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16 **IN THE UNITED STATES DISTRICT COURT**
17 **FOR THE EASTERN DISTRICT OF WASHINGTON**
18 **AT RICHLAND**

19 JAMES S. GORDON, JR.,)
20)
21 Plaintiff(s),)
22 v.)
23 IMPULSE MARKETING GROUP, INC.,)
24)
25 Defendant(s).)

No. CV 04-5125-FVS

**DEFENDANT’S ANSWER TO THE
COMPLAINT OF JAMES S.
GORDON, JR., COUNTERCLAIMS
AGAINST JAMES S. GORDON, JR.
AND THIRD PARTY COMPLAINT**

JURY TRIAL REQUESTED

26 IMPULSE MARKETING GROUP, INC.,)
27)
28 Third-Party Plaintiff,)
29 v.)
30 BONNIE GORDON, JAMES S. GORDON,)
31 III, JONATHAN GORDON, JAMILA)
32 GORDON, ROBERT PRITCHETT, EMILY)
33 ABBEY and LEW REED,)
34)
35 Third-Party Defendants.)

1 Defendant, Impulse Marketing Group (“IMG” or “Defendant”) by its
2 undersigned counsel, as and for its Answer to the James S. Gordon, Jr. Complaint
3 (the “Complaint”), denies each and every allegation not specifically addressed
4 herein and admits, avers and denies as follows (the paragraph numbers below
5 correspond to the paragraph numbers of the Complaint):
6
7

8 1. PARTIES

9 1.1 Denies knowledge or information sufficient to form a belief as to the
10 allegations contained in paragraph 1.1 of the Complaint.
11

12 1.2 Admits the allegations contained in paragraph 1.2 of the Complaint.
13

14 2. JURISDICTION

15 2.1 Denies the allegations contained in paragraph 2.1.

16 2.2 The allegations contained in paragraph 2.2 of the Complaint call for
17 a legal conclusion to which no responsive pleading is required. To the extent that
18 a response is required, Defendant denies same.
19

20 2.3 The allegations contained in paragraph 2.3 of the Complaint call for
21 a legal conclusion to which no responsive pleading is required. To the extent that
22 a response is required, Defendant denies same.
23
24
25
26

1 2.4 The allegations contained in paragraph 2.4 of the Complaint call for
2
3 a legal conclusion to which no responsive pleading is required. To the extent that
4 a response is required, Defendant denies same.

5 3. CAUSE OF ACTION

6
7 3.1 Defendant repeats and reiterates each and every answer set forth in
8 paragraphs 1 through 2.4 above, inclusive, as though set forth herein.

9 3.2 Denies knowledge or information sufficient to form a belief as to the
10 allegations contained in paragraph 3.2 of the Complaint.

11
12 3.3 Denies knowledge or information sufficient to form a belief as to the
13 allegations contained in paragraph 3.3 of the Complaint.

14
15 3.4 Denies knowledge or information sufficient to form a belief as to the
16 allegations contained in paragraph 3.4 of the Complaint.

17
18 3.5 The allegations contained in paragraph 3.5 of the Complaint call for
19 a legal conclusion to which no responsive pleading is required. To the extent that
20 a response is required, Defendant denies same.

21 3.6 Denies the allegations contained in paragraph 3.6.

22
23 3.7 Denies the allegations contained in paragraph 3.7.

1 3.7.1 Denies the allegations contained in paragraph 3.7.1. To the extent
2 said Plaintiff's paragraph alleges fraud or misrepresentation, plaintiff has failed to
3 set forth said allegation with particularity as required by FRCP 9(b).
4

5 3.7.2 Denies the allegations contained in paragraph 3.7.2. To the extent
6 said Plaintiff's paragraph alleges fraud or misrepresentation, plaintiff has failed to
7 set forth said allegation with particularity as required by FRCP 9(b).
8

9 3.8 Denies the allegations contained in paragraph 3.8. To the extent
10 said Plaintiff's paragraph alleges fraud or misrepresentation, plaintiff has failed to
11 set forth said allegation with particularity as required by FRCP 9(b).
12

13 3.9 Denies the allegations contained in paragraph 3.9.
14

15 3.9.1 Denies the allegations contained in paragraph 3.9.1. To the extent
16 said Plaintiff's paragraph alleges fraud or misrepresentation, plaintiff has failed to
17 set forth said allegation with particularity as required by FRCP 9(b).
18

19 3.9.2 Denies the allegations contained in paragraph 3.9.2. To the extent
20 said Plaintiff's paragraph alleges fraud or misrepresentation, plaintiff has failed to
21 set forth said allegation with particularity as required by FRCP 9(b).
22

23 3.10 Denies the allegations contained in paragraph 3.10. To the extent
24 said Plaintiff's paragraph alleges fraud or misrepresentation, plaintiff has failed to
25 set forth said allegation with particularity as required by FRCP 9(b).
26

1 3.11 Denies the allegations contained in paragraph 3.11.

2 3.12 Denies the allegations contained in paragraph 3.12.

3
4 3.12.1 Denies the allegations contained in paragraph 3.12.1. To the extent
5 said Plaintiff's paragraph alleges fraud or misrepresentation, plaintiff has failed to
6 set forth said allegation with particularity as required by FRCP 9(b).

7
8 3.12.2 Denies the allegations contained in paragraph 3.12.2. To the extent
9 said Plaintiff's paragraph alleges fraud or misrepresentation, plaintiff has failed to
10 set forth said allegation with particularity as required by FRCP 9(b).

11
12 3.12.3 Denies the allegations contained in paragraph 3.12.3. To the extent
13 said Plaintiff's paragraph alleges fraud or misrepresentation, plaintiff has failed to
14 set forth said allegation with particularity as required by FRCP 9(b).

15
16 4. PRAYER FOR RELIEF

17 4.1 Denies the allegations contained in paragraphs 4.1 through 4.7.

18
19 **FIRST AFFIRMATIVE DEFENSE**

20 Plaintiff's claims are barred, in whole or in part, for failure to state a claim
21 upon which relief can be granted.

22
23 **SECOND AFFIRMATIVE DEFENSE**

24 Plaintiff's claims are barred, in whole or in part, by the doctrine of
25 collateral estoppel.
26

1 **THIRD AFFIRMATIVE DEFENSE**

2 Plaintiff's claims are barred, in whole or in part, by the doctrine of waiver.

3 **FOURTH AFFIRMATIVE DEFENSE**

4 Plaintiff's claims are barred, in whole or in part, as moot.

5 **FIFTH AFFIRMATIVE DEFENSE**

6 Plaintiff's claims are barred by laches.

7 **SIXTH AFFIRMATIVE DEFENSE**

8 Any loss, injury, or damage incurred by Plaintiff was proximately caused
9 by the acts of third parties whom Defendant neither controlled nor had the right to
10 control, and was not proximately caused by any acts, omissions or other conduct
11 of Defendant.

12 **SEVEN AFFIRMATIVE DEFENSE**

13 Any loss, injury, or damage incurred by Plaintiff was caused by
14 independent contractors for whose actions Defendant is not liable.

15 **EIGHTH AFFIRMATIVE DEFENSE**

16 Plaintiff's claims are barred by the applicable statute of limitations.

17 **NINTH AFFIRMATIVE DEFENSE**

18 The relief sought by Plaintiff in this action would violate the First
19 Amendment to the United States Constitution.

1 **TENTH AFFIRMATIVE DEFENSE**

2 Plaintiff has failed to join all necessary and/or indispensable parties to this
3
4 action.

5 **ELEVENTH AFFIRMATIVE DEFENSE**

6 The allegations in the Complaint, in whole or in part, are preempted by
7
8 Federal law.

9 **TWELFTH AFFIRMATIVE DEFENSE**

10 Plaintiff has not suffered any damages due to Defendant's alleged actions
11
12 in the Complaint.

13 **THIRTEENTH AFFIRMATIVE DEFENSE**

14 Plaintiff's claims are barred, in whole or in part, by the doctrine of res
15
16 judicata.

17 **FOURTEENTH AFFIRMATIVE DEFENSE**

18 Plaintiff's claims are barred, in whole or in part, by the doctrine of unclean
19
20 hands and Plaintiff should be estopped from bringing this lawsuit.

21 **FIFTHTEENTH AFFIRMATIVE DEFENSE**

22 Plaintiff has failed to mitigate damages, if any.
23
24
25
26

1 **SIXTEENTH AFFIRMATIVE DEFENSE**

2
3 To the extent Defendant is found liable for violating Washington law, any
4 award of damages are, at the most, nominal.

5 **SEVENTEENTH AFFIRMATIVE DEFENSE**

6
7 To the extent Defendant is found liable for violating Washington law,
8 Plaintiff assumed the risk and contributed to his own damages, if any, by actively
9 and affirmatively soliciting commercial emails for the sole purpose of filing
10 multiple lawsuits arising out of the receipt of these commercial email messages.

11 **EIGHTEENTH AFFIRMATIVE DEFENSE**

12
13 To the extent that Plaintiff has plead fraud or misrepresentation, Plaintiff
14 has failed to plead with particularity in accord with FRCP 9(b).

15
16 WHEREFORE, Defendant prays that the Court:

- 17
18 1. Dismiss the Complaint with prejudice and enter judgment for
19 Defendant;
20
21 2. Award Defendant its reasonable attorney's fees, disbursements, and
22 costs; and
23
24 3. Grant Defendant such other and further relief as the Court may deem
25 just and proper.
26

1
2
3 **FIRST COUNTERCLAIM AGAINST PLAINTIFF**
4 **Fraud and Deceit**

5 Defendant as and for its counterclaims against Plaintiff, alleges as follows
6 upon information and belief:
7

8 1. Plaintiff engaged in deceitful conduct by actively and affirmatively
9 soliciting commercial emails for the sole purpose of filing multiple lawsuits
10 arising out of the receipt of these commercial email messages (the "Scheme").
11

12 2. In furtherance of the Scheme, Plaintiff instructed other individuals
13 that use the Domain to actively and affirmatively solicit commercial emails for
14 the sole purpose of filing multiple lawsuits arising out of the receipt of these
15 commercial email messages.
16

17 3. This conduct was deceitful and at the time such conduct occurred,
18 Plaintiff knew that his conduct was deceitful.
19

20 4. As part of the Scheme, Plaintiff intended to actively and
21 affirmatively solicit the commercial email messages for his own benefit and to
22 Defendant's detriment by suing Defendant.
23

24 5. As part of the Scheme, Plaintiff made false representations and took
25 deceitful actions to induce Defendant.
26

1 6. Defendant justifiably relied on Plaintiff's representations including,
2 Plaintiff's Scheme, causing Defendant to incur excessive business operational
3 costs and associated expenditures with running its business.
4

5 7. Defendant believed that Plaintiff's representations were true and
6 were ignorant of their falsity at the time when Plaintiff actively and affirmatively
7 solicited commercial email messages for the sole purpose of filing multiple
8 lawsuits.
9

10 8. As a proximate result of Defendant's reliance on the Scheme and
11 Plaintiff's deceitful representations, Defendant was damaged in an amount to be
12 determined at trial.
13

14 9. In doing the acts herein alleged, Plaintiff acted with oppression,
15 deceit, fraud, and malice, and Defendant is entitled to punitive damages in an
16 amount to be proven at the time of trial.
17

18
19 **SECOND COUNTERCLAIM AGAINST PLAINTIFF**
20 **Tortious Interference with Business Relationships**

21 10. Defendant incorporates by reference paragraphs 1 through 9, above,
22 as though fully set forth herein.
23

24 11. Defendant provides permission based marketing services to its
25 customers and on-line business partners.
26

1 12. Defendant has developed business relationships with its on-line
2 business partners over time.

3
4 13. Defendant relied on Plaintiff's active and affirmative representations
5 to solicit commercial email messages by negotiating and fulfilling marketing
6 agreements with Defendant's third party business partners.

7
8 14. Due to Plaintiff's actions and the Scheme, Defendant is likely to
9 sustain a loss of business relationships with its on-line marketing business
10 partners.

11
12 15. As a result of the foregoing, Defendant has sustained monetary
13 losses in an amount to be determined at trial.

14
15 16. Defendant is also entitled to punitive damages in an amount to be
16 proven at the time of trial.

17 **THIRD COUNTERCLAIM AGAINST PLAINTIFF**
18 **Malicious Prosecution**

19 17. Defendant incorporates by reference paragraphs 1 through 16, above,
20 as though fully set forth herein.

21
22 18. Plaintiff participated in the commencement and maintenance of a
23 civil proceeding against Defendant.

24
25 19. Plaintiff acted without probable cause in the commencement and
26 maintenance of said civil proceeding against Defendant.

1 20. Plaintiff acted maliciously in commencing and maintaining said
2
3 action against Defendant by intending to vex, annoy, and injure it.

4 21. As an actual, legal and proximate result of the foregoing, Defendant
5
6 suffered general damage, loss of business earnings and damage to its business
7 reputation.

8 **FOURTH COUNTERCLAIM AGAINST PLAINTIFF**
9 **Breach of Contract**

10 22. Defendant incorporates by reference paragraphs 1 through 21, above,
11
12 as though fully set forth herein.

13 23. Defendant provides its consumer's with online permission based
14
15 marketing services.

16 24. Plaintiff accepted and consented to receiving permission-based
17
18 marketing services by agreeing to receive commercial email.

19 25. Plaintiff had a duty to accept the commercial email in a proper
20
21 manner without negating the benefit conferred upon Plaintiff by Defendant.

22 26. Plaintiff breached this duty by participating in the Scheme.

23 27. Defendant failed to receive the benefit of the bargain because
24
25 Plaintiff never intended to allow Defendant to have a proper bargained for
26 exchange of consideration.

1 28. Plaintiff, in his individual capacity or as owner of the Domain,
2 supplemented, extended, or created a contract, by actively and affirmatively
3 soliciting commercial emails for the sole purpose of filing multiple lawsuits
4 arising out of the receipt of these commercial email messages.
5

6 29. Defendant has performed all of the obligations on its part to be
7 performed under the agreement.
8

9 30. As a proximate result of the breach of the agreement, including those
10 express communications, solicitations and representations made by Plaintiff,
11 personally or as owner of the Domain, Defendant has sustained monetary
12 damages, in the amount to be determined at trial.
13
14

15 **FIFTH COUNTERCLAIM AGAINST PLAINTIFF**
16 **Injunctive Relief**

17 31. Defendant incorporates by reference paragraphs 1 through 30, above,
18 as though fully set forth herein.
19

20 32. Defendant has suffered and will continue to suffer irreparable
21 damages unless Defendant is granted injunctive relief.

22 33. If Defendant is unable to stop Plaintiff's Scheme and further
23 schemes by Plaintiff, Defendant will suffer irreparable damages.
24

25 34. For this harm and damage, Defendant has no adequate remedy at
26 law.

1 35. These damages are continuing, and to a large degree will be
2
3 incalculable.

4 36. Defendant therefore requests the Court to enter a preliminary
5
6 injunction enjoining Plaintiff, his agents, servants, employees, and those acting in
7
8 concert with him from receiving value by actively and affirmatively soliciting
9
10 commercial emails for the sole purpose of filing multiple lawsuits arising out of
11
12 the receipt of these commercial email messages. Defendant further requests upon
13
14 trial of this counterclaim, that the preliminary injunction be made into a
15
16 permanent injunction so enjoining Plaintiff.

17 WHEREFORE, Defendant respectfully prays for the following relief:

- 18 a. Judgment against Plaintiff and an award of money damages, in
19 an amount to be determined at trial;
- 20 b. An award of punitive damages against Plaintiff due to
21 Plaintiff's acts of oppression, fraud, and malice in an amount
22 to be determined at trial;
- 23 c. An order enjoining Plaintiff, his agents, servants, employees,
24 and those acting in concert with him from receiving value by
25 actively and affirmatively soliciting commercial emails for the
26 sole purpose of filing multiple lawsuits arising out of the
receipt of commercial email messages;
- d. An award of Plaintiffs' costs of litigation, including attorney's
fees, costs and expenses;

- 1
2 e. Trial by jury on all issues for which a trial by jury is available;
3 and
4 f. Such other and further relief as this Court deems just and
5 proper.

6 **THIRD PARTY COMPLAINT AGAINST BONNIE GORDON, JAMES S.**
7 **GORDON, III, JONATHAN GORDON, JAMILA GORDON, ROBERT**
8 **PRITCHETT, EMILY ABBEY, AND LEW REED**
9 **First Cause of Action**
10 **Indemnification and Contribution**

11 In the event that damages are awarded to Plaintiff, which the Defendant,
12 vehemently denies, Third party plaintiff, Impulse Marketing Group (“Third Party
13 Plaintiff”) as and for its third party complaint against third party defendants
14 Bonnie Gordon, James S. Gordon, III, Jonathan Gordon, Jamila Gordon, Robert
15 Pritchett, Emily Abbey, and Lew Reed (collectively, “Third Party Defendants”),
16 alleges as follows:
17
18

19 1. Third Party Defendants are, to the knowledge of the Third Party
20 Plaintiff, residents of Benton County or of other Washington State Counties
21 which are within the Eastern District of Washington State. The amount in dispute
22 exceeds \$75,000.00. Jurisdiction is proper. Third Party Defendants assisted in
23 the transmission of commercial electronic messages to the Domain by actively
24 and affirmatively soliciting commercial emails for the sole purpose of filing
25
26

1 multiple lawsuits arising out of the receipt of these commercial email messages
2 (the “Scheme”).
3

4 2. Third Party Defendants knew or consciously avoided knowing that
5 by actively and affirmatively soliciting commercial emails for the sole purpose of
6 filing multiple lawsuits arising out of the receipt of these commercial email
7 messages that they would receive commercial email messages to the Domain.
8

9 3. Third Party Defendants provided substantial assistance or support
10 that enabled the formulation, composition, origination, initiation, or transmission
11 of commercial email messages to the Domain.
12

13 4. Third Party Defendants knew or consciously avoided knowing that
14 they were participating in the Scheme.
15

16 5. If Defendant/Third Party Plaintiff is found to be in any way liable to
17 Plaintiff, which liability Defendant/Third Party Plaintiff wholly denies, then
18 Defendant/Third Party Plaintiff demands judgment over and against, Third Party
19 Defendants, for indemnity and contribution for the full amounts of said liability.
20

21 **Second Cause of Action**
22 **Fraud and Deceit**

23 6. Third Party Plaintiff incorporates by reference paragraphs 1 through
24 5, above, as though fully set forth herein.
25
26

1 7. Third Party Defendants engaged in deceitful conduct by actively and
2 affirmatively soliciting commercial emails for the sole purpose of aiding and
3 abetting James Gordon (“Plaintiff”) to file multiple lawsuits arising out of the
4 receipt of these commercial email messages.
5

6 8. This conduct was deceitful and at the time such conduct occurred,
7 Third Party Defendants knew that his conduct was deceitful.
8

9 9. As part of the Scheme, Third Party Defendants intended to actively
10 and affirmatively solicit the commercial email messages for their own and
11 Plaintiff’s benefit and to Third Party Plaintiff’s detriment.
12

13 10. As part of the Scheme, Third Party Defendants made false
14 representations and took deceitful actions to induce Third Party Plaintiff.
15

16 11. Third Party Plaintiff justifiably relied on Third Party Defendants’
17 representations including, Third Party Defendants’ Scheme, causing Third Party
18 Plaintiff to incur excessive business operational costs and associated expenditures
19 with running its business.
20

21 12. Third Party Plaintiff believed that Third Party Defendants’
22 representations were true and were ignorant of their falsity at the time when Third
23 Party Defendants actively and affirmatively solicited commercial email messages
24 for the sole purpose of aiding and abetting Plaintiff in filing multiple lawsuits.
25
26

1 13. As a proximate result of Defendant's reliance on the Scheme and
2 Third Party Defendants' deceitful representations, Defendant was damaged in an
3 amount to be determined at trial.
4

5 14. In doing the acts herein alleged, Third Party Defendants acted with
6 oppression, deceit, fraud, and malice, and Third Party Plaintiff is entitled to
7 punitive damages in an amount to be proven at the time of trial.
8

9
10 **Third Cause of Action**
Tortious Interference with Business Relationships

11 15. Third Party Plaintiff incorporates by reference paragraphs 1 through
12 14, above, as though fully set forth herein.
13

14 16. Third Party Plaintiff provides permission based marketing services
15 to its customers and on-line business partners.
16

17 17. Third Party Plaintiff has developed business relationships with its
18 on-line business partners over time.
19

20 18. Third Party Plaintiff relied on Third Party Defendants' active and
21 affirmative representations to solicit commercial email messages by negotiating
22 and fulfilling marketing agreements with Third Party Plaintiff's third party
23 business partners.
24
25
26

1 19. Due to Third Party Defendants' actions and the Scheme, Third Party
2 Plaintiff is likely to sustain a loss of business relationships with its on-line
3 marketing business partners.
4

5 20. As a result of the foregoing, Third Party Plaintiff has sustained
6 monetary losses in an amount to be determined at trial.
7

8 21. Third Party Plaintiff is also entitled to punitive damages in an
9 amount to be proven at the time of trial.
10

11 **Fourth Cause of Action**
12 **Breach of Contract**

13 22. Third Party Plaintiff incorporates by reference paragraphs 1 through
14 21, above, as though fully set forth herein.

15 23. Third Party Plaintiff provides its consumer's with online permission
16 based marketing services.
17

18 24. Third Party Defendants accepted and consented to receiving
19 permission-based marketing services by agreeing to receive commercial email.
20

21 25. Third Party Defendants had a duty to accept the commercial email in
22 a proper manner without negating the benefit conferred upon Third Party
23 Defendants by Third Party Plaintiff.
24

25 26. Third Party Defendants breached this duty by participating in the
26 Scheme.

1 27. Third Party Plaintiff failed to receive the benefit of the bargain
2 because Third Party Defendants never intended to allow Third Party Plaintiff to
3 have a proper bargained for exchange of consideration.
4

5 28. Third Party Defendants, in their individual capacity or as user of the
6 Domain, supplemented, extended, or created a contract, by actively and
7 affirmatively soliciting commercial emails for the sole purpose of assisting
8 Plaintiff in filing multiple lawsuits arising out of the receipt of these commercial
9 email messages.
10

11 29. Third Party Plaintiff has performed all of the obligations on its part
12 to be performed under the agreement.
13

14 30. As a proximate result of the breach of the agreement, including those
15 express communications, solicitations and representations made by Third Party
16 Defendants, personally or as users of the Domain, Third Party Plaintiff has
17 sustained monetary damages, in the amount to be determined at trial.
18

19
20 **Fifth Cause of Action**
21 **Injunctive Relief**

22 31. Third Party Plaintiff incorporates by reference paragraphs 1 through
23 30, above, as though fully set forth herein.
24

25 32. Third Party Plaintiff has suffered and will continue to suffer
26 irreparable damages unless Third Party Plaintiff is granted injunctive relief.

1 33. If Third Party Plaintiff is unable to stop Third Party Defendants'
2 Scheme and further schemes by Third Party Defendants, Third Party Plaintiff will
3 suffer irreparable damages.
4

5 34. For this harm and damage, Third Party Plaintiff has no adequate
6 remedy at law.
7

8 35. These damages are continuing, and to a large degree will be
9 incalculable.
10

11 36. Third Party Plaintiff therefore requests the Court to enter a
12 preliminary injunction enjoining Third Party Defendants, their agents, servants,
13 employees, and those acting in concert with them from receiving value by
14 actively and affirmatively soliciting commercial emails for the sole purpose of
15 aiding and abetting Plaintiff to file multiple lawsuits arising out of the receipt of
16 commercial email messages. Third Party Plaintiff further requests upon trial of
17 this counterclaim, that the preliminary injunction be made into a permanent
18 injunction so enjoining Third Party Defendants.
19
20

21 WHEREFORE, Defendant/Third Party Third Party Defendants respectfully
22 requests that this Court grant judgment and relief against Third Party Defendants
23 as follows:
24

- 25 1. Compensatory damages in an amount to be determined at trial;
26

