

# EXHIBIT E

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE EASTERN DISTRICT OF TEXAS  
3 TYLER DIVISION

4 \*\*\*\*\*

5 ~~ADVANCEME, INC.~~ Case 6:05-cv-00424-LED Document 234 Filed 04/13/2007 Page 2 of 12

6 Plaintiff,

7 v.

CAUSE NO.

8 RAPIDPAY, LLC, BUSINESS CAPITAL

6:05-CV-424

9 CORPORATION, FIRST FUNDS LLC,

(LED)

10 MERCHANT MONEY TREE, INC., REACH

11 FINANCIAL, LLC and FAST TRANSACT,

12 INC., d/b/a SIMPLE CASH,

13 Defendants.

14 \*\*\*\*\*

15 ADVANCEME, INC.,

16 Plaintiff,

CAUSE NO.

17 v.

6:06-CV-082

18 AMERIMERCHANT, LLC,

(LED)

19 Defendant.

20 \*\*\*\*\*

21 Wednesday, January 31, 2007  
9:25 a.M.

22 VIDEOTAPE DEPOSITION OF LAURENT F. BOUCHARD

23  
24 BEFORE: Maureen O'Connor Pollard, RPR, CLR

1 was generally involved in the management of the  
2 merchant business as it relates to how merchants  
3 operated and how they interacted with Litle &  
4 Company.

5 Q. Are you familiar with the processing  
6 agreements Litle & Company entered into with  
7 merchants?

8 A. Yes.

9 MR. MATZ: Objection.

10 BY MR. GRAY:

11 Q. Why are you familiar, or how are you  
12 familiar?

13 A. I'm familiar with the processing  
14 agreement, or the member agreement as it was  
15 known, because I had a fair amount of  
16 involvement in the actual development of the  
17 agreement.

18 Q. Were you involved in drafting portions  
19 of that agreement?

20 A. Yes.

21 (Whereupon, Bouchard Exhibit 4 was  
22 marked for identification.)

23 BY MR. GRAY:

24 Q. I'm handing you what's been marked

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1 Litle 4. Is that the member agreement you were  
2 just referring to?

3 A. Yes, it is.

4 Q. Or an example of the member agreement?

5 A. Yes, it is. Case 6:05-cv-00424-LED Document 234 Filed 04/13/2007 Page 4 of 12

6 Q. Now, from 1992 to 1996 while you were  
7 at Litle & Company, were the member agreements  
8 essentially identical between merchants?

9 A. The body of the agreement was  
10 identical between merchants. The only  
11 difference would have been as it relates to  
12 Schedule A of pricing.

13 Q. Okay.

14 A. Negotiated pricing with each merchant,  
15 so the pricing would have been different, but  
16 the body of the agreement would have been the  
17 same.

18 Q. If you look at the last page of  
19 Exhibit 4, which is marked LI\_00029.

20 A. Yes.

21 Q. There are four signature blocks, one  
22 for Museum Publications of America, one for  
23 Litle & Company, one for National Processing  
24 Company, and one for First National Bank of

1 narrative.

2 A. A postage -- in the course of business  
3 for a catalog direct marketing merchant, one of  
4 the challenges of running a catalog business is  
5 that you mail catalogs today you don't get the  
6 results or the benefit of the catalogs or the  
7 sales that the catalogs originate for 30 to  
8 60 days. So there is a requirement to run the  
9 business that you have sufficient cash on hand  
10 to be able to mail the catalogs.

11 There is a -- postage financing was a  
12 means of Litle & Company assisting certain  
13 catalog merchants by funding the postage  
14 required to mail the catalog, with the benefit  
15 to the merchant that they would get the funding,  
16 they would not have to come up with the cash  
17 themselves, and Litle & Company would delay  
18 repayment of the advance for 30 to 60 days so  
19 that the merchant would realize sales  
20 transactions and revenue.

21 (Whereupon, Bouchard Exhibit 5 was  
22 marked for identification.)

23 BY MR. GRAY:

24 Q. I'm handing you Bouchard Exhibit 5,

1 which appear to be several promissory notes for  
2 postage advances.

3 A. Mm-hmm.

4 Q. To be specific, I believe it's six

5 promissory notes.  
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6 Have you seen these promissory notes  
7 before?

8 A. Yes.

9 Q. And at the top of the first page of  
10 this exhibit, LI 4, it says "Schedule E-1,  
11 Promissory Note For Postage Advances."

12 Does that mean that this is a schedule  
13 to the member agreement?

14 A. Correct.

15 Q. In Bouchard 4?

16 A. Correct. This is the schedule to the  
17 member agreement.

18 Q. On this first page again, it's LI 4,  
19 at the bottom the member is "Exposures, Inc."  
20 signed by Allen Abbott on June 22, 1990,  
21 correct?

22 A. Yes.

23 Q. Are you familiar with Exposures, the  
24 merchant Exposures?

1 advance?

2 A. Yes.

3 (Whereupon, Bouchard Exhibit 7 was  
4 marked for identification.)

5 BY MR. GRAY: Case 6:05-cv-00424-LED Document 234 Filed 04/13/2007 Page 7 of 12

6 Q. I'm handing you what's been marked  
7 Bouchard Exhibit 7, which appears to be a letter  
8 from Boston Publishing Company, Robert George,  
9 to Michael Duffy, vice-president of Litle &  
10 Company, dated February 17, 1994.

11 Have you seen this letter before?

12 A. Yes, back in 1994.

13 Q. Who is Michael Duffy?

14 A. Michael Duffy was the  
15 CFO/vice-president of Litle & Company in '94.

16 Q. Are you familiar with Boston  
17 Publishing Company?

18 A. Yes.

19 Q. Who is Boston Publishing Company?

20 A. They are a company that does  
21 publishing, they provide -- I think they have --  
22 I think they operate under more than one name in  
23 the marketplace, and they were a merchant of  
24 Litle & Co's at the time.

1 calculation we did, which would have been based  
2 on fixed amount or a percentage, send this  
3 amount to this third party creditor.

4 And the last set of instructions again  
5 through our accounting would have been whatever  
6 is left send to wherever the merchant directs  
7 us, which would typically have been the  
8 merchant's bank account.

9 Q. Would all of those payments have been  
10 made electronically?

11 A. Yes.

12 Q. And if you look at page LI 31 in  
13 Exhibit 7. At the top, the first paragraph,  
14 about the third line down it says "without  
15 further action by Boston Publishing, you will  
16 make all payments of net proceeds or any other  
17 credits, reserves, deposits," etcetera.

18 Does that "you" refer to the Litle  
19 processing entity?

20 A. Yes.

21 Q. So the "you" would have been  
22 instructions from Litle & Company to First  
23 National Bank of Louisville to forward those  
24 payments, correct?



1           A.     I want to say yes, but I want to make  
2     sure that we set the record straight, because  
3     without causing too much confusion, in 1994 when  
4     this occurred, First National Bank of Louisville  
5     and NPC were no longer involved in the Litle &  
6     Company relationship. At that point in time,  
7     prior to this point in time, Litle & Company  
8     changed its sponsoring institution to First USA,  
9     Dallas, Texas. Same exact, you replace NPC and  
10    FNBL with First USA, the relationship is the  
11    same, everything is the same, it's just that  
12    because of business reasons, we at Litle &  
13    Company opted to change our member sponsor.

14                And that's why you see in this letter  
15    to Duffy that the co-signer, or the required  
16    signature on this letter is First USA Merchant  
17    Services. And First USA merchant services  
18    equals NPC, it was the credit card processing  
19    division of First USA Bank.

20                So I mean the answer is yes, but it's  
21    not First National Bank of Louisville anymore,  
22    it's First USA Bank.

23           Q.     Right.

24                But the processing relationship --

1 A. Everything is the same.

2 Q. -- among those entities would have  
3 been the same?

4 A. It's identical, identical.

5 ~~Case 9:05-cv-00424-LED Document 234 Filed 04/19/07 Page 10 of 12~~  
6 ~~Are you aware of other agreements like~~

7 that described in Exhibit 7, these third party  
8 creditor arrangements, for lack of a better  
9 term, that occurred?

10 A. I was aware, I am aware that from time  
11 to time First USA -- I don't want to say  
12 Paymentech, I'll say Litle & Company, which  
13 became Paymentech after Paymentech acquired us,  
14 was contacted by merchants from time to time  
15 that the merchant was going to enter into a  
16 financing relationship with a third party. That  
17 third party may have been any type of financial  
18 institution, could have been Bank of America,  
19 could have been, you know, a third party  
20 creditor other than a bank. And that part of  
21 the arrangement that the merchant was  
22 orchestrating with that third party creditor was  
23 that the merchant would direct us, and it's  
24 important to understand that under MasterCard  
and Visa rules we are obligated to create

1 ATTACH TO THE DEPOSITION OF LAURENT F. BOUCHARD

2 CASE: AdvanceMe, Inc., v Rapidpay LLC, Et Al

3 DATE TAKEN: January 31, 2007

4 ERRATA SHEET

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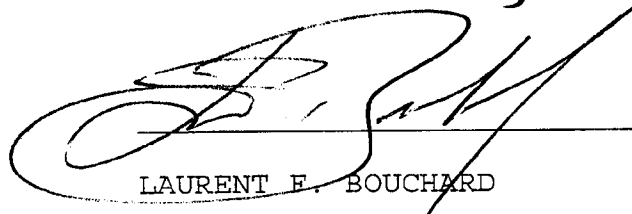
5 Please refer to page 197 for Errata Sheet

6 instructions and distribution instructions.

7 PAGE	LINE	CHANGE	REASON
8			
9			
10			
11			
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13			

14 I have read the foregoing transcript  
15 of my deposition and except for any corrections  
16 or changes noted above, I hereby subscribe to  
17 the transcript as an accurate record of the  
18 statements made by me.

19  
20 Executed this 23 day of February, 2007

21  
22   
23 LAURENT F. BOUCHARD

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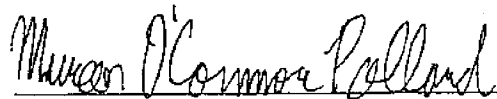
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COMMONWEALTH OF MASSACHUSETTS )  
SUFFOLK, SS. )

I, MAUREEN O'CONNOR POLLARD, RPR, CLR,  
and Notary Public in and for the Commonwealth of  
Massachusetts, certify that there came before me  
on the 31st day of January, 2007 the person  
hereinbefore named, who was duly sworn to  
testify to the truth of their knowledge  
concerning the matters in this cause, and their  
examination reduced to typewriting under my  
direction and is a true record of the testimony.

I further certify that I am neither  
attorney for or related or employed by any of  
the parties to the action, and that I am not a  
relative or employee of any attorney or counsel  
employed by the parties hereto or financially  
interested in the action.

In witness whereof, I have hereunto  
set my hand and seal this 5th day of February,  
2007.



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