

1 DOUGLAS E. MCKINLEY, JR.
 Attorney At Law
 2 P.O. Box 202
 Richland, Washington 99352
 3 Phone 628-0809 Fax (509) 628-2307

THE HONORABLE FRED VAN
 SICKLE

4
 5
 6
 7 IN THE UNITED STATES DISTRICT COURT
 8 FOR THE EASTERN DISTRICT OF WASHINGTON
 AT RICHLAND

9 JAMES S. GORDON, JR,

NO. CV-04-5125-FVS

10 Plaintiff,

11 v.

MEMORANDUM IN OPPOSITION TO
 DEFENDANT'S MOTION TO STRIKE
 AND PLAINTIFF'S STIPULATION
 THAT THE PLAINTIFF'S MOTION TO
 DISMISS SHOULD BE APPLIED TO
 THE DEFENDANT'S AMENDED
 ANSWER

12 IMPULSE MARKETING GROUP,
 INC.,

13 Defendant

14 IMPULSE MARKETING GROUP,
 15 INC.,

Jury Trial Demanded

16 Third Party Plaintiff

17 v.

18 BONNIE GORDON, JAMES S.
 19 GORDON, III, JONATHAN
 GORDON, JAMILA GORDON,
 20 ROBERT PRITCHETT, EMILY
 ABBEY, and LEW REED

21 Third Party Defendants

22
 23
 24 COMES NOW the Plaintiff, James S. Gordon, Jr., and hereby stipulates that

25 MEMORANDUM IN OPPOSITION TO
 26 DEFENDANT'S MOTION TO STRIKE
 AND PLAINTIFF'S STIPULATION THAT
 27 THE PLAINTIFF'S MOTION TO DISMISS
 SHOULD BE APPLIED TO THE
 28 DEFENDANT'S AMENDED ANSWER

Page 1 of 3

DOUGLAS E. MCKINLEY, JR.
 Attorney At Law
 P.O. Box 202
 Richland, Washington 99352
 Phone 628-0809 Fax (509) 628-2307

1 its' pending motion to dismiss counterclaims and third party defendants under
2 FRCP 12(b) (6) or in the alternative for summary judgment under FRCP 56 or in
3 the alternative to dismiss under FRCP (9) (b)), currently set for oral argument in
4 Richland on October 12, 2005 at 2 pm, should be applied to the Defendant's
5 amended answer. Based on this stipulation, the Court should deny the Defendant's
6 motion to strike, and should clarify to the Defendant that the Plaintiff's pending
7 motion to dismiss applies to the Defendant's amended answer.
8
9

10 The Plaintiff notes for the Court that the Defendant's original answer and its
11 amended answer allege identical counterclaims against the Plaintiff and identical
12 third party claims against the Third Party Defendants. All the Defendant has
13 changed by amending its' answer are tangential factual allegations that have no
14 bearing on the issues set for hearing before the Court. If the Defendant believes
15 amending their answer defeated the basis of the Plaintiff's motion to dismiss, they
16 are of course free to argue as such in their brief due September 23, 2005, or in oral
17 argument set for October 12, 2005.
18
19
20

21 CONCLUSION

22 The Plaintiff respectfully requests that the Court deny the Defendant's
23 request to strike the Plaintiff's pending motion to dismiss, and clarify to the
24

25 MEMORANDUM IN OPPOSITION TO
26 DEFENDANT'S MOTION TO STRIKE
27 AND PLAINTIFF'S STIPULATION THAT
28 THE PLAINTIFF'S MOTION TO DISMISS
SHOULD BE APPLIED TO THE
DEFENDANT'S AMENDED ANSWER

Page 2 of 3

DOUGLAS E. MCKINLEY, JR.
Attorney At Law
P.O. Box 202
Richland, Washington 99352
Phone 628-0809 Fax (509) 628-2307

1 Defendant that the Plaintiff's pending motion to dismiss applies to the Defendant's
2 amended answer.

3
4 DATED this 8th day of September, 2005

5
6 S/ DOUGLAS E. MCKINLEY, JR.
7 WSBA# 20806
8 Attorney for Plaintiff
9 P.O. Box 202
10 Richland, Washington 99352
11 Phone (509) 628-0809
12 Fax (509) 628-2307
13 Email: doug@mckinleylaw.com

14
15 Certificate of Service

16 I hereby certify that on September 8, 2005, I electronically filed the foregoing with
17 the Clerk of the Court using the CM/ECF System which will send notification of such
18 filing to the following: Floyd Ivey, and I hereby certify that I have mailed by United
19 States Postal Service the documents to the following non-CM/ECF participants: Peter
20 J. Glantz, Sean A. Moynihan, David O. Klein.

21
22 S/ DOUGLAS E. MCKINLEY, JR.
23 WSBA# 20806
24 Attorney for Plaintiff
25 P.O. Box 202
26 Richland, Washington 99352
27 Phone (509) 628-0809
28 Fax (509) 628-2307
Email: doug@mckinleylaw.com

29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
MEMORANDUM IN OPPOSITION TO
DEFENDANT'S MOTION TO STRIKE
AND PLAINTIFF'S STIPULATION THAT
THE PLAINTIFF'S MOTION TO DISMISS
SHOULD BE APPLIED TO THE
DEFENDANT'S AMENDED ANSWER