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HONORABLE JOHN C. COUGHENOUR

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT 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. C06-1284-JCC  
COUSEL'S REPLY RE: MOTION  
FOR LEAVE TO WITHDRAW AS  
COUNSEL AND TO FILE  
DECLARATIONS UNDER SEAL**

**NOTE FOR HEARING:  
August 31, 2007**

**COUNSEL'S REPLY RE: MOTION FOR LEAVE  
TO WITHDRAW AS COUNSEL AND TO FILE  
DECLARATIONS UNDER SEAL - 1**

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OMNI v. ASCENTIVE

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3 In Mr. Gordon's "Memorandum and Declaration" in opposition to counsel's  
4 motion to withdraw, Mr. Gordon sets forth numerous factual allegations against  
5 Mr. Siegel and Mr. McKinley (hereafter "counsel"). Mr. Gordon apparently  
6 believes these allegations will somehow serve as a basis for the Court to require  
7 counsel to continue to represent Mr. Gordon and/or Omni Innovations, LLC  
8 (hereafter "Gordon"). However, quite the contrary, Gordon's allegations actually  
9 bolster counsel's argument that this Court should grant counsel's motion to  
10 withdraw.

11  
12 The Court need not determine whether Gordon's allegations are true or false  
13 to decide the much more narrow question of whether counsel should be compelled  
14 to continue to represent Gordon in this case. Accordingly, counsel is not going to  
15 provide a detailed response to Gordon's allegations except as follows:

16  
17 Counsel denies that any of Gordon's cases were brought for any reason other  
18 than Gordon's professed desire, and authorization to bring those cases. Gordon's  
19 allegations to the contrary are, at a minimum, suspect on their face, as without  
20 Gordon first identifying and producing the offending spam, as well as the party  
21 responsible for sending it, initiating these cases would have been virtually  
22 impossible. Further, Gordon's allegation in this regard is patently belied by that  
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24  
25 **COUNSEL'S REPLY RE: MOTION FOR LEAVE  
TO WITHDRAW AS COUNSEL AND TO FILE  
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1 part of Gordon's complaining that counsel didn't bring MORE of his cases. Prior  
2 to counsel ever becoming involved with Gordon, Gordon had begun initiating  
3 "spam lawsuits" on his own, pro se, and as recently as this month, Gordon has  
4 initiated further pro se proceedings in the Washington State Superior Courts  
5 against parties named in his federal lawsuits. By his words and actions, Gordon  
6 has demonstrated beyond the shadow of any doubt that Gordon himself was the  
7 driving force behind all of his various lawsuits. Gordon's attempt to blame  
8 counsel for Gordon's "litigation factory" is entirely without merit.

9  
10 Counsel further denies the allegation, or any implication that Gordon has  
11 "paid" counsel for representing Gordon in his pending cases. It is simply untrue.  
12 Counsel denies that Gordon has not been provided a complete accounting of all  
13 costs and fees related to counsel's representation of Gordon. Counsel denies that  
14 any of Gordon's funds held in counsel's IOLTA trust fund have been used  
15 improperly. Finally, counsel emphatically and unequivocally denies each and  
16 every one of Gordon's remaining allegations.

17  
18 That being said, counsel draws the Court's attention to the inescapable  
19 conclusion that the very fact that Gordon has made these allegations compels the  
20 court to grant counsel's motion to withdraw as counsel.

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22 As set forth in his "Memorandum and Declaration," Gordon has filed a Bar  
23 Grievance and a criminal complaint against counsel. As set forth in counsel's  
24

25 **COUNSEL'S REPLY RE: MOTION FOR LEAVE  
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OMNI v. ASCENTIVE

1 motion to withdraw, Gordon has further threatened to bring a malpractice lawsuit  
2 against counsel. Given Gordon's serious charges and complaints against counsel,  
3 it is simply amazing that Gordon would even want counsel to continue to represent  
4 him. Counsel is at a loss to understand why Gordon would want counsel to  
5 continue to represent him if he truly believed counsel has violated the ethical rules,  
6 committed criminal acts against him, and committed malpractice. Regardless of  
7 the inherent contradictions of Gordon's accusations against counsel and his  
8 professed desire to continue to be represented by counsel, by taking these actions  
9 and making these allegations, Gordon has effectively destroyed the attorney client  
10 relationship to the point where it is impossible for counsel to continue to  
11 simultaneously represent Gordon and comply with the Rules of Professional  
12 Conduct (RPCs).

13  
14 In *WHITING v. LACARA*, 187 F.3d 317; (1999) U.S. App. LEXIS 19952, the  
15 United States Court Of Appeals For The Second Circuit considered a similar  
16 factual circumstance, where, as is the case here, an attorney's advice had been  
17 ignored, the attorney had been threatened with a malpractice suit, and the attorney  
18 then sought to withdraw. The appeals court ruled that forcing the attorney to  
19 continue in this circumstance was an abuse of discretion, commenting:

20  
21 We have determined that "an attorney who continues to represent a client  
22 despite the inherent conflict of interest in his so doing [due to possible Rule  
23 11 sanctions] risks an ethical violation." *Healey v. Chelsea Resources, Ltd.*,  
24 947 F.2d 611, 623 (2d Cir. 1991) (citing *Calloway v. Marvel Entertainment*

25 **COUNSEL'S REPLY RE: MOTION FOR LEAVE  
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OMNI v. ASCENTIVE

1           *Group*, 854 F.2d 1452, 1471 (2d Cir. 1988), rev'd on other grounds, 493  
2           U.S. 120, 107 L. Ed. 2d 438, 110 S. Ct. 456 (1989)). In this case, appellee's  
3           belief that he can dictate to Lacara how to handle his case and sue him if  
4           Lacara declines to follow those dictates leaves Lacara in a position  
5           amounting to a functional conflict of interest. If required to continue to  
6           represent Whiting, Lacara will have to choose between exposure to a  
7           malpractice action or to potential Rule 11 or other sanctions. To be sure,  
8           such a malpractice action would have no merit. However, we have no doubt  
9           it would be actively pursued, and even frivolous malpractice claims can have  
10           substantial collateral consequences. *WHITING v. LACARA*, 187 F.3d 317,  
11           323.

12           Counsel has either stayed, or has pending motions seeking a stay, of all of  
13           Gordon's pending lawsuits. As such, Gordon will have plenty of time to insure  
14           that no prejudice results from counsel's withdrawal. In light of Gordon's very  
15           serious accusations against counsel, this Court should immediately grant Mr.  
16           Siegel and Mr. McKinley's motions to withdraw.

17           DATED this 30<sup>th</sup> day of August, 2007.

18           **i.Justice Law, P.C.**

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21           Douglas E. McKinley, WSBA #20809  
22           Attorneys for Plaintiffs

23  
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25           **COUNSEL'S REPLY RE: MOTION FOR LEAVE  
TO WITHDRAW AS COUNSEL AND TO FILE  
DECLARATIONS UNDER SEAL - 5**

OMNI v. ASCENTIVE

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Robert J. Siegel, WSBA #17312  
Attorneys for Plaintiffs

**Certificate of Service**

I, hereby, certify that on August 30, 2007, I filed the subjoined pleading with this Court via approved CMECF electronic filing, that electronically serves Attorneys for Defendants:

I also certify that that on August 30, 2007, I served the subjoined pleading upon plaintiff James S. Gordon, Jr. electronically by email, and by regular US mail, postage prepaid.

/s/ Robert J. Siegel  
Robert J. Siegel

**COUNSEL’S REPLY RE: MOTION FOR LEAVE  
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