

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

**ADVANCEME, INC.,** §  
§  
*Plaintiff,* §  
§  
v. §  
§  
**RAPIDPAY LLC, BUSINESS CAPITAL** §  
**CORPORATION, FIRST FUNDS, LLC,** §  
**MERCHANT MONEY TREE, INC.,** §  
**REACH FINANCIAL, LLC, and FAST** §  
**TRANSACT, INC. d/b/a SIMPLE CASH,** §  
§  
*Defendants.* §

**CASE NO. 6:05-CV-424 LED**

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**JOINT MOTION TO AMEND DOCKET CONTROL ORDER**

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TO THE HONORABLE JUDGE OF SAID COURT:

Comes now, Plaintiff ADVANCEME, INC. (hereinafter “Plaintiff” or “AdvanceMe”) and Defendants FIRST FUNDS, LLC, MERCHANT MONEY TREE, INC. and REACH FINANCIAL, LLC (hereinafter collectively referred to herein as “Defendants”) herein make this Joint Motion to Amend Docket Control Order entered by this Court on February 27, 2006. Attached hereto as Exhibit “A” to this Motion is the proposed Amended Docket Control Order for this Court’s consideration.

**1.** This is a patent infringement case brought initially on November 9, 2005. The case was initially brought against Rapidpay, LLC who entered an appearance on November 30, 2005. Neither First Funds, LLC, Merchant Money Tree, Inc., nor Reach Financial, LLC was a named defendant in the Original Complaint. This Court conducted a scheduling conference with

AdvanceMe, Inc. and Rapidpay on February 1, 2006. After the scheduling conference was conducted, a Docket Control Order and Discovery Order was entered on February 24, 2006. The Docket Control Order provided for a December 7, 2006 trial setting. The Markman hearing was set for September 20, 2006. The parties had initial deadlines, which included for the Defendants April 14, 2006 in which to make preliminary invalidity contentions.

By subsequent amended pleadings, on February 27, 2006, the Plaintiff joined Business Capital Corporation, First Funds, LLC, Merchant Money Tree, Inc., Reach Financial, LLC and Fast Transact, Inc. d/b/a Simple Cash. First Funds, LLC, Merchant Money Tree, Inc., and Reach Financial, LLC filed their answers on April 24, 2006. This was after many of the initial deadlines had passed and after the Defendants would have been required to file their preliminary invalidity contentions. Business Capital Corporation has been dismissed from this case. Rapidpay, LLC has defaulted and a hearing on default judgment is set for June 7, 2006. Fast Transact, Inc. d/b/a Simple Cash has not appeared in the case thus far.

2. The parties now make a Joint Motion given the fact that First Funds, LLC, Merchant Money Tree, Inc. and Reach Financial, LLC did not file an appearance until April 24, 2006 or after many of the dates had already passed under the previous Docket Control Order. Recognizing that neither the Defendants nor the Plaintiffs have had adequate time to be prepared for the current Docket Control Order, the parties have been conferring to reach agreement for new docket control deadlines to present to this Court. The parties have reached an agreement to the dates proposed in Exhibit "A" to this Motion and would jointly request this Court to approve the Amended Docket Control Order. The parties have jointly been in contact with the Court's staff to arrange a date for the trial of this non-jury case before the Court that is convenient to this Court's calendar. Based upon these conversations, the parties propose for the Court's approval a

trial date of March 26, 2007. As this is a non-jury case, the parties have requested three days for trial. The parties have requested a Markman hearing before Judge Love on October 19, 2006. We have contacted Judge Love and have been advised that this date is acceptable to Judge Love. The parties have also jointly made other proposed amendments to the Docket Control Order as indicated in Exhibit "A."

3. The parties would show the Court that these changes are necessary to allow the parties to prepare this case for trial and that said amendments would not prejudice the parties.

WHEREFORE, PREMISES CONSIDERED, the parties jointly **move** this Court to enter the Amended Docket Control Order as provided by agreement, and for such other and further relief as the Court might deem necessary.

Dated: May 30, 2006

Respectfully submitted,

By: /s/ Douglas R. McSwane, Jr.

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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 30th day of May 2006.

/s/ Douglas R. McSwane, Jr.

Douglas R. McSwane, Jr.