

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

MAY 08 2006

JAMES R. LARSEN, CLERK  
DEPUTY  
RICHLAND, WASHINGTON

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT  
OF WASHINGTON AT RICHLAND

James S. Gordon, Jr., Plaintiff,

vs.

Impulse Marketing Group, Inc.,

Defendant

Impulse Marketing Group, Inc.,

Jeffrey P. Goldstein, Gregory

Greenstein, Kenneth Adamson, Phillip

Huston, and John Doe spammers 1-50,

Third-Party Plaintiffs,

v.

James S. Gordon III, Third-Party

Defendant

Case No.: CV-04-5125-FVS

THIRD-PARTY DEFENDANT'S  
FIRST AMENDED ANSWER AND  
AMENDED COUNTERCLAIMS  
AGAINST THIRD-PARTY  
PLAINTIFF

JURY TRIAL DEMANDED

TO: Clerk of the Court

AND TO: Floyd E. Ivey, Attorney for Third-Party Plaintiff

AND TO: Peter J. Glantz and Sean A. Moynihan

1 **Introduction**

2 The undersigned's amended complaint is necessitated by continued research into  
3 Impulse's business operations, online relationships, and the various violations of  
4 law that are being uncovered. For example, I have added "Cyberstalking" as a  
5 cause of action along with the "intentional infliction of emotional distress".

6  
7 As Impulse has not answered my counterclaims, I understand that I will be allowed  
8 to amend these counterclaims without obtaining leave of the Court to do so.

9 Exhibits in documents filed by me with this Court, e.g. my Declaration and  
10 Response to Impulse..., my Response to Impulse's Motion to Dismiss, my Answer  
11 Affidavit Counterclaims, and my Motion for Injunction demonstrate that Impulse  
12 knew of plaintiff and third party defendants' desire to stop receiving emails from  
13 Impulse and its partner, Commonwealth Marketing Group, Inc. (CMG) as of  
14 October 21, 2003. Added to these documents is the internal "opt-out" form, which  
15 states that the email address at "gordonworks.com" that bears my name opted out  
16 of all email offers on January 6, 2004. **Exhibit 1** However, I received email from  
17 Impulse through March of 2006 – over 80 additional emails. All emails that were  
18 sent subsequently were sent in contravention to the internal policy of Impulse as  
19 well as the written demands of CMG. These Impulse emails violated state and  
20 federal laws designed to curb the assault of junk email or spam.

21 Impulse's attorney, David Klein sent a letter to John Fonzo (counsel for CMG) on  
22 behalf of Impulse, dated February 3, 2004, assuring CMG of Impulse's compliance  
23 with all laws. This acknowledgement by Klein puts these parties in an untenable  
24 position in terms of any re-assertion of Impulse's counterclaims. If Impulse  
25 continues to assert the validity of its counterclaims, its owners and managers will

1 perjure themselves by claiming that one or all of its claims is/are true, because they  
2 now know that I/we know that Impulse was well aware of plaintiff's desire to stop  
3 receiving emails from CMG and Impulse by October 2003. Any statement to the  
4 contrary regarding Impulse's false claims puts Impulse in the position of lying to  
5 this Court and would also put the attorneys for Impulse in the position of suborning  
6 perjury - if they allow Impulse to continue to proffer the discredited claims.

7 Therefore, I am requesting that this Court reconsider my motion to dismiss all  
8 Impulse's claims against me under FRCP 12(b)(6)(c) and/or Rule 56 as Impulse's  
9 claims are **futile**. There is no possibility that a jury would sustain the fiction that I  
10 participated in a scheme to defraud Impulse when Impulse committed to (in  
11 writing) suppressing all emails to "gordonworks.com" domain and all email  
12 campaigns were (then and now) entirely within its power to control or to stop.

13 Although Impulse's claims fail to state a claim for which relief can be granted, I  
14 am providing the following amended counterclaims as I believe that I have  
15 legitimate causes of action against Impulse.

16  
17 **Answer to Complaint**

18 My answer and affirmative defenses to Impulse's counterclaims remain  
19 unchanged. However, I have amended/appended some of my claims.

20 **FIRST CAUSE OF ACTION**

21 After additional research into the intimidation tactics used by Impulse, I am  
22 amending this claim to reflect the Washington State statute which prohibits the  
23 intimidation of witnesses – RCW 9A 72.110 (1)(a).  
24  
25

1 Impulse requested additional months of time for discovery to depose and otherwise  
2 obtain discovery from third parties. This disingenuous request has been squandered  
3 by Impulse as it has allowed six months to pass without doing what it informed the  
4 Court that it would do. Its lawsuit can now be seen to have no other conceivable  
5 result except to intimidate, to harass, and to inflict emotional distress on me.

6  
7 **SECOND CAUSE OF ACTION**

8 I have submitted two emails from Impulse which show the material falsity of the  
9 headers. This delineation of violations in these emails should meet the heightened  
10 pleading requirement for an allegation of fraud. Further, I have obtained more  
11 evidence of fraud as Impulse uses a number of falsely registered domain names to  
12 stay one step ahead of regulators. I will produce evidence for a jury that the 500+  
13 domains (each one of these domains is similar to a real estate sub-division which  
14 can contain tens, hundreds or thousands of housing units) that Impulse has used in  
15 the last 15 months to send spam are owned and or controlled by Impulse, illegally  
16 registered entities, pornographers, and/or counterfeit drug operations.

17 **THIRD CAUSE OF ACTION**

18 **RCW 4.24.510** – unchanged

19  
20 **FOURTH CAUSE OF ACTION**

21 Impulse has admitted to buying and selling “personally identifying information”  
22 for profit. RCW 9.35 expressly prohibits the misuse of personally identifying  
23 information – including electronic mail addresses. I can show that Impulse has  
24 caused addresses of third parties to be exchanged among the 500+ domains  
25

1 referenced above – without my permission and in violation of this state’s statute  
2 against identity theft.

3 **FIFTH CAUSE OF ACTION**

4 I have provided evidence to this Court that Impulse knew of the anti-harassment  
5 action of plaintiff – thus it was apprised of the annoyance its emails were causing –  
6 these emails have continued for over two years after its initial notification.

7 **SIXTH CAUSE OF ACTION**

8  
9 **Chapter 19.170 RCW - Unchanged**

10 **SEVENTH CAUSE OF ACTION**

11 **RCW 9A.08. et seq** outline general requirements for culpability. Under RCW  
12 9A.08.010(1)(b)(c)(d)., Mssrs. Goldstein, Greenstein, Huston, and Adamson, at a  
13 minimum, are culpable for the civil and criminal activities specified in this  
14 amended counterclaims document. As evidenced in documents submitted to this  
15 Court, these four men (with full knowledge of the lawsuit and demands of plaintiff  
16 and third parties) acted willfully, recklessly, and in a criminally negligent manner  
17 in terms of the prosecution of this lawsuit and the continued harassment and  
18 Cyberstalking of the undersigned in this action.

19  
20 Impulse Marketing Group, Inc., a Nevada corporation bears corporate liability  
21 under RCW9A.08.030(2)(a)(b)(c)(3)(4). The totality of the acts in these amended  
22 counterclaims represent a criminal conspiracy by the named individuals and the  
23 corporation under RCW9A.28.040(1). As a result of this criminal conspiracy,  
24 Impulse should be barred from conducting business in Washington State under the  
25 referenced statute as a matter of law.

**EIGHTH CAUSE OF ACTION**

**RCW 9A.60.040 - Unchanged**

**NINTH CAUSE OF ACTION**

**Cyberstalking – RCW 9.61.260(1)(a)(b)(4)(5).** If one is to believe what Impulse has written since 10/21/03, no email should have been sent to “gordonworks.com” after that date and certainly not later than attorney David Klein’s assurance to CMG on 2/3/04 that its client, Impulse was CAN-SPAM complaint. But hundreds of emails ensued, and Impulse’s owners and managers are responsible for these illegal and harassing emails – this is Cyberstalking. An example of the pornography sent by an Impulse marketing partner is attached as **Exhibit 2** – a violation of (1)(a) of this statute.

**TENTH CAUSE OF ACTION**

**RCW 9.58.010 - Unchanged**

**ELEVENTH CAUSE OF ACTION**

Withdrawn

**TWELTH CAUSE OF ACTION**

Withdrawn

**THIRTEENTH CAUSE OF ACTION**

**RCW 19.190 - Unchanged**

**FOURTEENTH CAUSE OF ACTION**

**RCW 19.86 - Unchanged**

**FIFTEENTH CAUSE OF ACTION**

**Permanent injunction - Unchanged**

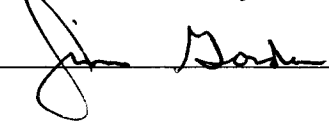
**PRAYER**

**WHEREFORE,** Third-Party Defendant prays that this Court:

- 1 1. Dismiss all claims against me by third-party plaintiff under Rule 12(b)(6)(c)
- 2 and/or Rule 56 as Impulse's claims are futile.
- 3 2. Sanction Impulse Marketing Group, its principals named in the caption
- 4 above, and its attorneys for the waste of judicial resources under Rule 11.
- 5 3. Award an amount equal to the sanction(s) referenced in No. 2 above to the
- 6 undersigned third-party defendant for the time and the intentionally inflicted
- 7 emotional distress caused by this lawsuit.
- 8 4. Award statutory damages of \$500 for each email that was sent to my
- 9 personal domains, "jaycelia.com" & "celiajay.com", damages are ongoing.
- 10 5. Enjoin Impulse and its marketing partners from sending email to any email
- 11 address wherein the recipient has not made an affirmative direct request for
- 12 Impulse's email offers at an Impulse owned and registered web site.
- 13 6. Grant third-party defendant such other and further relief as the Court deems
- 14 just and proper.

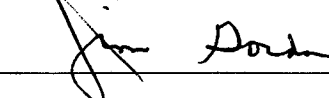
15 James S. Gordon III  
 16 9804 Buckingham Drive  
 17 Pasco, WA 99301  
 18 509-210-1069

19 Dated this 8<sup>th</sup> day of May, 2006

20  P O A

Certificate of Service

21 I, hereby, certify that on May 8, 2006, I filed this motion with this Court. I have  
 22 served Bob Siegel, Peter J. Glantz, Sean A. Moynihan, Floyd E. Ivey, Jamila  
 23 Gordon, Bonnie Gordon, Jonathan Gordon, Emily Abbey, and Robert Pritchett by  
 other means.

24  P O A

# CMG Opt Out and Offers Maintenance Page

Email:

Telephone

Email

Query

Opt Out Level to Add:

Add Opt Out

Opt Outs for and Offers Sent to Email: jay@gordonworks.com

Initial Opt Out	Last Opt Out	Opt Out Item Type	Opt Out Item Description
01/06/2004 11:45:10	03/22/2004 15:34:22	Opt Out of Everything	Everything

X-Persona: <spam>  
Return-Path: <111765854670480-2010600019-gordonworks.com?JAY@bounce.goldmeans.com>  
Delivered-To: 7-JAY@GORDONWORKS.COM  
Received: (qmail 32485 invoked from network); 2 Jan 2006 17:10:12 -0600  
Received: from unknown (HELO s1.goldmeans.com) (69.30.202.204)  
by celiajay.com with SMTP; 2 Jan 2006 17:10:07 -0600  
From: -FREE\*- DATING ADULT Personals <zip\_offers@lists.goldmeans.com>  
Subject: Please activate your sexually explicit FREE- Dating Membership  
To: JAY@GORDONWORKS.COM  
X-Priority: 3  
X-Owner: zip\_offers;MDB\*JRUGRQZRUNV!FRP;1;  
MIME-Version: 1.0  
Content-Type: multipart/alternative;  
boundary="-----113624310120305"  
X-RMD-Text: yes  
Date: Mon, 2 Jan 2006 17:10:08 CST  
X-Mailer: 2.0-b55-VC\_IPA [Apr 12 2005, 16:51:46]  
Message-ID: <2010600019\$111765854670480\$0\$15681656@s1.goldmeans.com>  
X-Spam-Checker-Version: SpamAssassin 2.63 (2004-01-11) on gordonworks.com  
X-Spam-Level: \*\*\*\*\*  
X-Spam-Status: No, hits=9.6 required=999.0 tests=BAYES\_99,HTML\_MESSAGE,  
HTML\_WEB\_BUGS,NO\_COST,OFFERS\_ETC,PORN\_4 autolearn=no version=2.63

-sexually explicit-

It seems that you've been invited to receive a -FREE\*- membership to an exciting new ADULT DATING NETWORK! All you need to do to begin meeting and dating thousands of SINGLE women and men in your city is to activate your -free-account and set up your profile!

[PRESS HERE TO ACTIVATE YOUR PROFILE FOR NO COST \(MUST BE 18 AND OVER\)](#)

With your membership you will have access to all of the following:

- \* Access to Beautiful, Fun, and outgoing Singles located in your city
- \* Video Chat
- \* Instant Messaging

# SEXSEARCH.com

**100% FREE ADULT PERSONALS 100% FREE ADULT PERSONALS**

**I AM / WE ARE**  
Man

**LOOKING FOR A**  
Woman

**BETWEEN AGES**  
18 and 29

**FOR**









- 1 on 1
- Other Activity
- 3-some/Orgies
- BDSM
- Cybersex
- Fetishes

**IN THE STATE/ PROVINCE OF**  
Select a state/prov

**IN THE CITY OF**  
Select a city

**SEARCH**

## HOOK UP WITH A DIFFERENT GIRL EVERY DAY

 ID. SWEET_18	 ID. JANDINE	 ID. SHERYL_21	 ID. FF
 ID. VERONICAXXX	 ID. CUTIE_ANNE	 ID. X_AMBER_X	 ID. CA

## HOOK UP WITH SOMEONE IN RICHLAND AND GET LUCKY TONIGHT


**100% FREE ADULT PERSONALS**

**BROWSE PHOTOS AND PROFILES OF MILLIONS OF MEMBERS**

**SIGN UP TODAY AND GET SOME TONIGHT**

**FEATURED MEMBER**

FEATURED

  
ID. ISABELLE

If you would like to not be contacted from us in the future please send us an email at [this address](#) and inform us that you would like to be removed.