

1 HON. JAMES P. DONOHUE  
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10 UNITED STATES DISTRICT COURT  
11 WESTERN DISTRICT OF WASHINGTON  
12 AT SEATTLE  
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15 UNITED STATES OF AMERICA,  
16 Plaintiff,  
17  
18 v.  
19  
20 IMPULSE MEDIA GROUP, INC.,  
21 a Washington corporation,  
22 Defendant.  
23  
24

No. CV05 1285 L

25 DECLARATION OF ROBERT S.  
26 APGOOD IN SUPPORT OF  
DEFENDANT'S RESPONSE IN  
OPPOSITION TO PLAINTIFF'S  
REQUEST REGARDING ATTENDANCE  
AT THE COURT ORDERED  
SETTLEMENT CONFERENCE" AND  
OBJECTIONS AND MOTIONS RELATED  
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4. Your declarant observed that the date that Plaintiff had noted its motion on the court's calendar is Monday, October 22, 2007;

5. Your declarant reviewed the Local Rules for the United States District Court for the Western District of Washington wherein Local Rule LR 7(d)(3) informed me that motions of the nature of Plaintiff's motion "oppositions shall be filed and served not later than the Monday before the noting date";

6. Your declarant consulted a calendar for October 2007 and ascertained that the Monday before the noting date of October 22, 2007 is Monday, October 15, 2007, a mere four (4) days subsequent to Plaintiff filing the instant motion;

7. When your declarant received the notification of Plaintiff's motion, he was attending to the following matters:

- a. Composing Defendant's Settlement Brief ordered by the Honorable Magistrate Judge James P. Donohue in this matter due Thursday, October 18, 2007;
- b. Composing Defendant's Confidential Statement ordered by the Honorable Magistrate Judge James P. Donohue in this matter due Thursday, October 18, 2007;
- c. Preparing for court appearance in a criminal matter pending in The Superior Court For The State of Washington In And For King County scheduled for Monday, October 15, 2007;
- d. Composing a brief in opposition to a motion pending in a copyright infringement in the United States District Court for the Central District of California brought by the defendant in that matter and where damages in that case extend into the millions of dollars;
- e. Preparing to defend a deposition in a case pending in the Superior Court of California In And For The County Of Los Angeles wherein witness

1 preparation is set for Tuesday, October 16, 2007 and wherein the deposition  
 2 is scheduled for Wednesday, October 17, 2007;

3       8. Upon ascertaining that Defendant's Opposition is due no later than Monday,  
 4 October 15, 2007, Defendant's counsel was required to immediately suspend his efforts on the  
 5 matters enumerated in ¶ 7, above, and devote his full attention to this motion, thereby  
 6 prejudicing the Defendant by curtailing his counsel's attention to the Settlement Brief and  
 7 Confidential Memorandum ordered by the Honorable Magistrate Judge James P. Donohue;

8       9. On October 9, 2007, your declarant received an electronic mail message from  
 9 Lauren Hash, counsel for Plaintiff, requesting the Defendant consent to the filing by Plaintiff as  
 10 unopposed, a motion by the Plaintiff. A true and correct copy of the message is attached hereto  
 11 as Exhibit A and by this reference thereby made a part hereof. A true and correct copy of  
 12 Plaintiff's proposed motion is attached hereto as Exhibit B and by this reference thereby made a  
 13 part hereof;

14       10. Counsel for the parties then exchanged messages wherein your declarant sought  
 15 a clarification of the proposed motion. True and correct copies of these communications are  
 16 attached hereto as Exhibit C and by this reference thereby made a part hereof;

17       11. After consideration, the Defendant, by and through your declarant, declined to  
 18 consent to the proposed motion as unopposed and so notified Plaintiff by electronic mail  
 19 communication. A true and correct copy of that communication is attached hereto as Exhibit D  
 20 and thereby made a part hereof;

21                   **FURTHER YOUR DECLARANT SAYETH NAUGHT.**

22       //

23       //

24       //

25       //

26       //

DECLARATION OF ROBERT S. APGOOD IN  
 SUPPORT OF DEFENDANT'S RESPONSE IN  
 OPPOSITION TO PLAINTIFF'S REQUEST  
 REGARDING ATTENDANCE AT THE COURT  
 ORDERED SETTLEMENT CONFERENCE - 3

**CARPELAW PLLC**  
 2400 NW 80th Street #130  
 Seattle, Washington 98117  
 (206) 624-2379 - (206) 784-6305 (fax)

1 I declare under penalty of perjury under the laws of the United States of America that  
2 the foregoing is true and correct to the best of my knowledge. Executed at Seattle, Washington.

3 CARPELAW PLLC

4 *s/ Robert S. Apgood*  
5 WSBA # 31023  
6 CARPELAW PLLC  
7 2400 NW 80th Street #130  
8 Seattle, WA 98117-4449  
Telephone: (206) 624-2379  
Facsimile: (206) 784-6305  
E-mail: rob@carpelaw.com