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Hon. Fred Van Sickle

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 8 *Group, Inc., Jeffrey Goldstein and Kenneth Adamson*

9
 10 **IN THE UNITED STATES DISTRICT COURT**
 11 **FOR THE EASTERN DISTRICT OF WASHINGTON**
AT RICHLAND

12 James S. Gordon, Jr.,
 13 Plaintiff,
 14 v.
 15 Impulse Marketing Group, Inc.,
 Jeffrey Goldstein, Phillip Huston,
 16 and Kenneth Adamson,
 17 Defendants.

Case No.: CV-04-5125-FVS

REPLY DECLARATION OF
 SEAN A. MOYNIHAN, ESQ. IN
 SUPPORT OF DEFENDANTS'
 MOTION TO DISMISS OR, IN
 THE ALTERNATIVE, FOR A
 MORE DEFINITE STATEMENT

18 Impulse Marketing Group, Inc.,
 19 Third-Party Plaintiff,
 20 v.
 21 Bonnie F. Gordon, Jamila Gordon,
 22 James Gordon, III, and Jonathan
 Gordon,
 23 Third-Party Defendants.

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 28 REPLY DECLARATION OF SEAN A. MOYNIHAN, ESQ.
 IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS - 1
 00080342;1

KLEIN, ZELMAN, ROTHERMEL & DICHTER, L.L.P.
 485 MADISON AVE., 15TH FL., NEW YORK, NY 10022

1 Sean A. Moynihan, an attorney and counselor at law duly licensed in the State of New
2 York, now declares:

3 1. I am a partner with the law firm of Klein, Zelman, Rothermel & Dichter,
4 L.L.P., counsel for Defendants Impulse Marketing Group, Inc. (“Impulse”), Jeffrey
5 Goldstein (“Goldstein”) and Kenneth Adamson (“Adamson”) (collectively,
6 “Defendants”) in the above-captioned action. I submit this reply declaration in
7 support of Defendants’ Memorandum in Support of Defendants’ Motion to Dismiss
8 or, in the Alternative, for a More Definite Statement. Except as to matters alleged
9 below as being upon information and belief, I am fully and personally familiar with the
10 facts and circumstances set forth herein.

11 2. On or about September 11, 2006, Plaintiff, without leave of the Court,
12 filed a Second Amended Complaint, changing the caption and adding new factual
13 allegations, concurrently with his opposition to Defendants’ motion to dismiss. This
14 is the second time Plaintiff has amended his pleadings without leave of the Court.

15 3. On or about September 13, 2006, Defendants filed an objection to the
16 Second Amended Complaint, and, if necessary, Defendants will move to strike the
17 pleading and for all other relief that may be available to them as a result of Plaintiff’s
18 willful misconduct.

19 4. Plaintiff’s unauthorized filing of a Second Amended Complaint is
20 demonstrative of Plaintiff’s previously admitted scheme to shift the financial cost of
21 email marketing from the recipient of the email to the email marketers.

22 5. Upon information and belief, any email accounts using the
23 Gordonworks.com domain name are provided through and hosted by the domain
24 name registrar GoDaddy.com at mail.gordonworks.com, not by Mr. Gordon himself.
25 Attached hereto as Exhibit A is the DNS Lookup information related to the email.

1 6. Upon information and belief, mail.gordonworks.com has been assigned
2 Internet Protocol ("IP") address 68.178.150.119 by the domain name registrar Go
3 Daddy Software, Inc. This IP address is, upon information and belief, hosted by
4 GoDaddy.com, not by Mr. Gordon himself. Attached hereto as Exhibit B is the DNS
5 Lookup information related to the IP address.

6 DATED this 18th day of September, 2006.

7
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9 _____
Sean A. Moynihan

Certificate of Service

1
2 I, hereby, certify that on September 18, 2006, I electronically filed this pleading with
3 this Court. The Clerk of the Court will provide electronic notification using the
4 CM/ECF system, which will send an electronic copy of the Reply Declaration of Sean
5 A. Moynihan, Esq. in Support of Defendants' Motion to Dismiss or, in the
6 Alternative, for a More Definite Statement to: Robert J. Siegel and Floyd Ivey. I
7 hereby certify that I have served the forgoing to the following non-CM/ECF
8 participants by other means: Bonnie Gordon; Jonathan Gordon; James S. Gordon, III;
9 Robert Pritchett; Jamila Gordon; Emily Abbey and Hon. Harold D. Clarke, Jr.
10


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12 
13 _____
14 Sean A. Moynihan, admitted *pro hac vice*
15 Attorneys for Defendants Impulse
16 Marketing Group, Inc., Jeffrey Goldstein
17 and Kenneth Adamson
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Exhibit A

E-mail Tester results for gordonworks.com

Generated by www.DNSstuff.com

Network Security Services

Protect your computers from outside threats, viruses and spyware
www.network--security.com

Network Solutions

Domains, Hosting, Web Sites & More. ICANN Accred. Learn more here!
www.networksolutions.com

DNS Expert Professional

Comprehensive analyzing software. Detailed report on your DNS health.
www.menandmice.com

Getting MX record for gordonworks.com (from local DNS server, may be cached)... Got it!

Host	Preference	IP(s) [Country]
mail.gordonworks.com.	10	68.178.150.119 [US]

Step 1: Try connecting to the following mailserver:
mail.gordonworks.com. - 68.178.150.119

Step 2: If still unsuccessful, queue the E-mail for later delivery.

Note: if you enter an entire E-mail address (such as postmaster@gordonworks.com), we will try to connect to each mailserver to ensure that they are live and accept mail to the gordonworks.com domain.

NOTE: This tool does **NOT** attempt to determine if an E-mail address exists!

(C) Copyright 2000-2006 DNSstuff.com

Exhibit B

WHOIS results for 68.178.150.119

Generated by www.DNSstuff.com

Location: United States [City: Scottsdale, Arizona]

NOTE: More information appears to be available at [NOC124-ARIN](#).

Using 19 day old cached answer (or, you can [get fresh results](#)).
Hiding E-mail address (you can [get results with the E-mail address](#)).

OrgName: Go Daddy Software, Inc.
OrgID: GDS-31
Address: 14455 N Hayden Road
Address: Suite 226
City: Scottsdale
StateProv: AZ
PostalCode: 85260
Country: US

NetRange: 68.178.128.0 - 68.178.255.255
CIDR: 68.178.128.0/17
NetName: GO-DADDY-SOFTWARE-INC
NetHandle: NET-68-178-128-0-1
Parent: NET-68-0-0-0-0
NetType: Direct Allocation
NameServer: CNS1.SECURESERVER.NET
NameServer: CNS2.SECURESERVER.NET
Comment:
RegDate: 2005-04-12
Updated: 2005-11-11

RAbuseHandle: ABUSE51-ARIN
RAbuseName: Abuse Department
RAbusePhone: +1-480-624-2505
RAbuseEmail: *****@godaddy.com

RNOCHandle: NOC124-ARIN
RNOCHandle: Network Operations Center
RNOCHandle: +1-480-505-8809
RNOCHandle: ***@godaddy.com

OrgAbuseHandle: ABUSE51-ARIN
OrgAbuseName: Abuse Department
OrgAbusePhone: +1-480-624-2505
OrgAbuseEmail: *****@godaddy.com

OrgNOCHandle: NOC124-ARIN
OrgNOCHandle: Network Operations Center
OrgNOCHandle: +1-480-505-8809
OrgNOCHandle: ***@godaddy.com

OrgTechHandle: NOC124-ARIN
OrgTechName: Network Operations Center
OrgTechPhone: +1-480-505-8809
OrgTechEmail: ***@godaddy.com

ARIN WHOIS database, last updated 2006-08-29 19:10
Enter ? for additional hints on searching ARIN's WHOIS database.

[If E-mail address(es) were hidden on this page, you can [click here to get the results with the E-mail address](#)].

When the server was last reloaded, we had 298601 IP addresses banned. We encourage you to view these pages in a browser or widget/extension. You are not allowed to use automated programs to access this information, or you may be fined.

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