Case 2:04-cv-05125-FVS   Document 56   Filed 09/06/2005

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7   **IN THE UNITED STATES DISTRICT COURT**
                FOR THE EASTERN DISTRICT OF WASHINGTON
8

9   JAMES S. GORDON, JR., an individual   )   NO. CV-04-5125-FVS
    residing in Benton County, Washington,   )   MEMORANDUM
10   )   SUPPORTING
                        Plaintiffs   )   DEFENDANT'S SECOND
11   )   MOTION FOR EXTENSION
    vs.   )   OF TIME TO FILE RESPONSE
12   )   TO PLAINTIFF'S MOTION
    IMPULSE MARKETING GROUP, INC.,   )   TO DISMISS OR FOR
13 a Nevada Corporation,   )   SUMMARY JUDGMENT OR
)   IN THE ALTERNATIVE TO
14   Defendants   )   STRIKE PLAINTIFF'S
    _____   )   MOTION
15 IMPULSE MARKETING GROUP, INC.,   )
)
16   Third-Party Plaintiff,   )
)
17 vs.   )
)
18 BONNIE GORDON, JAMES S. GORDON,   )
    III, JONATHAN GORDON, JAMILA   )
19 GORDON, ROBERT PRITCHETT and   )
    EMILY ABBEY,   )
20   )
        Third-Party Defendants.   )
21 _____   )

22   Defendant has filed its Answer with Counter Claims and a Third-Party

23 Complaint. Plaintiff has not filed a responsive pleading. Plaintiff has filed a

24 Motion to Dismiss Defendant's Counterclaims and Third Party Complaint.

25 Defendant's Response to Plaintiff's Motion to Dismiss was extended by order of

26 the court to September 7, 2005.

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28 Memorandum Supporting Defendant's Second Motion For   LIEBLER, IVEY, CONNOR, BERRY & ST. HILAIRE
    Extension of Time to File Response to Plaintiff's Motion to Dismiss   Attorneys at Law
    and for Summary Judgment - 1.   P.O. Box 6125
    Z:\IPClient\ImpulseMarketingGroup v. Gordon\Pleadings\Plaintiff Motion for   Kennewick, Washington 99336-0125
    S   u   m   m   a   r   y   (509) 735-3581
    Judgment\DefendantsSecondMotionExtension.050906\Defendants.Memorandum.
    Supporting.Defendant.Second.Motion.Extension.Time.File.Response.050906.wpd

1   Defendant has filed its First Amended Defendant's Answer, Counterclaims

2   and Third-Party Complaint on September 6, 2005. Defendant requests a further

3   extension of time to file its Response to Plaintiff's Motion to September 21, 2005

4   or in the alternative the Defendant requests that Plaintiff's Motion to Dismiss be

5   stricken in light of Defendant's filing of its First Amended Defendant's Answer.

6   A party may amend the party's pleading once as a matter of course at any

7   time before a responsive pleading is served. Federal Rules of Civil Procedure

8   Rule 15(a); *Ascon Properties, Inc. v. Mobil Oil Co.* 866 F.2d 1149, 1160 (9th. Cir.

9   Cal. 1989). Plaintiff's Motion to Dismiss is not a responsive pleading. FRCP 7(a)

10 defines "pleadings" as a complaint and answer; a reply to a counterclaim; an

11 answer to a cross-claim; and a third party complaint and answer. Anything else is a

12 motion or paper. The requirement in Rule 8(c) that a party set forth the affirmative

13 defenses listed in that rule applies only to responsive "pleadings," not to motions.

14 A motion to dismiss is not a pleading. *Morrison v. Mahoney* 399 F.3d 1042, 1046

15 (9th Cir. Mont. 2005).

16 Defednant requests either an extension of time to September 21, 2005 for

17 the filing of its Response to Plaintiff's Motion to Dismiss or alternatively for

18 Plaintiff's Motion to be stricken in light of the filing of First Amended

19 Defendant's Answer, Counterclaims and Third-Party Complaint.

20 DATED this 6th day of September, 2005.

21 LIEBLER, IVEY, CONNOR, BERRY & ST. HILAIRE

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23 By /s/ FLOYD E. IVEY
        FLOYD E. IVEY, WSBA #6888
24   Local Counsel for Defendant

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28 Memorandum Supporting Defendant's Second Motion For
    Extension of Time to File Response to Plaintiff's Motion to Dismiss
    and for Summary Judgment - 2.
    Z:\IPClient\ImpulseMarketingGroup v. Gordon\Pleadings\Plaintiff Motion for
    S   u   m   m   a   r   y
    Judgment\DefendantsSecondMotionExtension.050906\Defendants.Memorandum.
    Supporting.Defendant.Second.Motion.Extension.Time.File.Response.050906.wpd

    LIEBLER, IVEY, CONNOR, BERRY & ST. HILAIRE
    Attorneys at Law
    P.O. Box 6125
    Kennewick, Washington 99336-0125
    (509) 735-3581

1   KLEIN, ZELMAN, ROTHERMEL & DICHTER, LLP

2
        By PETER J. GLANTZ by telephone authority by
3   /S/FLOYD E. IVEY
        PETER J. GLANTZ
4   Attorneys for Defendant

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6   I hereby certify that on September 6, 2005, I electronically filed
Defendant's Memorantum in Support of Defendant's Second Motion for
7 **Extension of Time to File Response to Plaintiff's Motion to Dismiss or for**
Summary Judgment with the Clerk of the Court using the CM/ECF System
8 which will send notification of such filing to Douglas E. McKinley, Jr. and
transmitted via internet to Peter Glantz.

9
                S/ FLOYD E. IVEY
10   FLOYD E. IVEY

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28   Memorandum Supporting Defendant's Second Motion For   LIEBLER, IVEY, CONNOR, BERRY & ST. HILAIRE
    Extension of Time to File Response to Plaintiff's Motion to Dismiss   Attorneys at Law
    and for Summary Judgment - 3.   P.O. Box 6125
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