

The Honorable John C. Coughenour

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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

JAMES S. GORDON, Jr., a married individual, d/b/a 'GORDONWORKS.COM',

Plaintiff,

v.

VIRTUMUNDO, INC, a Delaware corporation, d/b/a ADNOWLEDGEMAIL.COM; ADKNOWLEDGE, INC., a Delaware corporation, d/b/a ADKNOWLEDGEMAIL.COM; SCOTT LYNN, an individual; and JOHN DOES, I-X,

Defendants.

NO. CV06-0204

**DECLARATION OF ALLEN BRANDT IN SUPPORT OF MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION**

**NOTE ON MOTION CALENDAR: APRIL 7, 2006**

I, Allen Brandt, do declare and testify as follows:

1. I am over the age of eighteen (18) years, and competent to testify to the matters stated herein.

2. I am, and have been at all times relevant to this lawsuit, a resident of the State of Kansas.

3. I am currently General Counsel for Virtumundo, Inc.. As such, and I am knowledgeable about the business practices, and methods and manner of operation at issue for Virtumundo, Inc. in this lawsuit.

1 4. Virtumundo, Inc. Was never properly served with process in this  
2 action. Virtumundo does not waive Plaintiff's obligation to serve valid  
3 process on it.

4 5. Virtumundo, Inc. is organized under the laws of the State of  
5 Delaware and has its principal place of business in Overland Park, Kansas.

6 6. Virtumundo, Inc. does not currently have any relationship to  
7 Defendant Adknowledge, Inc. Virtumundo, Inc. does not "do business as"  
8 Adknowledgemail.com, as alleged in Plaintiff James Gordon's Complaint.

9 7. Adknowledge, Inc. and Virtumundo, Inc. are two separate  
10 corporate entities and currently have no relationship to each other.

11  
12 **A. VIRTUMUNDO'S BACKGROUND AND BUSINESS OPERATIONS**

13 8. Virtumundo, Inc. is engaged in the business of online marketing,  
14 including marketing through email, providing services to optimize Internet  
15 web sites, and providing key word advice. Virtumundo, Inc. has  
16 approximately 20 employees.

17 9. Virtumundo's marketing services are permission-based services  
18 provided to various third party clients, including Sears, Roebuck and Co. and  
19 Prudential Financial.

20 10. Consumers "opt-in" to Virtumundo's marketing services by  
21 indicating that they are interested in receiving marketing offers regarding  
22 certain subject matter. These consumers voluntarily provide their  
23 information to Virtumundo, or its marketing partners through web sites such  
24 as [www.iwon.com](http://www.iwon.com) and [www.grandprizecentral.com](http://www.grandprizecentral.com).

25 11. Either Virtumundo or its marketing partners provide clear and  
26 conspicuous notice to these consumers prior to registration that the  
27 information the consumers provide will be used by these marketing partners  
28 and those affiliated with them (e.g., Virtumundo) to market to them via e-

1 mail and/or the Internet.

2 12. All emails transmitted by Virtumundo contain accurate  
3 information in the subject line. Virtumundo employs processes to screen each  
4 message that is transmitted. Similarly, Virtumundo has not ever obscured or  
5 misrepresented any transmission information with respect to any emails. At  
6 all times, Virtumundo only transmits emails from domains that it owns.

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8 **B. VIRTUMUNDO INC.'S LACK OF CONTACTS WITH WASHINGTON STATE**

9 13. Virtumundo has no offices or employees in the State of  
10 Washington.

11 14. Virtumundo does not own or rent real property in the State of  
12 Washington.

13 15. All of Virtumundo's employees are located in the State of Kansas.

14 16. Virtumundo has not previously and does not now focus any sales  
15 efforts with respect to its underlying clients to the State of Washington.  
16 Virtumundo has not targeted any bulk email or other advertisements to the  
17 State of Washington.

18 17. Virtumundo does not have an office, statutory agent, telephone  
19 listing or mailing address in Washington.

20 18. Virtumundo does not have any vendors, bank accounts, licenses  
21 or other operations in Washington.

22 19. Virtumundo is not subject to any taxation in Washington.

23 20. Virtumundo does not advertise in any Washington newspapers or  
24 magazines or other Washington media.

25 21. Virtumundo does not have any Washington-based shareholders.

26 22. None of Virtumundo's employees or agents have traveled to  
27 Washington on official business.

28 23. Virtumundo does not generate any substantial percentage of its

1 revenues from activities in the State of Washington. In 2004, only 0.04% of  
2 Virtumundo's revenue was generated from the State of Washington. In 2005,  
3 only 0.16% of Virtumundo's revenue was generated from the State of  
4 Washington.

5 24. The email addresses to which Virtumundo sends emails do not  
6 contain area codes or mailing addresses that would designate the location of  
7 the recipient. Moreover, email can be accessed anywhere in the world via the  
8 Internet and, as a result, email cannot be sent to a particular geographic  
9 location. Concomitantly, Virtumundo does not target any of its email  
10 marketing to the State of Washington.

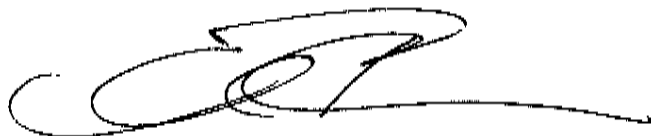
11 **C. VIRTUMUNDO, INC.'S LACK OF CONTACTS WITH PLAINTIFF JAMES**  
12 **GORDON**

13 25. After the formation of Virtumundo, I was provided the name of  
14 Plaintiff James Gordon as an individual involved with litigation adverse to  
15 Adknowledge, Inc. I accordingly caused Mr. Gordon's name to be removed  
16 from Virtumundo, Inc.'s database of consumers so that Mr. Gordon would  
17 receive no further contact from Virtumundo.

18 26. Since that time, Virtumundo has not made any contact with Mr.  
19 Gordon via email, for commercial purposes or otherwise.

20 I declare that the forgoing is true and correct to the best of my  
21 knowledge and belief under the penalty of perjury under the laws of the  
22 United States.

23 EXECUTED this 16<sup>th</sup> day of March, 2006.

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27 Allen Brandt