

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

ADVANCEME, INC.	§	
	§	Civil Case No. 6:05-CV-424
VS.	§	(LED-JDL)
	§	
RAPDIPAY, LLC, BUSINESS	§	
CAPITAL CORPORATION,	§	
MERCHANT MONEY TREE, INC.,	§	
REACH FINANCIAL, LLC and FAST	§	
TRANSACT, INC., dba SIMPLE	§	
CASH	§	

MOTION TO QUASH TRIAL SUBPOENA OF TOM BURNSIDE

TO THE HONORABLE LEONARD E. DAVIS:

Plaintiff, AdvanceMe, Inc. (“AdvanceMe”) comes and files this motion to quash the trial subpoena issued on Tom Burnside on July 12, 2007. This case is currently set for trial on Monday, July 16, 2007, before this Honorable Court.

On Thursday afternoon, July 12, 2007, defendants issued a trial subpoena for Mr. Tom Burnside, the President and Chief Operating Officer of AdvanceMe, demanding him to appear at trial on July 16, 2007, through July 19, 2007. This subpoena was served on the undersigned counsel.

The subpoena was issued after the defendants had asked AdvanceMe whether it needed to issue a subpoena to secure Mr. Burnside’s appearance. According to the defendants, Mr. Burnside was listed on their will-call list in the joint pretrial order. In response, AdvanceMe reminded defendants that while Mr. Burnside was originally listed on their will-call list, that thereafter the parties had agreed, in an effort to further prepare

for trial, that they would exchange lists of the parties that each actually intended to call live. This was done on June 22, 2007, and Mr. Burnside did not appear on either list or any list thereafter.

After the parties exchanged their respective lists, AdvanceMe no longer believed that Mr. Burnside's presence would be required at trial. As a result, counsel for AdvanceMe made no further effort to secure his presence and no effort to prepare him to testify in the trial of this cause and told him he would not be needed. Mr. Burnside lives and works in Georgia, and has made no arrangements to attend this trial. Additionally, he is currently on vacation in Florida. Counsel for AdvanceMe have been diligently working preparing for trial and have made arrangements for its other witnesses to come in shortly before trial to continue in this preparation. To require Mr. Burnside to come to Texas and prepare for trial that begins on Monday creates an undue burden on AdvanceMe and Mr. Burnside.

AdvanceMe had the right to rely on the representations of defendants that they would only call those people on the list provided to AdvanceMe pursuant to the agreement of the parties. Since Mr. Burnside did not appear on this list and since Mr. Burnside was not included on AdvanceMe's list, AdvanceMe should not now be expected to arrange to bring Mr. Burnside to Tyler and prepare him to testify on the matters at issue in this trial before the trial begins on July 16, 2007.

For these reasons, AdvanceMe respectfully prays that this Court quash the trial subpoena issued commanding Mr. Burnside to appear and for any and all additional relief to which it may be entitled either in law or equity.

Respectfully submitted:

By: /s/ Deborah Race
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3). Any other counsel of record will be served by facsimile transmission and/or first class mail this 13th day of July, 2007.

/s/ Deborah Race
Deborah Race

CERTIFICATE OF CONFERENCE

The undersigned spoke to Doug McSwane this afternoon and he advised that Defendants would oppose this motion.

/s/ Deborah Race
Deborah Race