

1
2 MERKLE SIEGEL &
3 FRIEDRICHSEN, P.C.
4 1325 Fourth Ave., Suite 940
5 Seattle, Washington 98101-2509
6 Phone (206)-624-9392
7 Fax (206) 624-0717

THE HONORABLE FRED VAN
SICKLE

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON
AT RICHLAND

James S. Gordon, Jr.,

Plaintiff,

v.

Impulse Marketing Group, Inc.,
Defendant

Impulse Marketing Group, Inc.,
Third-Party Plaintiff,

v.

Bonnie F. Gordon, Jamila Gordon,
James Gordon III, and Jonathan
Gordon,

Third-Party Defendants

NO. CV-04-5125-FVS

**MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION TO AMEND
COMPLAINT**

[JURY DEMAND]

TO: Clerk of the Court

AND TO: Floyd E. Ivey, Sean Moynihan, Peter Glantz, Attorneys for Defendants.

Plaintiff, James S. Gordon, Jr., (Gordon) by and through his undersigned
attorney, Robert J. Siegel, pursuant to FRCP 15, and FRCP 20 hereby moves the

NO. CV-05-5079-FVS
PLAINTIFF'S MOTION FOR LEAVE TO
FILE A SECOND AMENDED COMPLAINT

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MERKLE SIEGEL & FRIEDRICHSEN, P.C.
1325 Fourth Ave., Suite 940
Seattle, WA 98101-2509
Phone: 206-624-9392
Fax: 206-624-0717

1 Court for an order granting him leave to file and serve his Second Amended
2 Complaint. (See Second Amended Complaint Dkt. 410).
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4 STATEMENT OF FACTS

- 5 1. In 2004, Gordon properly commenced this action against the Defendant
6 Impulse Marketing Group, Inc. (“Impulse”).
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- 8 2. Impulse has appeared and defended the action. Discovery is ongoing.
- 9 3. Pursuant to an order of this Court granting Plaintiff leave; on June 13,
10 2006 Gordon filed his First Amended Complaint.
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- 12 3. Impulse did not file an Answer to Plaintiff’s First Amended Complaint,
13 but instead brought a Motion To Dismiss which was filed on August 31,
14 2006.
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- 16 4. Among other issues contained within the Defendant’s Motion to
17 Dismiss was the complaint that Gordon had identified himself as a
18 “dba” in the caption of the First Amended Complaint, and that Gordon
19 had failed to assert damages under the Washington State Prize Statute,
20 RCW 19.170 et seq.
21
- 22 5. As part of, and contemporaneously with Plaintiff’s Response to
23 Defendants’ Motion To Dismiss the First Amended Complaint, Gordon
24 filed a Second Amended Complaint, which sought to correct and clarify
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1 14 (1981). Leave to amend should be freely given "except where prejudice to the
2 opposing party would result." CARUSO, at 349; SEE ALSO 6 C. Wright & A.
3 Miller 1473. The amendment of pleadings is left to the sound discretion of the trial
4 court, whose determination will be overturned on review only for an abuse of that
5 discretion. Herron v. Tribune Pub. Co., 108 Wn.2d 162, 165, 736 P.2d 249 (1987).
6 Discretion is abused if it is manifestly unreasonable, or exercised on untenable
7 grounds, or for untenable reasons. State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26,
8 482 P.2d 775 (1971).

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12 In the case before the Court, giving Gordon leave to file Gordon's Second
13 Amended Complaint will assist all parties and the Court in the efficient disposition
14 of Gordon's claims, and will in no way prejudice the Impulse. As noted above,
15 Impulse has not answered Gordon's First Amended Complaint. Further, Gordon's
16 Second Amended Complaint only serves to clarify issues about which Impulse has
17 complained. Having first complained that Gordon added "dba
18 GORDONWORKS.COM" to the caption of Gordon's complaint, the Defendants
19 have essentially requested that the Court strike the "dba" in the Defendant's
20 pending motion to dismiss. Thus, it is puzzling in the extreme that they would
21 object to Gordon filing a Second Amended Complaint that gives them this exact
22 result. Similarly, having raised the objection that Gordon has failed to allege
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1 damages with respect to the Deceptive Offers statute, it is bizarre that Impulse
2 would now object to an amendment to Gordon's complaint that makes that
3 allegation explicit. Thus, having complained about these exact deficiencies in
4 Gordon's First Amended Complaint, Impulse is in no position to object to their
5 being remedied in Gordon's Second Amended Complaint, and should certainly not
6 be heard to claim that these perfunctory amendments somehow prejudice
7 Defendants.
8

9
10 Plaintiff requests that the Court grant its Motion For Leave for Gordon to file
11 his Second Amended Complaint.
12

13 DATED this 11th day of October, 2006.
14

15 **MERKLE SIEGEL & FRIEDRICHSEN, P.C.**
16

17 /s/ Robert J. Siegel
18 Robert J. Siegel, WSBA #17312
19 Attorneys for Plaintiffs
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Certificate of Service

I, hereby, certify that on October 11, 2006, 2006, we filed this pleading with this Court. The Clerk of the Court will provide electronic notification system using the CM/ECF, which will send an electronic copy of this Notice to: Floyd E. Ivey.

/S/ Robert J. Siegel
Robert J. Siegel, WSBA #17312
Attorneys for Plaintiffs