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THE HON. FRED VAN SICKLE

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON**

JAMES S. GORDON, JR.,

Plaintiff,

v.

**IMPULSE MARKETING GROUP,
INC.,**

Defendant.

NO. CV-04-5125-FVS

**RESPONSE TO DEFENDANTS'
MOTION FOR SANCTIONS**

[HEARING: DECEMBER 11, 2006]

Plaintiff respectfully responds as follows to Defendants' Motion For Sanctions:

1. Defendant's Motion Is Not Well Founded. As part of their ongoing scorched earth litigation tactics, Defendants bring this Motion in an attempt to intimidate and disparage Plaintiff. Defendants' Motion is nothing but a tempest in a teapot. Defendants complain about conduct by Plaintiff which the Defendants themselves had requested, and which does not prejudice Defendants in the slightest.

RESPONSE TO DEFENDANT'S
SECOND MOTION TO COMPEL - 1

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1 The sequence of relevant acts about which Defendants complain are
2 as follows:

- 3 a. Plaintiff moves for leave to file an amended complaint;
- 4 b. This Court grants Plaintiff's motion in part;
- 5 c. Plaintiff files his First Amended Complaint ("FAC"), but
6 inadvertently and erroneously includes a "d/b/a" designation in
7 the caption for Plaintiff (a mere scrivener's error);
- 8 d. The Defendant files a Motion To Dismiss, disingenuously
9 complaining that the use of the d/b/a somehow added an
10 additional Plaintiff and complaining of other inconsequential
11 technical deficiencies in the FAC;
- 12 e. In an attempt to expeditiously remedy these harmless errors
13 AND prior to Defendants having answered the FAC, Plaintiff
14 files a Second Amended Complaint ("SAC") removing the
15 "dba" language the Defendant apparently found to be so
16 offensive, and also making some other minor revisions in a
17 good faith attempt to address the inconsequential pleading
18 errors alleged by Defendants (Both the FAC and the SAC are
19 attached hereto as **Exhibit "A"** with the revisions highlighted
20 for the Court's convenience and comparison);
- 21 f. Defendants then shift ground, and begin to complain that
22 Plaintiff failed to move the Court for leave to file the SAC, and
23 threaten Plaintiff with sanctions for failing to file a motion for
24 leave to amend;
- 25 g. In response to these new complaints, the Plaintiff again accedes
26 to the Defendant's complaints, and files a motion for leave to

1 file the Plaintiff's SAC, which is now pending before this
2 Court;

3 h. Defendants apparently care nothing that Plaintiff, by attempting
4 to cure the minor deficiencies in the SAC, did exactly what the
5 Defendant had asked them to do. Rather, Defendants would
6 prefer to seize on these minor, and inconsequential grievances,
7 and use them in an attempt to disparage Plaintiff before this
8 Court, as they proceed to file this baseless Motion seeking
9 sanctions.

10
11 **2. Plaintiff's SAC Is Well Grounded In Fact, Has A Colorable Basis**
12 **In Law, And Was Not Filed For An Improper Purpose.**

13 Defendants attempt to characterize the above conduct by
14 Plaintiff as something egregious and "vexatious", warranting the
15 imposition of severe sanctions under FRCP 11. However, nothing
16 could be further from the truth. Plaintiff trusts that this Court,
17 viewing the record herein, will see that if Plaintiff is guilty of
18 anything, it is merely of attempting to expeditiously and efficiently
19 respond to and remedy the inconsequential pleading issues raised by
20 Defendants. Notwithstanding its precise technical correctness, to
21 characterize such conduct as "vexatious", and rising to the level of
22 sanctionable conduct is simply nonsensical, and plainly exposes
23 Defendants' true motives. That is, scorched earth tactics used by
24 defense counsel employed by a wealthy client (which has insurance
25 coverage in place), with an obvious carte blanc to wage a war of
26 attrition, to use every tool at their disposal to intimidate and harass

1 Plaintiff. Such conduct is wholly consistent with bringing baseless
2 countersuits against Plaintiff's family members and friends, thereby
3 senselessly increasing their own legal costs.

4 In any event, as this Court has already denied Defendants' first
5 motion to dismiss, the Court has implicitly found that Plaintiff's
6 complaint was well-grounded in fact, and had a colorable basis in the
7 law. And, as neither Plaintiff's FAC nor his SAC substantially
8 changed the allegations in the original complaint, it cannot be
9 reasonably argued that either of the subsequent complaints were filed
10 for an improper purpose, or in "bad faith". Defendants are simply
11 wrong, and their true motives are exposed in bringing this Motion.
12

13 **RESPECTFULLY SUBMITTED** this 17th day of November, 2006.

14
15 **MERKLE SIEGEL & FRIEDRICHSEN, P.C.**

16
17 /s/ Robert J. Siegel
18 Robert J. Siegel, WSBA #17312
19 Attorneys for Plaintiff
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Certificate of Service

I, hereby, certify that on November 17, 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 Ivey.


Adana Lloyd

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