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

JAMES S. GORDON, JR., an individual
residing in Benton County, Washington,

Plaintiffs

vs.

IMPULSE MARKETING GROUP, INC.,
a Nevada Corporation,

Defendants

IMPULSE MARKETING GROUP, INC.,

Third-Party Plaintiff,

vs.

BONNIE GORDON, JAMES S. GORDON,
III, JONATHAN GORDON, JAMILA
GORDON, ROBERT PRITCHETT and
EMILY ABBEY,

Third-Party Defendants.

NO. CV-04-5125-FVS

DEFENDANT'S
MEMORANDUM IN
SUPPORT OF
DEFENDANT'S MOTION
TO STRIKE PLAINTIFF'S
MOTION TO DISMISS AND
IN THE ALTERNATIVE FOR
CLARIFICATION OF THE
PLEADING WHICH IS THE
SUBJECT OF PLAINTIFF'S
MOTION

Plaintiff has moved to Dismiss relative to the original Defendant's
Counterclaims and Third-Party Complaint.

However, Defendant Impulse Marketing Group, Inc. filed its First Amended
Answer, Amended Counterclaims and Third-Party Amended Complaint on
September 6, 2005.

Memorandum in Support of Defendant's Motion to Strike Plaintiff's
Motion to Dismiss and in the Alternative for Clarification of the
Pleading Which is the Subject of Plaintiff's Motion - 1.
Z:\IPClient\ImpulseMarketingGroup v. Gordon\Pleadings\Plaintiff Motion for
S u m m a r y
Judgment\DEfednant'sMotionStrikeorForClarification\MemorandumSupportingD
efendantsMotionToClarifyOrStrikePlaintiffsMotion.050908.wpd

LIEBLER, IVEY, CONNOR, BERRY & ST. HILAIRE
Attorneys at Law
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1 Plaintiff's Motion, relative to the original Answer, is now rescheduled for
 2 October 12, 2005. However, Defendant's filing of the Amended Answer renders
 3 moot the original Answer. Proceeding with argument of Plaintiff's Motion
 4 pertaining to the original Answer renders confusion over which pleading is the
 5 subject of Argument. Plaintiff's Motion to Dismiss is moot, in light of the
 6 Defendant's Filing of its Amended Answer, and should be stricken. Defendant's
 7 Amended Answer supercedes the original Answer, thus making the motion to
 8 dismiss the original Answer moot. The Amended Answer becomes the operative
 9 pleading. Plaintiff's Motion to Dismiss should be stricken. *Kentucky Press Ass'n,*
 10 *Inc. v. Kentucky* 355 F.Supp.2d 853, 857 (E.D.Ky.2005); *Parry v. Mohawk Motors*
 11 *of Mich., Inc.*, 236 F.3d 299, 306 (6th Cir.2000); *Pure Country, Inc. v. Sigma Chi*
 12 *Fraternity* 312 F.3d 952, 956 (8th Cir. Mo. 2002).

13 Defendant respectfully requests the Court to Strike Plaintiff's Motion To
 14 Dismiss Counterclaims and Third Party Defendants Under FRCP 12(b)(6) or in
 15 The Alternative For Summary Judgment Under FRCP 56 or in The Alternative to
 16 Dismiss Under FRCP 9(b).

17 DATED this 8th day of September, 2005.

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

19 By /s/ FLOYD E. IVEY
 20 FLOYD E. IVEY, WSBA #6888
 Local Counsel for Defendant

21 I hereby certify that on September 8, 2005, I electronically filed
 22 **Defendant's Memorandum In Support of Defendant's Motion to Strike**
 23 **Plaintiff's Motion to Dismiss and in the Alternative for Clarification of the**
 24 **Pleading Which is the Subject of Plaintiff's Motion** with the Clerk of the Court
 using the CM/ECF System which will send notification of such filing to Douglas
 E. McKinley, Jr. and transmitted via internet to Peter Glantz.

25 S/ FLOYD E. IVEY
 26 FLOYD E. IVEY