

1 MERKLE SIEGEL & FRIEDRICHSEN, P.C.
Robert J. Siegel
2 1325 Fourth Ave., Suite 940
Seattle, WA 98101
3 (206) 624-9392

THE HON. JOHN C. COUGHENOUR

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9 UNITED STATES DISTRICT COURT
10 WESTERN DISTRICT OF WASHINGTON, SEATTLE

11 **JAMES S. GORDON, Jr., a**
12 **married individual, d/b/a**
'GORDONWORKS.COM',
13
14 **Plaintiff,**

NO. CV06-0204JCC

DECLARATION OF JAMES S.
GORDON, JR. IN SUPPORT OF
PLAINTIFF'S RESPONSE IN
OPPOSITION TO
DEFENDANTS' MOTION TO
DISMISS

14 v.

15 **VIRTUMUNDO, INC, a**
16 **Delaware corporation, d/b/a**
ADNOWLEDGEMAIL.COM;
17 **ADKNOWLEDGE, INC., a**
18 **Delaware corporation, d/b/a**
ADKNOWLEDGEMAIL.COM;
19 **SCOTT LYNN, an individual;**
and JOHN DOES, I-X,

20
21 **Defendants**

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

- 23 1) I, James S. Gordon, Jr., am the Plaintiff in the above captioned lawsuit. I
24 am over the age of 18 and am otherwise competent to testify.

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DECLARATION OF JAMES S. GORDON, JR. IN SUPPORT
OF PLAINTIFF'S RESPONSE TO MOTION TO
DISMISS GORDON v. VIRTUMUNDO GROUP, INC.

MERKLE SIEGEL & FRIEDRICHSEN
1325 Fourth Ave., Suite 940
Seattle, WA 98101
Phone: 206-624-9392
Fax: 206-624-0717

- 1 2) I am and have been a resident of Benton and Franklin Counties of
2 Washington State since January 1978.
- 3 3) I received the first offending email from Defendants on or about August
4 21, 2003. The ad appears to have been sent on behalf of Full Spectrum
5 Lending. (See copy of email attached as **Exhibit "A" – entitled Email
6 Source Code**). This email is typical of, although not identical to the
7 thousands of other emails received from Virtumundo/Adknowledgemail.
- 8 4) I had no relationship whatsoever with Virtumundo, AdknowledgeMail,
9 Scott Lynn, or with Full Spectrum Lending prior to the receipt of this
10 email.
- 11 5) In repeated attempts to obtain free prizes that various spammers' emails
12 claimed that I had won, I was "tricked" into responding to misleading
13 email ads from Virtumundo and other spammers. **Exhibit "B"** and
14 **Exhibit "C"** [B = "You Have Already won email"] [C = email confirmation
15 from Virtumundo – dated 9/4/03]
- 16 6) Despite numerous requests and demands to cease and desist, I continued
17 to receive thousands of emails from Defendants through February 15,
18 2006.
- 19 7) I have sent approximately 200 direct email requests to Virtumundo to
20 cease and desist and to stop transmission of all email. (See example
21 request at **Exhibit "D" – Dear...Marketer letter/contract**). I sent
22 those requests to: abuse@virtumundo.com, legal@virtumundo.com,
23 postmaster@virtumundo.com, and webmaster@virtumundo.com
24 addresses, and to the return email addresses in the spam.
- 25 8) At all times during which Defendants sent commercial emails to me, my
address and residency as a Washington State resident was available to
Defendants through my internet domain registration for the domains at
which Defendants sent the offending emails.

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1 9) I also registered my Washington state residency status for email
2 addresses at the WAISP.ORG registry (which is co-sponsored by the
3 Washington state Attorney General's Office and has been upheld in *State*
4 *v. Heckel* as a proper way to give notice to spammers that an email
5 address was held by a Washington state resident.

6 10) Despite these numerous attempts to stop spam from
7 Virtumundo/AdknowledgeMail I have received approximately 6,000
8 emails from them, with approximately an additional 5,000 recently
9 discovered on my internet server, owned by Omni Innovations, LLC,
10 which is also owned and operated by me, claims by which are included in
11 my First Amended Complaint.

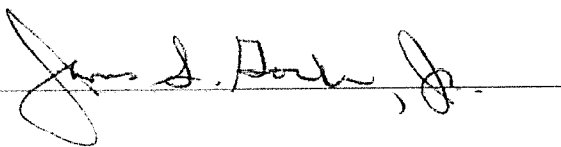
12 11) In fact, despite the above, and hundreds of requests and demands to cease
13 and desist, Defendants continue to send unlawful spam to me!. See copy
14 of most recent spam from Defendants, attached hereto as **Exhibit "E"**-
15 **Feb. 2006 email**

16 12) The first Virtumundo spam that was sent to Omni's server is dated, June
17 10, 2005, which is about 20 months after the first Virtumundo spam was
18 sent to "gordonworks.com". **Exhibit "F"**

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

21 James S. Gordon, Jr.
22 9804 Buckingham Drive
23 Pasco, WA 99301
24 509-210-1069

25 EXECUTED this 30th day of March, 2006



DECLARATION OF JAMES S. GORDON, JR. IN SUPPORT
OF PLAINTIFF'S RESPONSE TO MOTION TO
DISMISS GORDON v. VIRTUMUNDO GROUP, INC.

1 James S. Gordon, Jr.

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Certificate of Service

I, hereby, certify that on *April 4*, 2006, I filed this affidavit with this Court via approved electronic filing, and served the following: Attorneys for Defendants: Derek Newman of Newman & Newman.

Adana Lloyd

Adana Lloyd

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