

EXHIBIT A-2

The Honorable John C. Coughenour

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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;

Plaintiff,

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 his marital community; and JOHN DOES, 1-X,

Defendants.

No. CV06-0204JCC

**DEFENDANT SCOTT LYNN'S
FIRST SET OF
INTERROGATORIES AND
REQUESTS FOR PRODUCTION
TO PLAINTIFF OMNI
INNOVATIONS, LLC**

**TO: Omni Innovations, LLC; and
AND TO: Robert J. Siegel, Attorney for James S. Gordon, Jr.**

Defendant Scott Lynn hereby propounds the following requests for production and interrogatories to Plaintiff, pursuant to Fed. R. Civ. P. 26, 33 and 34. The requests should be answered in full and the original returned to this office (Newman & Newman, Attorneys at Law, LLP, 505 Fifth Avenue S., Suite 610, Seattle, Washington 98104) within 30 days after the date of service. The requested documents should be produced for

1 inspection and copying at the offices of Newman & Newman, Attorneys at Law, LLP,
2 505 Fifth Avenue S., Suite 610, Seattle, Washington 98104. You should respond to each
3 discovery question in accordance with the instructions and definitions set forth below.
4 The requests for production are continuing in nature within the meaning of Fed R. Civ.
5 P. 26.

6
7 **I. INSTRUCTIONS/DEFINITIONS**

8 1. In answering these requests for production, You are required to furnish all
9 information that is available to You, not merely such information as You know of Your
10 own personal knowledge, including information in the possession of Your attorneys, or
11 other persons directly or indirectly employed by or connected with You or Your
12 attorneys, or anyone acting on Your behalf or otherwise subject to Your control.

13 2. In answering these requests for production, You are requested to make a
14 diligent search of Your records and of other papers and materials in the possession,
15 custody or control of You or Your representatives.

16 3. The documents requested are not privileged and are reasonably calculated
17 to lead to the discovery of admissible evidence. If any document is withheld from
18 production on the ground that its production is privileged due to the attorney-client
19 privilege, work-product rule or other legally recognized standard preventing its disclosure
20 to a requesting party, then state separately for each such document: (1) the legal basis on
21 which You claim protection against discovery; (2) the date of the document; (3) the
22 nature of the document (*e.g.* letter); (4) the full name, job title and employer for each
23 author of the document; (5) the full name, job title, and employer or principal of each
24 addressee and named recipient of the document; (6) the full name, job title, and employer
25 of each person who to Your knowledge has knowledge of the communication; and (7) in
26 general, the substance of the document.

27 4. These discovery requests shall, to the fullest extent permitted by law, be
28 deemed continuing, so as to require You, without further request, to provide supplemental

1 responses within **15 days** of acquiring any additional material pertaining to the subject
2 matter of any of these requests.

3 5. Unless otherwise specified, You are instructed to answer for the period
4 from January 1, 2003 to the present.

5 6. If You cannot answer any of the following discovery requests in full after
6 exercising due diligence to secure the full information to do so, so state and answer to the
7 extent possible, specifying Your inability to respond in full, stating whatever information
8 or knowledge You have concerning the unanswered portion and detailing what You did in
9 attempting to secure the unknown information. If You do know the name of a person or
10 entity that may have such information, the name, address and telephone number and the
11 nature of the information known by such person or entity shall be disclosed in Your
12 response.

13 7. The singular form of a noun or pronoun shall be considered to include
14 within its meaning the plural form of the noun or pronoun so used and vice versa; the use
15 of the masculine form of a pronoun shall be considered to include within its meaning the
16 feminine form of the pronoun so used and vice versa; and the use of any tense of any verb
17 shall be considered to include within its meaning all other tenses of the verb.

18 8. The lower case form of a defined word shall be considered to include
19 within its meaning the capitalized form of the word and vice versa.

20 9. Whenever it is necessary to bring within the scope of these requests
21 information that otherwise might be construed to be outside their scope, "any" should be
22 understood to include and encompass "all"; and "all" should be understood to include and
23 encompass "any"; and "or" should be understood to include and encompass "and," and
24 "and" should be understood to include and encompass "or."

25 10. "**Affected Domains**" shall refer to any Internet domain names at which You
26 or Your users claim to have electronic mail addresses that received AOMs from
27 Defendants.

28 11. "**AOMs**" shall refer to the e-mails with respect to which You seek damages

1 from Defendants in this lawsuit.

2 12. “**Communications**” means any written communication, conversation, note,
3 SMS, instant message, email, letter, correspondence or exchange of document. When
4 identifying or referencing a communication, identify the date of the communication, the
5 location or means of communication, the parties and witnesses to the communication, and
6 the substance of the communication. When identifying or referencing an exchange of
7 more than one communication, include each document in the exchange.

8 13. The term “**Defendants**” means the above-captioned defendants in this
9 lawsuit.

10 14. The terms "**document**" and "**documents**" mean and include any kind of
11 written, typewritten, or printed material whatsoever, any kind of graphic material, and
12 any computer readable media including, without limitation, and papers, agreements,
13 contracts, notes, applications, memoranda, correspondence, instant message exchange,
14 SMS communications, studies, working papers, letters, telegrams, invoices, personal
15 diaries, journals, reports, records, books, forms, indexes, transcriptions and recordings,
16 magnetic tapes, video tapes, wire recordings, disks and printed cards, data sheets, data
17 processing cards, calendars, interoffice memoranda, minutes and records of any sorts of
18 meetings, financial statements, financial calculations, estimates, reports of telephone or
19 other oral conversations, appointment books, maps, drawings, charts, graphs,
20 photographs, and all other writings and recordings of every kind, however produced or
21 reproduced, whether signed or unsigned. The terms "document" and "documents"
22 include, without limitation, originals and all file copies and other copies that are not
23 identical to the original no matter how or by whom prepared, and all drafts prepared in
24 connection with any documents, whether used or not. If the original of any document is
25 not in Your possession, custody or control, a copy of that document should be produced.

26 15. The term “**identify**,” when used in connection with a document, means to
27 state the date on which the document was prepared, the author of the document, and any
28 and all recipient(s) of the document.

1 16. The term “**identify**,” when used in connection with an individual, means to
2 state the individual’s full current name, to state the individual’s full current residential
3 address, full current business address, email address, instant messaging name, and the
4 individual’s telephone numbers.

5 17. The use of the words “**include(s)**” and “**including**” should be construed to
6 mean without limitation.

7 18. The term “**person**” includes both individuals and business entities.

8 19. The term “**Plaintiffs**” means the above-captioned plaintiffs in this lawsuit..

9 20. The terms “**present**” or “**presently**” refer to the date of service of these
10 interrogatories and shall continue through resolution of this litigation.

11 21. The term “**Responses**” refers to Your responses and/or answers to
12 interrogatories and/or requests for production.

13 22. The phrase “**relating to**” means consisting of, summarizing, describing,
14 reflecting, or referring to in any way.

15 23. “**You**” means OMNI INNOVATIONS, LLC, Your agents, affiliates and
16 subsidiaries.

17 24. Defendants will move to preclude You from presenting evidence regarding
18 responsive matters You have failed to set forth in Your responses.

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20 **II. INTERROGATORIES**

21 **INTERROGATORY NO. 1:** Identify each and every e-mail address to which
22 You contend (as alleged in Paragraph 4.1.3 of Your First Amended Complaint) that
23 “[D]efendants sent at least one (1) separate item of electronic mail to the Plaintiffs to an
24 address most likely harvested from domain name registration and/or by other means of
25 anonymous Internet information harvesting.”

26 ANSWER:
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INTERROGATORY NO. 2: Identify each and every web hosting service, Internet service provider, or other provider of online services from whom You have purchased, leased, or otherwise obtained services in relation to Your operation of the Affected Domains.

ANSWER:

INTERROGATORY NO. 3: Please identify all Internet domain names registered in Your name or on Your behalf since January 1, 2003 as well as the dates of such registration and, if applicable, the dates on which such registrations expired.

ANSWER:

INTERROGATORY NO. 4: Please identify any filters, software, or other system used by You to prevent or reduce the receipt of unsolicited commercial email.

ANSWER:

INTERROGATORY NO. 5: Please identify the type(s) and/or brand(s) of “auto-responder” software applications that You used to generate the complaint messages contained in the mailbox files produced in Your First Supplemental Responses to Defendant’s First Discovery Requests on September 11, 2006.

ANSWER:

1 **INTERROGATORY NO. 6:** Please identify any service you provide that
2 enables users to access content, information, electronic mail, or other services offered
3 over the Internet. For each such service, please identify the users to whom you provide
4 that service (including their address, email and phone number), the nature of the service,
5 the consideration paid for the service.

6 ANSWER:
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9 **INTERROGATORY NO. 7:** Please identify (including date, subject line, sender
10 email and recipient email) any AOM that you contend was initiated by Defendants that
11 contained, or were accompanied by header information that was materially false or
12 misleading. For each such AOM, please explain how the header information was
13 materially false or misleading.

14 ANSWER:
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17 **INTERROGATORY NO. 8:** Please identify (including date, subject line, sender
18 email and recipient email) any AOM that you contend was initiated by Defendants that
19 did not contain a clearly and conspicuously displayed functioning return email address or
20 Internet-based mechanism that a recipient may have used to submit, in a manner specified
21 in the message, a reply email message or other form of Internet-based communication
22 requesting not to receive future commercial email messages at the email address where
23 the message was received. For each such AOM, please explain the basis upon which you
24 make such contention.

25 ANSWER:
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1 **INTERROGATORY NO. 9:** Please identify (including date, subject line, sender
2 email and recipient email) any AOM that you contend was initiated by Defendants that
3 the Defendants had actual or fairly implied knowledge that the subject headings of the
4 messages would be likely to mislead a reasonable recipient, under the circumstances,
5 about a material fact regarding the subject or content matter of the message. For each
6 such AOM, please explain how the subject headings are likely to mislead a reasonable
7 recipient.

8 ANSWER:
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11 **INTERROGATORY NO. 10:** Please identify (including date, subject line,
12 sender email and recipient email) any AOM that you contend was initiated by Defendants
13 that Your users attempted to request, using a mechanism specified in the AOM, to not
14 receive some or any commercial email from the Defendant and subsequent transmission
15 by that Defendant was made to that user more than 10 business days after the receipt of
16 such request. For each such AOM, please explain the basis upon which you make such
17 contention.

18 ANSWER:
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21 **INTERROGATORY NO. 11:** Please identify (including date, subject line,
22 sender email and recipient email) any AOM that you contend was initiated by Defendants
23 that did not provide clear and conspicuous identification that the message was an
24 advertisement or solicitation. For each such AOM, please explain the basis upon which
25 you make such contention.

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INTERROGATORY NO. 12: Please identify (including date, subject line, sender email and recipient email) any AOM that you contend was initiated by Defendants that did not provide clear and conspicuous identification of the opportunity to decline to receive further commercial emails from the message's sender via the methods specified in the message. For each such AOM, please explain the basis upon which you make such contention.

ANSWER:

INTERROGATORY NO. 13: Please identify (including date, subject line, sender email and recipient email) any AOM that you contend was initiated by Defendants that did not include the valid physical postal address of either the person who initiated the message or the person whose product, service, or Internet website is advertised in the message. For each such AOM, please explain the basis upon which you make such contention.

ANSWER:

INTERROGATORY NO. 14: Please identify (including date, subject line, sender email and recipient email) any AOM that you contend was initiated by Defendants that were sent to email addresses obtained using an automated means of generating email addresses by combining names, letters, or numbers into numerous permutations. For each such AOM, please explain the basis upon which you make such contention.

ANSWER:

1 **INTERROGATORY NO. 15:** Please identify (including date, subject line,
2 sender email and recipient email) any AOM that you contend was initiated by Defendants
3 that used a third party's Internet domain name without permission of the third party, or
4 otherwise misrepresented or obscured any information in identifying that message's point
5 of origin or transmission path. For each such AOM, please explain the nature of the
6 alleged misrepresentation or obscured information.

7 ANSWER:
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10 **INTERROGATORY NO. 16:** Please identify (including date, subject line,
11 sender email and recipient email) any AOM that you contend was initiated by Defendants
12 that contained false or misleading information in the subject line. For each such AOM,
13 please explain how the subject line is false or misleading.

14 ANSWER:
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17 **INTERROGATORY NO. 17:** Please identify (including date, subject line,
18 sender email and recipient email) any AOM that you contend was initiated by Defendants
19 that sought to solicit, request, or take any action to induce a person to provide personally
20 identifying information by representing oneself, either directly or by implication, to be
21 another person, without that person's approval or authority. For each such AOM, please
22 explain the basis upon which you make such contention.

23 ANSWER:
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26 **INTERROGATORY NO. 18:** Please identify (including date, subject line,
27 sender email and recipient email) any AOM that you contend was initiated by Defendants
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1 that was sent to email addresses obtained using an automated means from an Internet
2 website or proprietary online service operated by another person that included, at the time
3 the address was obtained, a notice stating that the website or service would not give, sell,
4 or transfer addresses maintained by such website or online service to any other party for
5 the purposes of initiating email messages. For each such AOM, please explain the basis
6 upon which you make such contention.

7 ANSWER:
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10 **INTERROGATORY NO. 19:** Please identify (including date, subject line,
11 sender email and recipient email) any AOM that you contend was initiated by Defendants
12 that contained offers or promotions for prizes in which the quality, type, value, or
13 availability of a prize was misstated. For each such AOM, please explain the basis upon
14 which you make such contention.

15 ANSWER:
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18 **INTERROGATORY NO. 20:** Please identify (including date, subject line,
19 sender email and recipient email) any AOM that you contend was initiated by Defendants
20 that failed to identify the name and address of the promoter and the sponsor of the
21 promotion. For each such AOM, please explain the basis upon which you make such
22 contention.

23 ANSWER:
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26 **INTERROGATORY NO. 21:** Please identify (including date, subject line,
27 sender email and recipient email) any AOM that you contend was initiated by Defendants
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1 that contained offers or promotions for prizes, gifts, or awards that failed to state the
2 verifiable retail value of each prize offered in it in immediate proximity on the same page
3 with the first listing of each prize in type at least as large as the typeface used in the
4 standard text of the offer. For each such AOM, please explain the basis upon which you
5 make such contention.

6 ANSWER:
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9 **INTERROGATORY NO. 22:** Please identify (including date, subject line,
10 sender email and recipient email) any AOM that you contend was initiated by Defendants
11 that contained offers or promotions for prizes, gifts, or awards involving an element of
12 chance that failed to state the odds the participant had of being awarded each prize with
13 such odds expressed in Arabic numerals, in ratio form in immediate proximity on the
14 same page with the first listing of each prize in type at least as large as the typeface used
15 in the standard text of the offer. For each such AOM, please explain the basis upon
16 which you make such contention.

17 ANSWER:
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20 **INTERROGATORY NO. 23:** Please identify (including date, subject line,
21 sender email and recipient email) any AOM that you contend was initiated by Defendants
22 that contained offers or promotions for prizes, gifts, or awards involving an element of
23 chance that failed to state the odds in such a manner that would have deceived or mislead
24 a person about that person's chance of being awarded a prize. For each such AOM,
25 please explain the basis upon which you make such contention.

26 ANSWER:
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INTERROGATORY NO. 24: Please identify (including date, subject line, sender email and recipient email) any AOM that you contend was initiated by Defendants that contained an item in an offer that was denominated a prize, gift, award, premium, or similar term that implied that the item is free yet in order to receive it the intended recipient would have been required to spend any sum of money, including shipping fees, deposits, handling fees, payment for one item in order to receive another at no charge, or the purchase of another item or the expenditure of funds in order to make meaningful use of the item awarded in the promotion. For each such AOM, please explain the basis upon which you make such contention.

ANSWER:

INTERROGATORY NO. 25: Please identify (including date, subject line, sender email and recipient email) any AOM that you contend was initiated by Defendants that contained offers or promotions for prizes which were not available for immediate delivery to the recipient for which the recipient was not given a rain check for the prize, the verifiable retail value of the prize in cash, or a substitute item of equal or greater verifiable retail value. For each such AOM, please explain the basis upon which you make such contention.

ANSWER:

III. REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: Please produce for inspection all documents evidencing notices included on websites or online services from which You allege that Defendants obtained e-mail addresses for recipients at your domain using

1 automated means which stated at the time the address was obtained that the operator of
2 such website or online service will not give, sell, or otherwise transfer addresses
3 maintained by such website or online service to any other party for the purposes of
4 initiating, or enabling others to initiate, electronic messages.

5 RESPONSE:
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8 **REQUEST FOR PRODUCTION NO. 2:** Please produce for inspection all
9 documents relating to any agreements, contracts, or relationships which You may have
10 had with website hosting services, Internet service providers, or other providers of online
11 services in relation to your use of the Affected Domains.

12 RESPONSE:
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15 **REQUEST FOR PRODUCTION NO. 3:** Please produce for inspection all
16 documents relating to Your configuration and customization of the “auto-responder” files
17 used to generate the messages contained in the mailbox files produced in Your First
18 Supplemental Responses to Defendant’s First Discovery Requests on September 11,
19 2006.

20 RESPONSE:
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Interrogatories and Requests for Production dated this 15th day of November, 2006.

**NEWMAN & NEWMAN,
ATTORNEYS AT LAW, LLP**



By:

Derek A. Newman, WSBA No. 26967
Roger M. Townsend, WSBA No. 25525
Attorneys for Defendants

505 Fifth Avenue South, Suite 610
Seattle, Washington 98104
phone: (206) 274-2800
fax: (206) 274-2801

VERIFICATION

I, _____, have read the foregoing Responses to DEFENDANT LYNN'S FIRST INTERROGATORIES & REQUESTS FOR PRODUCTION, know the contents thereof, and believe the same to be true.

Dated this _____ day of _____, 2006.

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2006.

Printed Name:
NOTARY PUBLIC in and for the State of
_____, residing at
My Commission Expires:

CERTIFICATION

The undersigned attorney for Plaintiff has reviewed the foregoing Responses to DEFENDANT LYNN'S FIRST INTERROGATORIES & REQUESTS FOR PRODUCTION, and certifies that they are in compliance with Civil Rules 26 and 34.

DATED: _____, 2006.

By: _____
Attorneys for James S. Gordon, Jr.

CERTIFICATE OF SERVICE

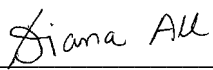
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3 The undersigned hereby certifies that on this 15th day of November, 2006, I
4 caused the foregoing **DEFENDANT SCOTT LYNN'S FIRST SET OF**
5 **INTERROGATORIES AND REQUESTS FOR PRODUCTION TO PLAINTIFF**
6 **OMNI INNOVATIONS, LLC AND CERTIFICATE OF SERVICE** to be served via the
7 methods listed below on the following party
8
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10 **Via Email and Fax to:**

11 Robert Siegel, Esq.
12 Merkle Siegel & Friedrichsen, P.C.

13 Email: bob@msfseattle.com
14 Fax: 206-624-0717
15

16 I declare under penalty of perjury under the laws of the United States and the State of
17 Washington that the forgoing is true and correct and that this declaration was executed on
18 November 15th, 2006, at Seattle, Washington.
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22 _____
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