

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

THE HONORABLE FRED VAN
SICKLE

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

**REPLY TO DEFENDANT’S RESPONSE
TO PLAINTIFF’S MOTION TO AMEND
(2ND Amended) COMPLAINT**

[JURY DEMAND]

TO: Clerk of the Court

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

1 The Defendant's make a great show of complaining about the fact that this
2 action has been pending for two years and has 421 docket entries. The Plaintiff
3 suggests that Defendants should simply comply with the rules of discovery and
4 provide the business records that the Plaintiff has requested and which are routinely
5 produced in civil litigation. The Plaintiff would then file a motion for summary
6 judgment, and this case would be over. The Defendant could also simplify the
7 litigation by voluntarily dismissing the Defendant's claims against the Plaintiff's
8 friends and family, which have no factual basis whatsoever, and which were
9 asserted by the Defendant purely for the vindictive purpose of punishing the
10 Plaintiff by attacking those closest to him. The Court might note that third-party
11 related pleadings account for a substantial number of the docket entries in this
12 matter.
13

14
15
16
17 Instead, the Defendants persist in engaging in the same scorched earth
18 litigation tactics that have resulted in this case requiring the two years and 421
19 docket entries about which the Defendants complain. For example, the Defendants
20 now deny that they had anything whatsoever to do with the emails that form the
21 basis of this action, despite the fact that Defendants have themselves made a
22 counterclaim based in part on the their own acts of sending the emails. (see the
23 Defendants' Fourth amended counterclaim against Plaintiff, paragraphs 31-42, Dkt.
24
25
26

1 58). The Defendants further deny sending the emails despite the fact that the
2 Defendants have previously admitted, and entered into evidence, the contract
3 whereby the Defendants were given the “exclusive” right to “market” the products
4 advertised in the emails. (see declaration of Philip Huston, Dkt. 6-1 ¶ 12 and
5 exhibit F thereto). Plainly, the Defendants cannot keep their story straight, and the
6 fact that they are now forcing the Plaintiff to prove even those elements of the
7 Plaintiff’s claims which the Defendants previously admitted, but now conveniently
8 deny, has undoubtedly exacerbated and complicated this litigation. It certainly
9 provides an obvious explanation for why the Defendants have refused to produce
10 any meaningful discovery for two years.
11
12
13

14 In the instant motion, the Defendants are in effect complaining about the fact
15 that the Plaintiff took efforts to address the Defendants’ earlier complaints.
16

17 In the Defendants’ motion to dismiss the Plaintiff’s First Amended
18 Complaint, the Defendants complained of various minor technical matters in the
19 First Amended Complaint. For example, the Defendants complained that the
20 Plaintiff had described itself under a “dba” in the caption. Since the Federal Rules
21 of Civil Procedure allow broad notice pleading, these technical details were not
22 fatal to any of the claims asserted, and did not need to be fixed to satisfy the Rules.
23
24 Nevertheless, to simplify matters, the Plaintiff filed a Second Amended Complaint,
25
26

1 which corrected these minor technical details. However, rather than accept that the
2 Plaintiff addressed these technical details about which the Defendant itself had
3 complained, the Defendant now lodges a new grievance; that the Second Amended
4 Complaint was filed without a motion! (Of course, this unnecessary resistance to
5 what should otherwise be a perfunctory matter, coming from a party complaining
6 about the number of docket entries, should not be lost on the Court.)
7
8

9 The Defendants have not yet filed an answer to the Plaintiff's First Amended
10 Complaint, and Plaintiff notes that Fed R. Civ. Pr. 15(a) provides that "A party may
11 amend the party's pleading once as a matter of course at any time before a
12 responsive pleading is served." Accordingly, under the Rules, the Plaintiff was free
13 to amend its First Amended Complaint without a motion, because no responsive
14 pleading had been filed. Nevertheless, if the Defendants wanted Plaintiff to file a
15 motion to amend, Plaintiff again decided to make things easy on Defendants, and
16 Plaintiff filed exactly just such a motion. Now, having previously complained that
17 the Plaintiff didn't seek leave of the Court to amend, the Defendant makes the
18 opposite argument, and complains that the Plaintiff *has* sought leave of the Court.
19 Plainly, there is nothing that Plaintiff can do, short of conceding and dismissing the
20 lawsuit, that won't generate complaints from the Defendant.
21
22
23
24
25
26

1 Notwithstanding the foregoing, the entire matter is a tempest in a teapot. The
2 Plaintiff's First Amended Complaint is substantively identical to its Second
3 Amended Complaint, and alleges the exact same causes of action. The Court has
4 already granted Plaintiff leave to amend its original complaint, and to include all of
5 the causes of action and parties set forth in both the First and Second Amended
6 Complaints. In any event, Defendants have never answered either the First or the
7 Second Amended Complaints, so regardless of which complaint is allowed, the
8 Defendants are in an identical procedural posture.

9 The Court should therefore ignore Defendants' objections, and grant Plaintiff
10 leave to file its Second Amended Complaint, as it does nothing except correct the
11 technical details about which the Defendants themselves have previously
12 complained.

13 DATED this 25th day of October, 2006.

14
15
16
17
18
19 **MERKLE SIEGEL & FRIEDRICHSEN, P.C.**

20
21 /s/ Robert J. Siegel
22 Robert J. Siegel, WSBA #17312
23 Attorneys for Plaintiffs
24
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Certificate of Service

I, hereby, certify that on October 25, 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