

1 DOUGLAS E. MCKINLEY, JR.  
 Attorney At Law  
 2 P.O. Box 202  
 Richland, Washington 99352  
 3 Phone 628-0809 Fax (509) 628-2307

THE HONORABLE FRED VAN  
 SICKLE

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

13 JAMES S. GORDON, JR,  
 an individual residing in  
 14 Benton County, Washington.

NO. CV-04-5125-FVS

15 Plaintiff,

DECLARATION OF JAMES S.  
 GORDON, JR. IN SUPPORT OF  
 PLAINTIFF'S MOTION TO DISMISS  
 COUNTERCLAIMS AND THIRD  
 PARTY DEFENDANTS UNDER FRCP  
 12(b)(6) OR IN THE ALTERNATIVE  
 FOR SUMMARY JUDGMENT UNDER  
 FRCP 56 OR IN THE ALTERNATIVE  
 TO DISMISS UNDER FRCP (9)(b)

16 v.

17 IMPULSE MARKETING GROUP,  
 INC.,  
 18 a Nevada Corporation

Jury Trial Demanded

20 Defendants.

23 James S. Gordon declares as follows:

- 24 1) I, James S. Gordon Jr., am the named plaintiff in the above captioned  
 25 lawsuit. I am over the age of 18 and am otherwise competent to testify.  
 26

- 1           2)    On or about May of 1998, I registered the domain name  
2                   “gordonworks.com” and began using it to make information relating to  
3                   job searching and career development available to the general public on  
4                   the internet. I also began using the email address  
5                   “gordonworks@gordonworks.com”
- 6           3)    In addition to the email address “gordonworks@gordonworks.com” I  
7                   created numerous other email addresses, all using the gordonworks.com  
8                   domain. These included msm@gordonworks.com,  
9                   cash@gordonworks.com, goals@gordonworks.com,  
10                  business@gordonworks.com, jobs@gordonworks.com,  
11                  marketer@gordonworks.com, localbusiness@gordonworks.com,  
12                  peace@gordonworks.com, postmaster@gordonworks.com,  
13                  referral@gordonworks.com, webmaster@gordonworks.com,  
14                  genesis@gordonworks.com, teen@gordonworks.com,  
15                  telecom@gordonworks.com, emily@gordonworks.com,  
16                  bonnie@gordonworks.com, bonniegg@gordonworks.com,  
17                  bonniefaye@gordonworks.com, jeg@gordonworks.com,  
18                  jay@gordonworks.com, jamila@gordonworks.com,  
19                  jonathan@gordonworks.com, jim@gordonworks.com,  
20                  james@gordonworks.com.
- 21           4)    Many of these email addresses were published on the internet on various  
22                  web pages I created.
- 23           5)    Almost as soon as each of these email addresses was published on the  
24                  internet, I began receiving commercial email at these addresses.
- 25           6)    The addresses for my family members, bonnie@gordonworks.com,  
26

1 jay@gordonworks.com, jamila@gordonworks.com,  
2 jonathan@gordonworks.com, jim@gordonworks.com,  
3 james@gordonworks.com, were all published on the internet on web  
4 pages I built for my family.

5 7) Although the web pages related to my family members, all of them were  
6 created and maintained by me, and email sent to any of these email  
7 addresses is and was received by me.

8 8) Many of the commercial emails I had begun to receive contained offers  
9 purporting to offer free products.

10 9) In response to these offers, on or about September 1, 2003, I submitted  
11 requests to receive the free products advertised in these offers. These  
12 submissions were made by visiting a website advertised in these emails,  
13 and entering an email address and other information into an online form.  
14 I used the following email addresses james@gordonworks.com,  
15 faye@gordonworks.com, jamila@gordonworks.com,  
16 jay@gordonworks.com, jonathan@gordonworks.com,  
17 emily@gordonworks.com.

18 10) I never received any of the free products advertised in the emails.

19 11) Nowhere on any of these websites was I asked to give my consent to  
20 receive any commercial email from the Defendant, and at no time did I  
21 give my consent to receive any commercial email from the Defendant.

22 12) Almost immediately after I had filled out the online forms which  
23 purported to offer free products, I began to receive a torrent of  
24 commercial email from the Defendant at the email addresses I had used to  
25 try to accept the offers for free prizes.  
26

- 1 13) Within a few weeks of these requests for free products, I attempted to stop  
2 this torrent of commercial email by unsubscribing.
- 3 14) In October of 2003, I began submitting “unsubscribe” requests to the  
4 Defendants, and continued to do so through Spring of 2005.
- 5 15) These “unsubscribe” requests were ignored, and in fact, the amount of  
6 emails I received increased after these requests were sent.
- 7 16) All of the emails that form the basis for my lawsuit against the Defendant  
8 were received by me after I had submitted these “unsubscribe” requests.
- 9 17) Throughout the fall of 2003, I continued to receive emails from the  
10 Defendant, and I brought complaints about this unwanted and ongoing  
11 commercial email to the Federal Trade Commission, the Attorney General  
12 for Washington State, Tier 1 backbone internet providers, my local ISP,  
13 and the local, Richland, Washington police department.
- 14 18) At the local Richland, Washington police department, I was put in contact  
15 with Officer Lew Reed, a police officer specializing in cybercrimes  
16 investigations. Officer Reed personally examined about 2,000 emails sent  
17 by the Defendant, and confirmed to me that information in the  
18 transmission paths of the emails in question had been omitted and/or  
19 mischaracterized.
- 20 19) In November of 2004, having confirmed that the emails in question  
21 violated RCW 19.190 et seq., and having exhausted all avenues I could  
22 conceive of to stop the sending of this illegal spam to my domain short of  
23 litigation, I brought this suit against the Defendant.
- 24 20) Despite all of these efforts, and the fact that my lawsuit against the  
25 Defendant has been pending for 9 months, to this day the Defendant  
26

1 continues to send me commercial email that violates RCW 19.190 et seq.

2 21) In my prior lawsuit against Commonwealth Marketing Group, Inc., I  
3 identified my wife, Mrs. Bonnie Gordon; my children, Mr. James. S.  
4 Gordon III, Mr. Jonathan Gordon, and Ms. Jamila Gordon; my friends,  
5 Mr. Robert Pritchett, and Ms. Emily Abbey; and Officer Lew Reed as  
6 witnesses.

7 22) The Defendants have now sued all of these individuals as “Third Party  
8 Defendants.”

9 23) The Defendant’s claims against the Third Party Defendants have no basis  
10 in fact whatsoever.

11 24) To the extent that I ever had any conversations with any of the Third Party  
12 Defendants related to the commercial emails sent by the Defendant, I  
13 expressed my desire that they stop sending these emails, and my  
14 frustration that the Defendant would not.

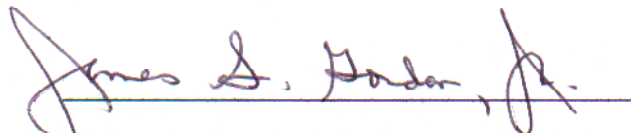
15 25) To the best of my knowledge, at no time have any of the Third Party  
16 Defendants ever solicited any commercial emails to any  
17 “gordonworks.com” email address.

18 26) At no time did any of the Third Party Defendants and I ever discuss any  
19 “scheme” whereby they would solicit any commercial emails to any  
20 “gordonworks.com” email address, as such would have been directly  
21 contrary to my often stated desire that the Defendant stop sending me  
22 commercial email.

23 27) The Defendant’s claims against the Third Party Defendants thus appear to  
24 be nothing more than an attempt to harm me by exposing my friends,  
25 family and law enforcement witnesses to the costs of defending  
26

1  
2 I declare under penalty of perjury under the laws of the United States that the  
3 foregoing is true and correct.  
4

5 EXECUTED this 15th day of August , 2005.  
6

7  
8  
9  
10 

11 James S. Gordon, Jr.  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24