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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

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SECURITIES AND EXCHANGE COMMISSION,

Civil No. 2:11CV00357

PLAINTIFF,

Judge Tena Campbell

v.

Art Intellect, Inc., a Utah corporation, d/b/a Mason Hill and  
Virtual MG, Patrick Merrill Brody, Laura A. Roser,  
Gregory D. Wood,

DEFENDANTS.

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**MOTION TO COMPEL DEPOSITION TESTIMONY OF LAURA A. ROSER AND  
PATRICK MERRILL BRODY**

Plaintiff, Securities and Exchange Commission (the "Commission"), pursuant to Rule 37(a) of the Federal Rules of Civil Procedure, hereby moves the Court for an order compelling deposition testimony of Defendants Laura A. Roser ("Roser") and Patrick Merrill Brody ("Brody") (collectively, the "Defendants").

The Commission filed a Complaint (Docket # 1) against Roser and Brody on April 18, 2011, alleging violations of the federal securities laws. Roser and Brody received service of the Complaint, other pleadings and orders on April 25, 2011. (Docket #s 15 and 16). Subsequently, the Commission noticed the deposition of Roser for May 4, 2011 and noticed the deposition of Brody for May 5, 2011. Neither Roser nor Brody appeared to provide deposition testimony despite the Commission's efforts to confer with them. Based on the foregoing, the Commission respectfully requests this Court to enter an order compelling Roser and Brody to provide deposition testimony.

Dated this 10<sup>th</sup> day of May 2011.

Respectfully submitted,

/s/ Thomas M. Melton

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Thomas M. Melton  
Daniel J. Wadley  
Attorneys for Plaintiff  
Securities and Exchange Commission

CERTIFICATE OF SERVICE

I hereby certify that on this 10<sup>th</sup> day of May 2011, I caused to be sent by the methods stated below a true and correct copy of the foregoing **MOTION TO COMPEL DEPOSITION TESTIMONY OF LAURA A. ROSER AND PATRICK MERRILL BRODY AND MEMORNANDUM IN SUPPORT THEREOF** to,

Via U.S. Mail, First Class:

Patrick Merrill Brody  
6492 Canyon Crest Drive  
Salt Lake City, Utah 84121;

Laura Roser  
6492 Canyon Crest Drive  
Salt Lake City, Utah 84121;

Gregory D. Wood  
4675 South 2050 East  
Holliday, Utah 84117;

Via Email:

Patrick Merrill Brody  
[patbrody@comcast.net](mailto:patbrody@comcast.net)  
[patrickmerrill@jensenblair.co.uk](mailto:patrickmerrill@jensenblair.co.uk)  
[patb@live.com](mailto:patb@live.com);

Laura A. Roser  
[lauraroserbrody@gmail.com](mailto:lauraroserbrody@gmail.com)  
[roserart@yahoo.com](mailto:roserart@yahoo.com); and,

Jennifer A. James  
Clyde Snow & Sessions  
[jaj@clydesnow.com](mailto:jaj@clydesnow.com)  
*Attorney for Receiver.*

/s/ Thomas M. Melton

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**MEMORANDUM IN SUPPORT OF MOTION TO COMPEL DEPOSITION  
TESTIMONY OF LAURA A. ROSER AND PATRICK MERRILL BRODY**

Plaintiff, Securities and Exchange Commission (the “Commission”), pursuant to Rule 37(a) of the Federal Rules of Civil Procedure, hereby submits this Memorandum in Support of its Motion to Compel Deposition Testimony of Laura A. Roser (“Roser”) and Patrick Merrill Brody (“Brody”) (collectively, the “Defendants”).

**STATEMENT OF FACTS**

1. The Commission filed a Complaint (Docket # 1) against Roser and Brody on April 18, 2011, alleging violations of the federal securities laws.
2. Roser and Brody received service of the Complaint, other pleadings and orders on April 25, 2011, at their Salt Lake City, Utah residence. (Docket #s 15 and 16).
3. In addition to receiving personal service of the Complaint and accompanying pleadings and orders, the Court granted the Commission permission to serve Roser and Brody by publication in the Salt Lake Tribune and Deseret News and by electronic mail in an Order dated April 25, 2011. (Docket # 13).
4. On April 28, 2011, the Commission noticed the deposition of Roser for May 4, 2011 at 10:00 a.m. at the Commission's Salt Lake City, Utah offices. A copy of the Notice of Deposition of Defendant Laura A. Roser (the "Roser Notice") is attached hereto as Exhibit "A". The Commission provided Roser with the Roser Notice (1) via United States mail to Roser's known residential address; (2) via United Parcel Service overnight, next day delivery; and, (3) by electronic mail to Brody's three known email addresses. Id.; see also UPS Delivery Confirmation dated April 29, 2011, attached hereto as Exhibit "B".
5. On April 28, 2011, the Commission noticed the deposition of Brody for May 4, 2011 at 10:00 a.m. at the Commission's Salt Lake City, Utah offices. A copy of the Notice of Deposition of Defendant Patrick Merrill Brody (the "Brody Notice") is attached hereto as Exhibit "C". The Commission provided Roser with the Brody Notice (1) via United States mail to Brody's known residential address; (2) via United Parcel Service overnight, next day delivery; and, (3) by electronic mail to Brody's three known email addresses. Id.; see also UPS Delivery Confirmation dated April 29, 2011, attached hereto as Exhibit "D".

6. Roser did not appear at her scheduled deposition on May 4, 2011.

7. Brody did not appear at his scheduled deposition on May 5, 2011.

8. Following Roser's and Brody's failure to appear at their respective deposition, Thomas Melton ("Melton"), the Commission's counsel, sent a letter to the Defendants' known residential address requesting them to contact him in order "to set a mutually convenient date and time for [their] depositions." See Letter from Melton to Brody and Roser dated May 5, 2011, attached hereto as Exhibit "E".

9. Neither Roser nor Brody contacted the Commission's counsel to discuss or to reschedule the properly noticed depositions.

### **ARGUMENT**

Federal Rule of Civil Procedure 37(a) generally provides that any party may move for an order compelling discovery. Fed. R. Civ. P. 37(a). Rule 37(d) further provides that if a party "fails, after being served with proper notice, to appear for that person's deposition" the court may order sanctions, on motion. Fed. R. Civ. P. 37(d)(1)(A)(i); see also, Lowe v. Surpas Res. Corp., No. 01-2149, 2002 U.S. Dist. LEXIS 18525, at \*9 (D. Kan. Aug. 29, 2002). Here, both Roser and Brody received proper service of their depositions. See generally Exhibits "A," "B," "C" and "D"; see also Fed. R. Civ. P. 5(b)(2)(C).

Despite the Commission's proper service of the Roser and Brody Notices, neither defendant made any attempt to contact the Commission's counsel to discuss or to reschedule the pending depositions. Rather, Roser and Brody willfully chose to ignore the notices and not appear to provide deposition testimony. Consequently, this Court should issue an order (1) compelling Roser to appear for a deposition on May 16, 2011 beginning at 10:00 a.m. at the offices of the Commission, 15 West South Temple Street, Suite 1800, Salt Lake City, Utah and

(2) compelling Brody to appear for a deposition on May 18, 2011 beginning at 10:00 a.m. at the offices of the Commission, 15 West South Temple Street, Suite 1800, Salt Lake City, Utah.

Pursuant to Rule 37(a)(5)(A) the Commission also requests the Court to order Roser and Brody to pay the Commission's costs associated with their failure to appear for their respective depositions.

**CERTIFICATION**

I, Thomas M. Melton, pursuant to Federal Rule of Civil Procedure 37(a)(1), as counsel of record for Plaintiff, United States Securities and Exchange Commission, hereby certify that I have attempted to confer with Defendants Roser and Brody regarding their appearances in order to provide deposition testimony. See Exhibit "E". Despite my good faith efforts, neither Roser nor Brody has contacted me regarding their properly noticed depositions.

Dated this 10<sup>th</sup> day of May 2011.

Respectfully submitted,

/s/ Thomas M. Melton

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Thomas M. Melton  
Daniel J. Wadley  
Attorneys for Plaintiff  
Securities and Exchange Commission