

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

ADVANCEME, INC.	§	
	§	
VS.	§	Civil Case No. 6:06-CV-082(LED-JDL)
	§	
AMERIMERCHANT, LLC, and	§	
FIRST FUNDS, LLC	§	

JOINT MOTION TO DISMISS WITHOUT PREJUDICE

Come now plaintiff, AdvanceMe, Inc. and defendants, First Funds, LLC and AmeriMerchant, LLC, and file this joint motion to dismiss the present litigation referenced above, without prejudice to refiling same after resolution of the appeal in the case styled *AdvanceMe, Inc. v. RapidPay, et al.*, Cause No. 6:05-CV-424 (“the RapidPay case”). The parties to this litigation have entered into an agreement that this suit will dismissed without prejudice to refiling, subject to certain stipulations which are summarized as follows:

1. The proper venue for refiling of this case will be in the Eastern District of Texas, Tyler Division;
2. Neither First Funds, LLC nor AmeriMerchant, LLC will institute any actions seeking a declaratory judgment regarding the ‘281 patent during the intervening time between the filing of this motion to dismiss and sixty days after the final resolution of the appeal in the RapidPay case;
3. The defendants will not use the time period during the appeal as the basis for asserting a laches argument on either damages or injunctive relief;
4. The parties have agreed that all statutes of limitations will be tolled until sixty days after the final conclusion of the RapidPay appeal.

5. If the plaintiff does not re-file this suit within sixty days of the final resolution of the appeal in the RapidPay case, then the plaintiff agrees it is barred from re-filing the suit;
6. If the plaintiff refiles the suit, then the parties agree that the Markman order in this cause, 6:06-CV-82, *AdvanceMe, Inc. v. AmeriMerchant, LLC*, et al. will apply to any re-filed action, except as such Markman Order may have been modified by the Federal Circuit during the RapidPay appeal.

Subject to the above stipulations as more fully set forth in a letter agreement dated August 23, 2007, the parties move this Court to dismiss any and all claims and counterclaims currently pending in the case styled *AdvanceMe, Inc. v. AmeriMerchant, LLC and First Funds, LLC*, Cause No. 6:06-CV-82, without prejudice to refiling pursuant to the agreement recited above. The parties further agree that they are to bear their own costs in connection with this dismissal, subject to reserving the ability to seek such costs based upon the outcome of the RapidPay appeal.

Respectfully submitted,

By: /s/ Deborah Race

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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 or parties will be served by facsimile transmission and/or first class mail this 29th day of August, 2007.

/s/ _____
Deborah Race