

**Dckt No. 101 – Declaration of Derek A.  
Newman in Support of Defendants’ Motion  
for Summary Judgment**

The Honorable John C. Coughenour

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

JAMES S. GORDON, Jr., a married individual, d/b/a 'GORDONWORKS.COM'; OMNI INNOVATIONS, LLC., a Washington limited liability company,

Plaintiffs,

v.

VIRTUMUNDO, INC, a Delaware corporation d/b/a ADKNOWLEDGEMAIL.COM; ADKNOWLEDGE, INC., a Delaware corporation, d/b/a ADKNOWLEDGEMAIL.COM; SCOTT LYNN, an individual; and JOHN DOES, 1-X,

Defendants.

NO. CV06-0204JCC

**DECLARATION OF DEREK A. NEWMAN IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

NOTE ON MOTION CALENDAR:  
February 16, 2007

I, Derek A. Newman, swear under penalty of perjury under the laws of the United States to the following:

1. I am counsel of record for defendants Virtumundo, Inc. ("Virtumundo") and Adknowledge, Inc. ("Adknowledge"), am over age 18, and competent to be a witness. I am making this Declaration based on facts within my own personal knowledge.

2. Attached hereto as Exhibit A is a true and accurate copy of the Deposition of James S. Gordon, Jr.

DECL. OF DEREK NEWMAN  
RE: DEFS.' MOT. FOR SUMM. J.  
CASE NO. CV06-0204C - 1

NEWMAN & NEWMAN,  
ATTORNEYS AT LAW, LLP

505 Fifth Ave. S., Ste. 610  
Seattle, Washington 98104  
(206) 274-2800

1 I certify and declare under the penalty of perjury under the laws of the State of  
2 Washington and the United States that to my knowledge the foregoing is true and correct.

3  
4 Executed on this 22nd day of January, 2007, at Seattle, Washington.

5  
6 

7 \_\_\_\_\_  
Derek A. Newman

## **EXHIBIT A**

### **Transcript of the Deposition of James Gordon, Jr., Plaintiff**

# Transcript of James S. Gordon, Jr., Vol. I

**Case:** Gordon v. Virtumundo

**Date:** January 9, 2007



Phone: 206.287.9066  
Fax: 206.287.9832  
e-mail: [info@buellrealtime.com](mailto:info@buellrealtime.com)  
Internet: [www.buellrealtime.com](http://www.buellrealtime.com)

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JAMES S. GORDON, JR., a )  
married individual, d/b/a )  
'GORDONWORKS.COM'; OMNI )  
INNOVATIONS, LLC, a )  
Washington limited )  
liability company, )

Plaintiffs, )

vs. )

No. CV06-0204JCC )

VIRTUMUNDO, INC., a )  
Delaware corporation )  
d/b/a ADKNOWLEDGEMAIL.COM;) )  
ADKNOWLEDGE, INC., a )  
Delaware corporation, )  
d/b/a ADKNOWLEDGEMAIL.COM;) )  
SCOTT LYNN, an individual;) )  
and JOHN DOES, 1-X, )

Defendant. )

VIDEO DEPOSITION UPON ORAL EXAMINATION

OF

JAMES S. GORDON, JR. - VOLUME I

Taken at 505 Fifth Avenue South

Seattle, Washington

DATE TAKEN: JANUARY 9, 2007

A P P E A R A N C E S

FOR THE PLAINTIFFS:

ROBERT J. SIEGEL  
Merkle Siegel & Friedrichsen, P.C.  
1325 Fourth Avenue  
Suite 940  
Seattle, Washington 98101-2590

FOR THE DEFENDANTS:

DEREK A. NEWMAN  
DEREK LINKE  
Newman & Newman, LLP  
505 Fifth Avenue South  
Suite 610  
Seattle, Washington 98104  
MICHAEL R. GEROE  
General Counsel, Adknowledge  
4600 Madison  
Tenth Floor  
Kansas City, Missouri 64112

THE VIDEOGRAPHER:

ALBERT MAIMON, CLVS/CDVS  
Buell Realtime Reporting, LLC  
1411 Fourth Avenue  
Suite 820  
Seattle, Washington 98101

\* \* \* \* \*

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1 SEATTLE, WASHINGTON; JANUARY 9, 2007

2 9:23 A.M.

3  
4 -o0o-

5 THE VIDEOGRAPHER: Good morning. We are now on the  
6 record. Today is January 9th, 2007. The time is now 9:23 a.m.  
7 This is the videotaped deposition of James S. Gordon, Junior,  
8 taken by the defendant in the matter of James S. Gordon,  
9 Junior, Gordonworks.com and Omni Innovations, LLC versus  
10 Virtumundo, Inc., Adknowledgemail.com, Adknowledge, Inc. and  
11 Scott Lynn filed in the district court of the -- United States  
12 District Court, Western District of Washington at Seattle,  
13 Case No. CV06-0204JCC.

14 This deposition is being held at the offices of  
15 Newman & Newman, 505 Fifth Avenue South, Suite 610, Seattle,  
16 Washington 98104.

17 My name is Albert Maimon, videographer with the firm  
18 of Buell Realtime Reporting located at 1411 Fourth Avenue,  
19 Suite 820, Seattle, Washington 98101. The court reporter today  
20 is Christine Hougen, also with the firm of Buell Realtime  
21 Reporting.

22 Counsel will now introduce themselves, stating whom  
23 they represent, starting with counsel for the defendant,  
24 please.

25 MR. NEWMAN: Good morning. Derek Newman for the

Buell Realtime Reporting, LLC  
206-287-9066

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1 defendants.

2 MR. SIEGEL: Good morning. Robert J. Siegel for  
3 Plaintiff Jim Gordon and Omni Innovations.

4 MR. GEROE: Good morning. Michael Geroe, general  
5 counsel for Defendant Adknowledge, Inc.

6 THE VIDEOGRAPHER: Will the court reporter please  
7 administer the oath and we will continue with the deposition.

8

9 JAMES S. GORDON, JR.,

10 witness herein, having been first duly sworn on oath,  
11 was examined and testified as follows:

12

13 E X A M I N A T I O N

14

15 BY MR. NEWMAN:

16 Q. Good morning, sir. My name is Derek Newman.

17 A. Morning.

18 Q. I represent Adknowledge, Virtumundo and Scott Lynn in  
19 a lawsuit that you have brought.

20 Do you understand that?

21 A. Yes.

22 Q. And today we're taking your deposition.

23 Do you understand that?

24 A. Yes, I do.

25 Q. Have you ever had your deposition taken before?

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1 A. Yes, I have.

2 Q. How many times?

3 A. I'm not sure. At least once.

4 Q. Tell me about that time.

5 In other words, what was the lawsuit in which you were  
6 deposed; were you a party?

7 A. That was a lawsuit against Theodore Hansson.

8 The deposition took place in Kennewick, Washington.

9 Q. Were you a party in that case?

10 A. Plaintiff.

11 Q. What were the nature of the claims?

12 A. This was a spam lawsuit, much like this one.

13 Q. How did that case resolve, if it did?

14 A. Well, the judge dismissed it because of improper  
15 service or some term like that, and I was proceeding pro se.

16 So I later, within a month or so, hired Doug McKinley  
17 to represent me. And we decided not to at that time pursue  
18 Mr. Hansson. I got a chance to meet him and his wife and we  
19 talked about it, and I didn't refile.

20 Q. I'm going to go over the process for depositions.

21 A. Okay.

22 Q. You advised that you have been through it once before,  
23 but I think it's appropriate that we all understand what the  
24 procedure is going to be.

25 A. Okay.

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1 Q. I'm going to ask you a series of questions, and it's  
2 your obligation to give to me true, accurate, forthright and  
3 honest answers.

4 Not only is it your obligation, but it is your right,  
5 and so I'm going to make an effort not to cut you off, I'm  
6 going to allow you to always finish your answer so that it can  
7 be full and complete, and I ask that you give me that same  
8 courtesy. Please let me finish my question before you begin  
9 your answer.

10 There will be times when I ask a question that you may  
11 not understand. And in those circumstances, please ask me to  
12 clarify because we want to make sure that the record is clean  
13 today.

14 A. Okay.

15 Q. Everything that you say is being taken down by this  
16 very kind stenographer, and she has a difficult job. We want  
17 to make sure that we speak slowly, clearly and audibly so that  
18 she can record everything that you and I say.

19 And similarly, and back to the earlier topic, we don't  
20 want to speak over each other because it's really difficult for  
21 her to write --

22 A. Okay.

23 Q. -- down things that we say simultaneously.

24 So let's keep that in mind.

25 A. Fair enough.

1 Q. If at any time, I ask you a question and you don't  
2 understand, you can ask me to clarify. And similarly, if later  
3 during the proceeding, you want to amend your answer, feel free  
4 to mention that you'd like to change an earlier response or  
5 amend an earlier response or add to an earlier response.

6 A. Okay.

7 Q. Your lawyer is here, Mr. Siegel --

8 A. Correct.

9 Q. -- and he's going to object to some of my questions.

10 That doesn't mean you shouldn't answer them. You  
11 should answer every question that I ask you unless Mr. Siegel  
12 instructs you not to answer.

13 And generally, the only reason why he can instruct you  
14 not to answer is because I ask a question that would infringe  
15 upon a privilege, such as the attorney-client privilege where  
16 you're asking him for legal advice or another lawyer for legal  
17 advice. I don't have a right to know what your questions in  
18 that regard are or their advice.

19 But other than that, I generally can ask you any  
20 questions that are likely to lead to the discovery of  
21 admissible evidence --

22 A. Okay.

23 Q. -- and I will.

24 And I may ask questions, and through your head, you  
25 may not know why it is likely to lead to the discovery of

1 admissible evidence, but that doesn't mean that I can't ask it.  
2 You're required to answer every question that I ask and give me  
3 your honest and forthright response.

4 A. Okay.

5 Q. This is a deposition, not an interrogation, not an  
6 endurance test. So if at any time you would like to take a  
7 break to use the restroom, to get some water, to grab some  
8 food, catch some fresh air, please ask, and I'm going to make  
9 every effort to accommodate that because I want you to be  
10 comfortable.

11 Again, it's important that we have a clear record.  
12 It's important that you have a clear mind when you're  
13 testifying today, so I don't want to put any undue pressure on  
14 he. Just let me know if you need a break. The only thing that  
15 I request in that regard is that if there is a question  
16 pending, please complete your answer before taking your break.

17 A. Okay.

18 Q. And if you come back from your break and you change  
19 your answer, then I may take that opportunity to inquire as to  
20 why the answer was changed.

21 But you have every right to change answers, because,  
22 again, what's important that we have true accurate and correct  
23 transcript and that we get truthful and forthright answers from  
24 you to be used in this proceeding?

25 Do you understand all that?

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1 A. Yes.

2 Q. Do you have any questions in that regard?

3 A. No.

4 Q. How old are you?

5 A. 55.

6 Q. Did you attend college?

7 A. Yes, I have.

8 Q. Where?

9 A. Do you want the whole list of colleges?

10 Q. I would appreciate that.

11 A. Okay.

12 Junior college, Oakland, California; that was Merritt  
13 Junior College.

14 The University of Wisconsin, Madison, Wisconsin.

15 City University in Richland, Washington.

16 And I'm presently attending Walden University. It's  
17 based in Minneapolis.

18 Q. Do you have a degree from the University of Wisconsin?

19 A. A bachelors in science and education.

20 Q. Do you have a degree from City University?

21 A. An MBA.

22 Q. Is Walden University a correspondence course?

23 A. It's a combination. Much of it's on-line, but we have  
24 certain residence requirements that I've met, and hopefully, by  
25 the end of this year, I'll have another degree.

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1 Q. What are you studying?

2 A. Business. It's a self-designed course -- course of  
3 study; applied management and decision sciences.

4 Q. Did you attend the University of Wisconsin immediately  
5 after the junior college in Oakland?

6 A. Yes.

7 Q. And after you graduated from the University of  
8 Wisconsin, did you attend another school or did you take  
9 employment?

10 A. I took employment at the -- Cal Tech's jet propulsion  
11 lab in Pasadena, California.

12 Q. What did you do for Cal Tech?

13 A. The first three-plus years, I was on a management  
14 rotation program. So everything that you do in a human  
15 resource department, I think I did.

16 Q. How long did you hold that position at Cal Tech?

17 A. Four years and four months.

18 I did give my resume. I think.

19 THE WITNESS: Does the water gurgle when I'm drinking?  
20 Will it gurgle in here? Okay.

21 Q. Did you take employment at another company after you  
22 left Cal Tech?

23 A. Yes.

24 Q. Do you know what year you left Cal Tech?

25 A. It was '78, January '78.



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1 Q. And in 1978, where did you then become employed?

2 A. The Washington Public Power Supply System.

3 Q. What was your position there?

4 A. Training specialist.

5 Q. What's a specialist?

6 A. I don't know how to answer that.

7 Q. You were training them?

8 A. No. My position title was a training specialist.

9 I conducted employment training, human resource  
10 development. That's everything from writing courses to  
11 supervisory development.

12 Q. How long did you hold that position?

13 A. For three years and -- what -- five months or so.

14 Q. Until approximately 1981 or '82?

15 A. 1981.

16 Q. And in 1981, did you take employment elsewhere?

17 A. With -- yes. With New York Life Insurance Company.

18 Q. What did you do for them?

19 A. I was in a training program, again, and became an  
20 agent and sold financial service products and did that for  
21 maybe two and a half years or so.

22 Q. What did you do after that?

23 A. I took another position with -- oh, geez. Now it's  
24 kind of foggy.

25 I think I went to IDS/American Express immediately

1 after that. Or maybe it was Consolidated Financial.

2 I'm not sure which of the positions I took next.

3 There were a series of two job -- two jobs and my  
4 first try at self-employment, and I'm just not sure what the  
5 sequence was. I'd have to go back and look.

6 Q. Were the jobs in financial services?

7 A. Yes. As well as the self-employment.

8 Q. And when you began self-employment, were you still  
9 employed?

10 A. No.

11 Q. So you left the firm you were with at the time and  
12 started a business?

13 A. Now that I think about it, it was IDS.

14 It was Consolidated Financial, which was a local  
15 company.

16 Then I went to IDS.

17 And then on to self-employment at that time.

18 Q. What year did you become self-employed?

19 A. 1985.

20 Q. And what was the nature of the business?

21 A. Provided information, workshops on financial products.

22 Helped people with credit counseling.

23 Produced a foreclosure newsletter.

24 Those types of things.

25 Q. You mentioned earlier a lawsuit against Mr. Hansson.

1 A. Yes.

2 Q. What year was that lawsuit?

3 A. I believe it was the end of '03. I believe it was  
4 December of '03.

5 Yes. And it was dismissed, I think, in April of '04.

6 Q. You testified that in 1985, you started a business  
7 where you provided information and workshops on financial  
8 products, you did credit counseling and you had a foreclosure  
9 newsletter.

10 What was the name of that business?

11 A. The Gordon Group, a d/b/a.

12 Q. When you say it was a d/b/a --

13 A. Yes?

14 Q. -- do you mean that it was a sole proprietorship that  
15 was called The Gordon Group?

16 A. Yes.

17 Q. And how long was The Gordon Group in business?

18 A. At that time, for maybe two years.

19 It could have been 22 months. It could have been 25  
20 months. I'm not sure.

21 But, approximately.

22 Q. What did you do after those approximately 25 months?

23 A. Well, I was unemployed for a period of time. One of  
24 the reasons for getting my continued education is because I  
25 didn't really know what I was doing in terms of the business

1 aspect.

2 Unemployed for -- I don't know -- maybe six, seven  
3 months, and then I went to work for Private Industry Counseling  
4 in Kennewick.

5 Q. And what year was that, 1988?

6 A. 1988, yes. April of '88.

7 Q. How long were you employed there?

8 A. This is one of those complex answers.

9 The contract changed from one group to the next to the  
10 next. So there were at least three, maybe four different  
11 groups. And again, it's a matter of sequencing.

12 At the end of each year, the contract ended. We were  
13 laid off. Sometimes for 24 hours; other times for a week.

14 It was, all in all, three years or so.

15 Q. What was the nature of your positions there?

16 A. I was a training specialist.

17 We did what's called workforce development training.

18 Q. And did you leave there in approximately 1991?

19 A. Yes.

20 Q. What did you do in 1991 for employment?

21 A. 1991, after I was laid off, I was unemployed the rest  
22 of the year. And I had to decide what I wanted to do.

23 So I didn't, and I was unemployed about eight or nine  
24 months and tried other things, put together business ideas.

25 And I started another business, The Gordon Group. I

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1 kind of reinvented that and started, again, I think, in '92.

2 Q. Why were you laid off?

3 A. I don't know. They were running out of money. This  
4 was a local two-person shop. It was locally-granted dollars  
5 for minority economic development, and they simply ran out of  
6 money.

7 Q. In 1991, you testified you started a new business,  
8 called it The Gordon Group --

9 A. I think it was '92. It could have been the beginning  
10 of '93.

11 I was doing a lot of training. I came here to Seattle  
12 with the Pacific Institute, and I thought I was going to do  
13 some of their training.

14 I came here for maybe a full year, off and on, taking  
15 courses and so forth.

16 So I -- I don't know the exact starting date of The  
17 Gordon Group the second time around.

18 The first of '93; it could have been the end of '92.

19 Q. And that was the nature of the business for that  
20 Gordon Group?

21 A. This time I got back to what I did best, and that was  
22 training.

23 And I conducted workshops for the local college,  
24 Department of Energy, whoever else locally -- the City and  
25 things like that.

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1 Q. How long did you do that for?

2 A. Up until, I think, 2001.

3 Q. From approximately 1992 or '93 until 2001 -- I'm  
4 clarifying -- you ran a business called The Gordon Group and  
5 you were a training specialist, correct?

6 A. Yes.

7 There's more than that. I can add to it, if you'd  
8 like.

9 Q. Please.

10 A. In 1997, I added something to what I was doing.

11 In addition to doing entrepreneur training, things  
12 like that, I started a health and nutrition business which was  
13 strictly on-line. That was in '97. And we sold health and  
14 nutrition products in eight or nine, 10 different nations.

15 So that's how I got this on-line presence.

16 So I did the two things simultaneously.

17 Q. Was the health and nutrition products business under a  
18 different name than The Gordon Group?

19 A. No. It was the same.

20 Q. Was it a sole proprietorship?

21 A. Yes.

22 Q. How did you come to be involved in the health and  
23 nutrition products industry?

24 A. A life-long allergy, and I found something to relieve  
25 the allergy symptoms, both seasonal allergy as well as food

1 allergy.

2 That something was methyl sulfinyl methane; MSM, they  
3 call it. And as a result of taking that, I had tremendous  
4 relief. Not -- it wasn't gone, but I had relief.

5 And people around me that knew me said, what are you  
6 doing, and as a result, I undertook that venture.

7 Q. Did you have partners in that venture?

8 A. Not until -- it was either '99 or 2000. And that  
9 partner was Dancing Wolf, Incorporated in -- I guess it was  
10 Beaverton, Oregon.

11 And actually, that company absorbed The Gordon Group.

12 Q. Where were the health and nutrition products sold?

13 And when I say "where," I mean what medium; the  
14 Internet, storefront or otherwise.

15 A. 99.9-some percent was sold via the Internet. Sold in  
16 most every state in the nation; Canada, England, Ireland,  
17 Italy, Ecuador, Australia.

18 There was a couple of others, but those were some of  
19 the places.

20 Q. Did you have employees in connection with the health  
21 and nutrition products company?

22 A. No. Occasionally, my son would help me and I paid  
23 him.

24 Q. Did you market on the Internet?

25 A. Yes.

1 Q. And who designed the Internet site --

2 A. I did.

3 Q. And how did you know how to design an Internet site?

4 A. I taught myself, HTML.

5 Q. So you designed the HTML front end for The Gordon

6 Group website that sold health and nutrition products --

7 A. Yes.

8 Q. -- is that correct?

9 A. Yes.

10 Q. Was there a back-end infrastructure; in other words,  
11 code that drove --

12 A. There were no scripts.

13 Q. -- the purchases?

14 A. There were no scripts until toward the end.

15 I apologize for interrupting. Go ahead.

16 Q. Thank you. You're doing great. It's sometimes  
17 difficult when we're speaking back and forth for the court  
18 reporter, and I appreciate that.

19 You mentioned a moment ago that there was no scripts  
20 until later.

21 How were the products sold if there wasn't any  
22 back-end infrastructure and it was just a graphical interface?

23 Do you understand my question?

24 A. I'm not positive I understand it all.

25 You said, how were they sold?



1 Q. You testified that you designed the front end of this  
2 website.

3 A. Yes.

4 Q. You specifically advised it was through HTML.

5 A. Yes.

6 Q. And it's true that HTML is primarily limited to  
7 displaying images, right?

8 A. Yes.

9 Q. HTML doesn't have an interactive feature that allows  
10 purchasers to submit purchase requests and receive receipts and  
11 have credit cards billed and the like, correct?

12 A. That's correct.

13 Q. So my question is, how were purchasers able to  
14 purchase on The Gordon Group website if it was just an HTML  
15 interface?

16 A. Okay. Toll-free number was one way. They called a  
17 number.

18 We allowed them to do it via fax.

19 Check by phone.

20 And eventually, I learned how to do forms well enough  
21 to put forms on the website. And I don't know at what point we  
22 added forms.

23 Q. When you first started the website in around 1997, did  
24 it exist to promote the 800 number; was that the only means by  
25 which a consumer could purchase?

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1 A. I'm not sure. I'm not sure.

2 Q. And at some point, consumers could purchase products  
3 on the website, correct?

4 A. At some point, correct.

5 Q. When do you believe that was?

6 A. I believe after we had become part of Dancing Wolf.  
7 I just -- I'm just not certain right now.

8 Q. How did you promote the products on the Internet?

9 A. Okay. It sounded like I answered that.

10 Let's see.

11 The toll-free number was on there.

12 The fax number was on there for fax orders. And there  
13 was a sheet that said, this is the product number or whatever  
14 and the number of products, and they were able to fax it in or  
15 call it in. And most people called it in.

16 Q. Are you familiar with the term "traffic" as applied to  
17 the Internet?

18 A. I think I am.

19 Q. What is your understanding of that term?

20 A. People who access a website -- and I put counters on  
21 the website, and that could pull up the amount of people that  
22 actually came to the website to look.

23 There are click-throughs where you have some other  
24 part of it -- maybe the order forms or something like that --  
25 you can -- you can gauge traffic just on -- on hits or you can

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1 gauge traffic on click-throughs and things like that.

2 And that's my limited understanding of what we're  
3 talking about.

4 Q. Did you make any efforts to generate traffic to The  
5 Gordon Group website that sold the health and nutrition  
6 products?

7 A. I'm just trying to remember what things we did do.  
8 I'm sure I did. Just with four hours sleep, maybe  
9 it's not coming to my mind right now.

10 If I'm asked that question again, maybe I'll have  
11 something.

12 Q. Would you like some coffee?

13 A. I don't drink coffee, but thank you.

14 Q. Did you advertise The Gordon Group website by  
15 purchasing key words or other paper-click mechanisms through a  
16 search engine?

17 A. This is a long time ago.

18 I don't know if I purchased -- well...

19 Again, I'm just not certain.

20 I'm not certain.

21 Q. Did you send out e-mail marketing to promote The  
22 Gordon Group website?

23 A. That's one thing we didn't do.

24 Q. Never?

25 A. I have no recollection of ever doing that; not for

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1 selling health and nutritional products.

2 Q. Did you pay anybody to market or promote The Gordon  
3 Group website?

4 A. No.

5 Unless I'm misunderstanding your term "marketing," no.

6 Q. Do you know how consumers that purchased The Gordon  
7 Group health and nutritional products found The Gordon Group  
8 website?

9 A. We didn't ask that question until very late in the  
10 game, and most people would say that they saw it in a search  
11 engine.

12 Now that you mention it, there was an application --  
13 you mentioned marketing -- WebPosition, I think it was called,  
14 out of Australia, a product that I purchased, and it was  
15 supposed to be something to give you better placement in the  
16 search engines.

17 I think that's the marketing tool that we used.  
18 WebPosition, I think, is the name.

19 Q. Did you use any other marketing tools?

20 A. I would have to ask my old partner. I don't know if  
21 we did anything else.

22 I locally told people about it and brought samples.  
23 We gave away a lot of samples to people, hundreds of bottles to  
24 give them our product.

25 So, word of mouth.

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1 Q. You mentioned a company in response to my question  
2 earlier about whether you had a partner.

3 Would you be so kind as to repeat its name?

4 A. Dancing Wolf, Incorporated.

5 Q. How did you become introduced to Dancing Wolf,  
6 Incorporated?

7 A. The proprietor called me. Saw my website.

8 Q. Did you sell an interest in the health and nutrition  
9 product business to Dancing Wolf?

10 A. Not technically. We -- because we were both small  
11 businesses, we just decided to combine our resources, and we  
12 redid our bylaws and things like that.

13 Q. Did you have a business entity formed for your health  
14 and nutrition product business at any time?

15 And when I say "business entity," I'm referring to a  
16 corporation, limited liability company or limited liability  
17 partnership.

18 A. I didn't, but she had a corporation, an Oregon-based  
19 corporation.

20 Q. Did she sell you interests or otherwise transfer you  
21 interests in the Oregon corporation?

22 A. No.

23 Q. Did so you never owned shares in the Oregon  
24 corporation?

25 A. No.

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1 Q. In response to my question about Dancing Wolf, you  
2 testified that "she" had a corporation.

3 Who is "she"?

4 A. Her name is Darin E. Tillinghast,  
5 T-I-L-L-I-N-G-H-A-S-T.

6 Q. At some point, Dancing Wolf, Incorporated -- I think  
7 you testified -- swallowed up your business?

8 A. Yes. That's a way to put it, yes. Merger.

9 Q. What was the nature of that transaction?

10 A. Effectively, it was a merger.

11 When I say we combined resources, that's exactly what  
12 we did. She had a local accountant to do the paperwork and the  
13 K-1s and things like that. And I let her handle that.

14 Q. Were you paid for the merger?

15 A. Pardon?

16 Q. Were you compensated for the merger?

17 A. Technically, no.

18 Q. You testified "technically, no," which indicates to me  
19 there might be a practically, yes.

20 Is there a practical way that you were compensated,  
21 even if technically you were not?

22 A. Well, other than getting free product, I don't know if  
23 there's anything else.

24 Q. Why did you allow Dancing Wolf, Inc. to swallow up  
25 your business?

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1 A. Well, I had done it for maybe three years, and I  
2 wanted to do something more.

3 The other part of that is there was a guy in Australia  
4 that wanted us to help market our product nationwide there, and  
5 he asked us to put together a marketing report. And I didn't  
6 know how to do that.

7 And there was a couple of other requests of that  
8 nature, and I wasn't able to fulfill my customers' request, and  
9 I decided I needed more education in business. And that's why  
10 I undertook my MBA and, effectively, withdrew from the other.

11 And we had an oral agreement for payment for services  
12 and things like that, and I decided I'd go ahead and start  
13 school full time. And that's what I did.

14 Q. What year was that?

15 A. 2000.

16 Q. Your business, The Gordon Group, was operating in  
17 1999, correct?

18 A. Up through, I think -- I terminated the business, I  
19 think it was 2002.

20 I kept it going. Just like -- I kept interest going,  
21 but I, on a day-to-day basis, did not manage, was not involved  
22 in the daily management of the business.

23 Q. Do you recall the gross revenue you generated in 1999?

24 A. No.

25 If I guessed, it would be about 100-, 110,000;

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1 something like that.

2 Q. Do you know what your profit was on that 100-,  
3 110,000?

4 A. No, I don't.

5 Q. I'm looking for a best estimate because I know that  
6 you don't have your financial documents in front of you.

7 A. No. Even so, we were just given K-1s. And all of the  
8 accounting was done with her accountant there in Oregon.

9 So, no, I don't -- even the Quickbooks -- we ran  
10 across some problem in transmitting the Quickbooks so that I  
11 could keep up to date. I'm not sure what the problem is right  
12 now.

13 So, no, I didn't get a final because I had been  
14 involved in my MBA and I also started another job in May of  
15 2000 working for City University.

16 So I had so much going on that I really didn't -- I  
17 wasn't diligent, vigilant, whatever, in terms of getting  
18 through and getting all these weekly updates and biweekly  
19 updates and so forth.

20 Q. Did you report income to the government in 1999?

21 A. Always.

22 Q. You don't know how much you reported?

23 A. No. I don't even know what I reported last year.

24 Q. And in the year 2000, did the health and nutrition  
25 business generate revenue for you?



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1 A. I -- I'm sure it did. I just don't know.

2 The last time, though, I got a paycheck from that  
3 venture was at the end of '01.

4 So it continued to, you know, provide income, but I  
5 just don't know what it was.

6 Q. What became of the business?

7 A. I believe it's still going.

8 Q. But you don't generate revenue from it any longer?

9 A. I haven't been paid.

10 Q. Do you have an agreement with Dancing Wolf or  
11 Ms. Tillinghast that provides that you should be earning  
12 revenue from the health and nutrition business?

13 A. I have an agreement, but it's more of a nondisclosure,  
14 noncircumvention-type of agreement and there was no exit  
15 strategy included in that.

16 Q. Are you entitled to a percentage of the revenue that  
17 the company generates?

18 A. I think so.

19 Q. Do you know whether you own shares in the company that  
20 offers these products?

21 A. I didn't purchase shares originally. I think we had a  
22 split of 51/49 or 52/48 or something like that.

23 So, that's my best recollection. It was a pretty  
24 narrow split.

25 Q. You testified that you went back to study for your

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1 MBA.

2 A. Yes.

3 Q. And that year was 2000, correct?

4 A. Yes.

5 Q. So were you in school full time at that time?

6 A. The first quarter, no.

7 But the second quarter that I was enrolled, I was full  
8 time.

9 Q. How did you earn a living during that time?

10 A. Please re- -- I -- I missed something.

11 Q. Okay.

12 You testified you went back to school, correct, in the  
13 year 2000, and you started studying full time, right?

14 A. Yes.

15 Q. And school costs money, correct?

16 A. Yes.

17 Q. And when you are in school, you are not paid for being  
18 in school, correct?

19 A. Yes, I was. At City University, that's who provided  
20 the education, and that was my employer as well.

21 Q. So you worked for City University at the time?

22 A. Correct. I was an academic advisor.

23 Q. Thank you for clarifying.

24 A. Okay.

25 Q. How long were you an academic advisor?

1 A. Three years and three months, two months; something  
2 like that.

3 Q. What were your responsibilities as an academic  
4 advisor?

5 A. Market the university, which I did.  
6 And all the outlying areas in the Columbia Basin.  
7 And to counsel, advise students on options for their  
8 academic progress.

9 For new people, just to tell them about the university  
10 and to follow up.

11 Q. You did that until approximately 2003?

12 A. Until the end of July 2003, yes.

13 Q. Did you hold other employment positions at that time?

14 A. Not in '03, no.

15 Q. Did you own any businesses at that time?

16 A. I thought I held interest in Dancing Wolf.

17 Q. Other than Dancing Wolf, did you own any businesses at  
18 that time?

19 A. No, I don't -- I don't think so.

20 Well, I formed Omni with the intention of making that  
21 my full-time occupation, but that was 2000, mid-2000. Maybe it  
22 was 2001.

23 Q. When you refer to Omni --

24 A. Omni Innovations, LLC. I apologize.

25 Q. And we'll just refer to that as Omni because it's

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1 probably easier for both of us.

2 But when either of us refer to the entity Omni, we're  
3 talking about Omni Innovations, LLC --

4 A. Yes.

5 Q. -- is that fair?

6 A. Yes.

7 Q. You formed Omni in the year 2000?

8 A. That's correct.

9 Q. Why did you form Omni?

10 A. I'm trying to think of the simplest way.

11 I have intellectual property concepts that I wanted to  
12 develop and market.

13 Q. What were they?

14 A. What I can tell you is I've developed a proprietary  
15 planning system which I will be marketing to K-20 --  
16 kindergarten through, really, doctoral level -- a planning  
17 program where we're taking my pen and paper process and, with  
18 the help of Battelle, turn it into software.

19 Q. Have you ever generated any revenue from that  
20 proprietary planning system?

21 A. No. It's not complete.

22 Q. So it's still in the --

23 A. Drawing board.

24 Q. -- research and development phase?

25 A. Yes.

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1 Q. Did Omni generate any revenue between the year 2000  
2 and 2003?

3 A. No.

4 Q. Did you personally generate any revenue or income  
5 between the year 2000 and 2003, other than from City University  
6 or Dancing Wolf?

7 A. I don't recall any other sources.

8 Other than my wife working.

9 Q. Why did you leave City University?

10 And when I'm speaking of it, I'm referring to the  
11 employment position as opposed to the student position in the  
12 year 2003.

13 A. I was laid off in 2003.

14 And last year -- I'm sorry, 2005, the campus closed in  
15 the Tri Cities.

16 Q. After you were laid off from City University in 2003,  
17 what did you do to generate income?

18 A. Well, I had a lot of time to think about it.

19 Q. To think about generating income?

20 A. Well, yeah. What I attempted to do was to continue  
21 work on the software development project.

22 In the meanwhile, the only income that I had was  
23 unemployment until sometime in '04.

24 Q. When you refer to "unemployment," are you speaking of  
25 State unemployment insurance?

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1 A. That's correct. That's correct.

2 Q. So your only source of income in the year 2003 was  
3 from State unemployment payments?

4 A. Up until my layoff at the end of July, I had a regular  
5 salary.

6 And after that -- I don't know -- I had a severance  
7 package plus -- oh, geez. I don't know.

8 It was the equivalent of six or eight weeks of pay  
9 after that. And they threw in my vacation and so forth.

10 So I had almost three months of pay afterwards.

11 Q. How long were you receiving unemployment compensation  
12 payments from the State?

13 A. It was until maybe mid-'04. I'm not sure when the  
14 cutoff was.

15 Q. Why did those unemployment compensation payments  
16 cease?

17 A. I don't know. I have no idea. Unless -- you know,  
18 there's only a certain amount of time that you can qualify, and  
19 I'm assuming that was the case.

20 Q. Were you employed in the year 2004?

21 A. I had no employer.

22 Q. Did you own a business in the year 2004?

23 A. Omni was the only thing that technically was formed.  
24 I kept renewing the license for it each year.

25 Q. Did Omni generate any revenue in 2004?

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1 A. No. I don't believe -- no. I don't believe it did.

2 Q. I just want to clarify.

3 I used the term "revenue." I suppose a synonym for  
4 that would be "income," and I just want to make sure you  
5 understand that when I ask, I'm inquiring as to whether Omni  
6 generated any income whatsoever, gross net, in kind.

7 A. I would have to double-check because I did ask an  
8 accountant for help, who was actually one of the professors at  
9 City U.

10 So I would have to go back to whatever notes to say --

11 I don't think so, but I'm not absolutely positive. I  
12 don't think, at that time, it did.

13 Q. In 2004, did you earn any income other than from  
14 unemployment compensation from the State?

15 A. Did I earn any other income?

16 I held no job during that period of time.

17 Q. In 2004, did you earn any income other than from  
18 unemployment compensation from the State?

19 A. As I understand that, the answer is no.

20 Q. In 2005, did Omni generate any revenue or earn any  
21 income of any kind?

22 A. I think -- I think the first revenue for Omni was  
23 2006.

24 I lost a lot -- in fact, I lost all of my records due  
25 to computer viruses on at least three occasions. And I've had

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1 to, I guess, decentralize recordkeeping.

2 Q. In 2005, did you earn any income?

3 A. I'm trying to think if I did any workshops.

4 I don't recall anything at this point for '05.

5 Q. During these years when you were unemployed, how did  
6 you pay your bills?

7 A. Well, I mentioned that my wife was working.

8 During the course of the last maybe two and a half  
9 years, the lawsuits that I have been involved with yielded  
10 settlements.

11 Q. You testified earlier that in 2006, Omni earned its  
12 first revenue.

13 A. Yes.

14 Q. From what source did Omni earn its first revenue?

15 A. The first revenue came from a settlement.

16 Q. A settlement of what?

17 A. A settlement of a lawsuit.

18 Q. What lawsuit?

19 A. I -- I think that agreement's confidential. Best --  
20 I'm not supposed to divulge that information.

21 Q. Are you refusing to answer the question?

22 A. At this point, yes.

23 MR. NEWMAN: Would the court reporter be so kind as to  
24 mark the record.

25 Q. You understand that I'm entitled to ask any question



1 that's likely to lead to the discovery of admissible evidence,  
2 correct?

3 A. Yes.

4 Q. And here, I'm asking a question that directly relates  
5 to this case because it involves another lawsuit you brought.

6 Do you understand that?

7 A. Yes, I do.

8 Q. And I believe I have the right to ask this question.

9 Why aren't you answering it?

10 MR. SIEGEL: Counsel, objection. To the extent that  
11 my client may be bound by confidentiality provisions in a  
12 particular settlement agreement, then we would request time and  
13 opportunity to consult and review that -- those provisions, and  
14 we will answer if we believe that we're obligated to and you're  
15 entitled to that information and my client doesn't run afoul of  
16 the confidential provisions.

17 MR. NEWMAN: In this case, we have a protective order,  
18 and we agreed to it and the court signed off on it. We  
19 negotiated it.

20 MR. SIEGEL: That's true.

21 MR. NEWMAN: And it provides for when in this case the  
22 parties should disclose confidential information and how that  
23 will be maintained.

24 May I ask this question of this witness pursuant to  
25 the protective order and we could ask the court reporter to

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1 maintain the confidentiality of this portion of the record?

2 THE WITNESS: It's okay?

3 MR. SIEGEL: I guess so.

4 We do have a protective order.

5 THE WITNESS: Okay.

6 Q. I just want to make clear for the record -- and court  
7 reporter's doesn't like this very much, but we have a very good  
8 one here.

9 At this point, the portion of the record should remain  
10 confidential, and then, when we're done with the areas that you  
11 would like protected pursuant to the protective order, please  
12 let me know so that we can go back on to a regular transcript  
13 so as not to inconvenience the stenographer any further.

14 A. Okay.

15 [START EXCERPT]

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23 [END EXCERPT]

24 Q. What -- from what source did that revenue come that  
25 Omni earned in 2006?

1 A. May I consult with my attorney?

2 Q. Not unless you believe the question that I'm asking  
3 you may infringe upon the attorney-client privilege.

4 MR. SIEGEL: You can answer the question.

5 THE WITNESS: This was the **REDACTED** matter.

6 It's okay?

7 MR. SIEGEL: Yeah.

8 With that said, we're going to have this portion  
9 marked as confidential pursuant to the protective order.

10 MR. NEWMAN: That's fair.

11 If the court reporter has any questions about the  
12 confidentiality, please let us know, because I anticipate we'll  
13 be doing this from time to time throughout the day.

14 [START EXCERPT]

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[END EXCERPT]

24 Q. You testified earlier that you used an ISP called One  
25 World?



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1 A. One World Telecommunications. OWT for short.

2 Q. When was OWT your ISP?

3 A. Pardon me. I've got something in my throat.

4 I didn't hear the question.

5 Q. When was OWT your ISP?

6 A. I believe it was from '95 to 2000 or 2001.

7 Q. Why did you terminate its services?

8 A. Too much spam.

9 Q. What services did you obtain from One World, OWT?

10 A. The Web hosting and e-mail were the two main ones.

11 Q. Who provided your bandwidth at the time?

12 A. I believe the same company, as I understand that.

13 Q. Did you have your own e-mail server at the time?

14 A. No.

15 Q. Did you have any server at all at the time?

16 A. No. Just leased space on theirs.

17 Q. Did you have a website?

18 A. Oh, yes. I've had a website since 1996, I think.

19 Q. How many websites have you had since 1996?

20 A. Oh. I -- dozens. I don't know if it's five dozen,

21 100.

22 I've done dozens of websites for people that I know.

23 For this Woman's Resource Center. For fraternal organizations.

24 For church organizations. Friends. Family.

25 I guess -- "this organization," I should say Columbia

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1 Basin College's Women's Resource Center.

2 Q. After you terminated One World, do you recall which  
3 ISP you engaged next?

4 A. I think it was Earthlink. I'm not positive, but I  
5 think it was Earthlink next.

6 Q. What services did Earthlink provide for you?

7 A. Geez, I'm not sure.

8 I had two ISPs, effectively, for a long period of time  
9 -- actually, several years -- so I'm not sure who did what.

10 Q. What were the two ISPs?

11 A. Well, at first it was -- at first it was One World. I  
12 had them for five or six years.

13 And then I went to Earthlink.

14 And then, I think, after that, I went to ValueWeb.

15 I'm -- it's not clear, but I had two at the same time  
16 for, as I said, maybe two years.

17 Q. Why did you have two?

18 A. I wasn't happy with, again, the spam problem. I had  
19 -- trying to check one solution versus others, trying to learn  
20 what worked best.

21 That's my best recollection. I just -- I had spam. I  
22 terminated at least three companies strictly because of spam.  
23 Maybe four.

24 Q. Did Earthlink provide a spam filter?

25 A. Yes.

1 Q. And you utilized it?

2 A. Yes. But it was very ineffective.

3 Of course, that may say a lot about my technical  
4 expertise, but it was ineffective.

5 Q. What services did Earthlink provide for you?

6 A. I'm not certain. I just don't recall which services.

7 Q. Spam filtering services?

8 MR. SIEGEL: Objection. Asked and answered.

9 A. What's next?

10 Q. Spam filtering services?

11 MR. SIEGEL: Objection. Asked and answered. He said  
12 he didn't remember, Counsel.

13 Q. Is that your testimony, that you don't remember?

14 A. I -- I don't -- the only thing that I recall -- and it  
15 must have been e-mail -- that's my summation or my guess there  
16 -- there would have been at least e-mail, but I don't remember  
17 having an Earthlink e-mail address.

18 So I'm really confused as to what services were  
19 provided by whom.

20 Q. Do you recall what services Webmasters.com provided?

21 A. The main thing was Web hosting.

22 Q. Did they provide an e-mail account?

23 A. Well, with the domain, you can carry as many e-mail  
24 addresses as you want with most companies. Some will have  
25 restrictions.

1 I think OWT had five addresses at their domain.

2 Q. Did Webmasters.com provide e-mail accounts to you?

3 A. They didn't need to.

4 With my domain, I can establish my own e-mail  
5 accounts.

6 Q. How?

7 A. You just point it to the e-mail -- the domain to their  
8 servers, and be "Jim@" or "James@" or something like that.

9 Q. Did Webmasters.com operate the mail server through  
10 which you received e-mail at that time?

11 A. I believe that's true.

12 MR. SIEGEL: What time are we at, just for  
13 clarification?

14 Q. What services did you receive from ValueWeb?

15 MR. SIEGEL: At what time, Counsel? Can I get  
16 clarification there so we know when we're talking about here?

17 You said, "at that time."

18 A. Let me go back.

19 ValueWeb was my Internet service provider prior to  
20 Webmasters.

21 And all of this took place in the window of 2000 to  
22 maybe 2004, but I just don't know with any demarkation when one  
23 started and one stopped.

24 Q. What services did ValueWeb provide for you?

25 A. Web hosting.

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1 Q. Did ValueWeb provide e-mail accounts to you?

2 A. That's part of the domain, yes.

3 Q. Did they provide a spam filter?

4 A. ValueWeb.

5 I'm almost certain they did because that was, again, a  
6 problem that I had with terminating their service. I continued  
7 to get spam.

8 Q. What services did AOL provide to you?

9 A. Nothing, really.

10 That -- I had it, at the most, five months. But I'm  
11 thinking it was probably more like three months, and that was  
12 early 1995.

13 Q. What services did AOL provide to you?

14 A. I'm not sure what services they even had.

15 E-mail, of course, was one that I do recall. But I  
16 didn't have a domain at that time, so I wasn't really  
17 interested in anything else beyond e-mail.

18 Q. We talked earlier about the lawsuit that you have with

19 **REDACTED**

20 A. Yes, we did.

21 Q. You testified that --

22 A. I'm sorry, it's not a lawsuit.

23 Q. Thank you for clarifying.

24 You testified you had a settlement with **REDACTED**

25 Today.

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1 A. Yes.

2 Q. What was the nature of the e-mails that you received  
3 from them?

4 A. I think I need a clarification because I'm not sure  
5 how to answer that.

6 Q. Were they advertisements?

7 A. Oh, yes. They were all advertisements for their  
8 **REDACTED**

9 Q. What did they advertise?

10 A. Dolls. Little statuettes, miniatures; things like  
11 that.

12 Q. And you believe they violated statutes, correct?

13 A. Yes.

14 Q. Do you remember specifically what about the e-mails  
15 violated statutes?

16 A. Some of it was "subject" line.

17 Relaying of e-mail.

18 That's just off the top of my head. There may have  
19 been other things.

20 Q. Were there problems with the "subject" lines?

21 A. Yes.

22 Q. What were the problems?

23 A. I don't recall.

24 Q. What is e-mail relay?

25 A. Spam filters designates the -- the SpamAssassin spam

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1 filter designates certain e-mail is received via a relay, and  
2 they determine relays -- IP addresses, domains that are blocked  
3 per Spamhaus, Spam Cop, one of those services, SPEWS and so  
4 forth.

5 And they -- whenever an e-mail from one of those  
6 domains comes through that, it's flagged, and SpamAssassin  
7 apparently somehow gets that information and tags the e-mail.

8 Q. Do you know whether the statute prohibits e-mail  
9 relay?

10 A. I don't think -- if you have permission, I don't think  
11 it's prohibited. But if you're doing it without permission, I  
12 believe it is.

13 Q. Do you believe **REDACTED** was doing e-mail  
14 relay without permission?

15 A. If I had to guess, I would say yes.

16 Q. Do you know whether -- strike that.

17 Are you familiar with the term "opt-out link"?

18 A. Yes.

19 Q. What is an opt-out link?

20 A. Typically, spammers provide that, ostensibly, to  
21 allow a person to -- it's a scam.

22 But anyway, they say that it's to allow people to opt  
23 out of -- or stop receiving communications from that particular  
24 spammer.

25 Q. Do you recall whether **REDACTED** provided an

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1 opt-out link?

2 A. They probably did. I'm guessing they did.

3 Q. Did you click on it?

4 A. No. Not to my --

5 Q. Have you ever --

6 A. Many, many times.

7 Q. I'm going to go back because I think we were talking  
8 over each other.

9 A. I interrupted you. I apologize.

10 Q. You testified that you don't recall whether  
11 **REDACTED** had an opt-out link.

12 A. That's inaccurate.

13 I wasn't -- I don't know how many of their e-mails had  
14 opt-out links, but if I had to guess, it would probably be most  
15 of them did. There may have been some without.

16 Q. Have you ever clicked on an opt-out link?

17 A. Hundreds of times. Maybe thousands of times.

18 Q. Were there occasions where you clicked on opt-out  
19 links and then e-mails stopped in response to clicking on the  
20 opt out?

21 A. There may have been.

22 Q. Were there occasions when you clicked on an opt-out  
23 links, requested to opt out, but e-mails continued?

24 A. I think that is the -- probably 95 percent of the  
25 time, that's the way it works.



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1 Q. Please identify an opt-out link that you clicked on  
2 and requested an opt out but continued to receive messages from  
3 the provider.

4 A. I did so with the defendants.

5 Q. Which defendant?

6 A. Both.

7 Both.

8 Q. Adknowledge and Virtumundo?

9 A. Yes.

10 Q. You clicked on an opt-out link with Virtumundo; is  
11 that right?

12 A. Well, let me double -- I think I did with Adknowledge.  
13 I know I did many, many times with Virtumundo.

14 Q. When was the first time you clicked on an opt-out link  
15 with Virtumundo?

16 A. Probably early October 2003.

17 Q. Where was the opt-out link located?

18 A. Don't recall.

19 I don't recall exactly where it was.

20 Q. Was it in an e-mail?

21 A. I -- I would think that it was. It could have been on  
22 their website. I visited the website. I've also looked  
23 through their e-mails.

24 I just don't recall where it was specifically. I  
25 could have clicked on a link that took me to a website. I just

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1 saw it -- I'm just not certain.

2 Q. Are you sure that you clicked on an opt-out link  
3 through Virtumundo?

4 A. Oh, yes.

5 Q. Did you receive any kind of response from Virtumundo  
6 after you entered the opt-out information?

7 A. I don't know right now. That was at a time where I  
8 had opted out of many thousands of offers that had come  
9 through.

10 I've kept about 2,000 successful unsubscribe notices  
11 that I've received.

12 Q. From Virtumundo?

13 A. No. From -- I guess we're only talking about  
14 Virtumundo and Adknowledge.

15 So, no.

16 Q. Have you ever received an unsubscribe notice from  
17 Virtumundo?

18 A. I don't think I've ever received anything from  
19 Virtumundo even though I've tried to contact them many times.

20 Q. You allege that you, on an Internet site or otherwise,  
21 clicked on an opt-out link through Virtumundo, correct?

22 A. That's my belief.

23 Q. Do you recall whether, after you clicked on the link  
24 or entered in any information, you received confirmation?

25 A. I don't recall.

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1 Q. How many times did you attempt to opt out through  
2 Virtumundo?

3 A. The reason why I don't recall is because I, as I said,  
4 did -- between August of '03 and the end of the year, 10- to  
5 12,000 opt-outs and letters, complaint letters.

6 11- to 12,000 is probably a more accurate number.

7 And your clients' e-mails would have been right along  
8 with everyone else's. I have no recollection of any specific  
9 ones. I just have records that I've done it.

10 Q. You have records of opting out through Virtumundo?

11 A. Through the opt-in source for Virtumundo, yes.

12 Q. Do you have records of opting out through Virtumundo?

13 A. For them directly, no.

14 Q. Why didn't you maintain any records of opting out  
15 through Virtumundo?

16 A. I didn't know it was going to be necessary.

17 Q. When was the last time you attempted to opt out  
18 through Virtumundo?

19 A. I don't recall when that was.

20 Q. Was it during the pendency of this lawsuit?

21 A. I may have. I just don't know.

22 MR. NEWMAN: I'm going to start with Exhibit No. 10.

23 The reason I'm starting with 10 is because I think that in your  
24 depositions, you used about 10, and in order to avoid confusion  
25 later when we designate exhibits for trial, I think it would be

1 best if they're sequential.

2 MR. SIEGEL: That's fine.

3 (Exhibit No. 10 marked.)

4 Q. The court reporter handed you what's been marked  
5 Exhibit No. 10.

6 Have you ever seen this letter before?

7 Take time to read it.

8 A. Oh, okay.

9 MR. SIEGEL: Have you got a copy there, Counsel?

10 MR. NEWMAN: I'm sorry.

11 A. (Witness reviews document.)

12 Okay.

13 Do you need it back? Oh.

14 Q. Throughout this process, you'll be handed exhibits,  
15 and they are original documents that will be attached to the  
16 transcript.

17 A. Okay.

18 Q. You may keep them at your side because we'll refer to  
19 them throughout the proceeding.

20 At the end of today, please return those documents to  
21 the court reporter and don't take any with you because they're  
22 going to be part of the permanent record.

23 A. Okay.

24 Q. I've provided your lawyer with a copy of this  
25 document, and I will for each exhibit, and so you'll have a

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1 copy for your files.

2 A. Okay.

3 Q. Have you ever seen Exhibit No. 10 before?

4 A. I think I have. I think I have.

5 Q. What is it?

6 A. Just what it says. "Preservation of evidence."

7 Q. It's a letter that my law firm sent to your lawyer  
8 reminding your lawyer about your duty to preserve evidence,  
9 correct?

10 A. Yes.

11 Q. And you say you believe you've seen this.

12 A. Yes, I think I have.

13 Q. So you're aware of your duty to preserve evidence,  
14 correct?

15 A. Yes.

16 Q. And what steps have you taken to preserve evidence in  
17 this case?

18 A. I just keep stuff on my computer. Put it -- try to  
19 put it in specific folders.

20 Q. Have you deleted any files relating to Virtumundo or  
21 Adknowledge?

22 A. Not to my knowledge.

23 Q. Have you maintained records relating to Virtumundo and  
24 Adknowledge to the extent that you have taken any steps with  
25 respect to them?

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1 A. Electronic records.

2 Q. Do you have any electronic records of attempting to  
3 opt out with Virtumundo or Adknowledge?

4 A. Yes, I believe I do.

5 Q. Have you provided those opt-out records to your lawyer  
6 to provide to us in response to discovery responses?

7 A. Yes.

8 Q. And do you know whether your lawyer has provided them  
9 to us?

10 A. I don't know. I think he has.

11 Q. What forms were the record of the opt-out requests?

12 A. CDs.

13 Q. What form were the opt-out requests; in other words,  
14 were they e-mails?

15 A. E-mails.

16 MR. NEWMAN: The videographer has indicated that he's  
17 running out of tape, so let's take a break.

18 A. Okay.

19 THE VIDEOGRAPHER: This is the end of Tape No. 1 of  
20 the video deposition of James S. Gordon, Junior. The time is  
21 now 11:53 a.m. We are off the record.

22 (A discussion was held off the record.)

23 THE VIDEOGRAPHER: This is the beginning of Tape No. 2  
24 of the video deposition of James S. Gordon, Junior. The time  
25 is now 11:55 a.m. We are on the record.

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1 Q. You testified that you made requests to Virtumundo,  
2 what we've discussed were opt-outs, right?

3 A. That I called opt-outs, yes.

4 Q. What is an opt-out out with respect to Virtumundo when  
5 you use that term?

6 A. What I attempted to do was to get them to cease  
7 sending me e-mails.

8 I did several things. I contacted them directly at  
9 their Whois look-up information that they provide to their  
10 registrar in case someone needs to contact them.

11 I directed to their legal.

12 To domain registration.

13 And maybe two for three others -- maybe more than that  
14 -- to ask them to stop.

15 I then put my auto responder up. And the auto  
16 responder had a cease and desist notice attached to it for  
17 anyone that sent me e-mail. Even my friends and colleagues  
18 were getting this auto response message, and they grew tired of  
19 it fast. But -- to everyone that was sending me e-mail.

20 So that means that they received hundreds of bounces  
21 -- not bounces, but hundreds of auto response messages to stop  
22 sending me e-mail. Every e-mail that I received had a  
23 corresponding auto responder message sent to them.

24 Q. You requested that Virtumundo stop sending you e-mail,  
25 correct?

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1 A. Yes, I did.

2 Q. And did you this through e-mail, correct?

3 A. I did --

4 MR. SIEGEL: Objection. Asked and answered. He just  
5 went through the litany of ways that he requested them to stop.

6 MR NEWMAN: That's not an appropriate objection.

7 If counsel wishes to object to the form of the  
8 question, counsel should so do so. "Asked and answered" is not  
9 an appropriate objection, and I would like a clear record here.

10 I also want to make sure the witness understands the  
11 subject matter we're discussing.

12 Q. From time to time, I will repeat a question. I will  
13 attempt not to, and I'm certainly not trying to put you under  
14 any pressure or harass you. I just want to make sure we have a  
15 clear record.

16 So I'll ask the question again.

17 A. Okay.

18 Q. You asked that Virtumundo stop sending you e-mail,  
19 correct?

20 A. Yes, I did.

21 Q. And in what form did you make that request?

22 A. In --

23 Q. And just to avoid the whole asked and answered issue,  
24 you testified you did this through e-mail, right?

25 A. That's a part of it.



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1 Q. How else did you request that Virtumundo stop sending  
2 you e-mail?

3 A. In '03, it started with trying to opt out through  
4 whatever was available. If it was a link or a web page or  
5 whatever, I tried to do it that way.

6 I also went to their upstream providers and sent them  
7 complaint letters -- let's say it was Cogent or someone else --  
8 and complained to them that I was receiving e-mail.

9 It didn't stop with that.

10 I then resorted to the Whois look-up information to  
11 try to get them to stop that way.

12 I then went to auto responders.

13 And it still hadn't stopped.

14 So, eventually, we ended up filing a lawsuit.

15 Q. You testified that you clicked on a Web link; is that  
16 right?

17 A. That's my belief.

18 Q. Upon what basis do you have that belief?

19 A. Well, I received some successful unsubscribes, and I  
20 typically did that action in groups. I would sit down with  
21 maybe day one or -- let's say Monday's e-mails and go through  
22 them.

23 Then I'd sit down again maybe on Wednesday or Friday  
24 or some other date.

25 And I did them in groups.

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1 Q. Did you retain the successful unsubscribes from  
2 Virtumundo?

3 A. No. I only retained it from EmailPrize and a few  
4 others at that date.

5 I didn't retain them again until -- at least, I'm  
6 guessing -- until January, February, March; in that time frame.

7 Q. You testified you sent Virtumundo e-mails, correct?

8 A. Yes, I did.

9 Q. And asked them to stop sending you messages?

10 A. Yes.

11 Q. Did you retain copies of those e-mails?

12 A. And I submitted them to you all.

13 Q. Are there any e-mails that you sent to Virtumundo that  
14 you haven't submitted to us in this case?

15 A. I don't think so.

16 Q. You testified you clicked on a Web link; is that  
17 right?

18 A. That's my belief.

19 Q. You responded that it is your belief.

20 Are you not sure whether you clicked on a Web link?

21 A. I did 10 -- 10-, 12,000 of them.

22 So I just can't be positive right now on who I sent it  
23 to. I only have a few names that I've retained.

24 Q. Is it possible you did not click on a Web link for  
25 Virtumundo?

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1 A. No. Because I received so much from them that -- the  
2 major spammers, I did for sure.

3 And the fact that I also have upstream providers for  
4 Virtumundo means that I did first try the opt-out. That was  
5 the sequence. It was an escalation or acceleration process or  
6 whatever you want to call it. So I went to the next level each  
7 time.

8 Q. So you're confident you clicked on a Web link?

9 A. No, I'm just confident I contacted them. And if the  
10 Web link was available, I used it.

11 Q. But you don't know whether you clicked on a Web link?

12 A. To be absolutely positive, I can't say that I did  
13 because I have no evidence that I did.

14 Q. Did you click on a link in any e-mails you received  
15 from Virtumundo requesting that Virtumundo stop sending you  
16 messages?

17 A. Again, that's my belief, that I did that.

18 Q. How many times?

19 A. I don't know.

20 Q. Did you save any evidence or printouts of documents  
21 arising out of you clicking on those links?

22 A. Other than the EmailPrize and maybe one or two of  
23 those other gateways or portals.

24 I didn't save records to that degree during '03.

25 I didn't really start saving records until '04.

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1           So I don't have any proof that I opted out at that  
2 point specifically to your client.

3           Q.    Did you click on any links in a Virtumundo e-mail  
4 requesting not to receive messages after 2004?

5           A.    I may have. I don't know for sure.

6           Q.    Do you have any records of that in that regard?

7           A.    I would have to check. Nothing comes to mind.

8           Q.    Have you clicked on any such links in the last year?

9           A.    I don't know. I may have.

10          Q.    But you have no record of that?

11          A.    I'm not going to say I don't have a record. I've kept  
12 a lot of records.

13                I've got maybe an e-mail repository of 3 or 4 million  
14 e-mails and ten of thousands of records. So it could be in  
15 there somewhere.

16          Q.    You understand you have a duty to search those records  
17 to determine whether they're responsive to the discovery  
18 requests in this lawsuit, correct?

19          A.    No, I don't understand that.

20          Q.    You have that duty.

21          A.    Okay.

22          Q.    But you don't understand you have that duty; is that  
23 right?

24          A.    No, I don't understand that. Or didn't.

25          Q.    Do you understand that now?

1 A. You've explained it, yes.

2 Q. Are you going to make an effort to go through those  
3 e-mails and the other records you just testified about to  
4 determine whether there's documents responsive to our discovery  
5 requests?

6 A. Yes, I will do that.

7 I'll likely find more spam. But, yeah, I will do  
8 that.

9 Q. To whom did you address e-mails at Virtumundo  
10 requesting that they stop sending you e-mails?

11 A. Other than the legal department, there were several  
12 others, and I would have to refresh my memory with an actual  
13 e-mail, which I've provided to you.

14 Q. Did you ever receive a response?

15 A. Yeah, there was something sent back to me. It was  
16 kind of a form letter.

17 Q. Do you remember the substance of the form letter?

18 A. Not exactly, no.

19 Q. Did you produce that form letter in the scope of the  
20 discovery in this lawsuit?

21 A. I believe I did.

22 Q. Do you remember who signed it?

23 A. No.

24 Q. Other than e-mail advertisements, have you received  
25 anything from Virtumundo?

1 By way of example, a letter from Virtumundo in  
2 response to one of your inquiries or the like.

3 A. I don't believe so.

4 Q. Have you ever made any attempt -- strike that.

5 Have you ever requested to Adknowledge that it stop  
6 sending you e-mails?

7 A. Other than the auto responder, I don't believe I have  
8 done anything more.

9 I've -- I don't think I've done anything more than  
10 that auto responder.

11 Q. Do you believe that Adknowledge received the messages  
12 that the auto responder sent?

13 A. I would have to double-check. I think they did. In  
14 fact, I think I even received a few bounces from Adknowledge.

15 Q. Do you believe that Adknowledge received the messages  
16 that the auto responder sent?

17 A. Yes.

18 Q. Upon what basis do you base that belief?

19 A. Because the auto responder is virtually infallible.  
20 If you send an e-mail, it will bounce -- send something back to  
21 you.

22 Q. What's the process of the auto responder?

23 A. Don't know if you're talking about the technical part  
24 of it.

25 I just know that if you use it -- and I've tested it.

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1 If you use it, it will send an e-mail message. Any time you  
2 send a message, you'll get a message.

3 Q. You believe that you receive messages from Adknowledge  
4 and the auto responder sent a message in reply, correct?

5 A. During certain windows of time, yes, that's true.

6 Q. Do you know whether the auto responder sent to the  
7 "reply to" address or the "from" address or both?

8 A. I'm not sure.

9 Q. How do you know Adknowledge received it?

10 A. It didn't bounce back.

11 Q. Do you know from what address the auto responder  
12 message came?

13 A. I'm not sure if I understand that. From --

14 Q. Well, your e-mail address is James@Gordonworks.com,  
15 correct?

16 A. No, it's Jim@Gordonworks.

17 Q. And if I send you a message and you hit "reply," it  
18 will come from Jim@Gordonworks.com, correct?

19 A. The recipient. Okay.

20 Q. Is that right?

21 A. Yes, it would.

22 Q. When the auto responder responds to a message, is that  
23 message from Jim@Gordonworks.com or from a different e-mail  
24 address?

25 A. Multiple. It was from -- I don't know how many.

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1 Maybe all. It could have been as many as the 23, 24 that I had  
2 at that time.

3 I believe it was for all of the Gordonworks.

4 Q. There's only one "from" address in an e-mail, correct?

5 A. In the course -- normal course of things, yes, that's  
6 true.

7 Q. When the auto responder sent messages, was there only  
8 one "from" address?

9 A. I would have to see.

10 This -- without seeing something, I just -- I don't  
11 have any basis to say yes or no. I'm just not sure. I would  
12 have to see it.

13 Q. Do you believe that Adknowledge sent e-mails to  
14 Jim@Gordonworks.com?

15 A. I don't know offhand.

16 Q. If Adknowledge had sent e-mails to  
17 Jim@Gordonworks.com, would it have received a message from the  
18 auto responder?

19 A. It depends. I think in February and/or March of '04,  
20 that would have been true.

21 No, that would have been Virtumundo, I think, at that  
22 time.

23 Again, without seeing it, I'm not certain. I would  
24 have to see it.

25 Q. During what period of time was the auto responder



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1 active?

2 A. Most of 2004.

3 Q. Do you know when in 2004 you began using the auto  
4 responder?

5 A. I think it was February.

6 Q. And do you know when in 2004 you stopped using the  
7 auto responder?

8 A. I'm guessing October.

9 Q. Did you ever call Virtumundo by telephone and request  
10 that they stop sending you e-mail?

11 A. No.

12 Q. Did you ever called Adknowledge by telephone and  
13 request that it stop sending you e-mail?

14 A. No.

15 Q. Did you ever send an e-mail to any particular person  
16 at Adknowledge requesting that it stop sending you e-mail?

17 A. They never identified anyone in their e-mails to send  
18 it to.

19 Q. Did you ever send registered mail to Virtumundo or  
20 Adknowledge requesting that either stop sending you e-mail?

21 A. No.

22 Q. What did you contend were the problems with the  
23 messages that Commonwealth Marketing Group sent you?

24 A. I don't recall specifically.

25 Q. Do you believe that the messages that you received

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1 from Commonwealth Marketing Group violated a statute?

2 A. That probably was my belief at the time.

3 Q. But you don't remember how they violated the statute?

4 A. Not offhand.

5 Q. How many lawsuits did you file in 2003?

6 A. Three, because that was the first time.

7 Q. And we discussed each of those lawsuits, correct?

8 A. I think so.

9 Q. Did you file lawsuits in 2004?

10 A. I just don't recall who I filed them -- I don't know  
11 the sequence. I know that I filed 15 to 20 lawsuits. I just  
12 don't know when they were filed.

13 Q. 15 to 20 lawsuits over what period of time?

14 A. Since December of '03. I think that's the ballpark  
15 figure.

16 Q. To the present?

17 A. Yes.

18 Q. How many of those lawsuits have settled?

19 A. Probably less than -- well, less than half.

20 I guess maybe seven, eight, six. I'm not sure.

21 Q. Was money paid to you in each of those six to eight  
22 settlements?

23 A. There's one that I can't talk about.

24 But as a rule, that is the case.

25 Q. Have you ever dismissed a lawsuit, other than the one

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1 against Mr. Hansson, for any reason other than an agreement  
2 with the other party to settle?

3 A. There's one I can't talk about.

4 But, again, as a rule, that was the case.

5 Q. There's one you can't talk about?

6 A. Uh-huh.

7 Q. Why can't you talk about it?

8 A. Confidentiality.

9 Q. You dismissed it, but it wasn't dismissed pursuant to  
10 an agreement; is that right?

11 A. I'm not going to talk about it.

12 Q. You testified that you have filed 15 to 20 lawsuits  
13 since December of 2003.

14 Did they all allege violations of laws governing  
15 e-mail?

16 A. Yes.

17 Q. Have you ever been to trial on any of these cases?

18 A. Not yet.

19 Something to look forward to, though.

20 Q. Has a court ever dismissed any of the cases upon a  
21 motion?

22 A. Hansson, I think, is the only case that I know of.

23 Q. How many lawsuits do you have pending?

24 A. I don't know.

25 Q. Have you ever been sued?

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1 A. Yeah. Impulse Marketing Group just sued us, I think,  
2 in '05. '04, '05.

3 Q. Is that lawsuit in the nature of a counterclaim --

4 A. Yes.

5 Q. -- or third-party complaint or is it a separate  
6 lawsuit?

7 A. My understanding is that it's a countersuit.

8 Q. It's part of the same case as one that you brought  
9 against Impulse Marketing, correct?

10 A. I don't understand it from a legal term.

11 But I'm just guessing that they're all, part and  
12 parcel, the same.

13 Q. Fair response.

14 Is it the same judge as the case --

15 A. Yes.

16 Q. -- you brought against Impulse Marketing Group?

17 A. Yes.

18 Q. You're married?

19 A. Yes, I am.

20 Q. How long have you been married for?

21 A. 30 years.

22 Q. Congratulations. That's awesome.

23 A. Hard work.

24 Q. Have you ever been convicted of a crime?

25 A. Never.

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1 I guess I should ask, what's a crime?

2 But in my -- to my knowledge, I have no criminal  
3 record as a juvenile or as an adult. Misdemeanor nor felony.

4 Q. And when you're asking for clarification, other than a  
5 traffic incident, speeding or the like --

6 A. Okay.

7 Q. -- has there been any type of --

8 A. No. No.

9 Q. Other than Impulse Marketing Group filing a  
10 counterclaim, have you ever been sued?

11 A. Okay. This is one -- I'm not certain how to answer  
12 that.

13 When there is a case of a suit and a countersuit,  
14 that's where, I guess, I'm getting hung up.

15 Q. Okay. I'm not trying to trick you.

16 A. I'm trying to understand.

17 Q. You are the plaintiff in the Impulse Marketing Group  
18 lawsuit, correct?

19 A. Yes.

20 Q. And they have a claim against you, which I'm calling a  
21 counterclaim, and you're not sure if that's what it is.

22 But there is a claim in that lawsuit that they're  
23 bringing against you, correct?

24 A. Yes.

25 Q. Is there any lawsuit that you can remember where you

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1 were named as the defendant and you weren't the plaintiff?

2 And my question is in all of time. It's not just  
3 limited to the past few years. If you can remember.

4 A. I -- I know I've been involved in legal squabbles  
5 about a couple of things. But I think it's as a plaintiff, if  
6 I recall.

7 I'm not sure, is the answer. I'm sure it's part of  
8 the record. If we have to do some research, I could find that.

9 As a plaintiff, I can think of other things, but as a  
10 defendant, nothing comes to mind right now.

11 Q. As a plaintiff, have you ever been involved in a  
12 lawsuit that didn't deal in e-mail marketing law violations or  
13 the like?

14 A. Yes.

15 Q. When?

16 THE WITNESS: Bob, how far back do we have to go with  
17 this?

18 MR. SIEGEL: As long as you can remember.

19 A. Oh, geez. I think it was 1992 or '3, I had dispute  
20 with a company I worked with about wages. And I went pro se,  
21 lost that case, and they got attorneys' fees.

22 That comes to mind.

23 Q. That was in 1992?

24 A. Oh, I don't know for sure. I'm just guessing. That's  
25 about the time.

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1 It was early '90s. Could have been '91, '2 or '3.

2 Q. What was the name of that employer?

3 A. Columbia Basin Minority Economic Development  
4 Association.

5 Q. Any others in which you were a plaintiff?

6 A. There were two as The Gordon Group, small claims, and  
7 I just don't know the details right now. One for me and one  
8 against me, in terms of the judge ruling.

9 Q. Let's start with the first one for you.

10 A. I don't -- I don't remember which was which.

11 Q. Who was the defendant?

12 A. Don't know.

13 I don't know either of them right now. This is 20  
14 years ago.

15 Q. What were the nature of the disputes?

16 A. Just small claims matters.

17 Q. Claims for what?

18 A. Without looking at it -- it has been out of my mind  
19 since whenever it was. 1985, '6 or '7; something like that.

20 Q. Any other lawsuits that you can recall?

21 A. No, there were probably -- that's all that comes to  
22 mind right now. If I took time to be refreshed, I probably  
23 could --

24 Oh, an employment discrimination complaint. 1981, I  
25 think it was. 1980. Could have been '79.

1 Q. What was the nature of the claim there?

2 A. Employment discrimination.

3 Q. You alleged that you were discriminated against?

4 A. Yes.

5 [START EXCERPT]

6 /

7 /

8 /

9 /

10 /

11 [END EXCERPT]

12 Q. I'm going to suggest that we take a lunch break.

13 A. Okay.

14 Q. And we'll return after and continue questioning.

15 A. Okay.

16 MR. NEWMAN: So we're off the record.

17 THE VIDEOGRAPHER: The time is now 12:21 p.m. We are  
18 off the record.

19 (A lunch recess was taken.)

20 THE VIDEOGRAPHER: The time is now 1:38 p.m. We are  
21 on the record.

22

23 E X A M I N A T I O N (Cont'd)

24 BY MR. NEWMAN:

25 Q. Godaddy currently provides you services, correct?



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1 A. That's correct.

2 Q. That are their services?

3 A. They provide a dedicated server for me.

4 And on the dedicated server, I can put all kinds of  
5 software on it. There's mail, Web hosting available, for  
6 starters.

7 Q. What else?

8 A. Just other things.

9 If I -- I've added SiteBuilder, which is an  
10 opportunity for all my clients to build their own websites. Or  
11 other people that I know, if they want to practice building  
12 websites, they can use that.

13 Q. The SiteBuilder service is offered by Godaddy,  
14 correct?

15 A. No, it's offered by SWSOft.

16 Q. What's SWSOft?

17 A. A company that builds SiteBuilder and other  
18 applications.

19 The two companies coordinate the offering, though,  
20 because SWSOft has an administrative control panel that Godaddy  
21 offers to its clients.

22 Q. How much do you pay Godaddy each month?

23 A. It's done automatically and we just upped it.

24 I don't know. It's about \$200 a month.

25 Q. For the \$200, do you receive any services in addition

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1 to the dedicated server?

2 A. Yes. There is one other. It's a technical assistance  
3 program where they go in and actually do the behind the scenes  
4 work on the server with the server.

5 Q. Who owns the server?

6 A. I guess they own it.

7 I believe my relationship is a lease.

8 Q. How do you access the server?

9 A. I go to my interface, the Plesk, P-L-E-S-K, and put in  
10 my password and user i.d. and can work with the administrative  
11 control panel to do what I need to do.

12 Q. What type of tasks do you perform via the Plesk  
13 interface?

14 A. Set up new e-mail accounts.

15 Set up new domains.

16 I don't really configure SiteBuilder, but I can  
17 practice sites and things like that as well.

18 But most of it's, you know, keeping control of -- of  
19 statistics, make sure people don't go over their limits and  
20 things like that.

21 Q. Go over what limits?

22 A. Their monthly limits in terms of bandwidth, how much  
23 bandwidth they can use and how much space they can occupy on  
24 the physical space on the server.

25 Q. Who is "they"?

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1 A. My clients.

2 Q. What are the monthly limits?

3 A. I think it's 600 megabytes for bandwidth, and there's  
4 250 megabytes for disk space.

5 Q. How much disk space is on the server in aggregate?

6 A. I think it's 120 gigabytes.

7 Q. How much bandwidth can you access through Godaddy for  
8 that server per month?

9 A. Currently, 500 gigabytes, I think, is my monthly  
10 limit.

11 Q. 500 gigabytes of what?

12 A. Of bandwidth, of traffic that they'll allow on the  
13 server.

14 Q. What's your limit at a single time?

15 A. I don't know.

16 Q. You believe that you have access to 500 gigabytes of  
17 data transfer per month --

18 A. Yes.

19 Q. -- through your server?

20 A. Yes.

21 Q. Have you ever used 500 gigabytes?

22 A. No. I haven't come close.

23 Q. Do you know the most you've ever used?

24 A. No, I don't.

25 Q. Is the server that you lease from Godaddy backed up?

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1 A. Currently, no.

2 When I had the virtual dedicated server, that was, I  
3 believe.

4 Q. You don't have the virtual dedicated server now?

5 A. No, I don't.

6 Q. What is a virtual dedicated server?

7 A. Where I share a server with -- I don't know how many  
8 other people.

9 Q. The reason you're using the virtual dedicated server  
10 now is because you have simply a dedicated server, right?

11 A. That's right.

12 Q. One box that's reserved for you?

13 A. That's correct.

14 Q. Have you ever seen the box?

15 A. No, I haven't.

16 Q. Do you know what kind of computer it is?

17 A. They had that information. I mean, it's in my Plesk  
18 interface. I would have to go on there to actually see what  
19 type of --

20 It's, likely, probably a Pentium box that runs Apache  
21 or something on there.

22 It's a Uni- -- not a Unix -- Lenox box. Lenox  
23 software running on Microsoft -- not Microsoft, but a regular  
24 PC.

25 Q. Was it your decision that that computer should run

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1 Lenox?

2 A. No.

3 Q. Whose decision was it?

4 A. I assume it was Godaddy.

5 Q. If you wanted the box to run Windows, could you?

6 A. I haven't asked that question.

7 Q. Do you know who makes the Lenox product that's on that  
8 box?

9 A. No, I don't.

10 Q. Do you have root access to the box?

11 A. Not for -- I'm sorry, I interrupted you.

12 Not for the dedicated server.

13 Q. The manner in which you answered that question  
14 indicates you might have root access for something else.

15 A. Prior to having the dedicated server, I had the  
16 virtual dedicated server up until November of last year, and  
17 that did have a provision for root access, which I never used.

18 Q. But not root access for the whole server, right?

19 A. I wouldn't think so.

20 No, I don't think it would be.

21 Q. Because other people shared that server?

22 A. That's correct.

23 Q. Have you asked Godaddy for root access to the server  
24 that you lease?

25 A. No, I haven't, because I had the technical assistance

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1 program. They'll do all the work.

2 Q. How many domain names do you register?

3 A. Me personally?

4 Q. You personally.

5 A. Okay.

6 Q. Or Omni or Gordonworks.

7 A. I have three or four that I own.

8 And I have set up just two recently that I just  
9 advanced my brother and another friend the fee for setup, and  
10 at some point -- I'll probably end up just making it again.

11 But I just set up two new ones and it's currently in  
12 my name, but we'll transfer it to the them in the near future.

13 Q. Is Godaddy the domain name registrant?

14 A. Yes. Yes.

15 Q. Godaddy provides a DNS for your domain names?

16 A. Yes. My belief, that's true.

17 Q. You don't operate your own DNS servers, correct?

18 A. My understanding is that it's all managed by their  
19 technical assistance group because I have -- I've had basically  
20 no duties to do anything with that server other than to set up  
21 the software to serve the clients.

22 Q. You don't operate your own DNS server, correct?

23 A. My understanding is no, I don't.

24 But who knows? That's my understanding.

25 Q. Do you know what an IP address is?

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1 A. Internet protocol address?

2 I have one. I've had three.

3 Q. When you say you have one and you've had three, what  
4 do you mean?

5 A. I'm still harking back to the virtual dedicated  
6 server. I had three assigned to me.

7 With this, I have one, but I understand that they're  
8 assigning another to an FTP service that I'm interested in, and  
9 I can get a third as well.

10 Q. Are you familiar with ARIN, the American Registry for  
11 Internet Numbers?

12 A. That depends on what "familiar" is.

13 I can look up who domains belong to.

14 Q. Can you look up who Internet protocol addresses belong  
15 to?

16 A. I don't use ARIN. I just use other applications to do  
17 look-ups.

18 Q. What applications?

19 A. I started with Sam Spade.

20 I've done dnstools.com.

21 SmartWhois.

22 CompleteWhois.

23 AllWhois.

24 And there are probably others that I've used.

25 Q. And on any of those websites that you just mentioned,

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1 can you find out to whom an IP address is registered?

2 A. Usually, they -- let's see. How do I answer that?

3 Yes, but I believe you typically get blocks of IPs.  
4 That's my recollection, that you get blocks, who the blocks  
5 belong to.

6 Q. And the IP address that you testified is assigned to  
7 your server, who is that IP address registered to?

8 A. I'm guessing Omni.

9 Q. And upon what information do you base that belief?

10 A. Well, Omni is the one that leases, owns the server.  
11 I guess "leases" is a more proper term.

12 Q. Have you ever done a search on any of the tools you've  
13 testified about earlier regarding the IP address that you  
14 believe is registered to Omni?

15 A. I don't recall anything right now. I could have done  
16 it sometime, but nothing comes to mind.

17 Q. Do you have any information other than your guess that  
18 the IP address assigned to that server is registered to Omni?

19 A. Please repeat that.

20 (The requested testimony was read.)

21 A. Somehow I'm not understanding that.

22 Q. I'll rephrase in an attempt to make it easier for you.

23 A. Okay. Okay.

24 Q. You testified earlier that there is an IP address  
25 assigned to the server that you lease from Godaddy, correct?



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1 A. Yes.

2 Q. And you testified that you believe that the IP address  
3 assigned to that server is registered to Omni, correct?

4 A. Right now -- I'm not sure. I'm just guessing. That's  
5 just my best guess.

6 Q. You don't know?

7 A. I don't know.

8 Q. Have you paid any fees for an IP address with Godaddy?

9 A. Other than my monthly fee, I don't know if I have.  
10 I can't think of anything else.

11 Q. Do you have FTP access to the server that you lease  
12 from Godaddy?

13 A. I don't quite understand what you mean.

14 I can FTP files to Gordonworks if I chose to because  
15 I've set that up.

16 But in terms of having an FTP site, where can go in  
17 and get a 450 megabyte file. That I haven't formally set up.

18 I tried to do that maybe -- about the time we filed a  
19 summary judgment motion, there was some files that I wanted to  
20 put on the Internet, and I talked with them about it.

21 Q. If you wished to have a copy of the hard drive in that  
22 server, could you obtain one?

23 A. I don't know. I've never asked.

24 Q. Do you have a computer that you own?

25 A. Yes, I do.

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1 Q. How many?

2 A. I have three that I use; two for business and one for  
3 my studies.

4 Q. What kind of computers?

5 A. I built them myself. So they're no brand, I guess.

6 Q. Where did you learn to build computers?

7 A. From my 14-year-old son.

8 Q. You testified you use two computers for business.

9 A. Yes.

10 Q. What business is that?

11 A. For my Omni business.

12 And I use -- let's see.

13 The Omni business. Occasionally, I'll do my studies  
14 on that depending on -- my laptop was unavailable to me for  
15 several months. So I've done my studies as well as my business  
16 on there.

17 And I see it as two businesses. I see the spam  
18 business, if I can call it that, and there's also the business  
19 of Omni, which is the software development, proprietary stuff  
20 that I was mentioning earlier.

21 Q. What is the "spam business"?

22 A. The spam business involves reclaiming my domain name  
23 from spammers.

24 Q. How does that business operate?

25 A. Basically, I notify -- first, I've done a little bit

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1 of research, and of course, I've retained attorneys.

2 Notifying spammers that they're violating the law, ask  
3 them to stop, ask them to not use my Gordonworks domain, and  
4 those that refuse to after as many attempts to do the things I  
5 mentioned earlier, they don't, some of them, we file lawsuits  
6 against.

7 Q. Does the spam business have any customers?

8 A. I think both of us have something in our mind when we  
9 say "customers."

10 I don't understand what you mean by it, but if I can  
11 just give you what I understand by that, my clients, in a  
12 manner of speaking, are customers because they have a spam  
13 problem as well.

14 I talk to university groups and so forth about spam.  
15 So, theoretically, some of those people could be customers in  
16 that sometimes I follow up with them and so forth.

17 So as far as -- that's the extent of what I'm  
18 referring to as customers.

19 Q. Do your customers compensate you for the spam  
20 business?

21 A. The agreement that I had with my customers is that the  
22 first two years of running their business, that there would be  
23 no monthly charge -- and the monthly charge in our area is  
24 about \$45 to \$50 a month for the same set of services -- until  
25 they got their websites up and running.

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1 So, two years.

2 Q. What set of services are you referring to?

3 A. Well, it's strictly e-mail presently. And sometimes  
4 when there are viruses and things like that, I'll help them if  
5 they need their hard drive reformatted or something like that.

6 And then there are other people I can refer them to,  
7 folks that I know that are network administrators or do have  
8 specialized expertise.

9 Q. Did you testify that you believe e-mail services  
10 require a \$40 a month charge as a market rate?

11 A. No. What requires that amount is the services,  
12 meaning the Web building, the Web hosting, the 250 megabytes of  
13 disk space and so forth.

14 I do a lot of work for them, including some of the  
15 troubleshooting that I can do with their computers.

16 Q. Do you believe Web building, hosting and 250 megabytes  
17 of disk space has a market rate of \$40 per month?

18 A. In our area, yes.

19 Q. What is your area?

20 A. Tri Cities.

21 Q. Do you perform those services for free?

22 A. I said for the first two years, I would provide the  
23 services.

24 Q. Have you ever received any payment for those services?

25 A. We haven't gotten to the two years yet.

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1 Q. Why are you doing it for free for two years?

2 A. That's just a choice I made.

3 Q. How many customers do you have?

4 A. 12, 15; something like that.

5 Q. How did you obtain those customers?

6 A. Technically, that answer isn't wholly correct.

7 There's another group that I set up the domain for,  
8 and that's a group of about 110 or -20 people that are related  
9 to GreatNorthwest-Alpha.org. That I just haven't started doing  
10 the work on. I've set up the e-mail address for anyone that  
11 wants to start, but we've not gone into actual setup of all of  
12 the --

13 So, presently, there are active 12 to 15 people, and  
14 those that are prospective, sometime this year, another 110 or  
15 -20 people.

16 Q. Will any of them pay you money for services?

17 A. They will offset -- yes. Yeah, they'll offset costs.

18 Q. How much?

19 A. We haven't determined that yet.

20 Q. And upon what information do you base your belief that  
21 they will pay you anything at all?

22 A. First of all, they said they would.

23 And they know that there is a cost involved in doing  
24 this. And that would --

25 Q. Doing what?

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1 A. Setting up all of the e-mail addresses and having a  
2 monthly contract with Godaddy to provide Web hosting.

3 Q. Have you ever suggested that these people sign up with  
4 Godaddy directly?

5 A. Some of them did.

6 Q. Do you know why these people would turn to you for  
7 these services as opposed to Godaddy when these types of  
8 services are generally \$7 a month or so?

9 A. Well, the fact that Godaddy didn't offer them two full  
10 free years of service might have been a reason.

11 Q. You testified that you have two lines of business; one  
12 you referred to as the spam business and the other is software  
13 development.

14 A. Yes.

15 Q. What's the nature of the software development  
16 business?

17 A. It is software development. It takes pen and paper  
18 product that I have and turns it into a Web-based application.

19 Q. Who is writing that Web-based application?

20 A. Well, we started with Meiers, Incorporated in  
21 Kennewick, M-E-I-E-R. They were helping with the demo portion  
22 of the software.

23 And Battelle is providing what's called a technical  
24 assistance program grant to do a lot of the work in terms of  
25 helping me learn about the documentation process, software

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1 development cycle and all those kinds of things. So they're  
2 providing a lot of administrative support.

3           However, I'm considering going to them to do the whole  
4 job. The price would go up two to three times, but I think I  
5 can get the job done faster.

6           Q. What's the nature of the software?

7           A. It entails something I call vision mapping; helping to  
8 take ideas from something ethereal to a finished product.

9           I think there is a track that all ideas run on and I  
10 think I've identified that track.

11          Q. Do you pay Meiers and Battelle?

12          A. I have, yes. Just Meiers.

13                I haven't paid Battelle. It's a grant that I received  
14 through DOE, Department of Energy.

15          Q. Do you ever order products or services on-line?

16          A. All the time.

17          Q. What types of?

18          A. Mostly software, but I've ordered lots of things.

19                The software comes to mind immediately. 10, 12 times  
20 a year, if not more.

21          Q. From whom do you purchase that software or have you  
22 purchased the software?

23          A. The most recent, Visualware, which is a company that  
24 markets EmailTrackerPro. They market Visual Route. Visual  
25 IPTrace, it's called. Visual IPTrace. SmartWhois. Commview.

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1 MailWasherPro.

2 I've ordered things like Adobe Acrobat Pro on-line  
3 through one of the academic resellers.

4 I order health and nutrition products all the time via  
5 the Internet.

6 Q. When you order these products, do you submit your  
7 e-mail address?

8 A. I submit -- yes, Jim@Gordonworks.

9 Q. And in connection with that submission, do you  
10 generally read terms and conditions?

11 A. Not generally.

12 Q. Are there terms and conditions at these websites where  
13 you submit your e-mail address?

14 A. I guess. I guess most of them would have it nowadays.

15 Q. But you've never read them?

16 A. Seldom. I can't even tell you which ones I've read.

17 Q. Why?

18 A. I just don't waste time doing that.

19 And I only submit the Jim@Gordonworks.

20 Q. When you submit your e-mail address and purchase  
21 software, do you ever click on a button that says "I agree" or  
22 "I accept" or the like?

23 A. I typically decline to receive anything from  
24 third-party marketers.

25 I only agree to updates.



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1 Q. When you submit your e-mail address and purchase  
2 software, do you ever click on a button that says "I agree" or  
3 "I accept" or the like?

4 A. I don't click on it.

5 If it's already defaulted there, I probably don't  
6 change it most of the time.

7 Q. Have any of the companies from which you have  
8 purchased software marketed to you by e-mail?

9 A. No one comes to mind.

10 I typically go out and search for what I need, so I  
11 can't think of one offhand. Unless, again, one of those boxes  
12 was checked.

13 And there is one company, now that you mention that,  
14 Zone Alarm. And apparently, it has an agreement with a lot of  
15 people to send related software to me.

16 That's the only one that comes to mind right now.

17 Q. You testified you purchased Acrobat Pro, correct?

18 A. Yes.

19 Q. Did you purchase that from Adobe?

20 A. No, from an academic reseller.

21 Q. Has the academic reseller ever sent you e-mails  
22 marketing or promoting its services?

23 A. I would have to check my e-mail.

24 They may have. I get so many e-mails, I'm just not  
25 sure right now.

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1 Q. From whom did you purchase MailWasherPro on-line?

2 A. I don't recall. It could have been from Tamosoft,  
3 T-A-M-O soft.

4 It could have been directly from Visualware.

5 I'm not sure who I purchased it from.

6 Q. Has Tamosoft or Visualware ever sent an advertisement,  
7 marketing or promotion to you by e-mail?

8 A. Updates, they do. Typically it's in their software.  
9 It says "time" or "an update" type stuff.

10 Q. You testified earlier about your definition of spam,  
11 and I believe part of that definition included the word  
12 "unwanted" or an adjective similar to that.

13 A. Okay.

14 Q. Do you believe that there are legitimate e-mail  
15 marketing pieces? In other words -- I'm going to strike that  
16 question.

17 A. Okay.

18 Q. Do you object to the receipt of any e-mail promotions  
19 or marketing or only certain e-mail promotions and marketing?

20 A. When there is a relationship, no, I don't object to  
21 that.

22 When there's no relationship, there may have been an  
23 exception or two. I just can't recall anything right now.

24 But as a rule, I do object when it's unsolicited.

25 Q. You object to all unsolicited commercial e-mail,

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1 correct?

2 A. I'm not going to say 100 percent, because I'm sure  
3 there's something at some time that I may have responded to.

4 I just don't recall anything right now.

5 Q. So you believe that at some point, you received an  
6 unsolicited commercial e-mail to which you responded?

7 A. It's very likely that I have.

8 Q. Were you grateful to have received it?

9 A. I don't recall the emotion, but maybe I was. If I  
10 responded, there had to be some level of gratitude.

11 Q. You testified that you don't object to commercial  
12 e-mail when "there is a relationship."

13 A. That's true.

14 Q. What did you mean by that?

15 A. Well, with Tamosoft and Visualware, they have related  
16 products that developers and unaffiliated companies sell, and  
17 they want to send notices. And I've received those notices  
18 from those allied companies.

19 Q. You're familiar with the term "opt-in"?

20 A. Pardon me?

21 Yes.

22 Q. What does that term mean to you?

23 A. Typically, when you take an affirmative step by saying  
24 yes to -- whether it's by way of e-mail or assent to it in  
25 terms of conversation -- when you say, I agree to receive what

1 it is that you have.

2 Q. Are you familiar with the term "subscribe" as applied  
3 to e-mail?

4 A. I think I am.

5 Q. What is your understanding of that term?

6 A. Sometimes it's the same thing.

7 Q. Have you ever opted in or subscribed to receive  
8 e-mail?

9 A. Yes.

10 Q. How many times?

11 A. I don't know. I think virtually all of them were in  
12 2003.

13 Could have been 100, 150 times all told.

14 But it wasn't me directly. It was me on behalf of  
15 people.

16 For my own account, so to speak, I'm not sure how  
17 many, but it's much fewer. Maybe you can count it on a hand or  
18 two. It's fewer times.

19 Q. What do you mean when you testify that it wasn't you  
20 directly, it was on behalf of people?

21 A. No, what I meant was it was not for my own account. I  
22 asked my wife, I said, this is something out there, would you  
23 like it, because there's something you've already won or a  
24 prize you already supposedly are being offered.

25 And I've asked my son, I've asked a friend, and they

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1 say yes. That's what we did back in '03.

2 Q. Why were you asking your wife and son and friend?

3 A. Free makeup, \$125 worth. As much as she buys? I  
4 figure, hey, if she's already won it, why not try to get the  
5 offer.

6 Q. So you opted in 100 to 150 times on behalf of yourself  
7 and others, correct?

8 A. Do we have to wait? Oh, I apologize.

9 Probably, yeah.

10 I don't have a record as to how many times, so I'm  
11 guessing.

12 Q. Did you ever opt in or subscribe to Virtumundo?

13 A. Not directly.

14 Q. Have you ever subscribed or opted in to Adknowledge?

15 A. Not directly.

16 Q. Did you ever opt in or subscribe indirectly to  
17 Virtumundo?

18 A. Well, I found out later that I was subscribed to it.

19 Q. Do you know whether you ever opted in or subscribed  
20 indirectly to Virtumundo?

21 A. Indirectly, it's possible. But not directly.

22 Q. Do you know whether you opted in or subscribed  
23 indirectly to Adknowledge?

24 A. I'm trying to figure out how that's different from  
25 what you asked me.

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1 Q. I asked about Virtumundo. Now I'm asking about  
2 Adknowledge.

3 A. Oh. Okay. Wait a minute.

4 Virtumundo was the byproduct of signing up at  
5 EmailPrize, and they sent me a letter within 10 days that I had  
6 signed up at that particular website. Never heard of the  
7 company directly and never had a relationship with them until I  
8 got that letter saying that I had a relationship.

9 However, within three weeks, maybe four, I rescinded  
10 it by going back to EmailPrize and said -- basically, I opted  
11 out. I took the unsubscribe, kept a copy of that and said I  
12 didn't want what Virtumundo and all of the other spammers were  
13 sending.

14 Q. Who sent the letter?

15 A. I did the opt-out on their website. They had a link  
16 to the EmailPrize, but Virtumundo sent the e-mail  
17 acknowledgment that I was now a subscriber.

18 Q. When you testified "they sent me a letter," is "they"  
19 Virtumundo?

20 A. Yes.

21 Q. And after you received that letter, you contacted  
22 EmailPrize; is that right?

23 A. That was who I was pointed to in the e-mail.

24 Q. Why didn't you contact Virtumundo?

25 A. Because EmailPrize, I was familiar with. I wasn't

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1 familiar with Virtumundo at that time.

2 Q. You received a letter from Virtumundo, correct?

3 A. Yes.

4 Q. Why didn't you contact Virtumundo in response to the  
5 letter?

6 A. Because they were citing EmailPrize as the gateway or  
7 portal to spam.

8 So I wanted to go back to the source, so to speak, and  
9 unsubscribe from that source because Virtumundo wasn't the only  
10 company that started sending me spam.

11 Q. You testified that you haven't signed up with  
12 Virtumundo or Adknowledge directly.

13 A. That's correct.

14 Q. But you may have indirectly.

15 A. Yes.

16 Q. What is the difference?

17 A. Well, these people, like Home4FreeStuff and EmailPrize  
18 and those others, they claim that they have affiliates. And  
19 typically, they don't identify the affiliates, so I don't know  
20 who they're signing me up for.

21 Q. Does "indirectly" mean that you sign up at one source  
22 and inadvertently sign up for a different source?

23 A. That's not direct -- that's not exactly what I meant.

24 I'm just saying that these people claim alliances with  
25 all types of marketers out there, and I don't know at that

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1 given point who those marketers are. And that list over time  
2 migrates, changes, and all of a sudden, there are new  
3 affiliates that we're not sure about.

4 But I do know and do have that record that I had  
5 unsubscribed from EmailPrize, along with those others that  
6 claim that they now have the right to give my name to others.

7 So I unsubscribed.

8 Q. We talked earlier about what the word "spam" means.

9 Do you believe that the term "spam" can be applied to  
10 both solicited and unsolicited e-mail or does it only apply to  
11 the unsolicited kind?

12 MR. SIEGEL: Objection to the extent this calls for a  
13 legal conclusion.

14 You can answer it from your understanding.

15 Q. You can answer.

16 A. Well, when you first asked the question, I was trying  
17 to paraphrase what Spamhaus -- which has, in my opinion, the  
18 best definition of spam -- trying to paraphrase what they said.

19 I don't have a separate, distinct definition of it. I  
20 know what I don't like, and I don't like to receive e-mail  
21 after I ask people to stop. I basically consider everything  
22 after that point spam.

23 Q. Do you believe that all spam, as that term is defined  
24 by Spamhaus, is unlawful?

25 A. No.



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1 Q. Do you have an understanding as to what kind of spam  
2 is lawful and what kind of spam is unlawful?

3 A. I have a layman's understanding, yes.

4 Q. What is your layman's understanding?

5 A. There are statutes that restrict practices such as  
6 obscuring parts of the headers, "subject" lines that have the  
7 capacity to see and things of that nature. Those are  
8 restrictions upon mailers in terms of what they can't do, is my  
9 understanding.

10 Q. Can a marketer send spam lawfully?

11 A. It appears so.

12 Q. And what is your layman's understanding about how a  
13 marketer could send spam lawfully?

14 A. To comply with the statutes in terms of not obscuring  
15 their identity and not munding, M-U-N-D-I-N-G, the headers.

16 Q. You allege in this lawsuit that you received e-mail  
17 from Adknowledge and Virtumundo, correct?

18 A. Yes.

19 Q. Did Adknowledge or Virtumundo obscure its identity?

20 A. Yes, I believe so.

21 Part of that belief is, I guess, demonstrated by way  
22 of our summary judgment motion.

23 And the other things, we've not -- I guess theories,  
24 if you will, of the case, we've not divulged them entirely.

25 There's been some response to your motion to compel

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1 which further delineates some of those theories or our ideas  
2 about the theories that we have.

3 Q. You believe that the basis for your claim that  
4 Adknowledge and Virtumundo obscured its identify is disclosed  
5 in the summary judgment motion, right?

6 A. No, that's just one point.

7 Q. What are some other points?

8 A. They were, I guess, elucidated in that letter.

9 Gosh.

10 Q. What letter?

11 A. Sorry. The response to the motion to compel that  
12 Mr. Siegel responded to.

13 I have a little cheat sheet which I didn't bring which  
14 talks about the various things. We could actually look at some  
15 of the e-mails and we can start going through and pointing out  
16 things, if you'd like.

17 Q. Are you familiar with the Informal Coalition of  
18 Private Anti-Spam Litigants?

19 A. Yes.

20 Q. What is the Informal Coalition of Private Anti-Spam  
21 Litigants?

22 A. In the simplest form, it's just people that sue  
23 spammers.

24 Q. Are you the founder of that organization?

25 A. What I did was -- when you say "founder," I wasn't the

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1 first to start doing this. I was Johnny-come-lately, so to  
2 speak.

3 However, I made a lot of the networking calls and  
4 contacts, and in that place, I guess you can say it's a  
5 founding role.

6 Q. Who's the founder -- strike that.

7 Do you know who the founder of that organization is?

8 A. No. Not in terms of the initial person to start these  
9 lawsuits.

10 Q. Do you know how many members the Informal Coalition of  
11 Private Anti-Spam Litigants has?

12 A. There are no members, as such.

13 Q. How is the coalition comprised? And I should clarify  
14 because I know that's an awkward question.

15 But if there's not members, who comprises the  
16 coalition?

17 A. Okay. Those words weren't mine. I didn't call it  
18 ICPAL. That was someone else's doing.

19 Just people who talked to one another.

20 Q. Whose doing was it, calling it ICPAL?

21 A. It was more my attorney's doing than mine.

22 Q. Which attorney?

23 A. Doug McKinley.

24 Actually, the naming is --

25 Q. Excuse me?

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1 A. The naming of the organization was more his doing.  
2 I'm not sure what name I had had before, and he asked me to  
3 change it.

4 (Exhibit No. 11 marked.)

5 Q. Have you ever seen Exhibit No. 11 before?

6 A. Yes, I have.

7 Q. What is it?

8 A. An article from Internetnews.com.

9 Q. And it's about the Informal Coalition of Private  
10 Anti-Spam Litigants, right?

11 A. Yes.

12 Q. And in this article, the writer states that you're the  
13 founder of ICPAL.

14 But that's not correct?

15 A. It's not correct in that these people were doing this  
16 long before me.

17 Q. And the article also advises that you rejected a  
18 \$40,000 settlement from Commonwealth Marketing Group.

19 Is that true?

20 I'm looking at page 2.

21 A. Yes, I see that page there.

22 THE WITNESS: Bob, is this still protected, the  
23 conversation part here?

24 MR. SIEGEL: Well, he's just asking you to comment on  
25 the statement in this article, not on --

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1 A. That's then -- that's what Susan Kuchinskas said.

2 Q. Susan Kuchinskas, the author of the article?

3 A. Yes.

4 Q. My question is whether you rejected a \$40,000  
5 settlement from Commonwealth Marketing Group.

6 A. And that's what I was asking Mr. Siegel.

7 THE WITNESS: Are we still under that protective  
8 thing?

9 MR. SIEGEL: Well, I don't think that would be  
10 protected, Jim.

11 THE WITNESS: Okay.

12 MR. SIEGEL: If you recall and you can say --

13 A. The answer is yes, then.

14 Q. At some point, you settled the Commonwealth Marketing  
15 Group lawsuit, right?

16 A. I'm not going to talk about that.

17 Q. You can't tell me whether or not you settled it?

18 A. I can't tell you that.

19 Q. What did you tell the author of this article that's  
20 contained in Exhibit No. 11 about the Commonwealth Marketing  
21 Group lawsuit?

22 A. I don't recall what I told her.

23 Q. Do you know why you told her anything?

24 A. I'm rereading some of this.

25 I do recall saying that I received that amount of

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1 e-mails, 1500 a day, and it went up to 2,000, and then on up  
2 from that.

3 Do I recall -- I'm not sure what the catalyst was for  
4 this particular article. It could have been some of the  
5 California folks or it could have been some of the Western  
6 Washington folks.

7 Somehow our names all came up in the course of  
8 conversations.

9 Again, I don't know the genesis of it.

10 Q. Who are the California folks?

11 A. The people named here, I think, are Joe Wagner, Dan  
12 Balsam.

13 And I don't know if Bill is mentioned or not here.

14 Those are two of the names that I just saw.

15 Bill Silverstein is another person in California. And  
16 I don't think he's mentioned. Of course, I'm not reading it  
17 carefully.

18 And then there's some Western Washingtonians also  
19 mentioned.

20 Q. Does the Informal Coalition of Private Anti-Spam  
21 Litigants have meetings?

22 And when I use the word "meeting," I mean it in the  
23 broadest sense; conference calls, Web exchange, list serves,  
24 actual inperson meetings.

25 A. No.

1 Q. What has your participation in the Informal Coalition  
2 of Private Anti-Spam Litigants been?

3 A. That name was probably more for the benefit of the  
4 press than anything else.

5 We just talk to one another from time to time. There  
6 are no formal meetings, and we did that by design. We just  
7 chose not to.

8 Q. Why did you choose not to?

9 A. It's an easier target.

10 Q. Target for what?

11 A. People like IMG that want to countersue and do  
12 scorched-earth-type stuff.

13 Q. IMG is Impulse Marketing Group?

14 A. I apologize. It is Impulse Marketing Group of  
15 Atlanta, Georgia.

16 Q. The article provides -- and I think you just confirmed  
17 that you stated to the reporter that you received roughly 1500  
18 e-mails every single day; is that right?

19 A. That varies, though, over time.

20 Q. Plus or minus?

21 A. Plus or minus many thousands.

22 When I had my auto responder, I got up to 8,000 all by  
23 myself on a daily basis.

24 Q. And what have you done to stop that?

25 A. I stopped using my auto responder.

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1           That was part of it. But the SpamAssassin filter is  
2 one of the things.

3           And I continue to contact network service providers  
4 who use protection services and so forth. ICANN, which is the  
5 registrar, the rural registrar, if you will, of domains.

6           And I've done all the little things that I know of,  
7 contact state Attorney Generals to try to stop it.

8           Q. Internet corporation for assigned names and number,  
9 right?

10          A. That's true.

11          Q. Who at ICANN did you contact?

12          A. It was by e-mail. I don't remember an individual.

13          Q. Did you receive a response?

14          A. Yes, there was some responses.

15          Q. But you don't remember from whom?

16          A. No, I don't remember a name.

17          Q. What did the response provide?

18          A. An opportunity to say whether or not the problem that  
19 I referred to them had been corrected, and I told them no, and  
20 I told them why and set a follow-up.

21          Q. When did you exchange e-mails with ICANN?

22          A. In the last three to five months.

23          Q. Is that exchange ongoing or has it concluded?

24          A. There's been a silence for about two months now, so it  
25 may be concluded.



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1 I've not done any additional work. There are other  
2 people who I could turn in, so to speak, but I've not done  
3 anything recently.

4 Q. What do you hope to accomplish with ICANN?

5 A. According to what I understand is their charter, there  
6 are certain things they can do for people such as myself when  
7 it comes to misrepresentations.

8 There are a lot of companies who will -- I'm not  
9 alleging it for the defendants -- but who will falsely register  
10 domains, and that was what I was reporting to ICANN.

11 Q. Do you believe that Adknowledge or Virtumundo falsely  
12 registered domains?

13 A. They didn't, in my opinion.

14 Q. Have you shared any information about this lawsuit  
15 with other persons who participate in the Informal Coalition of  
16 Private Anti-Spam Litigants, other than your attorneys?

17 A. When you say "share," we talk and they know because  
18 there are a lot of -- there are individuals who will go to  
19 Pacer and look up stuff and they know that I'm involved in  
20 various litigation.

21 So share information -- they know that we're suing.  
22 They know that we had a summary judgment motion because those  
23 are things that we talk about in the normal course.

24 Q. What is the normal course?

25 A. From time to time, we call each other.