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

**MEMORANDUM IN SUPPORT OF  
PLAINTIFF'S MOTION FOR RELIEF  
FROM DEADLINE**

**[JURY DEMAND]**

TO: Clerk of the Court

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

Plaintiff, James S. Gordon, Jr., (Gordon) by and through his undersigned  
attorney, Robert J. Siegel, hereby moves the Court for an order relieving him from

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

Page 1 of 5

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1 responding to Defendants' Motion to Dismiss Philip Huston until an Order is  
2 entered in Defendants' pending Motion to Dismiss Plaintiff's First Amended  
3  
4 Complaint.

5 **STATEMENT OF FACTS**

- 6 1. In 2004, Gordon properly commenced this action against the Defendant  
7  
8 Impulse Marketing Group, Inc. ("Impulse").
- 9 2. Impulse has appeared and defended the action. Discovery is ongoing.
- 10 3. Pursuant to an order of this Court granting Plaintiff leave; on June 13,  
11  
12 2006 Gordon filed his First Amended Complaint.
- 13 3. Impulse did not file an Answer to Plaintiff's First Amended Complaint,  
14  
15 but instead brought a Motion To Dismiss which was filed on August 31,  
16  
17 2006.
- 18 5. As part of, and contemporaneously with Plaintiff's Response to  
19  
20 Defendants' Motion To Dismiss the First Amended Complaint, Gordon  
21  
22 filed a Second Amended Complaint, which sought to correct and clarify  
23  
24 some of the issues about which Defendants complained in their Motion  
25  
26 To Dismiss.
- 27 6. The Defendants then objected to the filing of the Second Amended  
28  
29 Complaint.

1 7. Gordon then moved the Court for an Order granting Gordon leave to file  
2 Gordon's Second Amended Complaint.  
3

4  
5 **ARGUMENT**

6 Defendant Philip Huston's Motion to Dismiss, dated and served on Plaintiff  
7 January 2, 2007, is premature because until the Court decides the Plaintiff's motion  
8 for leave to file an amended complaint, it is unclear which complaint is operative in  
9 the case. Accordingly, the Plaintiff cannot meaningfully respond to Defendant  
10 Huston's motion, because Plaintiff does not know which complaint the Court will  
11 ultimately use to determine if the complaint satisfies Rule 12(b)(6). While the  
12 Plaintiff is confident that the Court will ultimately rule to allow the Plaintiff's  
13 Second Amended Complaint to be entered, forcing the Court to rule on, and  
14 Plaintiff to respond to, a motion to dismiss in the interim is a waste of judicial  
15 resources because it requires both the Court and the Plaintiff to respond to the  
16 adequacy of a complaint that will likely be rendered moot by virtue of the  
17 Plaintiff's already pending motion to amend.  
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23  
24 Defendant Philip Huston's Motion to Dismiss does contain some new  
25 grounds for dismissal that are specific to Defendant Philip Huston, but for the most  
26 part it simply re-alleges the basis for dismissal set forth in the Defendant Impulse

1 Marketing Group Inc.'s (IMG) Motion to Dismiss Plaintiff's First Amended  
2 Complaint. As such, the Defendants have in effect filed two identical copies of the  
3 same motion. Forcing the Court and the Plaintiff to respond to the second version  
4 of a motion that is substantially duplicative of a pending motion is also a waste of  
5 judicial resources.  
6

7  
8 For the forgoing reasons, the Plaintiff respectfully requests that the Court  
9 relieve the Plaintiff from responding to the Defendant Philip Huston's pending  
10 Motion to Dismiss until an Order is entered in pending Plaintiff's pending motion  
11 for leave of the Court to file the Plaintiff's Second Amended Complaint, and an  
12 order is entered in Defendant Impulse Marketing Group Inc.'s (IMG) Motion to  
13 Dismiss Plaintiff's First Amended Complaint.  
14

15  
16  
17 DATED this 4<sup>th</sup> day of January, 2007.  
18

19 **MERKLE SIEGEL & FRIEDRICHSEN, P.C.**  
20

21 /s/ Robert J. Siegel  
22 Robert J. Siegel, WSBA #17312  
23 Attorneys for Plaintiffs  
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**Certificate of Service**

I, hereby, certify that on January 4, 2007, 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