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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

NO. CV-04-5125-FVS

DEFENDANT'S
MEMORANDUM OPPOSING
PLAINTIFF'S REQUEST FOR
PERSONAL APPEARANCE
FOR ARGUMENT OF
PLAINTIFF'S MOTION TO
DISMISS

Defendant Impulse Marketing Group, Inc. opposes Plaintiff's request for other than telephonic hearing of Plaintiff's Motion to Dismiss. This Defendant's Memorandum was previously submitted in support of Defendant's request, in March, 2005, to limit argument to telephonic relative to Defendant's Motion to Dismiss. The request for the personal appearance of counsel for argument imposes increased costs on the party with such of particular significance where counsel, as in this matter, will travel from New York state. This memorandum, with the exception of this first paragraph and the Date Line, is identical to that submitted by Defendant in March 2005.

It will be judicially efficient and economically prudent for the parties for Defendant's Motion to Dismiss to be heard telephonically. Requiring the presence

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Defendant's Memorandum Opposing
Personal Appearance - 1.

1 of the parties will necessarily require the Court to devote resources, not required
 2 for a telephonic hearing, should the matter be heard with personal appearances by
 3 one or all of the parties before the Court. Hearing motions in the Eastern District
 4 has commonly occurred via telephonic hearing. Such is appropriate for the
 5 Defendant's Motion to Dismiss.

6 The goal to conserve judicial resources and promote an efficient
 7 determination of action(s) has been widely considered and is the subject of
 8 Local Rules in many jurisdictions, e.g., Civ. L.R. 3-12(~)(2)-(3) for the
 9 Northern District of California and S.D. FLA. E.R. 3.9C for the Southern
 10 District of Florida. The court in *International Beauty Exchange, Inc. v. Tony*
 11 *Dollar Kingdom Inc.*, 199 F.R.D. 700, 701 (S.D.Fla.,2001) addressed steps,
 12 relative to assignment of cases to judges, "--**To assist Judges in avoiding the**
 13 **duplication of judicial resources, S.D.FLA.L.R. 3.9D** requires "attorneys of
 14 record in every action or proceeding to bring promptly to the attention of the
 15 Court and opposing counsel the existence of other actions or proceedings..."

16 Courts have the power to manage cases. The processes available are
 17 "designed to promote efficiency and conserve judicial resources...". *Berkovitz v.*
 18 *Home Box Office, Inc.* 89 F.3d 24, 29 (C.A.1 (Mass.) 1996).

19 Counsel for the Defendant has found only a single instance where a hearing
 20 by telephonic conference was found to be improper and where personal
 21 appearance was required by statute. *Purba v. I.N.S.* 884 F.2d 516, 517(C.A.9
 22 1989). There is no suggestion of such a requirement relative to the present motion.

23 Defendant's respectfully request the Court to conduct the argument of
 24 Defendant's Motion to Dismiss by telephonic conference with all parties
 25 participating by telephone.

26
 27 LIEBLER, IVEY, CONNOR, BERRY & ST. HILAIRE
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28 Defendant's Memorandum Opposing
 Personal Appearance - 2.

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DATED this 13th day of September, 2005.

LIEBLER, IVEY, CONNOR, BERRY & ST. HILAIRE

By /S/FLOYD E. IVEY
FLOYD E. IVEY, WSBA #6888
Local Counsel for Defendant

KLEIN, ZELMAN, ROTHERMEL & DICHTER, LLP

By /S/SIGNED BY PERMISSION BY IVEY
PETER J. GLANTZ
Attorneys for Defendant

I hereby certify that on September 13, 2005, I electronically filed the **Defendant's Memorandum Opposing Plaintiff's Request for Personal Appearance for Argument of Plaintiff's Motion to Dismiss** with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following: Douglas E. McKinley, Jr., Peter J. Glantz and Sean A. Moynihan.

S/ FLOYD E. IVEY
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