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 6 *Local Counsel for Defendants Impulse Marketing*
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Hon. Fred Van Sickle

5 Klein, Zelman, Rothermel & Dichter, L.L.P.
 6 By: Sean A. Moynihan & Peter J. Glantz
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 10 *Attorneys for Defendant Impulse Marketing*
 11 *Group, Inc., Jeffrey Goldstein and Kenneth Adamson*

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

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

Case No.: CV-04-5125-FVS

DECLARATION OF
 SEAN A. MOYNIHAN, ESQ. IN
 SUPPORT OF DEFENDANTS'
 MOTION FOR SANCTIONS

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

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

27 DECLARATION OF SEAN A. MOYNIHAN, ESQ.
 28 IN SUPPORT OF DEFENDANTS' MOTION FOR SANCTIONS- 1
 00080591;1

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

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

8 2. On or about March 29, 2006, Plaintiff filed a motion seeking leave to file
9 a first amended complaint.

10 3. On or about May 2, 2006, this Court granted in part and denied in part
11 Plaintiff’s motion to amend his original complaint. In particular, the order denied
12 Plaintiff’s request to add new plaintiffs to the action.

13 4. On or about June 13, 2006, Plaintiff filed his First Amended Complaint,
14 and, in direct contradiction to the Court’s Order, counsel surreptitiously added “dba
15 Gordonworks.com” as a plaintiff in the action.

16 5. On or about August 31, 2006, Defendants moved to dismiss Plaintiff’s
17 First Amended Complaint on several grounds including, but not limited to, the
18 unauthorized amendment of the original complaint, lack of jurisdiction and failure to
19 state a claim upon which relief could be granted. In addition, Defendants concurrently
20 moved in the alternative for a more definite statement.

21 6. On or about September 11, 2006, Plaintiff filed a memorandum in
22 response to Defendants’ motion concurrently with Plaintiffs unauthorized Second
23 Amended Complaint. The Second Amended Complaint, filed unilaterally without
24 Plaintiff ever seeking leave from the Court, changed the caption yet again and made
25 substantial material revisions to Plaintiff’s factual allegations and causes of action.

1 7. On or about September 13, 2006, Defendants filed an objection to the
2 unauthorized Second Amended Complaint and returned the rejected pleading to
3 Plaintiff's counsel.

4 8. The motion for sanctions and supporting papers were served on Robert J.
5 Siegel, Esq. on October 4, 2006, more than 21 days ago. To date, Plaintiff has failed to
6 withdraw the offending unauthorized pleading.


7 9. As a result of the filing of this unauthorized pleading and Plaintiff's
8 pattern of misconduct, Defendants have incurred substantial legal expenses.

9 DATED this 8th day of November, 2006.

10
11 
12 Sean A. Moynihan

1 Certificate of Service

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

9
10 
11 _____
12 Sean A. Moynihan, admitted *pro hac vice*
13 Attorneys for Defendants Impulse
Marketing Group, Inc., Jeffrey Goldstein
and Kenneth Adamson