

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

DEFENDANTS' MOTION TO FILE UNDER SEAL

NOTE ON MOTION CALENDAR:
February 2, 2007

Pursuant to Local Rule 5(g) and Paragraph 13 of this Court's October 26, 2006 Protective Order filed in the above-captioned action (Dkt. No. 37), Defendants submit this motion to file their Reply in Support of Motion for an Undertaking (Dkt. No. 92, the "Reply"), together with the Declaration of Derek A. Newman in Support of Defendants' Motion for an Undertaking (Dkt. No. 93, the "Newman Decl.") under seal.

Local Rule 5(g)(1) requires a showing "that the public's right of access is outweighed by the interests... of the parties in protecting files, records, or other

1 documents from public review.” The Reply and Newman Decl. request this Court order
2 Plaintiffs to file an undertaking for the potential payment of attorneys’ fees and costs, and
3 are partially based on Plaintiff James Gordon’s (“Gordon”) testimony, which indicates the
4 frivolousness of Plaintiffs’ claims. Defendants’ arguments required them to refer to
5 Gordon’s testimony. However, Gordon claims his testimony is confidential. Filing the
6 Reply and Newman Decl. under seal will allow the Court to strike an effective balance
7 between Defendants’ interest in obtaining attorneys’ fees and costs incurred in defending
8 against a frivolous lawsuit, and any legitimate interest Gordon may have in preserving the
9 confidentiality of his testimony. Accordingly, good cause exists for filing the Reply and
10 Newman Decl. under seal.

11 In addition, Paragraph 13 of the Protective Order provides as follows: “All
12 materials containing CONFIDENTIAL INFORMATION that are submitted to the
13 Court... shall remain confidential and shall be accorded in camera treatment.” Defendants
14 do not believe the information in the Reply and Newman Decl. is confidential. However,
15 for Plaintiffs’ benefit they have marked those documents “CONFIDENTIAL
16 INFORMATION” and are moving to file them under seal, to ensure this Court reviews
17 them *in camera* pursuant to the Protective Order.

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19 DATED this 12th day of January, 2007.

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

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23 By:

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

25 Attorneys for Defendants
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