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**THE HONORABLE JOHN C. COUGHENOUR**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON, AT SEATTLE

OMNI INNOVATIONS, LLC., a Washington  
Limited Liability company; EMILY ABBEY,  
an individual,

Plaintiffs,

v.

IMPULSE MARKETING GROUP, INC., a  
Nevada/Georgia corporation; JEFFREY  
GOLDSTEIN, individually and as part of his  
marital community; KENNETH ADAMSON,  
individually and as part of his marital  
community; GREGORY GREENSTEIN,  
individually and as part of his marital  
community; STEVE WADLEY, individually  
and as part of his marital community; JOHN  
DOES, I-X,

Defendants.

NO. C06-1469-JCC

REPLY IN FURTHER SUPPORT OF  
DEFENDANTS' MOTION TO DISMISS  
FOR FAILURE TO COMPLY WITH  
COURT ORDER

Noted for Consideration: October 5, 2007

Defendants Impulse Marketing Group, Inc. ("Impulse") and Jeffrey Goldstein ("Goldstein") (collectively "Defendants"), by and through their counsel, Klein Zelman Rothermel, LLP and Jackson & Wallace LLP, hereby submit this Reply in Further Support of Defendants' Motion to Dismiss for Failure to Comply with Court Order.

PRELIMINARY STATEMENT

Plaintiffs allege in their Response to Motion to Dismiss ("Response") that Defendants' motion to dismiss based upon Plaintiffs' failure to comply with a court order to file an amended

REPLY IN FURTHER SUPPORT OF DEFENDANTS'  
MOTION TO DISMISS - 1  
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**JACKSON & WALLACE LLP**  
Washington Mutual Tower  
1201 Third Avenue, Suite 3080  
Seattle, WA 98101  
(206) 386-0214

1 complaint by a specified date and to provide a “more definite statement” within their amended  
2 complaint has been rendered “moot” by the late filing of their Second Amended Complaint (the  
3 “Amended Complaint”). Beyond Plaintiffs’ noncompliance with the timeline of the Court’s  
4 Order, a review of Plaintiffs’ Amended Complaint shows that Plaintiffs have failed to sufficiently  
5 correct the very deficiencies that plagued their initial complaint.

6 The July 18<sup>th</sup> Order specifically directed the Plaintiffs to file an amended complaint  
7 “within thirty days” that: “states for each e-mail allegedly at issue in this case: (1) the e-mail  
8 address to which it was sent and (2) the date on which it was sent.” Rather than state the specific  
9 information they were ordered by the Court to include in their Amended Complaint, Plaintiffs  
10 took a nonchalant approach and merely filed a “CD” along with its Amended Complaint that  
11 allegedly contains the e-mails that form the basis of their complaint. Plaintiffs claim that their  
12 Amended Complaint complies with the Court’s Order, despite the fact that it was filed over a  
13 month late. For the reasons provided herein, and those provided in Defendants’ Motion to  
14 Dismiss, Plaintiffs’ claim is without merit and this action should be dismissed with prejudice  
15 pursuant to this Court’s inherent power and Federal Rule of Civil Procedure (“Fed.R.Civ.P.”)  
16 41(b).

### 17 INTRODUCTION

18 As the Court’s docket demonstrates, due to no fault of the Defendants, the recent  
19 procedural history of this action is somewhat tortuous.<sup>1</sup> The July 18<sup>th</sup> Order issued by the Court  
20 granted in part Defendants’ Motion to Dismiss Plaintiffs’ Complaint dated May 4, 2007, and  
21 ordered Plaintiffs to file an amended complaint within thirty (30) days of the date of the Order.  
22 Plaintiffs failed to comply with the deadline for filing set forth in the Order and, on or about  
23

24  
25 <sup>1</sup> For a detailed description of the procedural history of this action, Defendants respectfully refer the Court to the  
Declaration of Stacy K. Wolery , dated September 13, 2007, submitted in support of Defendants’ Motion to Dismiss  
for Failure to Comply with Court Order.

1 August 22, 2007, Plaintiffs' counsel moved to withdraw as counsel before an amended complaint  
2 was filed. On or about September 11, 2007, the Court granted counsel's motion to withdraw,  
3 effective October 11, 2007. (Moynihan Decl. ¶ 2.) On or about September 25, 2007, weeks after  
4 the motion to withdraw had been granted, and over a month after it was due pursuant to Court  
5 order, Plaintiffs filed their Amended Complaint. (Moynihan Decl. ¶ 3.) On or about October 1,  
6 2007, Plaintiffs filed their response to Defendants' Motion to Dismiss for Failure to Comply with  
7 Court Order ("Motion to Dismiss") alleging that the filing of their Amended Complaint placed  
8 them in compliance with the July 18<sup>th</sup> Order and that, as a result, Defendants' motion was moot.  
9 (Moynihan Decl. ¶ 7.)  
10

11 ARGUMENT

12 Plaintiffs' belated attempt to comply with the July 18<sup>th</sup> Order continues their pattern of  
13 deliberately vague and ambiguous pleadings forming the basis of Defendants' Motion to Dismiss.  
14 As highlighted above, Plaintiffs were specifically ordered to file an Amended Complaint within  
15 thirty (30) days of the July 18<sup>th</sup> Order and to *state* "for each e-mail allegedly at issue in this case:  
16 (1) the email address to which it was sent and (2) the date on which it was sent." This specific  
17 Order was intended to provide for a more definite statement under Rule 12(e) in order to "further  
18 the economical disposition of the case and to provide Defendants with enough information to  
19 frame a responsive pleading." It is respectfully submitted that because of Plaintiffs' continued  
20 scattershot approach to litigation, the goal of the Order has not been reached.

21 Instead of furthering the economic disposition of the case, Plaintiffs' late filing of its  
22 Amended Complaint and its choice to include a CD full of numerous electronic files containing  
23 thousands of e-mails that are difficult to read as an exhibit, has prolonged the litigation of this  
24 action and forced Defendants to expend additional time and money on their legal defense.  
25

1 (Moynihan Decl. ¶¶ 5, 9.) Plaintiffs' late and insufficient Amended Complaint is further proof  
2 that their strategy in this action is similar to the one employed in *Gordon v. Virtumundo*, et. al.,  
3 CV-06-020. Through their actions, Plaintiffs here are providing another example of the "ill-  
4 motivated, unreasonable, and frivolous type of law suit that justifies an award of attorneys' fees to  
5 Defendants."<sup>2</sup>

6 Defendants assert that Plaintiffs' Amended Complaint does not sufficiently comply with  
7 this Court's specific Order that: (1) set forth the latest date that the Amended Complaint could be  
8 filed; and (2) outlined what the Plaintiffs were required to state in their Amended Complaint. For  
9 this reason, the law cited in Defendants' Motion to Dismiss remains on point. In fact, Plaintiffs'  
10 latest filing, filed late and without leave to do so, provides further evidence that dismissal is  
11 proper under the legal authority previously cited by Defendants. *See Estrada v. Cohen*, 244 F.3d  
12 1050, 1060 (9<sup>th</sup> Cir. 2001) (a party may not "willfully, repeatedly, and persistently disobey court  
13 orders" and a district judge may impose the "ultimate sanction" for such conduct); *see also Van*  
14 *Bronkhorst v. Safeco Corp.*, 529 F.2d 637 (9<sup>th</sup> Cir. 1963) (there is "no question" a district judge  
15 has the authority to dismiss an action with prejudice for failure to comply with a court order).  
16

17 CONCLUSION

18 For the foregoing reasons, this action should be dismissed in its entirety pursuant to the  
19 Court's inherent power and Fed.R.Civ.P. 41(b). Defendants respectfully request that the Court  
20 dismiss this action with prejudice, award Defendants their costs in defending this action, and  
21 grant such other and further relief as it deems just and proper.

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23 ///

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26 <sup>2</sup> Pages 8-10 of the August 1, 2007 Order issued in *Virtumundo*, Case No. 06-0204-JCC.

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DATED this 5th day of October, 2007.

JACKSON & WALLACE LLP

/s/ Matthew R. Wojcik

Matthew R. Wojcik, WSBA No.27918  
JACKSON & WALLACE LLP  
1201 Third Avenue, Suite 3080  
Seattle, WA 98101  
Telephone: (206) 386-0214  
Fax: (206) 386-0216  
Email: mwojcik@jacksonwallace.com  
Attorneys for Defendants Impulse and Goldstein

KLEIN ZELMAN ROTHERMEL LLP

/s/ Sean A. Moynihan, Esq.

Sean A. Moynihan, Esq.  
Klein Zelman Rothermel LLP  
485 Madison Avenue, 15th Floor  
New York, New York 10022  
(212) 935-6020 ext. 207  
(212) 753-8101 Fax  
*Admitted Pro Hac Vice*  
Attorneys for Defendants Impulse and Goldstein

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**CERTIFICATE OF SERVICE**

I hereby certify that on the date noted below I electronically filed the document entitled Reply in Further Support of Defendants' Motion to Dismiss for Failure to Comply with Court Order in accordance with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following persons:

Robert J. Siegel, WSBA #17312  
i.Justice Law P.C.  
1325 Fourth Avenue, Suite 940  
Seattle, WA 98101  
Bob@iJusticelaw.com

Douglas E McKinley  
LAW OFFICE OF DOUGLAS E MCKINLEY JR  
PO BOX 202  
RICHLAND, WA 99352  
doug@mckinleylaw.com

DATED this 5th day of October, 2007.

JACKSON & WALLACE LLP

/s/ Matthew R. Wojcik  
Matthew R. Wojcik, WSBA No.27918  
JACKSON & WALLACE LLP  
1201 Third Avenue  
Seattle, WA 98101  
Telephone: (206) 386-0214  
Fax: (206) 386-0216  
Email: mwojcik@jacksonwallace.com  
Attorneys for Defendants Impulse and Goldstein