

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

ADVANCEME, INC.  
*Plaintiff*

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VS.

CAUSE NO. 6:06-CV-082 LED

AMERIMERCHANT LLC.  
*Defendant*

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**MOTION OF THE PARTIES FOR THE COURT TO ENTER A  
SCHEDULING ORDER AND A DISCOVERY ORDER**

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COMES NOW the parties and make and file this their proposed Scheduling and Discovery Order in advance of the scheduling conference now set for June 20, 2006 at 1:00 p.m. in the courtroom of Judge John Love. Attached to this Motion is a proposed Docket Control Order and Discovery Order for the Court’s consideration.

1. The parties would show to the Court that they are in agreement with the majority of the dates proposed in the Docket Control Order. Judge Davis issued a Docket Control Order to which the parties have made proposed changes which they would request the Court to adopt. These changes are in Exhibit “A” attached hereto. This case involves issues of claim construction that are similar to the issues of claim construction involved in the case styled *AdvanceMe, Inc. v. Rapidpay, LLC, et al.*, Cause No. 6:05CV424 LED, in the United States Court for the Eastern District of Texas, Tyler Division. The *Rapidpay* case is set for the Markman hearing on October 19, 2006 before this Court. The parties request modifications to the Docket Control Order to coincide with the deadlines leading to the Markman hearing now scheduled for October 19, 2006 in this Court.

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MOTION OF THE PARTIES FOR THE COURT TO ENTER  
A SCHEDULING ORDER AND A DISCOVERY ORDER

*AdvanceMe, Inc. v. Amerimerchant, LLC, et al.*  
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The parties would represent to the Court that they are in agreement with the deadlines outlined in Exhibit "A" leading to the proposed Markman hearing on October 19, 2006. The parties believe that the claim construction issues are similar and in the interests of judicial economy the parties would request the Court set the *Amerimerchant* case for Markman hearing and enter the deadlines as described on Exhibit #1 on the proposed Docket Control Order.

2. The parties are in disagreement as to the dates contained on the proposed scheduling Order in regards to the discovery deadline, designation of expert and rebuttal witnesses, and compliance with PR 3-8. The Plaintiff intends to present the argument to the Court that these dates should also coincide with the dates currently scheduled under the *Rapidpay, LLC* case. The Defendant would show the Court that these dates as set by the current proposed Discovery Order issued by Judge Davis should remain the same.

3. Other than what is stated above, the parties are in agreement with the remainder of the deadlines and would request this Court to approve such deadlines, subject to the Court's resolution of the dispute outlined in paragraph 2 above.

4. In connection with the Court's Discovery Order, paragraph 4, the parties would request that this Court grant 70 hours for the third-party witnesses' depositions. The parties would also request that this Court allow the depositions of testifying experts and any non-testifying experts whose work product is relied upon by a testifying expert. The parties would further represent that they have agreed to Jim Knowles being appointed as mediator for the *AdvanceMe, Inc. v. Amerimerchant* case. This motion and the attached proposed Amended Docket Control Order are submitted to the Court for consideration in advance of the scheduling conference.

Respectfully submitted,

/s/ Douglas R. McSwane, Jr.

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**CERTIFICATE OF SERVICE**

I hereby certify that all counsel of record who have consented to electronic service and are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on this the 16<sup>th</sup> day of June, 2006. Any other counsel of record will be served by first class mail on this same date.

/s/ Douglas R. McSwane, Jr.

Douglas R. McSwane, Jr.