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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON, SEATTLE

**OMNI INNOVATIONS, LLC, a
Washington Limited Liability
company; EMILY ABBEY, an
individual,**

Plaintiffs,

v.

**ASCENTIVE, LLC, a Delaware
limited liability company; ADAM
SCHRAN, individually and as part of
his marital community; JOHN DOES,
I-X,**

Defendants,

NO. 06-01284

**DECLARATION OF JAMES S.
GORDON, JR. IN SUPPORT OF
MOTION TO DISQUALIFY
COUNSEL**

James S. Gordon, Jr. declares as follows:

- 1) I, James S. Gordon, Jr., am the principal member and owner of Omni Innovations, LLC ("Omni") the Plaintiff in the above captioned lawsuit. I am over the age of 18 and am otherwise competent to testify.
- 2) In 2002, I retained the legal services of Floyd E. Ivey to assist me in drafting contracts for Omni among other matters. Mr. Ivey's firm

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DECLARATION OF JAMES S. GORDON, JR.
IN SUPPORT OF MOTION TO DISQUALIFY DEFENDANTS'
COUNSEL

MERKLE SIEGEL & FRIEDRICHSEN
1325 Fourth Ave., Suite 940
Seattle, WA 98101
Phone: 206-624-9392
Fax: 206-624-0717

1 invoiced me, and I paid them, for those services. Subsequently,
2 and periodically over the next several years I also disclosed and
3 discussed the business strategy of bringing anti-spam lawsuits in
4 order to enforce my rights under the anti-spam laws, take action
5 against the scourge of spam, and generate business income. I
6 even discussed particular possible target defendants who had
7 spammed me numerous times with Mr. Ivey. I was told by Mr. Ivey
8 that he was very interested in the spam lawsuits. He even quoted
9 me a cost to pursue them. I explained at the time that I expected
10 to be paid by a former partner and could pay his fee with those
11 funds. There was no doubt in my mind at the time that I had
12 established an attorney-client relationship with Mr. Ivey. I certainly
13 expected that all of my discussions, and the confidences I had
14 shared with Mr. Ivey would be held in absolute confidentiality.

15 3) Mr. Ivey and I corresponded and talked (face-to-face) about spam
16 lawsuits for approximately six months. It appears that I was being
17 "strung along". Mr. Ivey said/did nothing to contraindicate his "very
18 interested" comment to me.

19 4) Although I do not believe that I have retained all of the relevant
20 documents and writings, some of the documents which
21 substantiate my contention that I had established an attorney-
22 client relationship with Mr. Ivey include: **Exhibit 1** – email dated
23 9/22/03; **Exhibit 2** – email dated 9/25/03; **Exhibit 3** – dated
24 9/30/03; **Exhibit 4** – dated 9/30/03 to Jamila Gordon; **Exhibit 5** –
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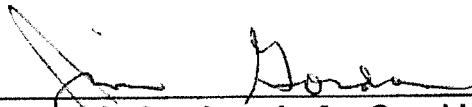
1 dated 12/30/03; **Exhibit 6** – dated 4/4/05.

- 2 5) In early 2005 I advised my attorney, Douglas E. McKinley, Jr. that
3 Mr. Ivey had represented me on another matter, and that we had
4 also discussed strategies for bringing spam lawsuits. Mr. McKinley
5 did not know during our first conversation the extent of the
6 representation, and that an attorney-client relationship had been
7 established, nor that substantial email communications existed
8 between myself and Mr. Ivey.
- 9 6) The matter of Mr. Ivey's conflict of interest re-surfaced in 2005 with
10 the advent of a second and third lawsuit in which Mr. Ivey
11 undertook representation of those defendants, i.e. Gordon v.
12 Ascentive and Gordon v. eFinancial. However, on this occasion I
13 had located the emails that were exchanged with Mr. Ivey. Upon
14 reading these emails, Mr. McKinley advised me that in his opinion
15 there was a definite conflict. I was directed to the Washington
16 State Bar Assn. (WSBA). My conversation with the individuals
17 there led me to believe that the only recourse the WSBA had was
18 to disbar Mr. Ivey. That outcome was too drastic. – so I did not
19 pursue it at the time.
- 20 7) Upon Mr. Siegel's appearance on my and Omni's behalf in some
21 of my cases, we put Mr. Ivey on notice of the conflict of interest,
22 and requested that he disqualify himself voluntarily from pending
23 cases, a request he declined.
- 24 8) I have made good faith efforts to challenge Mr. Ivey's

1 representation against me in these spam lawsuits, but he has
2 refused to disqualify himself. Mr. Ivey never communicated to me
3 about a potential conflict of interest, nor did he ever request that I
4 execute a waiver of any conflict.

5 9) Now, particularly with Omni as a plaintiff, Mr. Ivey's continued
6 representation of parties with adverse interests to Omni's and
7 mine has become completely intolerable and unacceptable.
8 Consequently, I ask that the Court act to disqualify him from
9 further representation adverse to my and Omni's interests.

10 I declare under penalty of perjury under the laws of the State of
11 Washington and of the United States that the foregoing is true and
12 correct. Signed this 29th day of September, 2006

13 

14 _____
15 **James S. Gordon, Jr. for Omni Innovations, LLC**
16 **as its owner and managing member.**