

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

TYLER DIVISION

DATE: 7/9/07

JUDGE

JOHN LOVE

REPORTER: Jana Bald, Therese Casterline**LAW CLERK:** Deleith Gossett

ADVANCEME INC. Plaintiff vs. RAPIDPAY, LLC, ET AL Defendant	CIVIL ACTION NO: 6:05cv424 PRETRIAL CONFERENCE
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ATTORNEY FOR PLAINTIFF	ATTORNEY FOR DEFENDANT
Deborah Race Otis Carroll Robert Matz Shanee' Williams Vid Bhakar Ron Lemieux	Matt Rowan Willam Schuurman Douglas McSwane Joey Gray Graham Sutliff

On this day, came the parties by their attorneys and the following proceedings were had:

OPEN: 9:10 am**ADJOURN:** 1:17 pm

TIME:	MINUTES:
9:10 am	Case called. Mr. Carroll, Ms. Race, Mr. Matz, Ms. Williams, Mr. Bhakar and Mr. Lemieux announced ready on behalf of the Plaintiff. Mr. Rowan, Mr. Schuurman, Mr. McSwane, Mr. Gray and Mr. Sutliff announced ready on behalf of the Defendants'.
9:12 am	The Court greeted the parties and asked if the parties have consented before him. Mr. Lemieux stated that the plaintiff has consented however, the Defendants have not.
9:13 am	Mr. Sutliff stated that the Plaintiff has withdrawn pages 3-10 of Objections to Defendants' Affirmative Deposition Designation, in which now, pages 3-10 are moot.
9:14 am	The Court asked Plaintiff to began argument on Objections to Defendants' Affirmative Deposition Designations beginning with page one, with John Konop.
9:14 am	Ms. Williams began argument of John Konop on 154:1-155:17. She stated that Mr. Konop is a former employee of AdvanceMe.

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BY: *Mechele Morris*, Courtroom Deputy

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TIME:	MINUTES:
9:19 am	Mr. Sutliff responded and made argument on behalf of the Defendants'.
9:20 am	The Court overruled John Konop testimony of 154:1-155:17.
9:20 am	Mr. Williams began argument on 158:23-161:12 of Mr. Konop.
9:21 am	Mr. Sutliff responded and began argument on behalf of the Defendants'. Ms. Williams responded. Mr. Sutliff further responded. Ms. Williams further responded.
9:24 am	The Court overruled objection on 158:23-161:12.
9:24 am	Ms. Williams began argument on 163:24-166:17.
9:25 am	Mr. Sutliff responded and made argument on behalf of the Defendants'. Mr. Schuurman added to the argument regarding Nick Logan. Ms. Williams responded.
9:28 am	The Court asked if any objections were lodged to the questions in argument. Ms. Williams responded.
9:28 am	The Court overruled objection to 163:24-166:17.
9:29 am	Ms. Williams began argument on 167:13-168:25.
9:30 am	Mr. Sutliff responded and made argument on behalf of the Defendants. Ms. Williams responded. Mr. Sutliff further responded.
9:32 am	The Court overruled objection on 167:13-168:25.
9:32 am	Ms. Williams began argument on 182:9-183:15.
9:33 am	Mr. Sutliff responded and made argument on behalf of the Defendants'. Mr. Schuurman responded. Mr. Gray responded and added to argument. Ms. Williams further responded.
9:35 am	The Court sustained objection on 182:9-183:15.
9:35 am	Ms. Williams began argument on 185:11-189:25.
9:38 am	Mr. Gray responded and made argument on behalf of the Defendants'.
9:38 am	The Court asked Mr. Gray about Tom Burnside. Mr. Gray responded.
9:41 am	The Court asked Mr. Gray about list of witnesses on page one. Mr. Gray responded. Ms. Williams further responded about objections. Mr. Gray further responded. Ms. Williams further responded.
9:50 am	The Court overruled objection to page 185 line 11, 186 line 11; Sustained objections to page 186 line 18, 187 line 9, 187 line 17, 188 line 4, 188 line 9, 188 line 20 and 189 line 13; Overruled page 188 line 14.
9:51 am	Ms. Williams began argument on 328:23-329:13.
9:52 am	Mr. Gray responded and made argument on behalf of the Defendants'.
9:52 am	The Court overruled objections to 328:23-329:13.
9:53 am	Ms. Williams began argument on 330:22-331:8.

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TIME:	MINUTES:
9:54 am	Mr. Gray responded and gave argument on behalf of the Defendants'.
9:54 am	The Court overruled objection to 330:22-331:8.
9:54 am	Mr. Matz began argument on Deposition of Anthony Maley from 2/28/07 in regards to 57:17-59:14.
9:57 am	The Court asked Mr. Matz who Mr. Crob and Mr. Maley was. Mr. Matz responded.
9:59 am	Mr. Gray responded and argued on behalf of the Defendants'. Mr. Matz further responded. Mr. Gray further responded. Mr. Matz further responded.
10:02 am	The Court overruled objection to 57:17-59:14.
10:03 am	Ms. Williams stated to the Court that they have a few more objections. Mr. Sutliff responded. Ms. Williams responded. Ms. Williams stated that the Plaintiff does not have anymore objections to discuss.
10:03 am	Mr. Sutliff began argument on behalf of the Defendants' of objection to William Benedict on 2/8/07 in regards to 83:16-84:6.
10:07 am	Mr. Matz responded and began argument on behalf of the Plaintiff. Mr. Sutliff responded.
10:09 am	The Court asked why this is necessary in the witness is live at trial. Mr. Matz responded. Mr. Sutliff responded.
10:10 am	The Court sustained objection with stipulation. Mr. Matz responded.
10:10 am	Mr. Sutliff began argument on behalf of the Defendant of objection to 88:4-22.
	The Court overruled objection 88:4-22.
10:12 am	Mr. Sutliff began argument on behalf of the Defendants' on objection to 97:8-97:14.
10:13 am	Mr. Matz responded. The Court sustained objection to 97:8-97:14.
10:13 am	Mr. Sutliff began argument on behalf of the Defendants' on objection 98:14-98:17.
10:14 am	Mr. Matz responded and gave argument on behalf of the Plaintiff. Mr. Sutliff responded. Mr. Matz further responded.
10:17 am	The Court overruled objection to 98:14-98:17.
10:17 am	Mr. Sutliff began argument on behalf of the Defendants' on objections to 110:5-110:8.
10:18 am	Mr. Matz responded and made argument on behalf of the Plaintiff. Mr. Sutliff further responded. Mr. Gray responded. Mr. Matz further responded.
10:21 am	The Court overruled objection to 110:5-10:8.
10:21 am	Mr. Sutliff began argument on behalf of the Defendants' to objection on 115:9-115:10.
10:22 am	Mr. Matz responded and gave argument on behalf of the Plaintiff.
10:22 am	The Court sustained objection to 115:9-115:10.

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TIME:	MINUTES:
10:22 am	Mr. Sutliff began argument on behalf of the Defendants' on objection to 149:17-150:8.
10:23 am	Mr. Matz responded and made argument on behalf of the Plaintiff. Mr. Sutliff further responded.
10:27 am	Mr. Sutliff began argument on behalf of the Defendants' on 153:24-154:23.
10:27 am	Mr. Matz responded and gave argument on behalf of the Plaintiff.
10:27 am	The Court sustained objections on 153:24-154:23, 156:19-157:22, 162:5-162:7, 162:16-162:18, 162:21-162:25, 163:4-164:7. The Court overruled objections to 179:12-17.
10:28 am	Mr. Sutliff began argument on behalf of the Defendants' on 182:15-25.
10:28 am	Mr. Matz responded and gave argument on behalf of the Plaintiff.
	The Court overruled objection on 182:15-25.
10:29 am	Mr. Sutliff began argument on behalf of the Defendants' on objection 184:15-185:17.
10:30 am	Mr. Matz responded and gave argument on behalf of the Plaintiff.
10:31 am	The Court overruled objections to 184:15-185:7.
10:31 am	Mr. Sutliff began argument on behalf of the Defendants' on objections to 199:18-201:23.
10:32 am	Mr. Matz responded and gave argument on behalf of the Plaintiff. Mr. McSwane responded. Mr. Matz further responded.
10:36 am	The Court sustained objection to 199:18-201:23.
10:36 am	Mr. Sutliff began argument on behalf of the Defendants' on objection to 202:3-202:10.
10:37 am	Mr. Matz responded and gave argument on behalf of the Plaintiff.
10:37 am	The Court sustained objection to 202:3-202:10.
10:38 am	Mr. Matz withdrew objections to 202:23-203:8 and 203:12-203:13.
10:39 am	Mr. Sutliff began argument on behalf of the Defendants' on objection of Anthony Wilden on 2/20/07 to 57:25-58:14.
10:40 am	Mr. Matz responded and gave argument on behalf of the Plaintiff. Mr. Sutliff further responded.
10:40 am	The Court sustained objection to 57:25-58:14.
10:40 am	The Court will now hear on Plaintiffs objections to Defendants exhibits.
10:40 am	Mr. Sutliff withdrew objections to 400-425.
10:43 am	Mr. Sutliff discussed page 5 of objections and stated exhibits are identical.
10:44 am	Ms. Williams responded.
10:46 am	Recess.

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TIME:	MINUTES:
10:48 am	Clerk informed parties that Judge Davis asked to see them in his chambers. Parties left for chambers of Judge Davis.
11:14 am	Court resumed. The Court will hear Plaintiff's objections to exhibit 7.
11:14 am	Ms. Williams began argument on behalf of the Plaintiff of exhibits 7, 8, 9, 131-135.
11:15 am	Mr. Sutliff responded and began argument on behalf of the Defendants'.
11:19 am	The Court asked to take issues one at a time and start with objections to exhibit #7. The Court asked for arguments on exhibit #7. Ms. Williams began argument on exhibit #7 on behalf of the Plaintiff.
11:22 am	Mr. Gray responded and gave argument on behalf of the Defendants'.
11:25 am	The Court deferred ruling on exhibit 7 until trial.
11:25 am	Ms. Williams began argument on behalf of the Plaintiff on Defendants' exhibit #8.
11:27 am	Mr. Gray responded and gave argument on behalf of the Defendants'.
11:29 am	The Court sustained objections to #8 and #9.
11:29 am	Ms. Williams began argument on behalf of the Plaintiff on objections to exhibit #131.
11:31 am	Mr. Gray began argument on behalf of the Defendants'. Ms. Williams further responded. Mr. Gray further responded. Ms. Williams further responded.
11:37 am	The Court asked to hear about exhibit #132. Ms. Williams began argument on behalf of the Plaintiff on exhibit #132. Ms. Williams stated that the same issues refer to 132-135. Mr. Gray responded. Ms. Williams further responded.
11:40 am	The Court will defer ruling on 131-135 until trial. The Court asked the parties what their view is on consent. Mr. McSwane responded and stated Judge Davis asked the parties to get with him after trial. He stated they are in discussion at this time about consent.
11:41 am	The Court stated that the Judge at trial may need further briefing on exhibits 131-135, but will defer ruling until then.
11:41 am	Mr. Sutliff stated to the Court that the Plaintiff has withdrawn objections to #29. Ms. Williams began argument on behalf of the Plaintiff on objection to #32 exhibit.
11:45 am	The Court will defer ruling on exhibit #32 until trial. Mr. Matz began argument on behalf of the Plaintiff on exhibit #325.
11:47 am	Mr. Sutliff responded and gave argument on behalf of the Defendants'. Mr. Gray responded. Mr. Schuurman responded. Mr. Gray further responded. Mr. Matz further responded.
11:55 am	The Court overruled objections to exhibits 325-328.
11:57 am	Ms. Williams began argument on behalf of the Plaintiff on exhibits #126. Mr. Gray responded.
11:58 am	The Court deferred ruling on exhibit #126 until trial.

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TIME:	MINUTES:
11:58 am	Mr. Sutliff began argument on behalf of the Defendants' on exhibits #304-308. Mr. Matz responded. Mr. Sutliff further responded.
12:06 pm	The Court will defer ruling on exhibits #304-308.
12:06 pm	Mr. Sutliff began argument on behalf of the Defendants' on exhibit #519 and #525.
12:07 pm	Mr. Matz responded and gave argument on behalf of the Plaintiff. Mr. Sutliff responded.
12:12 pm	The Court will overrule objection to exhibit #519 and #525. Mr. McSwane responded. Mr. Carroll responded. Mr. Lemieux responded.
12:14 pm	Mr. Sutliff began argument on behalf of the Defendants' on objections to exhibits #526-538 and 543-551.
12:15 pm	Mr. Matz responded and gave argument on behalf of the Plaintiff. Mr. Gray responded. Mr. Sutliff responded. Mr. Matz further responded. Mr. Lemieux responded.
12:22 pm	The Court sustained objections to exhibits #526-538 and 543-551. Mr. Schuurman responded.
12:23 pm	Mr. Sutliff began argument on behalf of the Defendants' on objections to exhibit #452.
12:23 pm	Mr. Matz responded and gave argument on behalf of the Plaintiff. Mr. Sutliff responded. Mr. Matz further responded. Mr. Sutliff further responded. Mr. Gray responded. Mr. Matz further responded.
12:26 pm	The Court overruled objection to exhibit #452.
12:26 pm	Mr. Sutliff began argument on behalf of the Defendants' on objections to exhibit #18. Mr. Matz responded.
12:28 pm	The Court overruled objection to exhibit #18.
12:28 pm	Mr. Sutliff began argument on behalf of the Defendants' objections to exhibit #19 and #20.
12:29 pm	Mr. Matz responded and gave argument on behalf of the Plaintiff. Mr. Sutliff responded. Mr. Gray responded. Mr. Matz further responded. Mr. Gray further responded.
12:40 pm	The Court sustained objections to #19 and #20. Mr. Lemieux responded.
12:40 pm	Mr. Sutliff began argument on behalf of the Defendants' to objections AM_12228-2234 and AM_02304-2307.
12:42 pm	Mr. Matz responded and gave argument on behalf of the Plaintiff. Mr. Gray responded. Mr. Matz further responded. Mr. Lemieux responded. Mr. Gray further responded.
12:46 pm	The Court overruled objections to exhibit AM_12228-2234
12:48 pm	Mr. Matz began argument on behalf of the Plaintiff on and AM_02304-2307.
12:49 pm	Mr. Gray responded and gave argument on behalf of the Defendants'. Mr. Matz further responded. Mr. Gray further responded. Mr. Matz further responded.

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TIME:	MINUTES:
12:52 pm	The Court will defer ruling on AM_02304-2307.
12:52 pm	Mr. Sutliff discussed ruling of exhibits #18 and #19. Mr. Lemieux responded.
12:54 pm	The Court stated that the Court ruled on it and asked the parties to bring up issues at Court. Mr. Matz responded. Mr. Gray responded.
12:55 pm	Mr. Sutliff discussed issues with the meet and confer with witnesses of who will be live or brought by deposition testimony. Mr. Lemieux responded. Mr. Sutliff responded. Mr. Sutliff discussed issues about exchanging exhibit information electronically. Mr. Matz responded.
12:58 pm	The Court stated that exhibits can be exchanged by Wednesday. Mr. Sutliff responded.
12:58 pm	Mr. Gray discussed deposition testimony and made proposal of presentation to the Court. Mr. Lemieux responded.
1:02 pm	The Court directed the parties to present one tape of deposition testimony at trial. Mr. Gray responded. Mr. Lemieux responded.
1:04 pm	The Court asked the parties to get list to other party and get tapes done according to discussion.
1:05 pm	Mr. Lemieux discussed time of trial with the Court. Mr. Schuurman stated that they will have difficulty to put case on in two days.
1:06 pm	The Court directed parties to file time estimates from parties by 7/10/07. The Court will then designate times.
1:06 pm	Mr. Schuurman discussed Amerimerchant case and new discovery and issues.
1:08 pm	The Court will get a ruling on extending deadlines soon.
1:08 pm	Mr. Lemieux discussed Jackson witnesses. Mr. Gray responded that Jeff Jackson is off the list. Mr. Lemieux discussed documents presented by Merchant MoneyTree. Mr. Gray responded. Mr. Sutliff responded. Mr. Lemieux responded.
1:09 pm	Mr. McSwane discussed timing estimates with the Court. Mr. Schuurman responded. Mr. Lemieux further responded. Mr. Schuurman further responded about inequitable conduct and briefing. He discussed post trial briefings. Mr. Lemieux responded. Mr. Schuurman further responded.
1:12 pm	The Court directed parties to present evidence that they want and the relief can be sort through after the outcome. Mr. Matz responded.
1:14 pm	The Court asked Mr. Schuurman what he was wanting to present to the Court. Mr. Schuurman responded.
1:16 pm	The Court stated that they could brief after the outcome of the trial.

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TIME:	MINUTES:
1:16 pm	The Court suggested that the parties should get with Judge Davis. The Court stated that the partes should be prepared to offer agreed exhibits at the beginning of trial.
1:17 pm	There being nothing further, Court is adjourned.

FILED: 7/9/07

DAVID J. MALAND, CLERK

BY: *Mechele Morris*, Courtroom Deputy