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THE HONORABLE FRED VAN  
SICKLE

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

James S. Gordon, Jr.,  
Plaintiff,  
v.  
Impulse Marketing Group, Inc.,  
Defendant  
Impulse Marketing Group, Inc.,  
Third-Party Plaintiff,  
v.  
Bonnie F. Gordon, Jamila Gordon,  
James Gordon III, and Jonathan  
Gordon,  
Third-Party Defendants

**NO. CV-04-5125-FVS**

**REPLY TO DEFENDANT’S RESPONSE  
TO PLAINTIFF’S MOTION TO AMEND  
(2<sup>ND</sup> Amended) COMPLAINT**

**[JURY DEMAND]**

TO: Clerk of the Court

AND TO: Floyd E. Ivey, Sean Moynihan, Peter Glantz, Attorneys for Defendants.

1 The Defendant's make a great show of complaining about the fact that this  
2 action has been pending for two years and has 421 docket entries. The Plaintiff  
3 suggests that Defendants should simply comply with the rules of discovery and  
4 provide the business records that the Plaintiff has requested and which are routinely  
5 produced in civil litigation. The Plaintiff would then file a motion for summary  
6 judgment, and this case would be over. The Defendant could also simplify the  
7 litigation by voluntarily dismissing the Defendant's claims against the Plaintiff's  
8 friends and family, which have no factual basis whatsoever, and which were  
9 asserted by the Defendant purely for the vindictive purpose of punishing the  
10 Plaintiff by attacking those closest to him. The Court might note that third-party  
11 related pleadings account for a substantial number of the docket entries in this  
12 matter.  
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17 Instead, the Defendants persist in engaging in the same scorched earth  
18 litigation tactics that have resulted in this case requiring the two years and 421  
19 docket entries about which the Defendants complain. For example, the Defendants  
20 now deny that they had anything whatsoever to do with the emails that form the  
21 basis of this action, despite the fact that Defendants have themselves made a  
22 counterclaim based in part on the their own acts of sending the emails. (see the  
23 Defendants' Fourth amended counterclaim against Plaintiff, paragraphs 31-42, Dkt.  
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1 58). The Defendants further deny sending the emails despite the fact that the  
2 Defendants have previously admitted, and entered into evidence, the contract  
3 whereby the Defendants were given the “exclusive” right to “market” the products  
4 advertised in the emails. (see declaration of Philip Huston, Dkt. 6-1 ¶ 12 and  
5 exhibit F thereto). Plainly, the Defendants cannot keep their story straight, and the  
6 fact that they are now forcing the Plaintiff to prove even those elements of the  
7 Plaintiff’s claims which the Defendants previously admitted, but now conveniently  
8 deny, has undoubtedly exacerbated and complicated this litigation. It certainly  
9 provides an obvious explanation for why the Defendants have refused to produce  
10 any meaningful discovery for two years.  
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14 In the instant motion, the Defendants are in effect complaining about the fact  
15 that the Plaintiff took efforts to address the Defendants’ earlier complaints.  
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17 In the Defendants’ motion to dismiss the Plaintiff’s First Amended  
18 Complaint, the Defendants complained of various minor technical matters in the  
19 First Amended Complaint. For example, the Defendants complained that the  
20 Plaintiff had described itself under a “dba” in the caption. Since the Federal Rules  
21 of Civil Procedure allow broad notice pleading, these technical details were not  
22 fatal to any of the claims asserted, and did not need to be fixed to satisfy the Rules.  
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24 Nevertheless, to simplify matters, the Plaintiff filed a Second Amended Complaint,  
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1 which corrected these minor technical details. However, rather than accept that the  
2 Plaintiff addressed these technical details about which the Defendant itself had  
3 complained, the Defendant now lodges a new grievance; that the Second Amended  
4 Complaint was filed without a motion! (Of course, this unnecessary resistance to  
5 what should otherwise be a perfunctory matter, coming from a party complaining  
6 about the number of docket entries, should not be lost on the Court.)  
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9 The Defendants have not yet filed an answer to the Plaintiff's First Amended  
10 Complaint, and Plaintiff notes that Fed R. Civ. Pr. 15(a) provides that "A party may  
11 amend the party's pleading once as a matter of course at any time before a  
12 responsive pleading is served." Accordingly, under the Rules, the Plaintiff was free  
13 to amend its First Amended Complaint without a motion, because no responsive  
14 pleading had been filed. Nevertheless, if the Defendants wanted Plaintiff to file a  
15 motion to amend, Plaintiff again decided to make things easy on Defendants, and  
16 Plaintiff filed exactly just such a motion. Now, having previously complained that  
17 the Plaintiff didn't seek leave of the Court to amend, the Defendant makes the  
18 opposite argument, and complains that the Plaintiff *has* sought leave of the Court.  
19 Plainly, there is nothing that Plaintiff can do, short of conceding and dismissing the  
20 lawsuit, that won't generate complaints from the Defendant.  
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1 Notwithstanding the foregoing, the entire matter is a tempest in a teapot. The  
2 Plaintiff's First Amended Complaint is substantively identical to its Second  
3 Amended Complaint, and alleges the exact same causes of action. The Court has  
4 already granted Plaintiff leave to amend its original complaint, and to include all of  
5 the causes of action and parties set forth in both the First and Second Amended  
6 Complaints. In any event, Defendants have never answered either the First or the  
7 Second Amended Complaints, so regardless of which complaint is allowed, the  
8 Defendants are in an identical procedural posture.

9 The Court should therefore ignore Defendants' objections, and grant Plaintiff  
10 leave to file its Second Amended Complaint, as it does nothing except correct the  
11 technical details about which the Defendants themselves have previously  
12 complained.

13 DATED this 25<sup>th</sup> day of October, 2006.

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19 **MERKLE SIEGEL & FRIEDRICHSEN, P.C.**

20  
21 /s/ Robert J. Siegel  
22 Robert J. Siegel, WSBA #17312  
23 Attorneys for Plaintiffs  
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**Certificate of Service**

I, hereby, certify that on October 25, 2006, we filed this pleading with this Court.

The Clerk of the Court will provide electronic notification system using the CM/ECF, which will send an electronic copy of this Notice to: Floyd E. Ivey.

/S/ Robert J. Siegel  
Robert J. Siegel, WSBA #17312  
Attorneys for Plaintiffs