

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

<b>ADVANCEME, INC.</b>	§	
<b>Plaintiff,</b>	§	
	§	<b>CIVIL ACTION NO. 6:05cv424</b>
<b>vs.</b>	§	
	§	
<b>RAPIDPAY, LLC, BUSINESS</b>	§	
<b>CAPITALCORPORATION, FIRST</b>	§	
<b>FUNDS LLC, MERCHANT MONEY</b>	§	
<b>TREE, INC., REACH FINANCIAL,</b>	§	
<b>LLC and FAST TRANSACT, INC. dba</b>	§	
<b>SIMPLE CASH</b>	§	
<b>Defendants.</b>	§	

**REPORT AND RECOMMENDATION OF  
UNITED STATES MAGISTRATE JUDGE**

On October 30, 2006, the Court heard argument on AdvanceMe, Inc.'s Motion for Default Judgment Against Defendant Rapidpay, LLC (Doc. No. 33). This motion was previously set for hearing on June 7, 2006, and continued to June 15, 2006. AdvanceMe then notified the Court that Rapidpay had, in fact, filed for bankruptcy protection in the Southern District of New York, in case number 06-10453BRL. Upon notice of the bankruptcy proceeding and resulting stay, this Court canceled the hearing it had previously set on the motion for default. On July 31, 2006, AdvanceMe notified the Court that Rapidpay had been dismissed from bankruptcy. AdvanceMe attached a copy of an Order Dismissing Chapter 11 Bankruptcy Pursuant to § 1112(B)(1) of the Bankruptcy Code, entered July 25, 2006 by the Honorable Burton R. Lifland, United States Bankruptcy Judge. Because of the dismissal of the bankruptcy, and the resulting lifting of the automatic stay, AdvanceMe reurged its Motion for Default Judgment against Rapidpay. Notice of the hearing was sent to Rapidpay's president, Stephanie Nimberg, and general counsel, Lawrence Morrison, at 17 Battery Place, Suite 1330, New York, NY 10004.

Mr. Otis Carroll, counsel for AdvanceMe, solely appeared at the hearing. Mr. Carroll recounted the procedural history of this case and pointed out that AdvanceMe has not secured counsel since February 17, 2006, when its sole attorney in this matter, Guy Harrison, sought to withdraw (Doc. 18), and the Court granted Mr. Harrison's motion (Doc. 19). Mr. Carroll advised the Court that Rapidpay has not filed anything with the Court since February 17, 2006, and has not complied with the Court's discovery order to date.

Accordingly, the Magistrate Judge issues the following Report and Recommendation and RECOMMENDS, under Federal Rules of Civil Procedure 37 and 55, that Defendant Rapidpay, LLC, its officers, agents, servants, employees, and all persons and entities acting in concert with Rapidpay, or in participation with Rapidpay, be enjoined from making, using, selling, or offering for sale in the United States, or importing into the United States, any products and/or services that infringe, induce the infringement of, or contributorily infringe U.S. Patent No. 6,941,281 entitled "Automated Payment."

A party's failure to file objections to the findings, conclusions, and recommendations contained in this Report within ten days after service with a copy thereof shall bar that party from *de novo* review by the district judge of those findings, conclusions and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

**So ORDERED and SIGNED this 2nd day of November, 2006.**

  
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JOHN D. LOVE  
UNITED STATES MAGISTRATE JUDGE