

Hon. Fred Van Sickle

Liebler, Ivey, Conner, Berry & St. Hilaire
By: Floyd E. Ivey
1141 N. Edison, Suite C
P.O. Box 6125
Kennewick, WA 99336
*Local Counsel for Defendants Impulse Marketing Group, Inc.,
Jeffrey Goldstein, Phillip Huston and Kenneth Adamson*

Klein Zelman Rothermel LLP
By: Sean A. Moynihan & Stacy K. Wolery
485 Madison Avenue, 15th Floor
New York, NY 10022
(212) 935-6020
*Attorneys for Defendants Impulse Marketing Group, Inc.,
Jeffrey Goldstein, Phillip Huston and Kenneth Adamson*

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

James S. Gordon, Jr.,
Plaintiff,
v.
Impulse Marketing Group, Inc.,
Jeffrey Goldstein, Phillip Huston,
and Kenneth Adamson,
Defendants.

Case No.: CV-04-5125-FVS

MOYNIHAN DECLARATION IN
SUPPORT OF DEFENDANTS'
MOTION TO DISMISS THE
AMENDED FIRST AMENDED
COMPLAINT AND TO STRIKE
PLAINTIFF'S MORE DEFINITE
STATEMENT

Impulse Marketing Group, Inc.,
Third-Party Plaintiff,
v.
Bonnie F. Gordon, Jamila Gordon,
James Gordon, III, and Jonathan
Gordon,
Third-Party Defendants.

MOYNIHAN DECLARATION IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS THE AMENDED
FIRST AMENDED COMPLAINT AND TO STRIKE THE MORE
DEFINITE STATEMENT - 1
00084838;1

KLEIN ZELMAN ROTHERMEL LLP
485 MADISON AVENUE, NEW YORK, NY 10022
(212) 935-6020 TEL.
(212) 753-8101 FAX

1 Sean A. Moynihan, an attorney and counselor at law duly licensed in the State of
2 New York and admitted *pro hac vice* in this action, now declares:

3 1. I am a partner with the law firm of Klein Zelman Rothermel LLP,
4 counsel for Defendants Impulse Marketing Group, Inc. ("Impulse"), Jeffrey Goldstein
5 ("Goldstein"), Kenneth Adamson ("Adamson") and Phillip Huston ("Huston")
6 (collectively, "Defendants") in the above-captioned action. I submit this declaration in
7 support of Defendants' Motion to Dismiss the Amended First Amended Complaint
8 and to Strike the More Definite Statement. Except as to matters alleged below as
9 being upon information and belief, I am fully and personally familiar with the facts and
10 circumstances set forth herein.

11 2. The Original Complaint was filed on or about November 23, 2004, nearly
12 three (3) years and five hundred (500) docket entries ago, by the filing of a summons
13 and complaint against Impulse.

14 3. On or about June 13, 2006, Plaintiff filed his First Amended Complaint
15 ("FAC"). Contrary to the Court's order denying Plaintiff's request to add new
16 plaintiffs, Plaintiff surreptitiously added the d/b/a "Gordonworks.com" as a plaintiff.

17 4. Defendants Impulse, Goldstein and Adamson moved to dismiss the FAC
18 on or about August 31, 2006. Defendant Huston was not served with the FAC until
19 November 2, 2006, and his motion to dismiss the FAC was filed on or about January
20 2, 2007.

21 5. Both the Original Complaint and the FAC were, *inter alia*, rife with vague,
22 ambiguous and often conclusory allegations that Defendants had violated "at least
23 one" prohibition of RCW § 19.190, *et seq.* (collectively referred to as "CEMA").

24 6. On or about September 11, 2006, unilaterally and in direct contravention
25 to Rule 15 of the Federal Rules of Civil Procedure, Plaintiff filed a Second Amended
26

1 Complaint (“SAC”).

2 7. On or about September 13, 2006, Defendants filed an objection to the
3 unauthorized pleading and rejected the SAC.

4 8. Plaintiff moved to amend his complaint on or about October 10, 2006.

5 9. On or about November 8, 2006, Defendants moved this Court for
6 sanctions against Plaintiff, based upon Plaintiff’s repeated violations of Court orders
7 and the Federal Rules of Civil Procedure.

8 10. On or about May 14, 2007, “troubled by the vague and conclusory nature
9 of the FAC,” the Court granted in part and denied in part Defendants’ motion to
10 dismiss, requiring Plaintiff to file a more definite statement (quoting the Court’s May
11 14, 2007 Order at 11).

12 11. A hearing on Defendants’ motion for sanctions was held on May 25,
13 2007, and Plaintiff was sanctioned in the amount of One Thousand Five Hundred
14 Dollars (\$1,500.00) both verbally and in the resulting minute order issued that same
15 day.

16 12. On or about June 15, 2007, the Court issued an additional order
17 reiterating the sanctioning of Plaintiff. Nonetheless, to date, Plaintiff has failed to pay
18 to Defendants the sanctions as ordered.

19 13. Nearly one (1) month past the time limits prescribed by Fed. R. Civ. P.
20 12(e), Plaintiff filed his Amended First Amended Complaint (“AFAC”) and More
21 Definite Statement on or about June 22, 2007.

22 14. The More Definite Statement was filed separate and apart from the
23 AFAC and did not correspond to any specific allegations contained in the AFAC.

24 15. Defendants filed an objection to the offending pleadings on or about
25 June 26, 2007 and returned same to Plaintiff as rejected.

1 16. Despite being sanctioned, Plaintiff continues to engage in a pattern and
2 practice of disregard for the Federal Rules of Civil Procedure and orders of this Court.

3 17. As a result of Plaintiff's pattern of misconduct, Defendants have been
4 prejudiced and forced to expend substantial sums defending this matter.

5
6 DATED this 28th day of June, 2007.

7
8 
9 Sean A. Moynihan

Certificate of Service

I, hereby, certify that on June 27, 2007, I electronically filed this pleading with this Court. The Clerk of the Court will provide electronic notification using the CM/ECF system, which will send an electronic copy of the Moynihan Declaration in Support of the Motion to Dismiss the Amended First Amended Complaint and to Strike the More Definite Statement to: Robert J. Siegel, Floyd E. Ivey and Sean A. Moynihan. I hereby certify that I have served the forgoing to the following non-CM/ECF participants by other means:

Bonnie Gordon
9804 Buckingham Drive
Pasco, WA 99301

Jonathan Gordon
9804 Buckingham Drive
Pasco, WA 99301

James S. Gordon, III
9804 Buckingham Drive
Pasco, WA 99301

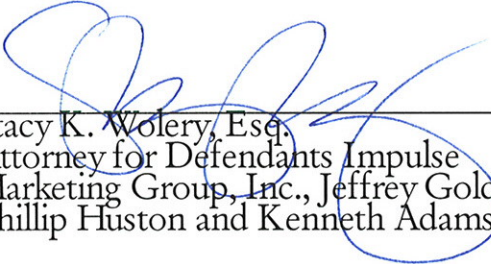
Robert Pritchett
1952 Thayer Drive
Richland, WA 99354

Jamila Gordon
9804 Buckingham Drive
Pasco, WA 99301

Emily Abbey
1407 2nd Avenue West, # 608
Seattle, WA 98119

Hon. Harold D. Clarke, Jr.
Special Discovery Master
Algeo Clarke & Erickson
E 102 Baldwin
Spokane, WA 99207

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



Stacy K. Wolery, Esq.
Attorney for Defendants Impulse
Marketing Group, Inc., Jeffrey Goldstein,
Phillip Huston and Kenneth Adamson