

EXHIBIT D

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;

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 VIRTUMUNDO, INC.'S
FIRST SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION
TO PLAINTIFF GORDON**

TO: James S. Gordon, Jr., d/b/a 'GORDONWORKS.COM'; and

AND TO: Robert J. Siegel, Attorney for James S. Gordon, Jr.

Defendant Virtumundo, Inc. 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 within 30 days after the date of service. The requested

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

7 8 I. INSTRUCTIONS/DEFINITIONS

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

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

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

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5 4. These discovery requests shall, to the fullest extent permitted by
6 law, be deemed continuing, so as to require You, without further request, to
7 provide supplemental responses within **15 days** of acquiring any additional
8 material pertaining to the subject matter of any of these requests.

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

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13 6. If You cannot answer any of the following discovery requests in
14 full after exercising due diligence to secure the full information to do so, so
15 state and answer to the extent possible, specifying Your inability to respond
16 in full, stating whatever information or knowledge You have concerning the
17 unanswered portion and detailing what You did in attempting to secure the
18 unknown information. If You do know the name of a person or entity that
19 may have such information, the name, address and telephone number and the
20 nature of the information known by such person or entity shall be disclosed in
21 Your response.

22 7. The singular form of a noun or pronoun shall be considered to
23 include within its meaning the plural form of the noun or pronoun so used
24 and vice versa; the use of the masculine form of a pronoun shall be considered
25 to include within its meaning the feminine form of the pronoun so used and
26 vice versa; and the use of any tense of any verb shall be considered to include
27 within its meaning all other tenses of the verb.

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

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4 9. Whenever it is necessary to bring within the scope of these
5 requests information that otherwise might be construed to be outside their
6 scope, "any" should be understood to include and encompass "all"; and "all"
7 should be understood to include and encompass "any"; and "or" should be
8 understood to include and encompass "and," and "and" should be understood
9 to include and encompass "or."

10 10. The phrase "**Allegedly Offending Messages**" shall refer to the
11 e-mails with respect to which You seek damages from Defendants in this
12 lawsuit.

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14 11. "**Communications**" means any written communication,
15 conversation, note, SMS, instant message, email, letter, correspondence or
16 exchange of document. When identifying or referencing a communication,
17 identify the date of the communication, the location or means of
18 communication, the parties and witnesses to the communication, and the
19 substance of the communication. When identifying or referencing an
20 exchange of more than one communication, include each document in the
21 exchange.

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23 12. The terms "**document**" and "**documents**" mean and include any
24 kind of written, typewritten, or printed material whatsoever, any kind of
25 graphic material, and any computer readable media including, without
26 limitation, and papers, agreements, contracts, notes, applications,
27 memoranda, correspondence, instant message exchange, SMS

1 communications, studies, working papers, letters, telegrams, invoices,
2 personal diaries, journals, reports, records, books, forms, indexes,
3 transcriptions and recordings, magnetic tapes, video tapes, wire recordings,
4 disks and printed cards, data sheets, data processing cards, calendars,
5 interoffice memoranda, minutes and records of any sorts of meetings,
6 financial statements, financial calculations, estimates, reports of telephone or
7 other oral conversations, appointment books, maps, drawings, charts, graphs,
8 photographs, and all other writings and recordings of every kind, however
9 produced or reproduced, whether signed or unsigned. The terms "document"
10 and "documents" include, without limitation, originals and all file copies and
11 other copies that are not identical to the original no matter how or by whom
12 prepared, and all drafts prepared in connection with any documents, whether
13 used or not. If the original of any document is not in Your possession, custody
14 or control, a copy of that document should be produced.

15 13. The term "**identify**," when used in connection with a document,
16 means to state the date on which the document was prepared, the author of
17 the document, and any and all recipient(s) of the document.

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19 14. The term "**identify**," when used in connection with an individual,
20 means to state the individual's full current name, to state the individual's full
21 current residential address, full current business address, email address,
22 instant messaging name, and the individual's telephone numbers.

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24 15. The use of the words "**include(s)**" and "**including**" should be
25 construed to mean without limitation.

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27 16. The term "**person**" includes both individuals and business
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1 entities.

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3 17. The term "**Plaintiffs**" includes You, Plaintiffs, Counter-
4 Defendants, and Third Party-Defendants.

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6 18. The terms "**present**" or "**presently**" refer to the date of service of
7 these interrogatories and shall continue through resolution of this litigation.

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9 19. The term "**Responses**" refers to Your responses and/or answers
10 to interrogatories and/or requests for production.

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12 20. The term "**Responsive Pleading**" means Your Answer,
13 Affirmative Defenses, Counterclaims, Third Party Complaint and any
14 amendments or modifications to any of the foregoing.

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16 21. The phrase "**relating to**" means consisting of, summarizing,
17 describing, reflecting, or referring to in any way.

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19 22. "**You**" means JAMES S. GORDON, Jr., d/b/a
20 'GORDONWORKS.COM,' Your agents, affiliates and subsidiaries.

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

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25 **II. INTERROGATORIES**

26 INTERROGATORY NO. 1: Please identify all persons providing information and/or
27 assisting in the preparation of Your responses to these Interrogatories and Requests for
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1 Production, and for each such person identified, state the number of each interrogatory or request
2 for production for which that person provided information or assisted in the preparation, and the
3 information provided.

4 ANSWER:

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7 INTERROGATORY NO. 2: Please identify all Allegedly Offending Messages, including
8 the date, time, location of access of those messages by You, and the basis or bases for Your
9 contention that they violate state and/or federal law.

10 ANSWER:

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14 INTERROGATORY NO. 3: Please identify all communications between You and
15 Defendants. Include in Your answer the date of each communication, the persons with whom
16 You communicated, and the substance of each communication.

17 ANSWER:

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21 INTERROGATORY NO. 4: Please identify all e-mails dispatched by Defendants which
22 (as alleged in Paragraph 4.2.2 of Your First Amended Complaint) “misrepresented or obscured
23 information identifying the point of origin or the transmission path, and/or which contained false
24 or misleading information in the subject line...”. In Your answer, please specifically identify the
25 subject matters You contend are false and/or misleading, as well as the points of origin and/or
26 transmission paths You contend are obscured, and please explain the basis or bases for these
27 contentions.

1 ANSWER:

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4 INTERROGATORY NO. 5: Please identify all Allegedly Offending Messages to which
5 You replied.

6 ANSWER:

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10 INTERROGATORY NO. 6: Please identify all Allegedly Offending Messages with
11 respect to which You followed the unsubscribe instructions set forth in the message.

12 ANSWER:

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16 INTERROGATORY NO. 7: Please identify all facts which support Your contention (as
17 alleged in Paragraph 4.2.3 of Your First Amended Complaint) that “[n]umerous e-mails sent by
18 Defendants and received by Plaintiffs violated” *Washington Revised Code* § 19.190.080.

19 ANSWER:

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23 INTERROGATORY NO. 8: Please identify all facts which support Your contention (as
24 stated in paragraph 4.3.2 of Your First Amended Complaint) that “[n]umerous email
25 advertisements, i.e., ‘spam’ which Defendants transmitted to Plaintiffs, as described herein,
26 violated RCW 19.170.030 *et seq...*”.

1 ANSWER:
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5 INTERROGATORY NO. 9: Please identify all e-mail lists and websites to which You
6 have subscribed in the last three (3) years. Please include in your answer the date You subscribed
7 to the e-mail list and/or website; whether You un-subscribed, and if so, when; and the identity,
8 including IP address, of any computer you used for such subscription.

9 ANSWER:
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12 INTERROGATORY NO. 10: Please identify all facts that support Your contention (as
13 alleged in Paragraph 4.1.3 of Your First Amended Complaint) that “[D]efendants sent at least one
14 (1) separate item of electronic mail to the Plaintiffs to an address most likely harvested from
15 domain name registration and/or by other means of anonymous internet information harvesting.”

16 ANSWER:
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20 INTERROGATORY NO. 11: Identify all facts that support Your contention (as alleged
21 in Paragraph 4.1.5 of Your First Amended Complaint) that Defendants dispatched e-mails which
22 “failed to provide a functioning mechanism, clearly and conspicuously displayed, that a recipient
23 may use, in a manner specified in the message, to request not to receive further messages from the
24 sender[.]”

25 ANSWER:
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1 INTERROGATORY NO. 12: Please identify all damages You claim to have *actually*
2 suffered from Your receipt of the Allegedly Offending Messages. In Your answer, include the
3 nature, extent and monetary value of those alleged damages.

4 ANSWER:
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7 INTERROGATORY NO. 13: Identify all lawsuits to which You have been a party
8 durion the previous five (5) years. For each lawsuit, include the date of filing, venue and case
9 number, as well as whether You were a plaintiff or defendant.

10 ANSWER:
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13 INTERROGATORY NO. 14: Identify all false or deceptive communications You
14 contend were made by Defendants to You.

15 ANSWER:
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18 INTERROGATORY NO. 15: Identify all Your efforts to 'unsubscribe' from the
19 Allegedly Offending e-mails or from Defendants' mailing lists in general.

20 ANSWER:
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23 INTERROGATORY NO. 16: Identify all steps You have taken to mitigate Your alleged
24 damages.
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1 ANSWER:

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5 INTERROGATORY NO. 17: Please describe the manner in which you were adversely
6 affected by the Allegedly Offending Messages.
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8 ANSWER:

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11 INTERROGATORY NO. 18: For each and every computer in receipt of an Allegedly
12 Offending Message, please describe in detail the activities of each computer involving interstate
13 commerce.
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15 ANSWER:

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18 INTERROGATORY NO. 19: If You have registered any e-mail addresses with
19 WAISP.org, please identify all e-mails registered. Please include in your answer the date of
20 registration of such e-mail addresses, and the identity, including IP address, of each computer you
21 used for such registration.

22 ANSWER:

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26 INTERROGATORY NO. 20: Please identify all of Your e-mail address that received the
27 Allegedly Offending Messages. Please include in your answer the purpose(s) for which you use
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1 each of the e-mails you identify.

2 ANSWER:

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5 INTERROGATORY NO. 21: Please explain when and why you registered the domain
6 name 'GORDONWORKS.COM'.

7 ANSWER:

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11 INTERROGATORY NO. 22: Please identify all customers whom you serve as a provider
12 of internet services. Please include (a) the names and addresses of such customers; (b) the date
13 they became your customers; and (c) and the amount and type of remuneration you have received
14 for providing such services.

15 ANSWER:

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19 INTERROGATORY NO. 23: Please state the amount of monetary compensation you
20 have received through judgment or settlement in any of the lawsuits identified in Interrogatory
21 No. 13, above. Include the identity from whom you received this compensation, whether it came
22 through settlement or judgment, and the date you received it.

23 ANSWER:

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27 INTERROGATORY NO. 24: Explain in detail all steps You have undertaken to preserve
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1 your electronic correspondence and data since the filing of this lawsuit.

2 ANSWER:

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4 INTERROGATORY NO. 25: Explain in detail all efforts expended by you to determine
5 whether any of the Allegedly Offending Messages came from sources other than Defendants or
6 any of them.

7 ANSWER:

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12 **III. REQUESTS FOR PRODUCTION**

13 REQUEST FOR PRODUCTION NO. 1: Please produce for inspection a full copy of
14 all Allegedly Offending Messages.

15 RESPONSE:

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19 REQUEST FOR PRODUCTION NO. 2: Please produce for inspection all documents
20 referenced in, relating to, or in support of, Your responses to the Interrogatories.

21 RESPONSE:

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25 REQUEST FOR PRODUCTION NO. 3: Please produce for inspection all documents
26 which support or relate to the damages allegedly sustained by You, including all receipts for any
27 out of pocket expenses.

1 RESPONSE:

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5 REQUEST FOR PRODUCTION NO. 4: Please produce for inspection all documents
6 relating to Your contention that Defendants initiated a transmission of the Allegedly Offending
7 Messages to You.

8 RESPONSE:

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11 REQUEST FOR PRODUCTION NO. 5: Please produce for inspection all documents
12 relating to Your contention that Defendants sent e-mails containing false, or misleading
13 information in the subject line.

14 RESPONSE:

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18 REQUEST FOR PRODUCTION NO. 6: Please produce for inspection all documents
19 relating to Your contention that Defendants sent e-mails containing altered or obscured
20 transmission path or point of origin information.

21 RESPONSE:

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25 REQUEST FOR PRODUCTION NO. 7: Please produce for inspection all documents
26 relating to Your contention that Defendants sent e-mails using a third party domain without the
27 third party's permission.

1 RESPONSE:

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4 REQUEST FOR PRODUCTION NO. 8: Please produce for inspection all documents
5 relating to Your contention that the actions allegedly engaged in by Defendants constitute one or
6 more violations of *Washington Revised Code* § 19.170 et seq.
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8 RESPONSE:

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11 REQUEST FOR PRODUCTION NO. 9: Please produce for inspection all documents
12 relating to Your contention that Defendants violated *Washington Revised Code* §19.190 et seq.
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14 RESPONSE:

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17 REQUEST FOR PRODUCTION NO. 10: Please produce for inspection all documents
18 relating to Your contention that the alleged actions engaged in by Defendants constitute one or
19 more violations of *Washington Revised Code* § 19.86 et seq.
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21 RESPONSE:

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24 REQUEST FOR PRODUCTION NO. 11: Please produce for inspection all documents
25 You have provided to any experts You anticipate calling to testify at trial.
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27 RESPONSE:

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REQUEST FOR PRODUCTION NO. 12: Please produce all treatises, books, articles or papers published by each of Your expert witnesses and/or relied upon by each of Your anticipated expert witnesses in forming the facts and opinions to which each expert is expected to testify.

RESPONSE:

REQUEST FOR PRODUCTION NO. 13: Please produce for inspection all documents evidencing Plaintiffs' communications with Defendants.

RESPONSE:

REQUEST FOR PRODUCTION NO. 14: Please provide Your tax returns for all income earned in the past three years.

ANSWER:

REQUEST FOR PRODUCTION NO. 15: Please produce all e-mail messages sent or received by You in the past two (2) years relating to Your having opted-in out of a commercial e-mail list, as well as any e-mail correspondence between You and any commercial e-mail company.

ANSWER:

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REQUEST FOR PRODUCTION NO. 16: Please provide a copy of (i) the cookies;
(ii) cache; and (iii) history, of all Internet browser software programs on any computer owned or controlled by You.

ANSWER:

REQUEST FOR PRODUCTION NO. 17: Please produce for inspection the hard drives from each of the computers identified in the foregoing interrogatories.

ANSWER:

Interrogatories and Requests for Production dated this 16th day of June, 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 VIRUMUNDO, INC.'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 VIRTUMUNDO, INC.'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.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 16th day of June, 2006, I caused the foregoing **DEFENDANT VIRTUMUNDO, INC.'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION TO PLAINTIFF GORDON, AND CERTIFICATE OF SERVICE** to be served via the methods listed below on the following party:

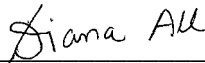
Via Email and Fax to:

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

Fax: (206) 624 - 0717

Email: bob@msfseattle.com

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



Diana Au