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

THE HON. JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON, SEATTLE

**JAMES S. GORDON, Jr., a married individual; 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, I-X,**

**Defendants.**

**NO. CV06-0204JCC**

**DECLARATION OF JAMES S. GORDON, JR. IN RESPONSE AND OPPOSITION TO DEFENDANTS' MOTION TO COMPEL SEGREGATION OF EMAILS.**

James S. Gordon, Jr. declares as follows:

- 1) I, James S. Gordon, Jr., am the Plaintiff in the above captioned lawsuit, and am the managing member of Plaintiff Omni Innovations, LLC. I am over the age of 18, of sound mind, and am otherwise competent to testify.

DECLARATION OF JAMES S. GORDON, JR. IN RESPONSE TO MOTION TO COMPEL SEGREGATION OF EMAILS  
GORDON v. VIRTUMUNDO GROUP, INC. - 1

**MERKLE SIEGEL & FRIEDRICHSEN**  
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Phone: 206-624-9392  
Fax: 206-624-0717

1 2) I have done my best to respond to Defendants' discovery requests and to provide  
2 them with copies of the many thousands of emails they have sent to me and my  
3 clients at my 'gordonworks.com' domain, and to email addresses at other  
domains hosted on Omni's server.

4 3) The management of the massive volume of emails sent by spammers, in  
5 general, is extremely time consuming and burdensome to me and Omni.  
6 Spammers like the Defendants, send Omni's server between 5,000-8,000 emails  
7 or spam every day of the year. My server's clients are distributed over a dozen or  
8 more domains and they live in several different cities. The job of collecting,  
9 sorting, and compiling records on this and other defendants is a very time-  
10 consuming process. My clients send me emails that are unsorted in lots of 10-  
11 50,000 at one time. Any duplication was a result of this volume. Even now, I  
12 could do a search of several million emails and perhaps capture even more new  
13 emails from Defendants - at some point one says enough is enough. Each  
14 update is typically done without the culling of duplicates as this process would  
15 require opening each and every email, then expanding the headers, which are  
16 about 3-4 lines long (an expanded header could be as few as 5-6 lines or 30-40  
17 lines in length. The expanded header then enables a viewing of each received  
18 header. The information available via the expanded header allows the viewer or  
19 recipient to sort the email by 1) Date 2) Time 3) Addressee 4) Message  
20 Identification Number. Culling emails for duplicates can not effectively be done  
without expanding the headers. I do not doubt Defendants' assertion that it took  
a team of professionals hundreds of hours of labor time to analyze the emails in  
question. I ask the Court to imagine the daunting scope of the task, and my  
investment of time and resources into this process acting alone.

21 4) On some days, my server can receive dozens of emails from a single spammer.  
22 These emails could be received within seconds of one another. This fact thwarts  
23 the efficacy or use of the date and time "field" as sort criteria. One would then  
24 have to look at the second that the email was received. Another complication is  
25

1 that spammers sometimes send multiple emails to an individual during the same  
2 day. Therefore, one must also check the message ID to compare one email to  
3 the next – that number can be in different places for any number of emails. An  
example of a message ID# is Message-ID:

4 116750160423820.514269@gisdop.com - each email has a distinct ID#.

- 5 5) One other complicating factor is many spam emails are inaccurate. Problems  
6 with headers include missing Addressees, missing or erroneous dates, missing  
7 from fields, and/or missing subject lines. The foregoing is the reason for the  
8 Defendants' desire to shift the work load back onto Plaintiff. This work can be  
9 distinguished from the work of merely sorting a folder of the emails, such as  
10 those Plaintiffs have provided to Defendants. The emails in these folders have  
11 already undergone much of the work described above.
- 12 6) Defendants continued to send spam emails to my domain and Omni's server  
during this litigation up until and as recently as November 30, 2006.
- 13 7) There is no way known to me to set a point of demarcation as to the date emails  
14 were received and combined with prior contributions of emails from my clients. A  
15 few clients' emails are updated every week and others only 3-4 times per year.  
16 From these piecemeal submissions of emails, I then sort for the names of  
17 Defendants and collect those emails in a single folder. I have no way to know  
18 exactly when an email was added as the Eudora program I use automatically  
19 adds new emails in chronological order. I have no record or means to know the  
20 dates and times clients provided updates. This coupled with the fact that all  
21 Defendants' emails are now commingled makes it impossible to segregate the  
22 emails based on dates and times.
- 23 8) The only clear delineation of emails is on a domain basis. Defendant can  
24 accomplish this by using the search feature of Eudora to sort the emails by  
25 domain. For example, by placing "gordonworks.com" in the search box and  
selecting the "To" field in the first of three horizontally aligned search boxes, the  
Defendants would have a means to segregate the emails by domain. Once

1 separated by domains, the result can be placed in a box with the name of the  
2 domain, i.e. "gordonworks.com". Once in this box, a simple click of the "Date"  
3 field organizes the emails in a chronological fashion. The search could take as  
4 much as 1-2 minutes per domain – there are less than a dozen domains used by  
5 Defendants that are a part of this action. And once emails are in their respective  
6 domain boxes all dates and times become evident to whoever views the emails.

7 9) It is ironic that the instant motion is predicated on Defendants' belief or realization  
8 of how burdensome this process of rendering such a massive amount of emails  
9 in various forms is. Their solution was first to hire ten or more attorneys to do  
10 this task, but it was costly and time-consuming. And now, Defendants wish to  
11 avoid the time and cost of future renderings by employing Plaintiff to do work that  
12 their team had done at great expense. Plaintiff is but one individual. It defies  
13 both logic and fairness to now shift the burden to Plaintiffs.

14 10) Plaintiff has prepared yet a Fourth production, which has not yet been given to  
15 Defendants, except for the 7,890 emails which comprise the current summary  
16 judgment motion before this court. This latest production includes 13,890 emails,  
17 and represents Plaintiffs' best effort to cull duplicates from the compilation.  
18 Assuming that Defendants cease sending additional emails, it should be the final  
19 one.

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

22 EXECUTED this 31st day of December, 2006, at Pasco, Washington.

23 \_\_\_\_\_  
24 James S. Gordon, Jr.

25  
Certificate of Service

I, hereby, certify that on January 2, 2002, I filed this affidavit with this Court via  
approved electronic filing, and served the following:  
Attorneys for Defendants: Newman & Newman, Derek Newman

1 domain. For example, by placing "gordonworks.com" in the search box and  
2 selecting the "To" field in the first of three horizontally aligned search boxes, the  
3 Defendants would have a means to segregate the emails by domain. Once  
4 separated by domains, the result can be placed in a mail box with the name of  
5 the domain, i.e. "gordonworks.com". Once in this mail box, a simple click of the  
6 "Date" field organizes the emails in a chronological fashion. The search could  
7 take as much as 1-2 minutes per domain – there are less than a dozen Omni  
8 client domains used by Defendants that are a part of this action. And once emails  
9 are in their respective domain mail boxes all dates and times become evident to  
10 whoever views the emails.

9) It is ironic that the instant motion is predicated on Defendants' belief or realization  
10 of how burdensome this process of rendering such a massive amount of emails  
11 in various forms is. Their solution was first to hire ten or more attorneys to do  
12 this task, but it was costly and time-consuming. And now, Defendants wish to  
13 avoid the time and cost of future renderings by employing Plaintiff to do work that  
14 their team had done at great expense. Plaintiff is but one individual. It defies  
15 both logic and fairness to now shift the burden to Plaintiffs.

10) In our continuing effort to provide accurate and updated compilations of the email  
16 records, Plaintiff has prepared yet a Fourth production, which has not yet been  
17 given to Defendants, except for the 7,890 emails which comprise the current  
18 summary judgment motion before this court. This latest production includes  
19 13,906 emails, and represents Plaintiffs' best effort to cull duplicates from the  
20 compilation. Assuming that Defendants cease sending additional emails, it  
21 should be the final one.

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

EXECUTED this 31st day of December, 2006, at Pasco, Washington.

  
James S. Gordon, Jr.