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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 RESPONSE TO
MOTION TO DISMISS
SECOND AMENDED FIRST
AMENDED] COMPLAINT**

[JURY DEMAND]

COMES NOW, Plaintiff James S. Gordon, Jr. and, by and through
undersigned counsel, responds to Defendants’ Motion To Dismiss Second
Amended First Amended Complaint.

1 The Defendants motion to dismiss rests entirely on the proposition that the
2 Plaintiff's Second Amended First Amended Complaint (Dkt. #513) (hereafter the
3 "Complaint") fails to comply with the Court's Order of July 9, 2007 (Dkt. #512)
4 (hereafter "the Court's Order"). As such, the Defendant's motion fails completely.
5 Not only is it plain that the Plaintiff's Complaint complied with the Court's Order,
6 it is equally plain that the Complaint actually provides substantially *more* detail
7 than required by the Court's Order, and thus provides the Defendants substantially
8 *more* information than even the Court required. In its Order, the Court stated:

9 "the Plaintiff shall file an amended pleading setting forth:

- 10 a) The number of emails at issue;
- 11 b) The time frame during which the emails were sent;
- 12 c) The addresses and domain names that received the emails; and
- 13 d) A brief summary of the factual basis Plaintiff claims that Impulse sent the
- 14 emails."

15 While the Court did not require Plaintiff to do so, Plaintiff made the actual emails
16 that form the basis of the Plaintiff's claims an exhibit to the Complaint. Thus,
17 Plaintiff has gone above and beyond the Court's mere requirement that the Plaintiff
18 provide "the number of emails at issue," and has provided the actual emails

1 themselves.

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4 Each of these emails contain the exact date and time that each of the emails was
5 sent, as well as the exact addresses to which the emails were sent, and the domain
6 names from which each was sent for each of the emails. Thus, rather than merely
7 providing a range of dates (which was all that was required by the Court's Order),
8 the Complaint contains the exact time and date each and every email was sent.

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10 Again, the Complaint goes above and beyond the Court's Order. Similarly, rather
11 than merely providing a summary of the addresses and domain names that received
12 the emails (which was all that was required by the Court's Order), the Complaint
13 now contains the exact addresses and domain names for each email. Plainly, the
14 Plaintiff has again provided far more information than required by the Court.
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18 Finally, the Court's Order also required that the Plaintiff provide "a brief summary
19 of the factual basis Plaintiff claims that Impulse sent the emails." Complying with
20 this portion of the Court's Order was not difficult. The Defendants are indisputably
21 a company that exists entirely to send email marketing, and the emails in question,
22 attached as an exhibit to the Complaint, have the Defendant's name printed on
23 them. In paragraphs 3.19 through 3.20 of the Complaint, the Plaintiff went so far as
24 to attach printed versions of examples of these emails, calling out the specific
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1 portions of example emails where the Defendant's name appears. Again, Plaintiff
2 has more than complied with the Court's requirement that the Plaintiff provide a
3 "brief summary of the factual basis Plaintiff claims that Impulse sent the emails."
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6 Notably, and despite the Defendant's claims to the contrary, the Court did NOT
7 require Plaintiff to include ANY recitation or summary of why the Plaintiff claimed
8 that each of the emails sent by the Defendant violated the statutes. Rather, the
9 Court's Order only required that the Plaintiff provide a summary of the evidence
10 that the Defendant sent the emails. Despite the fact that the Court did not make any
11 such requirement, again, Plaintiff provided significantly more details than the
12 Court's Order required.
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17 Not only did the Plaintiff amend his complaint to set forth "a brief summary of the
18 factual basis Plaintiff claims that Impulse sent the emails," the Plaintiff also
19 included a summary, complete with examples, of why the Plaintiff believed that
20 these emails violated the statutes, complete with examples and exhibits. At
21 paragraphs 3.9 through 3.14 in the Complaint, the Plaintiff described the Plaintiff's
22 extensive efforts to get the Defendant to stop sending the Plaintiff spam. For
23 years, despite all of these efforts, the Defendant continued to send the Plaintiff
24 spam in violation of the statutes. Paragraphs 3.9 through 3.14 in the Complaint
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1 further show how the Defendant uses various ruses to hide its identity, such as
2 registering domains in the name of non-existent entities, also in violation of the
3 statutes.
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6 In its brief, the Defendant claims that the Court's Order required the Plaintiff to
7 explain how each and every email at issue violates the statute. A plain reading of
8 the Court's Order demonstrates that it contains no such requirement, and the
9 Plaintiff is being disingenuous in leading the Court to believe that the Court's Order
10 contained this requirement when, in fact, it did not. Nevertheless, it is clear that
11 even if the Court did make this requirement, (which would be well beyond any
12 requirement of *notice* pleading), the Plaintiff has complied. At a minimum, the
13 Plaintiff has shown that each and every email at issue violates the law because the
14 Defendant sent them after they had been asked repeatedly to stop.
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20 In summary, the Court should deny the Defendant's motion not only because the
21 Plaintiff's Second Amended First Amended Complaint (Dkt. #513) complies with
22 the Court's Order of July 9, 2007, but also because the Plaintiff's Complaint
23 provides vastly more detail and explanation of the Plaintiff's claims than is required
24 under the Federal Rules and/or to satisfy notice pleading.
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1 DATED this 22nd day of September, 2007.
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4 **i.JUSTICE LAW, P.C.**
5

6 /s/ Robert J. Siegel
7 Robert J. Siegel, WSBA #17312
8 Attorneys for Plaintiffs
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11 **Certificate of Service**

12 I, hereby, certify that on September 22, 2007, we filed this pleading with
13 this Court. The Clerk of the Court will provide electronic notification
14 system using the CM/ECF, which will send an electronic copy of this
15 Notice to: Floyd E. Ivey; Sean Moynihan; Stacy Wolery. I further certify
16 that I have served the foregoing to the following non-CM/ECF
17 participants by other means: Bonnie Gordon; Jonathan Gordon; James
18 S. Gordon, III; Jamila Gordon; Emily Abbey; and Hon. Harld D. Clarke,
19 Jr.
20

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