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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,
a married individual;

Plaintiff,

v.

**IMPULSE MARKETING
GROUP, INC., a
Nevada/Georgia corporation;
JEFFREY GOLDSTEIN,
individually and as part of his
marital community; PHILLIP
HUSTON, individually and as
part of his marital community;
KENNETH ADAMSON,
individually and as part of his
marital community; JOHN
DOES, I-X,**

NO. CV-04-5125-FVS

**PLAINTIFF'S MORE DEFINITE
STATEMENT**

[JURY DEMAND]

COMES NOW, Plaintiff James S. Gordon, Jr. and, pursuant to this Court's
order of May 14, 2007, files this More Definite Statement:

Plaintiff hereby apologizes to the Court for failing to file this statement
within the time period set forth in FRCP 12(e). However, Plaintiff's efforts have
been greatly complicated by the unlawful and ongoing actions of Defendant

1 Impulse. Specifically, Impulse has continued to illegally send unwanted email to
2 Plaintiff essentially on a daily basis. Thus, the Plaintiff cannot with any certainty
3 identify the number of emails at issue, the time frame during which the emails were
4 sent, or the address and domain names that received the emails, as each day
5 changes the number of emails, adds to the relevant time period, and potentially adds
6 new addresses and domain names to the list. Further, it appears to Plaintiff that
7 Impulse is using an ever changing group of third parties to assist Impulse in sending
8 these unlawful emails. Thus, to provide a brief summary of the factual basis upon
9 which the Plaintiff claims that Impulse sent the emails requires Plaintiff to conduct
10 a new investigation beginning each day with the receipt of new email sent by an
11 associate of Impulse whose identity is deliberately obscured.
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17 It is indisputable that Plaintiff James S. Gordon Jr. (hereafter "Gordon")
18 never wanted to receive spam from Impulse. It is further indisputable that Gordon
19 has repeatedly notified Impulse of Gordon's desire not to receive spam from
20 Impulse. One would think that the fact that Gordon was suing Impulse in Federal
21 Court would provide sufficient notice that Gordon does not want their spam.
22 However, no matter what Gordon does, including filing and maintaining this
23 lawsuit over a period of three years and through hundreds of docket entries,
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1 Impulse has continued to ignore Gordon's repeated requests and plain desire to be
2 left alone, and has continued to send Gordon spam. Impulse's conduct in this
3 regard is simply outrageous.
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6 Impulse's continued spamming of Gordon is also plainly illegal. CAN
7 SPAM requires the senders of commercial emails to leave a party alone without the
8 necessity of the intervention of a Court. 15 USC 7704(a)(4) provides:
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12 (4) PROHIBITION OF TRANSMISSION OF COMMERCIAL
ELECTRONIC MAIL AFTER OBJECTION-

13 (A) IN GENERAL- If a recipient makes a request using a
14 mechanism provided pursuant to paragraph (3) not to receive
15 some or any commercial electronic mail messages from such
sender, then it is unlawful--

16 (i) for the sender to initiate the transmission to the
17 recipient, more than 10 business days after the receipt of
18 such request, of a commercial electronic mail message
that falls within the scope of the request;

19 (ii) for any person acting on behalf of the sender to
20 initiate the transmission to the recipient, more than 10
21 business days after the receipt of such request, of a
22 commercial electronic mail message with actual
23 knowledge, or knowledge fairly implied on the basis of
objective circumstances, that such message falls within
the scope of the request;

24 (iii) for any person acting on behalf of the sender to assist
25 in initiating the transmission to the recipient, through the
26 provision or selection of addresses to which the message
will be sent, of a commercial electronic mail message

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with actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that such message would violate clause (i) or (ii); or (iv) for the sender, or any other person who knows that the recipient has made such a request, to sell, lease, exchange, or otherwise transfer or release the electronic mail address of the recipient (including through any transaction or other transfer involving mailing lists bearing the electronic mail address of the recipient) for any purpose other than compliance with this Act or other provision of law.

There is no question that Gordon has repeatedly requested that Impulse stop sending spam to Gordon prior to filing this lawsuit. However, even if Gordon had not otherwise notified Impulse in that regard, by virtue of Gordon filing this lawsuit, and by providing Impulse copies of the offending spam in discovery, there can be no rational argument that Impulse is not on actual notice of Gordon's desire to be free from Impulse's spam. Gordon's initial disclosures, his discovery responses, and, of course, the emails sent by Impulse themselves plainly disclose the email addresses and domain names at Gordon's server. For Impulse to continue to send their spam to these email addresses and domain names throughout this lawsuit in the face of the plain prohibition under 15 USC 7704(a)(4) is nothing short of unconscionable.

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2 Accordingly, subject to the foregoing, Gordon makes more definite statement as
3 follows:
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5 **a) The number of emails at issue.**

6 There are approximately 31,000 emails that form the basis of this action. On
7 information and belief, Impulse has sent approximately 18,100 of these emails.
8 10,900 more emails appear to have been sent on behalf of Impulse by Impulse
9 affiliates.
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13 **b) The time frame during which the emails were sent**

14 The emails at issue started in Sept. 2003 and are still being sent in June 2007.
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17 **c) The address and domain names that received the emails**

18 The addresses at gordonworks.com, include:
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20 james@; faye@; jamila@; jay@; jonathan@; emily@

21 Other domains on Gordon's server that are receiving unwanted spam from the
22

23 Defendant are: anthonycentral.com; celiajay.com; chiefmusician.net; ehahome.com

24
25 jaycelia.com; jaykaysplace.com; itdidnotendright.com; rcw19190020.com;
26

1 ewaterdragon.com
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4 **d) A brief summary of the factual basis upon which the Plaintiff claims that**
5 **Defendant (Impulse) sent the emails.**

6 Gordon believes that the emails are from Impulse because each of the emails

7 contain one or more of the following characteristics:

8 the mailing address of Impulse;

9 the emails are sent from a domain that is owned by Impulse;

10 the emails advertise a product sold by Commonwealth Marketing Group, Inc., and

11 (CMG), and Impulse has an exclusive agreement to send spam advertising CMG

12 products;

13 the emails contain a domain name owned by a principal or manager of Impulse.
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18 **RESPECTFULLY SUBMITTED** this 22nd day of June, 2007.

19 **i.JUSTICE LAW, P.C.**

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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 June 22, 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; Sean Moynihan; Stacy Wolery. I further certify that I have served the foregoing to the following non-CM/ECF participants by other means: Bonnie Gordon; Jonathan Gordon; James S. Gordon, III; Jamila Gordon; Emily Abbey; and Hon. Harld D. Clarke, Jr.

/S/ Robert J. Siegel
Robert J. Siegel, WSBA #17312
Attorneys for Plaintiffs