

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

ADVANCEME, INC.

Plaintiff

vs.

AMERIMERCHANT LLC; FIRST FUNDS,  
LLC

Defendant

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CASE NO. 6:06cv82

AMENDED  
DOCKET CONTROL ORDER

It is hereby **ORDERED** that the following schedule of deadlines are in effect until further order of this Court:

<p><b>January 14, 2008</b></p>	<p><b>9:00 a.m. JURY TRIAL</b> as reached at the United States District Court, 211 W. Ferguson, Tyler, Texas.</p> <p><b>EXHIBITS &amp; EXHIBIT LISTS:</b> Each party is requested to provide the Court with an original and two courtesy copies of exhibits and exhibit lists. The Court’s preferred format for Exhibit Lists is available on the Court’s website at <a href="http://www.txed.uscourts.gov">www.txed.uscourts.gov</a> under “Judges’ Orders &amp; Information.”</p> <p>If exhibits are voluminous, provide only specific pages that pertain to the issues on the two courtesy copies. The original exhibits that are agreed upon by the parties, should be ready to be tendered to the Clerk of the Court at the beginning of trial. Other exhibits that are admitted during trial should be tendered to the Clerk of the Court immediately after admission.</p> <p>The parties are further requested to have all exhibits labeled with the following information on each label: Designation of Plaintiff’s or Defendant’s Exhibit Number and Case Number. For example:</p> <div style="display: flex; justify-content: space-around; align-items: flex-start;"> <div style="border: 1px solid black; padding: 5px; width: 150px; text-align: center;"> <p><b>Plaintiff’s Exhibit</b></p> <p>Exhibit No. _____</p> <p>Case No. _____</p> </div> <div style="border: 1px solid black; padding: 5px; width: 150px; text-align: center;"> <p><b>Defendant’s Exhibit</b></p> <p>Exhibit No. _____</p> <p>Case No. _____</p> </div> </div>
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<b>January 7, 2008</b>	<b>9:00 a.m. - JURY SELECTION at the United States District Court, 211 W. Ferguson, Tyler, Texas.</b>
<b>December 20, 2007</b>	<b>9:00 a.m. - PRETRIAL CONFERENCE at the United States District Court, 211 W. Ferguson, 2<sup>nd</sup> Floor, Courtroom of Judge John D. Love, Tyler, Texas.</b>
<b>December 18, 2007</b>	Parties to file estimates of the amount of time they request at jury selection and trial for (1) voir dire, (2) opening statements, (3) direct and cross examinations, and (4) closing arguments.
<b>December 17, 2007</b>	<b>Motions in Limine due.</b> The parties are directed to confer and advise the Court on or before 3:00 o'clock p.m. the day before the pre-trial conference which paragraphs are agreed to and those that need to be addressed at the pre-trial conference.
<b>December 17, 2007</b>	<b>Pretrial Objections due.</b>
<b>December 6, 2007</b>	<b>Objections to Rebuttal Deposition Testimony due.</b>
<b>November 29, 2007</b>	<b>Rebuttal Designations and Objections to Deposition Testimony due.</b> For rebuttal designations, cross examination line and page numbers to be included.
<b>November 15, 2007</b>	<b>Pretrial Disclosures due.</b> <b>Video and Stenographic Deposition Designation due.</b> Each party who proposes to offer deposition testimony shall file a disclosure identifying the line and page numbers to be offered. In video depositions, each party is responsible for preparation of the final edited video in accordance with their parties' designations and the Court's rulings on objections.
<b>November 2, 2007</b>	<b>Joint Pretrial Order, Joint Proposed Jury Instructions with citation to authority, and Form of the Verdict for jury trials.</b> Proposed Findings of Fact and Conclusions of Law with citation to authority for bench trials. Notice of Request for Daily Transcript or Real Time Reporting of Court Proceedings. If a daily transcript or real time reporting of court proceedings is requested for trial or hearings, the party or parties making said request shall file a notice with the Court and email the Court Reporter, Shea Sloan, at shea_sloan@txed.uscourts.gov.
<b>October 26, 2007</b>	<b>Expert discovery deadline.</b>
<b>October 19, 2007</b>	<b>Response to Dispositive Motions (including <i>Daubert</i> motions) due.</b> Responses to dispositive motions filed prior to the dispositive motion deadline, including <i>Daubert</i> Motions, shall be due in accordance with Local Rule CV-7(e).
<b>October 15, 2007</b>	<b>Parties to Identify Rebuttal Trial Witnesses.</b>

<b>October 8, 2007</b>	Parties designate rebuttal expert witnesses (non-constructions issues). Rebuttal expert witness reports due. Refer to Local Rules and Discovery Order for required information.
<b>October 3, 2007</b>	<b>Parties to Identify Trial Witnesses; Amend Pleadings (after <i>Markman</i> Hearing).</b> It is not necessary to file a Motion for Leave before the deadline to amend pleadings. It is necessary to file a Motion for Leave to Amend after the deadline. However, except as provided in Patent Rule 3-6, if the amendment would effect preliminary or final infringement contentions or preliminary or final invalidity contentions, a motion must be made pursuant to Patent Rule 3-7 irrespective of whether the amendment is prior to this deadline.
<b>September 28, 2007</b>	<b>Dispositive Motions due from all parties and any other motions that may require a hearing (including <i>Daubert</i> motions).</b> Motions for Summary Judgment shall comply with Local Rule CV56.
<b>September 20, 2007</b>	Parties with burden of proof designate expert witnesses (non-construction issues). Expert Witness reports due. Refer to Local Rules and Discovery Order for required information.
<b>September 14, 2007</b>	Last day to complete depositions noticed before discovery deadline. If necessary for scheduling purposes, subject to the parties' agreement on a case-by-case basis, depositions of third parties noticed before the discovery deadline may be completed after this date and before September 28, 2007.
<b>August 24, 2007</b>	<b>Discovery Deadline.</b>
<b>5 Days</b>	<b>EXPECTED LENGTH OF TRIAL</b>

In the event that any of these dates fall on a weekend or Court holiday, the deadline is modified to be the next Court business day.

The parties are directed to Local Rule CV-7(d), which provides in part that “[i]n the event a party fails to oppose a motion in the manner prescribed herein the Court will assume that the party has no opposition.” Local Rule CV-7(e) provides that a party opposing a motion has **15 days** in which to serve and file supporting documents and briefs after which the Court will consider the submitted motion for decision.

#### **OTHER LIMITATIONS**

- (a) All depositions to be read into evidence as part of the parties' case-in-chief shall be **EDITED** so as to exclude all unnecessary, repetitious, and irrelevant testimony; **ONLY** those portions which are relevant to the issues in controversy shall be read into evidence.

- (b) The Court will refuse to entertain any motion to compel discovery filed after the date of this Order unless the movant advises the Court within the body of the motion that counsel for the parties have first conferred in a good faith attempt to resolve the matter. See Eastern District of Texas Local Rule CV-7(h).
- (c) The following excuses will not warrant a continuance nor justify a failure to comply with the discovery deadline:
  - (i) The fact that there are motions for summary judgment or motions to dismiss pending;
  - (ii) The fact that one or more of the attorneys is set for trial in another court on the same day, unless the other setting was made prior to the date of this order or was made as a special provision for the parties in the other case;
  - (iii) The failure to complete discovery prior to trial, unless the parties can demonstrate that it was impossible to complete discovery despite their good faith effort to do so.

**So ORDERED and SIGNED this 3rd day of August, 2007.**

  
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JOHN D. LOVE  
UNITED STATES MAGISTRATE JUDGE