IN THE CIRCUIT COURT OF TENNESSEE
FOR THE NINETEENTH JUDICIAL DISTRICT AT MONTGOMERY COUNTY

STATE OF TENNESSEE, *ex rel.* ROBERT E. COOPER, JR., Attorney General,	)	
Plaintiff,	)	
v.	)	Case No. 50500795
BRITLEE, INC., d/b/a The MILITARY ZONE, MILITARYZONE.COM and LAPTOYZ COMPUTERS AND ELECTRONICS, STUART L. JORDAN, individually and d/b/a BRITLEE, INC., MILLENIUM FINANCE, INC. and MILLENIUM, and ROME FINANCE COMPANY, INC.,	)	Judge Ross Hicks
Defendants.	)	

PLAINTIFF, STATE OF TENNESSEE'S MOTION TO COMPEL AND FOR SANCTIONS AGAINST DEFENDANT ROME FINANCE COMPANY, INC. AND RONALD M. WILSON FOR FAILING TO PROVIDE COURT ORDERED DEPOSITION TESTIMONY

Plaintiff, State of Tennessee ("State"), by and through its undersigned attorneys, hereby respectfully moves this Court pursuant to Tenn. R. Civ. P. 37.02 for an Order assessing sanctions against defendant Rome Finance Company, Inc. ("Rome") and its owner, president and chief operating officer Ronald M. Wilson ("Wilson"), for their continuing refusal to provide deposition testimony as Ordered by this Court on February 15, 2008, June 17, 2008 and July 2, 2008. As grounds for its motion, and in addition to the attached Exhibits and Memorandum filed concurrently herewith, the State submits as follows:

1. This civil law enforcement proceeding was filed by the State of Tennessee on September 23, 2005, alleging the defendants engaged in various unlawful and predatory sales and lending practices which mainly targeted the young men and women in the military.

2. The discovery at issue pertains to allegations that Rome is in civil contempt of this Court's September 23, 2005 Temporary Restraining Order and later agreed injunctive Orders (hereafter collectively "Injunction Orders") because it engaged in unlawful collection activity and other conduct in direct violation of such Orders.

3. In October 2006, the State received information that Rome was continuing to engage in collection activity in violation of this Court's Injunction Orders and promptly contacted Rome regarding the same. *See* September 21, 2006 email from Assistant Attorney General John Smith to Tom Greenholtz, Esquire, and Bill Hannah, Esquire, Exhibit A.[1] *See also* Transcript of September 4, 2007 Proceedings, pp. 10-11, Exhibit B.

4. Rome represented that such collection activity was minimal and inadvertent and promised the State it would provide the State with documents related to its post-injunction collection activities. *Id.*

5. On July 24, 2007, during the parties' hearings on cross motions for partial summary judgment, this Court ordered Rome to produce certain contempt-related discovery to the State. *See* Exhibit C, pp. 35-36. *See also* Orders of August 10, 2007 and August 23, 2007, Exhibits D and E.

6. Rome failed to abide by these Orders and refused to produce even a single document to the State.

7. On September 4, 2007, the hearing on the State's contempt allegations against

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[1] All exhibits are attached to the State's accompanying Motion to Compel and for Sanctions Against Defendant Rome Finance Company, Inc. and Ronald M. Wilson, filed concurrently herewith.

Rome began absent the benefit of Rome's court-ordered discovery. Exhibit B.

8. During the September 4, 2007 contempt proceedings, the Court again Ordered Rome to produce outstanding discovery to the State. *Id.* at 48, 93 - 96 and Rome promised the Court it would produce such documents within thirty days. *Id.* *See also* September 28, 2007 Order, attached as Exhibit F, hereto.

9. On September 21, 2007, the State noticed Rome's deposition pursuant to Tenn. R. Civ. P. 30.02(6), which is the first of the two depositions at issue now. *See* Notice of Deposition, Exhibit H.

The First Round of Sanctions Against Rome in this Case

10. On October 3, 2007, one day before Rome's court-ordered discovery deadline, Rome filed a Notice of Removal with the United States District Court for the Middle District of Tennessee. *See* Notice of Removal, Exhibit H.[2]

11. On October 30, 2007, six weeks after Rome was first served with the State's Notice of Deposition and only four days before Rome's deposition was set to begin, Rome advised the State that it would have to "wait" until after an October 31, 2007 federal court scheduling conference took place before Rome would agree to a deposition date. *See* Oct. 29, 2007 letter from Hugh Moore, Esq. to Assistant Attorney General John Smith, Exhibit J.

12. On October 31, 2007, the federal court ruled that Rome had improperly

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[2] Defendant Millenium Finance Inc. ("Millenium") filed the first removal of this case to federal court on October 24, 2005. *See* Notice of Removal, Exhibit I. Rome fully supported Millenium's first removal and even filed a brief supporting Millenium's removal of this case to federal court.

removed this case to federal court and issued the first of what were to be multiple rounds of sanctions assessed against Rome in this case, all related to its obstruction of the pending contempt proceedings or the related discovery. *See State of Tennessee v. Britlee, et al.*, Civil Action 3:07cv0988, p. 5 (M.D. Tenn. Oct. 30, 2007) (Wiseman, J.), Exhibit K.

The Second Round of Sanctions Against Rome in this Case

13. The State continued its efforts to schedule Rome's 30.02(6) deposition without success. Exhibit L.

14. On November 19, 2007, the State filed a Motion to Compel and for Sanctions, alleging Rome had failed to provide court-ordered discovery and was evading its Rule 30.02(6) deposition.

15. On December 20, 2007, this Court ruled that Rome was in violation of its earlier discovery orders and assessed additional sanctions against Rome, including the partial sanction of requiring Rome to appear for its Rule 30.02(6) deposition in Tennessee. *See* Transcript of December 20, 2007 Hearing and February 15, 2008 Order, Exhibits M and N.

16. The State continued in its efforts to schedule Rome's Rule 30.02(6) deposition, without success. *See* Exhibits L.

17. Rome deposition took place April 14 - 15, 2008, but included numerous, improper and unlawful objections, improper instructions not to answer questions and prolonged dialogue and oratory on the record by defense counsel as follows:

- Out of 427 pages of transcript, Rome's counsel objects, speaks or otherwise interrupts testimony on 333 pages or 79% of the transcript. *See* Exhibit O.
- Although the deposition was defended by Rome attorney Hugh J. Moore,

Rome's in-house counsel, Thomas Todd, Esquire, also repeatedly lodged objections and interrupted the record with questions, comments and speeches and shouting. Mr. Todd is not believed to be a licensed Tennessee attorney and refused to say whether or not he was licensed to practice law in Tennessee. *Id.*

- Rome's attorneys gave repeated, improper instructions to the witness not to answer questions.

- Rome's attorneys engaged in repeated, disrespectful conduct towards the State's attorney, including shouting, laughing, reading treatise text into the record to "educate" the State and in one case, boasting about defense counsel's 39 years of experience. *Id.*

- Rome's attorneys made numerous improper objections which were suggestive of the answer and were adopted by the witness. *Id.*

- Rome's attorneys made numerous interruptions during the deposition to demand that the State justify its questions as within the scope of the Rule 30.02(6) Notice. *Id.*

See Exhibit O.

The Third Round of Sanctions Against Rome in this Case

18. On April 24, 2008, the State filed a Notice of Deposition to take the deposition of Ronald M. Wilson on May 27, 2008. *See* Exhibit P.

19. The State also filed deposition notices seeking to depose other Rome employees, including Ramona Archer and Jay Kennedy. *See* Exhibits Q and R.

20. On April 31, 2008, Rome filed an Emergency Motion for Protective Order, seeking to block the State from deposing any of its employees.

21. On May 2, 2008, the Court ruled that because Rome was insisting that the State follow the formal out-of-state commissioning process for all employee depositions, while it continued to withhold discovery from the State identifying its employees' addresses,

thereby making it impossible for the State to follow the commissioning process. Rome would be sanctioned. *See* Transcript, May 2, 2008 Telephonic Hearing and June 17, 2008 Order, Exhibits S and T.

22. On May 2, 2008, as memorialized in this Court's June 17, 2008 Order , the Court ruled that the State could proceed with the deposition of Ronald M. Wilson on May 27, 2008. *Id.*

The Fourth Round of Sanctions Against Rome in this Case

23. On May 12, 2008, the State filed a motion to compel Rome to complete its Rule 30.02(6) deposition.

24. On May 27, 2008 hearing, as memorialized in this Court's July 2, 2008 Order, this Court ruled that Rome was to complete its Rule 30.02(6) deposition and answer all questions addressed in the State's motion. *See* Exhibits U and V.[3]

25. On May 19, 2008, the State once again filed a motion to compel and for sanctions, as a result of Rome's permanent destruction of contempt-related evidence.

26. On May 27, 2008 hearing, as memorialized in the Court's July 2, 2008 Order, Exhibits U and V, Rome was sanctioned for destroying evidence, withholding contempt-related discovery and was again ordered to produce both Rome and its principal, Ronald M. Wilson, for deposition. *Id.*

27. On May 28, 2008, shortly after a lunch break, Ronald M. Wilson aborted his

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[3] Upon Rome's request, Ronald M. Wilson's deposition began on May 28, 2008, and the parties agreed Rome's Rule 30.02(6) deposition would follow immediately thereafter.

deposition in violation of this Court's June 2, 2008 Order and Rome failed to appear for its deposition altogether. Exhibit W.

28. The State continued to request deposition dates from Rome in order to complete these depositions, but Rome failed to provide any dates.

WHEREFORE, for all of the above reasons and given the protracted history of bad faith conduct and discovery evasion by Rome, including Rome's blanket defiance of multiple Orders of this Court, serious sanctions should be assessed against defendant Rome and Ronald M. Wilson as set forth in Tenn. R. Civ. P. 37.02(A) as follows:

(1) Under Tenn. R. Civ. P. 37.02(D), a default judgment should be entered against Rome under the State's Second Amended Complaint and under the State's pending civil contempt motion;

(2) Under Tenn. R. Civ. P. 37.02(A), an Order should be issued ruling that all documents produced by Rome to date in this litigation be deemed admissible into evidence for any purpose at any hearing to be held in this case, including hearings on the issue of penalty assessments for Rome's contempt of court and for its violations of the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101, *et seq*.

The State further requests that this Court rule that all court records obtained by the State from the Gwinnett County Court in Lawrenceville, Georgia, be similarly deemed admissible into evidence;

(3) Under Tenn. R. Civ. P. Rule 37.02(D), a finding should be made that defendant Rome and its president and CEO, Ronald M. Wilson is each in contempt of court

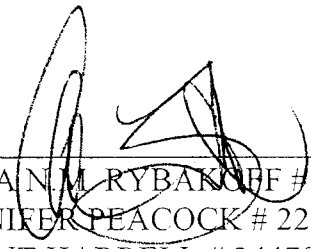
for the failure to obey this Court's aforesaid discovery orders;

(4) The State further requests that this Court assess all costs and attorney fees incurred by the State in attempting to depose Rome and Wilson to date, and in pursuing the instant motion for sanctions against Rome and Wilson. The State further requests that the Court Order Rome and Wilson to immediately appear for deposition at the State's Nashville, Tennessee offices to conclude the monetary portions of this proceeding, including, but not limited to, restitution, penalties and disgorgement of profits; and

(5) The State further requests that the Court enter such other relief as may be just and appropriate.

Respectfully Submitted,

OFFICE OF THE ATTORNEY GENERAL



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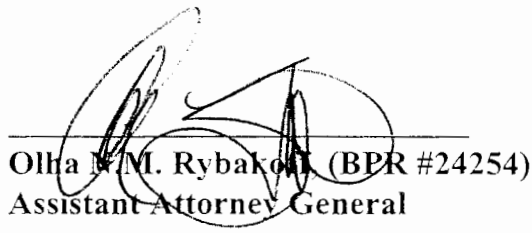
CERTIFICATION OF COUNSEL

I, OLHA N.M. RYBAKOFF, ESQUIRE, hereby certify that the above steps have been taken as outlined in Plaintiff's Motion to Compel and for Sanctions, Exhibits and Memorandum thereto in an effort to resolve such discovery issues prior to filing the instant motion.



Olha N.M. Rybakoff (BPR #24254)
Assistant Attorney General

CERTIFICATE OF SERVICE

I, OLHA N.M. RYBAKOFF, ASSISTANT ATTORNEY GENERAL, hereby certify that a true and correct copy of PLAINTIFF, STATE OF TENNESSEE'S MOTION TO COMPEL AND FOR SANCTIONS AGAINST DEFENDANT ROME FINANCE COMPANY, INC. AND RONALD M. WILSON FOR FAILING TO PROVIDE ORDERED DEPOSITION TESTIMONY, MEMORANDUM and EXHIBITS thereto, were served upon the below counsel on JULY 28, 2008 by electronic mail and United States First Class Mail, postage prepaid, addressed as follows:

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