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7
8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF WASHINGTON**

10
11 **JAMES S. GORDON, JR.,**

NO. CV-04-5125-FVS

12 **Plaintiff,**

**DECLARATION OF JAMES S.
13 GORDON, JR. IN
14 OPPOSITION TO
15 DEFENDANTS' SECOND
16 MOTION TO DISMISS**

17 v.

18 **IMPULSE MARKETING
19 GROUP, INC., et al.,**

Defendants.

**[HEARING: OCTOBER 10,
2006]**

20 James S. Gordon, Jr. declares as follows:

- 21
- 22 1) I, James S. Gordon, Jr., am the Plaintiff in the above captioned lawsuit. I am over the age
 - 23 of 18 and am otherwise competent to testify.
 - 24 2) Attached herewith as **Exhibit "A"** is a true and correct copy, with one instance of
 - 25 highlighting, of a typical email sent by or on behalf of the Defendant, Impulse Marketing
 - 26 Group, Inc. (IMG) to my interactive computer service maintained at the domain

DECLARATION OF JAMES S. GORDON, JR. IN OPPOSITION TO
DEFENDANTS' SECOND MOTION TO DISMISS - 1

MERKLE SIEGEL & FRIEDRICHSEN, P.C.

ATTORNEYS AT LAW

1325 FOURTH AVENUE, SUITE 940

SEATTLE, WASHINGTON 98101-2509

PHONE: (206) 624-9392 FAX: (206) 624-0717

1 gordonworks.com.

- 2 3) The e-mail advertises a product known as "USA Platinum."
3 4) I have first hand knowledge that the "USA Platinum product is sold by Commonwealth
4 Marketing Group, Inc. (CMG)
5 5) IMG has filed a contract with the Court in this action which provides that IMG is the
6 exclusive marketing agent for CMG.
7 6) A portion of the e-mail reads "USA Platinum c/o Impulse Marketing Group 1100
8 Hammond Drive NE Suite 410A – 202 Atlanta, GA 30328." I have highlighted that
9 portion of the e-mail to make it easy to identify.
10 7) As a result of the exclusive marketing arrangement between IMG and CMG, and the
11 plain language contained on the email, I believe that the attached e-mail was sent by or
12 on behalf of IMG.
13 8) I am the owner of the domain name Gordonworks.com
14 9) I registered the domain name Gordonworks.com on or about May 1998.
15 10) At the time of registration, I listed my home address in Washington State and home
16 telephone number as both the administrative contact and registrant with Network
17 Solutions, who handled the domain registration for me.
18 11) From that time forward, the domain registration has always reflected my home address in
19 Washington State and my home telephone number as both the administrative and
20 registrant.
21 12) Beginning on or about May 1998, I placed content on a server connected to the Internet
22 accessible to the general public at the Gordonworks.com domain. This content included
23 job-search information and resources for small business. Included within this
24 information were reciprocal links from institutions such as colleges and universities,
25 employment related agencies in five different states, and the Federal Small Business
26 Administration. By "reciprocal" links, I mean that not only did I have links to these
institutions and agencies, but also that these institutions and agencies had links on their
websites to my website at Gordonworks.com. As a result of these reciprocal links,
Gordonworks.com served as a clearinghouse for job-search information and small
business resources on the World Wide Web.

DECLARATION OF JAMES S. GORDON, JR. IN OPPOSITION TO
DEFENDANTS' SECOND MOTION TO DISMISS - 2

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- 1 13) At all times relevant to this action, I leased the server space that hosted the
2 gordonworks.com domain and content placed thereon.
3 14) I have maintained this content and leased space continuously through to the present.
4 15) By September 2003, I had provided numerous e-mail accounts using the
5 Gordonworks.com domain name to various individuals.
6 16) All of these e-mail accounts could be accessed by these individuals using the World Wide
7 Web.
8 17) Unfortunately, these e-mail accounts were inundated with commercial electronic mail
9 messages, rendering them unusable by many of these individuals. As a result, I took over
10 the administration of many those e-mail accounts and began receiving directly the e-mail
11 sent thereto.

12 I declare under penalty of perjury under the laws of the United States that
13 the foregoing is true and correct.

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

18 EXECUTED this 11th day of September, 2006

19 
20 _____
21 James S. Gordon, Jr.
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Certificate of Service

I, hereby, certify that on September 11, 2006, I filed this affidavit with this Court via approved electronic filing, and served the following:
Attorneys for Defendants: Peter J. Glantz, Sean A. Moynihan, Floyd E. Ivey,
Third Party Defendants: Jamila Gordon, Bonnie Gordon, James Gordon III, Jonathan Gordon, Emily Abbey, and Robert Pritchett by other means.

/s/ Adana Lloyd
Adana Lloyd

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