

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**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 TO COMPEL**

NOTE ON MOTION CALENDAR:  
January 5, 2007

I, Derek Newman, swear under penalty of perjury under the laws of the United States of America 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.

**A. PLAINTIFFS' FIRST AND SECOND PRODUCTION OF EMAILS**

1. On or about December 4, 2006, I met and conferred with Plaintiffs' attorney

1 via email regarding the belatedly produced emails. *See* Linke Decl. ¶ 24, **Exhibit E**.

2 2. On or about December 5, 2006, Plaintiffs' attorney advised by email that he  
3 would not produce only the new emails. *See* Linke Decl. ¶ 24, **Exhibit E**.

4 3. Again, on or about December 13, 2006, I met and conferred with Plaintiffs'  
5 counsel regarding the belatedly produced emails. Attached hereto as **Exhibit A** is a true  
6 and accurate copy of the deposition transcript of Brett Brewer in which Plaintiffs counsel  
7 and I discuss our December 13, 2006 meeting.

8 4. Again, on or about December 14, 2006, during Defendants' deposition, I  
9 met and conferred with Plaintiffs' counsel regarding the belatedly produced emails. *See*  
10 **Exhibit A**.

11 5. In the December 14th meeting, Plaintiffs' counsel advised that he would  
12 consult with his client and would use good faith efforts to produce the information as  
13 requested. Plaintiffs' counsel refused to commit to producing only the new emails,  
14 however, and has not in fact produced them.

15  
16 I certify and declare under the penalty of perjury under the laws of the State of  
17 Washington and the United States that to my knowledge the foregoing is true and correct.

18  
19 DATED this 21<sup>ST</sup> day of December 2006, at Seattle, Washington

20  
21 

22  
23 \_\_\_\_\_  
Derek A. Newman