

HON. JAMES P. DONOHUE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

IMPULSE MEDIA GROUP, INC.,

a Washington corporation,

Defendant.

No. CV05 1285 L

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" AND
OBJECTIONS AND MOTIONS RELATED
THERETO

**NOTED ON MOTIONS CALENDAR:
OCTOBER 22, 2007**

I, Robert S. Apgood, upon my oath do declare and say as follows:

1. Your declarant is at least eighteen years of age and could and would be able to testify to the herein stated matters;

2. Your declarant is an attorney of record in the above-captioned case and have personal knowledge of the averments contained herein;

3. On Thursday, October 11, 2007 at 3:03 PM, your declarant received the CM-ECF notification from the Clerk of the Court informing him that the Plaintiff had filed its "United States' Request Regarding Attendance at the Court Ordered Settlement Conference";

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 - 1

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

1 4. Your declarant observed that the date that Plaintiff had noted its motion on the
2 court's calendar is Monday, October 22, 2007;

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

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

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

12 a. Composing Defendant's Settlement Brief ordered by the Honorable
13 Magistrate Judge James P. Donohue in this matter due Thursday, October 18,
14 2007;

15 b. Composing Defendant's Confidential Statement ordered by the Honorable
16 Magistrate Judge James P. Donohue in this matter due Thursday, October 18,
17 2007;

18 c. Preparing for court appearance in a criminal matter pending in The Superior
19 Court For The State of Washington In And For King County scheduled for
20 Monday, October 15, 2007;

21 d. Composing a brief in opposition to a motion pending in a copyright
22 infringement in the United States District Court for the Central District of
23 California brought by the defendant in that matter and where damages in that
24 case extend into the millions of dollars;

25 e. Preparing to defend a deposition in a case pending in the Superior Court of
26 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 //

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

9 Telephone: (206) 624-2379

10 Facsimile: (206) 784-6305

11 E-mail: rob@carpelaw.com