

SETTLEMENT AGREEMENT

This Settlement Agreement (this “Agreement”) is entered into by and between JJ Management, Inc. (“JJ Management”) and Michael Rabinowitz d/b/a Goodfellow Automotive (“Rabinowitz”) (together, the “Settlement Class Representatives”), individually and as representatives of the Settlement Class (defined below), on the one hand, and AdvanceMe, Inc. (“AMI”), on the other, in the action entitled Richard B. Clark, et al., v. AdvanceMe, Inc., United States District Court for the Central District of California, Case No. CV 08-3540 VBF (FFMx) (the “Action”).

I. RECITALS

This Agreement is made with reference to and in contemplation of the following facts and circumstances:

A. AMI offers to merchants a financial product known as a Merchant Cash Advance (“MCA”). AMI contends that, in an MCA, AMI purchases future credit card receivables from a merchant at a discount, collecting a percentage of the merchant’s credit card receipts as they are generated until the full purchased amount has been remitted. AMI further contends that the agreements executed in connection with MCAs (the “Merchant Agreements”) do not impose any payment obligation on the merchant, but rather require that the merchant comply with certain covenants (the “Merchant Contractual Covenants”) designed to allow AMI to collect receivables as agreed.¹ AMI further contends that personal guarantees contained in the Merchant Agreements are guarantees that the merchant will comply with the Merchant Contractual Covenants, not of any payment obligation.

B. The Action was filed on May 29, 2008, alleging that MCAs are not purchases of future credit card receivables, but rather disguised loans with interest rates that violate

¹ Some examples of the Merchant Contractual Covenants include agreements to use only a designated credit card processor and not to sell the business to someone who has not assumed the Merchant Agreement with AMI’s consent.

California's usury laws. The operative Second Amended Complaint (the "Complaint") asserts claims for violation of California's usury laws and California Business & Professions Code Section 17200, *et seq.*, on behalf of a putative class of persons owning or operating retail establishments in California who entered into MCAs with AMI or executed personal guarantees relating to such MCAs. The Settlement Class Representatives contend, among other things, that the Merchant Agreements, both in form and in practice, impose payment obligations, that personal guarantees contained in the MCAs are guarantees of payment, and that the MCAs are, in substance and effect, loans subject to California's usury laws.

C. AMI has asserted counterclaims for breach of contract or conversion (or both) against Richard B. Clark, individually and f/d/b/a Austin's Barbeque & Tavern, ("Clark"), JJ Management, Rabinowitz, Joseph Bonafede ("Bonafede"), Jesus Gonzales, and Juan Jose Hernandez (collectively, the "Counterclaim Defendants").

D. AMI vigorously denies all claims asserted against it in the Action, denies all allegations of wrongdoing and liability and has denied all material allegations of the Complaint and asserted numerous defenses as to both liability and damages. AMI nevertheless desires to settle the Action on the terms set forth herein solely for the purpose of avoiding the burden, expense, risk and uncertainty of continuing these proceedings.

E. The Settlement Class Representatives and the Counterclaim Defendants vigorously deny the counterclaims asserted in the Action, deny all allegations of wrongdoing and liability and have denied all material allegations of the Second Amended Counterclaim and asserted numerous defenses as to both liability and damages.

F. The Settlement Class Representatives and Class Counsel (defined below) have investigated the facts and law and have engaged in discovery and settlement negotiations relating to the Action, including the counterclaims, and have concluded that the settlement set forth in this Agreement (the "Settlement") is in the best interests of the Settlement Class Representatives and the Settlement Class (defined below). This Agreement resulted from and is the product of

hours of meetings, negotiations and analysis by counsel knowledgeable and experienced in class action litigation, including extensive arm's-length negotiations conducted under the supervision of the Hon. Richard C. Neal, a former Justice of the California Court of Appeal.

G. The parties understand, acknowledge and agree that the execution of this Agreement constitutes the settlement and compromise of disputed claims. This Agreement is inadmissible as evidence against any party except to enforce the terms of the Settlement and is not an admission of wrongdoing or liability on the part of any party to this Agreement. It is the parties' desire and intention to effect a full, complete and final settlement and resolution of all existing disputes and claims as set forth herein.

H. The Settlement is subject to preliminary and final approval by the Court, as set forth herein. This Agreement is intended by the parties to fully, finally and forever resolve, discharge and settle the Released Claims (defined below) and Released Counterclaims (defined below), upon and subject to the terms and conditions hereof.

II. DEFINITIONS

A. As used in this Agreement, capitalized terms have the meanings specified below:

1. "Claim Form" means the claim form to be submitted by certain Class Members in order to receive settlement payments, the proposed form of which is attached hereto as Exhibit F.

2. "Class Counsel" means Marc M. Seltzer, Drew D. Hansen, Arun S. Subramanian and Jordan Connors of Susman Godfrey L.L.P. and Anat Levy of Anat Levy & Associates, P.C.

3. "Class Notice" means the various forms of notice that will be provided to the Settlement Class pursuant to this Agreement, including the Internet Notice, Publication Notice and Mailed Notice.

4. "Closed Account" means any Settlement Class Member who (a) is not party to or a guarantor of an MCA that has a Specified Amount balance, or (b) is party to or a

guarantor of an MCA that is in Nonperforming Status, both as of the date of the entry of the Preliminary Approval Order.

5. “Court” means the United States District Court for the Central District of California.

6. “Cy Pres Amounts” means the cy pres charitable amounts that AMI will pay in connection with the Settlement pursuant to Section III.E.1(b) of this Agreement.

7. “Effective Date” means three (3) business days after each and all of the following conditions have occurred: (a) this Agreement has been signed by the Settlement Class Representatives, Class Counsel and AMI and approved as to form by AMI’s counsel; (b) the Court has entered, without material modification, the Preliminary Approval Order substantially in the form of Exhibit A conditionally certifying the Settlement Class, granting preliminary approval of the Settlement and approving the Class Notice and Claim Form; (c) the Settlement Amount has been paid to the Escrow Agent as required by Section III.E.1(b) of this Agreement; (d) the Court-approved Class Notice has been duly provided as ordered by the Court; (e) AMI has not elected to terminate the Settlement under Section III.C.2 of this Agreement by the deadline for it to do so; (f) the Court has entered, without material modification, the Final Approval Order approving the Settlement; (f) the Court has entered the Fee Order (defined below) and that order has become Final; and (g) the Court has entered a Judgment dismissing the Action with prejudice, and that Judgment has become Final.

8. “Escrow Agent” means Gilardi & Co., LLC or another third-party escrow agent agreed to by the Settling Parties. The Escrow Agent shall place all funds into an interest-bearing escrow account. All interest earned on the account shall inure to the benefit of the Settlement Class Representatives, the Settlement Class Members and Class Counsel.

9. “Fee Order” means the order(s) issued by the Court with respect to any application(s) for attorneys’ fees, expenses and incentive awards under this Agreement.

10. “Final Approval Hearing” means the hearing at or after which the Court

will determine whether to finally approve the Settlement as fair, reasonable and adequate to the Settlement Class.

11. “Final Approval Order” and “Judgment” each mean the Final Approval Order And Judgment to be submitted to the Court in connection with the Final Approval Hearing, the proposed form of which is attached hereto as Exhibit E. Among other things, the Judgment shall dismiss all claims and counterclaims in the Action with prejudice.

12. “Final” shall mean, with respect to the Final Approval Order, the Judgment and the Fee Order, the later of: (a) three (3) business days after the expiration of the time to seek appeal, review, rehearing, reconsideration or any other action seeking to reverse or modify a judgment or order; or (b) if any such document is filed, then fourteen (14) days after the date upon which all appellate and/or other proceedings resulting from the document or any subsequent such documents have been finally terminated and the orders or judgments are affirmed in such a manner as to permit no further judicial action. Neither the provisions of Federal Rule of Civil Procedure 60 nor the All Writs Act, 28 U.S.C. Section 1651, shall be taken into account in determining the above-stated times.

13. “Internet Notice” means the form of notice made available pursuant to Section III.B.2(c) of this Agreement.

14. “Mailed Notice” means the individual notice that will be provided pursuant to Section III.B.2(a) of this Agreement, the proposed form of which is attached hereto as Exhibit B.

15. “Nonperforming Status” means the status AMI assigns to an MCA when AMI has not received any remittances with respect to such MCA for 32 consecutive days.

16. “Open Account” means any Settlement Class Member with at least one MCA that has a Specified Amount balance and is not in Nonperforming Status as of the date of the entry of the Preliminary Approval Order.

17. “Person” means an individual, corporation, partnership, limited

partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity, and their spouses, heirs, predecessors, successors, agents, representatives or assigns.

18. “Preliminary Approval Order” means the order to be submitted to the Court in connection with the preliminary approval hearing on the Settlement, the proposed form of which is attached hereto as Exhibit A.

19. “Publication Notice” means the summary notice of the Settlement that will be published pursuant to Section III.B.2(b) of this Agreement, the proposed form of which is attached hereto as Exhibit C.

20. “Purchase Price” means the amount specified as the Purchase Price in a Merchant Agreement.

21. “Released Claims” means the claims and matters released in Section III.J.1-3 of this Agreement.

22. “Released Counterclaims” means the counterclaims and matters released in Section III.J.4-6 of this Agreement.

23. “Released Parties” means, as to the Released Claims, the Persons released in Section III.J.1-3 of this Agreement and, as to the Released Counterclaims, the Persons released in Section III.J.4-6 of this Agreement.

24. “Settlement Administrator” means Gilardi & Co., LLC or another third-party settlement administrator agreed to by the Settling Parties. The Settlement Administrator shall be paid entirely from the Settlement Amount.

25. “Settlement Amount” means the total amount of eleven and one-half million dollars (\$11,500,000) to be paid pursuant to Section III.E.1(b) of this Agreement.

26. “Settlement Class” means: all Persons in the State of California who obtained an MCA from AMI, executed a guaranty of an MCA in favor of AMI, or remitted or allowed to be remitted any funds to AMI in connection with an MCA between May 29, 2004,

and the date of preliminary approval of the Settlement, inclusive.

27. “Settlement Class Member” means a Person in the Settlement Class.

28. “Settlement Class Representatives” means JJ Management and Rabinowitz.

29. “Settlement Costs” means any attorneys’ fees, costs or incentive awards awarded by the Court under this Agreement, all costs of providing Class Notice, and all costs incurred in administering the Settlement (including, among other things, Taxes (defined below), all costs incurred in receiving and processing opt-outs and claims, communicating with Class Members regarding claims or the Settlement, and issuing and mailing settlement payments).

30. “Settling Parties” means AMI and the Settlement Class Representatives, on behalf of themselves and the Class.

31. “Specified Amount” means the amount designated as the Specified Amount in a Merchant Agreement.

32. “Taxes” means (1) all federal, state, or local taxes of any kind on any income earned on the Settlement Amount; and (2) the reasonable expenses and costs incurred by Class Counsel and/or the Escrow Agent in connection with determining the amount of, and paying, any taxes owed on interest accrued on the Settlement Amount (including, without limitation, reasonable expenses of tax attorneys and accountants).

B. Capitalized terms used in this Agreement but not defined above shall have the meaning ascribed to them in this Agreement, including the attached Exhibits.

III. TERMS OF SETTLEMENT

A. Conditional Certification Of Settlement Class. Solely for the purposes of settlement, providing Class Notice and implementing this Agreement, the Settling Parties agree to conditional certification of the Settlement Class, as defined above, which shall be certified for settlement purposes only.

B. Preliminary Approval And Class Notice.

1. Preliminary Approval: Promptly after the execution and delivery of this Agreement by all parties, the Settlement Class Representatives will move the Court for entry of the Preliminary Approval Order, which shall specifically include provisions that: (a) preliminarily approve the Settlement reflected herein as fair, adequate and reasonable to the Settlement Class, and within the reasonable range of possible final approval; (b) conditionally certify the Settlement Class for settlement purposes only and appoint Class Counsel as counsel for the Settlement Class for settlement purposes only; (c) approve the forms of Class Notice and find that the notice program set forth herein constitutes the best notice practicable under the circumstances, provides due and sufficient notice to the Settlement Class and fully satisfies the requirements of due process and Federal Rule of Civil Procedure 23; (d) direct that notice be provided to the Settlement Class, in accordance with this Agreement, within thirty (30) days following entry of the Preliminary Approval Order (the “Notice Deadline”); (e) establish a procedure for Settlement Class Members to object to the Settlement or exclude themselves from the Settlement Class, and set a date thirty (30) days after the Notice Deadline, after which no one shall be allowed to object to the Settlement or exclude himself or herself from the Settlement Class or seek to intervene in the Action (the “Opt Out and Objection Deadline”); (f) approve the Claim Form and the claims process described herein; (g) pending final determination of whether the Settlement should be approved, bar all Settlement Class Members, directly, on a representative basis or in any other capacity from commencing or prosecuting against any of the Released Parties any action, arbitration or proceeding in any court, arbitration forum or tribunal asserting any of the Released Claims; (h) pending final determination of whether the Settlement should be approved, stay all proceedings in the Action except those related to the effectuation of the Settlement; and (i) schedule a hearing on final approval of the Settlement, which shall be scheduled no earlier than forty-five (45) days after the Opt-Out and Objection Deadline.

2. Class Notice: AMI shall provide Class Notice in the forms approved by

the Court, as detailed below, by the Notice Deadline.

(a) Mailed Notice: Within fifteen (15) days after entry of the Preliminary Approval Order, AMI shall provide the Settlement Administrator with the names and addresses of all Settlement Class Members. AMI shall obtain this information from the database it uses for day-to-day servicing of accounts and shall not be required to restore back-up tapes or otherwise attempt to obtain names or addresses from other sources. The names and addresses shall be provided in a format reasonably requested by the Settlement Administrator, with the information for Open Accounts and Closed Accounts provided separately. No later than the Notice Deadline, the Settlement Administrator shall mail a notice substantially in the form appended hereto as Exhibit B to all Open Accounts and all Closed Accounts for which it has received names and addresses. Closed Accounts also shall be provided with a copy of the Claim Form. Prior to mailing, the Settlement Administrator will conduct a national change-of-address search and update its mailing list accordingly. No further skip-trace or re-mailing of returned mail will be required.

(b) Publication Notice: The Settlement Administrator shall cause a summary notice of the Settlement, substantially in the form appended hereto as Exhibit C, to be published once in each of the publications identified in Exhibit D. The Publication Notice shall include, among other things, the address of the web site containing Internet Notice.

(c) Internet Notice: AMI shall establish an Internet web site (which shall be distinct from and not linked to any websites used in AMI's business) on which it will make available the Mailed Notice, the Claim Form, this Agreement, contact information for the Settlement Administrator, contact information for Class Counsel, and any other materials the parties agree in writing to include. The domain name for the website shall be www.amisettlement.com. The settlement web site shall be made accessible by the public by the earlier of the date the first Publication Notice is published and the date the first Mailed Notice is mailed, and shall remain accessible until the Judgment becomes Final and the net Settlement

Amount has been distributed to members of the Settlement Class.

C. Opt-Out Right/Termination

1. Settlement Class Members may opt out of the Settlement by sending a written request to the Settlement Administrator at the address designated in the Class Notice by the Opt-Out and Objection Deadline. Exclusion requests must: (i) be signed by the merchant and each guarantor for each MCA as to which exclusion is requested; (ii) include the full name, address and (if known) AMI account number(s) of the Person(s) requesting exclusion; and (iii) include the following statement: "I/we request to be excluded from the settlement in Clark v. AdvanceMe, Inc." No request for exclusion will be valid unless all of the information described above is included, except for the AMI account number. For any person in the Settlement Class who has or had more than one AMI account, the exclusion request must specify each AMI account to be excluded. The Settlement Administrator will retain a copy of all requests for exclusion and will, upon written request, provide copies of any such requests to counsel for the Settling Parties. Class Counsel will keep any such opt-out information confidential and use it only for purposes of determining whether a Person has properly opted out.

2. All Settlement Class Members who do not opt out in accordance with the terms set forth herein will be bound by all determinations and judgments in the Action. If the number of accounts in the Settlement Class that opt out exceeds the percentage set forth in a separate agreement between the parties of the total number of accounts in the Settlement Class as reflected by AMI's account records, then AMI in its sole discretion will have the right to terminate the Settlement by giving written notice to Class Counsel within twenty-one (21) days after the Opt-Out and Objection Deadline. In the event that the Settlement is terminated pursuant to this provision or Section III.E.1(b) below, the parties will be returned to the *status quo ante* as if no settlement had been negotiated or entered into; provided, however, that all costs of Class Notice and all costs of administering the Settlement paid or incurred shall be paid out of the Settlement Amount and shall not be recoupable from the Settlement Class Representatives or

Class Counsel.

D. Objections To The Settlement

1. Any Settlement Class Member who has not previously opted out in accordance with the terms of this Agreement may appear at the Final Approval Hearing to object to the proposed Settlement and/or to the application of Class Counsel for an award of attorneys' fees and costs and/or the incentive awards.

2. In order to be heard at the hearing, the Settlement Class Member must make any objection in writing and file it with the Court by the Opt-Out and Objection Deadline. The objection must also be mailed to each of the following, postmarked not later than the last day to file the objection: (i) Class Counsel – Marc M. Seltzer, Susman Godfrey, L.L.P., 1901 Avenue of the Stars, Suite 950, Los Angeles, California 90067; and (ii) counsel for AMI – Scott M. Pearson, Stroock & Stroock & Lavan LLP, 2029 Century Park East, 16th Floor, Los Angeles, California 90067.

E. Settlement Consideration. In complete and final settlement of the Action, AMI agrees to provide the following consideration. The Settlement is not conditioned upon the plan of allocation for the settlement consideration, and any appellate proceedings relating solely to such plan of allocation shall not delay the date on which the Judgment becomes Final.

1. Monetary Relief.

(a) Cancellation of Certain Accounts and Judgments. For all MCAs obtained by Settlement Class Members that have been in Nonperforming Status for at least 24 months as of the date of Preliminary Approval (the "24-Month Accounts"), AMI shall, on the Effective Date, deem such MCAs fully satisfied and performed and take the same actions as to such MCAs that would be required in the event of full performance, including terminating collection efforts and releasing UCC-1 liens upon individual written request from holders of 24-Month Accounts. In the event that AMI has obtained a judgment against the holder and/or guarantor of any 24-Month Account, AMI shall file a satisfaction of such judgment within 90

days after the Effective Date. AMI represents and warrants that the aggregate unremitted Specified Amount on MCAs in Nonperforming Status for at least 24 months as of December 2, 2010 was approximately \$11.9 million and that AMI held judgments relating to such accounts on the same date in the aggregate amount of approximately \$2.8 million.

(b) Cash Consideration: In full settlement of the Released Claims and in consideration of the releases specified in Section III.J of this Agreement, AMI agrees to the total Settlement Amount of eleven and one-half million dollars (\$11,500,000) for the benefit of the Settlement Class. AMI shall pay seven million dollars (\$7,000,000) of the Settlement Amount to the Escrow Agent within twenty (20) calendar days after the entry of the Preliminary Approval Order by the Court in this Action. AMI further shall instruct its insurance carriers to pay an additional four and one-half million dollars (\$4,500,000) of the Settlement Amount to the Escrow Agent within the time required by its agreement with such carriers with respect to the Action. In the event that AMI's insurance carriers have not paid to the Escrow Agent the \$4,500,000 in insurance proceeds within sixty (60) days of entry of the Preliminary Approval Order, then the Settlement Class Representatives may terminate the Settlement. The Settlement Amount shall be used for the payment of Settlement Costs, payments to Settlement Class Members and the Cy Pres Amounts. The Settlement Amount will be paid in full regardless of the number of Claim Forms received. Settlement Costs shall be deducted from the Settlement Amount prior to determining and paying any amounts to Settlement Class Members as set forth below.

(1) Initial Charitable Contributions: Five hundred thousand dollars (\$500,000) of the Settlement Amount (the "Initial Cy Pres Amount") shall be paid by the Escrow Agent to a non-profit organization as cy pres relief for the benefit of Settlement Class Members who do not receive direct settlement payments. Subject to court approval, the charity that will receive the cy pres payments is the SCORE Foundation, a 501(c)(3) nonprofit organization dedicated to educating entrepreneurs and helping small business start, grow and

succeed nationwide. If for any reason after Preliminary Approval of the Settlement, any party or the Court determines that the SCORE Foundation is no longer an appropriate recipient, or the Court does not approve it as a recipient, the parties may designate one or more replacement recipients of such money subject to court approval. The funds may not be used for advocacy purposes and shall be used to assist small businesses in California. The AMI name may not be used by the recipient(s) absent AMI's prior written approval. Recipients must agree in writing to such terms and must promptly provide, upon request, information reasonably requested for payment, including, without limitation, taxpayer identification information. The Initial Cy Pres Amount shall be paid within ten (10) business days after the Effective Date.

(2) Claims Process. After deduction of Settlement Costs and the Initial Cy Pres Amount, the remainder of the Settlement Amount shall be distributed to Settlement Class Members on a pro rata basis using the following claims process. All calculations and payments shall be made on a contract-by-contract basis, so that a Settlement Class Member who obtained an MCA and the guarantor(s) of the same MCA will not receive multiple payments based on the same MCA.

a. Open Accounts. Settlement Class Members with at least one Open Account shall not be required to submit a Claim Form in order to receive settlement payments. For each such Settlement Class Member, AMI shall determine from its records the difference between the Purchase Price and the Specified Amount (the "Differential") for each MCA obtained during the Class Period or with respect to which AMI received funds during the Class Period. The "Nominal Claim Amount" for each Settlement Class Member shall be equal to the sum of the Differentials on all such MCAs for such Settlement Class Member.

b. Closed Accounts. Settlement Class Members who do not have an Open Account must submit a properly completed Claim Form in order to receive a settlement payment. Claim Forms must be postmarked or received by the Settlement Administrator by a date to be set in the Preliminary Approval Order. The Settlement

Administrator shall maintain a call center with a toll-free telephone number for the purpose of providing Claim Forms and information to Settlement Class Members during the claims process; menu-driven recorded messages may be used in the Settlement Administrator's discretion provided that live operators are available on request. In the event that it receives a Claim Form that was not properly completed, the Settlement Administrator shall notify the Settlement Class Member by mail and allow the Settlement Class Member to submit a corrected Claim Form within twenty-one (21) days of the mailing of such notice (the "Cure Period"). After the Cure Period for all claims has expired, the Settlement Administrator shall provide AMI with a summary of all claims it received in a format acceptable to AMI. AMI shall then determine from its records the Nominal Claim Amount for each Closed Account. For Closed Accounts, the Differential shall be equal to the difference between the Purchase Price and the amount of receivables remitted or otherwise received by AMI for each MCA obtained during the Class Period or with respect to which AMI received funds during the Class Period; provided, however, that the Differential shall be zero for MCAs on which AMI received an amount equal to or less than the Purchase Price for such MCA.

c. Pro Rata Calculation. Within sixty (60) days after receiving the aforementioned summary of claims from the Settlement Administrator, AMI shall provide the Settlement Administrator with a spreadsheet or other report acceptable to the Settlement Administrator setting forth the Nominal Claim Amounts for all Settlement Class Members who either have an Open Account or submitted a properly completed Claim Form. The Settlement Administrator shall then calculate the amount available for distribution to Settlement Class Members (the "Total Distribution Amount") by deducting from the Settlement Amount (i) the Initial Cy Pres Amount, (ii) the attorneys' fees and costs approved by the Court plus a proportionate share of accrued interest, (iii) the incentive awards approved by the Court, (iv) Settlement Costs incurred to date, and (v) a reserve the Settlement Administrator, after consultation with counsel for the Settling Parties, believes will be sufficient to pay for additional

Settlement Costs (such as the costs of issuing and mailing checks, responding to inquiries from Settlement Class Members, etc.) (the “Costs Reserve”). The Settlement Administrator’s compensation for work performed after this calculation shall be limited by contract to the Costs Reserve amount except as otherwise provided below. The settlement payments for Settlement Class Members on each account (i.e., the claims of account holders and guarantors with respect to the same MCAs shall be combined) shall be equal to the Total Distribution Amount multiplied by a fraction equal to the Nominal Claim Amount for the account divided by the sum of the Nominal Claim Amounts for all accounts receiving payments. In the event that the foregoing calculation yields a fractional number, the settlement payment shall be rounded down to the nearest \$0.01.

d. Minimum Payments and Recalculation. In order to avoid unwarranted administrative costs and minimize the number of uncashed settlement checks, Settlement Class Members with a calculated settlement payment of less than \$10.00 will not receive any payment. Instead, after calculating individual settlement payments in accordance with the foregoing paragraph, the Settlement Administrator shall determine the aggregate amount of payments of less than \$10.00 and redistribute that amount to Settlement Class Members with payments of \$10.00 or more on a pro rata basis. Adjusted settlement payments shall be rounded down to the nearest \$0.01.

e. Review Process. Before mailing payments to Settlement Class Members, the Settlement Administrator shall provide Class Counsel and AMI’s counsel with a detailed declaration concerning the claims process, including all calculations in native electronic form, so that counsel may confirm that the claims process was conducted in accordance with this Agreement. AMI also shall provide Class Counsel with a declaration concerning its calculation of Differentials and Nominal Claim Amounts. After receiving the foregoing information, Class Counsel shall either notify the Settlement Administrator and AMI’s counsel in writing that it approves the mailing of payments or informally attempt to resolve any

concerns with AMI's counsel and the Settlement Administrator. In the event that Class Counsel does not approve the mailing of payments within sixty (60) days after its receipt of the declarations despite good-faith efforts to resolve any disputes informally, the parties may (but are not required to) seek the Court's assistance in resolving any disputes by filing a Joint Statement regarding the dispute and requesting the scheduling of a hearing.

(3) Payments. After receiving approval from Class Counsel or an order from the Court, but no earlier than the Effective Date, the Settlement Administrator shall mail payments to Settlement Class Members in the calculated amounts to the notice address for Open Accounts or the address provided on the Claim Form for Closed Accounts. Prior to mailing, the Settlement Administrator will conduct a national change-of-address search and update its mailing list accordingly. No further skip-trace or re-mailing of returned mail will be required. In the event that multiple addresses for a single account are provided on Claim Forms, the Settlement Administrator shall send a letter to each address on the Claim Form(s) advising that multiple addresses and/or claims were submitted and requesting that the Settlement Class Members submitting multiple claims and/or addresses provide mailing instructions signed by all such Settlement Class Members within fifteen (15) days. In the event the Settlement Administrator receives multiple claims and/or addresses for a single Closed Account and does not receive mailing instructions signed by all Settlement Class Members who have submitted such claims, the Settlement Administrator shall make a recommendation to Class Counsel as to which address should be used for the payment based on the documents submitted by such claimants. The claimants shall be notified of the recommendation and of their right to seek review of the recommendation by the Court. Settlement checks shall be made payable jointly to all Settlement Class Members with a claim on each account (i.e., to the merchant and all guarantors). The checks shall be mailed with a letter or other notice approved by the parties advising that the checks must be negotiated within 180 days. On the 190th day following mailing of all settlement payments (or the next business day thereafter), the Settlement

Administrator shall stop payment on all checks that have not been negotiated according to the Settlement Administrator's bank. The aggregate amount of uncashed checks and any portion of the Settlement Amount that was not distributed to Settlement Class Members due to rounding down shall be used first to pay any Settlement Costs in excess of the Costs Reserve and to replenish or supplement the Costs Reserve with any additional amount the Settlement Administrator believes, after consulting with counsel for the Settling Parties, should be added to the Costs Reserve to pay future Settlement Costs. After the Settlement Administrator completes its work, the balance of these funds (including any unused portion of the Costs Reserve) shall be paid to the non-profit organizations identified above as an additional cy pres contribution in the same shares as the Initial Cy Pres Amount.

(c) Escrow.

(1) The Escrow Agent shall invest the Settlement Amount deposited pursuant to Section III.E.1(b) of this Agreement in instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, or in an account fully insured by the United States Government, and shall reinvest the proceeds of these instruments as they mature in similar instruments at their then-current market rates. The Settlement Amount shall bear all risks related to investment of the Settlement Cash Amount.

(2) The Escrow Agent shall not disburse any portion of the Settlement Amount except as provided in this Agreement and with the written agreement of Class Counsel and counsel for AMI (which may be provided by electronic mail) or by order of the Court.

(3) Subject to further order or direction as may be made by the Court, the Escrow Agent is authorized to execute such transactions on behalf of the Settlement Class Members as are consistent with the terms of this Agreement.

(4) All funds held by the Escrow Agent shall be deemed and

considered to be in custodia legis of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to this Agreement or further order of the Court.

(d) Taxes.

(1) The Settling Parties and the Escrow Agent agree to treat the Settlement Amount as being at all times a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B-1. In addition, Class Counsel or the Escrow Agent shall timely cause such elections as necessary or advisable to carry out the provisions of this paragraph, including, if necessary, the “relation-back election” (as defined in Treas. Reg. § 1.468B-1(j)(2)) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in § 1.468B of the Treasury regulations promulgated under Internal Revenue Code of 1986, as amended (the “Code”). It shall be the responsibility of Class Counsel or the Escrow Agent to timely and properly cause the preparation and delivery of the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

(2) For the purpose of the Code and the Treasury regulations thereunder, the Escrow Agent shall be designated as the “administrator” of the Settlement Amount. The Escrow Agent shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Amount (including, without limitation, the returns described in Treas. Reg. § 1.468B-2(k)). Such returns (as well as the election described in the previous paragraph) shall be consistent with this paragraph and in all events shall reflect that all Taxes (including any estimated Taxes, interest or penalties) on the income earned by the Settlement Amount shall be paid out of the Settlement Amount as provided in the following paragraph.

(3) All: (i) Taxes (including any estimated Taxes, interest or penalties) arising with respect to the income earned by the Settlement Amount, including any

Taxes or tax detriments that may be imposed upon AMI with respect to any income earned by the Settlement Amount for any period during which the Settlement Amount does not qualify as a “qualified settlement fund” for federal or state income tax purposes; and (ii) expenses and costs incurred in connection with the operation and implementation of this Section III.E.1(d) (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this Section III.E.1(d) (“Tax Expenses”), shall be paid out of the Settlement Amount. In no event shall AMI have any responsibility for or liability with respect to the Taxes or the Tax Expenses. The Settlement Amount shall indemnify and hold AMI harmless for Taxes and Tax Expenses (including, without limitation, Taxes payable by reason of any such indemnification). Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement Amount and shall be timely paid by Class Counsel or the Escrow Agent out of the Settlement Amount without further consent of AMI, or prior order from the Court, and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to the Settlement Class any funds necessary to pay such amount, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(I)(2)); AMI is not responsible therefor nor shall it have any liability with respect thereto. The Settling Parties hereto agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this Section III.E.1(d).

(4) For the purpose of this Section III.E.1(d), references to the Settlement Amount shall include both the Settlement Amount and any earnings thereon.

2. Attorneys’ Fees And Costs: Class Counsel may apply to the Court for an award of attorneys’ fees of no more than \$4,000,000, plus costs and expenses incurred by Class Counsel not to exceed \$500,000, to be paid from the Settlement Amount. AMI agrees not to oppose such an application provided that it does not request more than the foregoing amount.

Class Counsel may apply for an second award of attorneys' fees, costs and expenses to be paid from the Settlement Amount for additional work, costs and expenses associated with settlement administration without further notice to the Settlement Class, subject to approval by the Court. AMI shall have no obligation to pay any attorneys' fees or costs to Class Counsel except from the Settlement Amount. The amount of attorneys' fees and costs awarded by the Court, plus a proportionate share of any interest accrued on the Settlement Amount, shall be paid to Class Counsel from the Settlement Amount within ten (10) business days after the Effective Date. The Settlement is not conditioned upon the Court's approval of the fees or costs sought by Class Counsel, and any appellate proceedings relating solely to the award of attorneys' fees and costs and/or incentive awards shall not delay the date on which the Judgment becomes Final.

3. Incentive Awards: Class Counsel may apply to the Court for incentive awards of \$15,000 to be paid to each of the Settlement Class Representatives and/or Clark from the Settlement Amount. AMI agrees not to oppose such an application provided that it does not request more than the foregoing amounts. AMI shall have no obligation to pay any incentive awards except from the Settlement Amount. The amount of the incentive awards awarded by the Court shall be paid from the Settlement Amount within ten (10) business days after the Effective Date. The Settlement is not conditioned upon the Court's approval of the incentive awards sought by Class Counsel, and any appellate proceedings relating solely to the incentive awards and/or the award of attorneys' fees and costs shall not delay the date on which the Judgment becomes Final.

F. Termination: In the event that the Settlement is not approved, or is terminated, canceled, or fails to become effective for any reason, the remaining Settlement Amount (including accrued interest), less expenses and Taxes incurred or due and owing and payable from the Settlement Amount in accordance with this Agreement shall be refunded to AMI as provided in Section III.O.2 below. In no circumstances shall any costs or expenses paid or incurred in connection with Class Notice or administering the Settlement, including but not

limited to any Taxes, be recoupable from the Settlement Class Representatives or Class Counsel.

G. Modification of Merchant Agreements: Within sixty (60) days after the Effective Date, AMI shall modify its Merchant Agreements to include a statement that a merchant's going out of business does not, in and of itself, constitute a breach of the Merchant Contractual Covenants. The modification is set forth in the last sentence of Section 2.1 of Exhibit G. The Settlement does not prevent AMI from later modifying its Merchant Agreements in a manner AMI reasonably believes is required to comply with applicable law or to reflect a future change in its business practices, or to further improve the agreement consistent with the spirit of this paragraph. The Settlement Class Representatives acknowledge and agree, on behalf of all Settlement Class Members, that merchants who go out of business in the ordinary course without previously breaching the revised Merchant Agreement have no obligation to deliver the unremitted portion of the Specified Amount.

H. Additional AMI Commitments: AMI agrees to implement (or keep in place, to the extent they previously were implemented) measures designed to ensure that its collections personnel do not request payments from merchants who went out of business in the ordinary course and had not previously breached their Merchant Agreement. These measures shall include: (1) issuing a written policy statement to all collections personnel highlighting the foregoing change to AMI's Merchant Agreements and prohibiting attempts to collect payments from merchants who went out of business in the ordinary course without previously breaching their Merchant Agreement; (2) conducting compliance training at least annually for collections personnel; and (3) conducting compliance training for new collections hires before they begin work. To the extent these commitments were not previously implemented, AMI will implement them no later than sixty (60) days after the Effective Date.

I. Final Approval: Following the provision of Class Notice and expiration of the Opt-Out and Objection Period, the Settlement Class Representatives shall promptly request that the Court enter the Final Approval Order, which shall specifically include provisions that: (a)

finally approve the Settlement as fair, reasonable and adequate to the Settlement Class; (b) find that the Class Notice as given was the best notice practicable under the circumstances, is due and sufficient notice to the Settlement Class and fully satisfies the requirements of due process and Federal Rule of Civil Procedure 23; (c) approve the plan of distribution of the Settlement Amount and interest accrued thereon; (d) finally certify the Settlement Class; (e) confirm that AMI, the Settlement Class Representatives and the Settlement Class Members (except those who have timely and validly requested exclusion from the Settlement Class) have released all Released Claims or Released Counterclaims (as applicable) and are permanently barred and enjoined from asserting, commencing, prosecuting or continuing any of the Released Claims or Released Counterclaims (as applicable) against the Released Parties; and (f) dismiss the Action with prejudice, without costs to any party, except as provided in the Agreement, and subject to the Court's retaining continuing jurisdiction over the parties and the Settlement Amount for the purpose of enforcement of the terms of the Agreement. The Final Approval Order and Judgment shall not address any award of attorneys' fees and costs or incentive awards, which shall be addressed in the Fee Order.

J. Releases

1. Upon the Effective Date, the Settlement Class Representatives and the Settlement Class, on behalf of themselves and their respective heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest and assigns, shall be deemed to have, and by operation of the Judgment shall have, fully released and forever discharged AMI and each and all of its present, former and future direct and indirect parent companies, affiliates, subsidiaries, agents, successors, predecessors-in-interest, or any financial institutions, corporations, trusts, or other entities that may hold or have held any interest (including, without limitation, any security interest) in any account or any receivables relating to any account, or any receivables or group of receivables, or any interest in the operation or ownership of AMI, and all of the aforementioned's respective officers, directors, employees,

attorneys, shareholders, agents, vendors and assigns, from any and all rights, duties, obligations, claims, actions, causes of action or liabilities, whether arising under local, state or federal law (including, without limitation, under any state consumer-protection or unfair and deceptive practices acts), whether by constitution, statute, contract, common law or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, as of the Effective Date, including, without limitation: (1) that arise out of or relate in any way to any or all of the claims, causes of action, acts, omissions, facts, matters, transactions or occurrences that were or could have been directly or indirectly alleged, asserted, described, set forth or referred to in the Action; or (2) that arise out of or relate in any way to the administration of the Settlement. This release does not extend to claims that are completely unrelated to those alleged in the Action, such as claims that AMI did not credit to an account remittances that it actually received.

2. Without limiting the foregoing, the Released Claims specifically extend to claims that the Settlement Class Representatives and the Settlement Class Members do not know or suspect to exist in their favor at the time that the Settlement, and the releases contained therein, becomes effective. This paragraph constitutes a waiver of, without limitation as to any other applicable law, solely with respect to the Released Claims, of any of the rights and benefits of section 1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

3. The Settlement Class Representatives understand and acknowledge, and each member of the Settlement Class shall be deemed to understand and acknowledge, the significance of these waivers of California Civil Code section 1542 and any other applicable law relating to limitations on releases. In connection with such waiver and relinquishment, the Settlement Class Representatives acknowledge, and all members of the Settlement Class shall be

deemed to acknowledge, that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they now know or believe to be true with respect to the subject matter of the Settlement, but that it is their intention to release fully, finally and forever all Released Claims, and in furtherance of such intention, the release of the Released Claims will be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.

4. Upon the Effective Date, AMI, on behalf of itself and each and all of its present, former and future direct and indirect parent companies, affiliates, subsidiaries, agents, successors, predecessors-in-interest, and/or any financial institutions, corporations, trusts, or other entities that may hold or have held any interest (including without limitation any security interest) in any account or any receivables relating to any account, or any receivables or group of receivables, or any interest in the operation or ownership of AMI, and all of the aforementioned's respective officers, directors, employees, attorneys, shareholders, agents, vendors and assigns, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged the Counterclaim Defendants, and each and all of their present, former and future direct and indirect parent companies, affiliates, subsidiaries, agents, successors, predecessors-in-interest, and all of the aforementioned's respective officers, directors, employees, attorneys, shareholders, agents, vendors and assigns, from any and all rights, duties, obligations, claims, actions, causes of action or liabilities, whether arising under local, state or federal law, whether by constitution, statute, contract, common law or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, as of the date of Final Judgment in the Action, without limitation: (1) that arise out of or relate in any way to any or all of the claims, causes of action, acts, omissions, facts, matters, transactions or occurrences that were or could have been directly or indirectly alleged, asserted, described, set forth or referred to in the Action; or (2) that arise out of or relate in any way to the administration of the Settlement. The foregoing release is expressly

conditioned upon each Counterclaim Defendant participating in the Settlement; there shall be no release of any Released Counterclaims or dismissal of the counterclaims in the Action as to any Counterclaim Defendant who opts out of the Settlement. In the event of any such opt out, the Final Approval Order shall be modified accordingly.

5. Without limiting the foregoing, the Released Counterclaims specifically extend to claims that AMI does not know or suspect to exist in its favor at the time that the Settlement, and the releases contained therein, becomes effective. This paragraph constitutes a waiver of, without limitation as to any other applicable law, solely with respect to the Released Claims, of any of the rights and benefits of section 1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

6. AMI, on behalf of itself and the other releasors of the Counterclaim Defendants, understands and acknowledges the significance of these waivers of California Civil Code section 1542 and/or of any other applicable law relating to limitations on releases. In connection with such waiver and relinquishment, AMI acknowledges that it is aware that it may hereafter discover facts in addition to, or different from, those facts which it now knows or believes to be true with respect to the subject matter of the Settlement, but that it is its intention to release fully, finally and forever all Released Counterclaims, and in furtherance of such intention, the release of the Released Counterclaims will be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.

K. Public Statements: Neither the Settling Parties nor their counsel may issue press releases regarding the Settlement. In the event that any public statement is requested from a third party, the only statements that may be made are as follows: By AMI: "This was a vigorously contested, protracted and costly litigation. It has been resolved on terms mutually agreeable to

the parties and the settlement agreement prohibits further comment.” By the Settlement Class Representatives or Class Counsel: “This was a vigorously contested litigation. It has been resolved on terms mutually agreeable to the parties. The Settlement Class Representatives and Class Counsel believe the settlement is in the best interests of the class.” This paragraph shall not prohibit Class Counsel from communicating with any Settlement Class Member regarding the Action or the Settlement, nor shall it prohibit AMI from communicating with its stakeholders, business partners, regulators and advisors, including without limitation lenders, attorneys, accountants, investors, insurers and sales partners, regarding the Action or the Settlement; provided, however, that any Person engaging in such communications must comply with all confidentiality agreements and any Protective Order in the Action.

L. Stay and Bar of Other Proceedings: All proceedings in the Action will be stayed following preliminary approval of the Settlement, except as may be necessary to implement the Settlement or comply with the terms of the Settlement. Pending determination of whether the Settlement should be granted final approval, the Settling Parties agree not to pursue in the Action any claims or defenses otherwise available to them in the Action, and no Settlement Class Member, either directly, on a representative basis or in any other capacity, will commence or prosecute against any of the Released Persons any action or proceeding asserting any of the Released Claims, and AMI will not commence or prosecute against any of the Released Persons any action or proceeding asserting any of the Released Counterclaims. The Settling Parties agree that, if this Settlement does not become Final, the period of time between March 19, 2010 and the date the Settlement is cancelled or terminated shall not be counted for purposes of any defense based on passage of time.

M. Confidentiality: It is agreed that, within thirty (30) days after the Effective Date, the originals and all copies of all confidential or highly confidential documents and/or information subject to all confidentiality agreements and any protective orders in the Action shall be returned to the producing party or destroyed. Nothing in the Agreement shall require attorney

work product or pleading files to be returned or destroyed.

N. Notices: Any notice sent in connection with this Agreement shall be transmitted by e-mail and Federal Express or an equivalent overnight delivery service as follows:

To Plaintiff and Class Counsel:

Marc M. Seltzer, Esq.
Susman Godfrey L.L.P.
1901 Avenue of the Stars, Suite 950
Los Angeles, CA 90067-6029
mseltzer@susmangodfrey.com

To AMI:

Scott M. Pearson, Esq.
Stroock & Stroock & Lavan LLP
2029 Century Park East, 16th Floor
Los Angeles, CA 90067-3086
spears@stroock.com

O. General Matters

1. No Admission of Liability: It is expressly declared that AMI and each of the Counterclaim Defendants denies any wrongdoing and any liability whatsoever in the Action and is settling solely to avoid the cost and inconvenience of litigation.

2. Settlement Conditioned Upon Approval: The Settlement reflected by this Agreement is expressly conditioned on obtaining the Preliminary Approval Order and Final Approval Order without material modification by the Court. In the event of failure to obtain any of the required provisions of such orders, including, without limitation, the denial of any motion seeking preliminary or final approval, this Agreement, except for Sections III.E.1(c), III.F, and this paragraph, will become null and void and all parties will return, without prejudice, to the *status quo ante* as of the date of this Agreement as if this Agreement had not been entered into. In such event, certification of the Settlement Class will be void, no doctrine of waiver, estoppel or preclusion shall be asserted in any litigated certification proceedings in the Action, and this Agreement and its existence shall be inadmissible to establish any fact relevant to class

certification or any alleged liability of AMI for the matters alleged in the Action or for any other purpose. In the event the Agreement shall terminate, be canceled, or not become effective for any reason, within five (5) business days after written notification of such event is sent by counsel for AMI or Class Counsel to the Escrow Agent, subject to the terms of Sections III.E.1(c) and III.F of this Agreement, the Escrow Agent shall refund to AMI the balance of the Settlement Amount and all interest accrued thereon. At the request of counsel for AMI, the Escrow Agent or its designee shall apply for any tax refund owed on the Settlement Amount and pay the proceeds, after deduction of any fees or expenses incurred in connection with such application(s) for refund, to AMI. If the Effective Date does not occur, or if the Agreement is terminated pursuant to its terms, neither the Settlement Class Representatives nor Class Counsel shall have any obligation to repay any amounts actually and properly disbursed to pay for costs of Class Notice or administration of the Settlement. In addition, any expenses already incurred and properly charged to the Settlement Amount at the time of such termination or cancellation, but which have not been paid, shall be paid by the Escrow Agent in accordance with the terms of the Agreement prior to the balance being refunded in accordance with Section III.F and this paragraph.

3. Effect of Settlement: Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of the Released Parties; (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of the Released Parties in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal; or (iii) is or may be deemed to be a waiver of AMI's right to seek to enforce any arbitration provision in other cases or against Settlement Class Members who opt out of the Settlement. The Released Parties may file the Agreement and/or the Judgment in any action or proceeding that may be brought against them in order to support a defense or counterclaim based on principles of

res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

4. Evidentiary Preclusion: In the event that the Settlement is not approved as presented, or AMI terminates the Settlement as permitted herein, the parties agree that neither the terms of this Agreement nor any publicly disseminated information regarding the Settlement, including, without limitation, the Mailed, Publication or Internet Notice, court filings, orders or public statements, may be used as evidence for any purpose whatsoever. In addition, neither the fact of, nor any documents relating to, AMI's termination of the Settlement, any failure of the Court to approve the Settlement or any objections or interventions may be used as evidence for any purpose whatsoever.

5. Parties Authorized to Enter into Settlement Agreement: The individuals executing this Agreement on behalf of a party represent and warrant that he, she, or it is fully authorized to execute this Agreement on such party's behalf and to carry out the obligations provided for therein. Each Person executing the this Agreement on behalf of a party covenants, warrants and represents that he or she is and has been fully authorized to do so by such party. Each party represents and warrants that he, she, or it intends to be bound fully by the terms of this Agreement.

6. Execution: The parties and their counsel may execute this Agreement in counterparts. Each counterpart shall be deemed to be an original, and execution of counterparts shall have the same force and effect as if all parties had signed the same instrument.

7. Best Efforts: The parties agree to cooperate in preparing and reviewing the documents and performing all other acts contemplated herein in a timely manner. Class Counsel and AMI consider the Settlement described herein to be fair, reasonable and adequate will use their best efforts to seek approval of the Settlement by the Court and respond to any objectors, intervenors or other persons or entities seeking to preclude entry of the Final Judgment, and, if the Settlement is granted final approval, to effectuate its terms.

Notwithstanding the foregoing, AMI shall have no obligation to join in any motions for preliminary or final approval.

8. Time Periods: The time periods and dates described in this Agreement with respect to the giving of Class Notice and hearings will be subject to Court approval and modification by the Court with the consent of the parties.

9. Governing Law: The Agreement is governed by the laws of the State of California without reference to choice of law principles.

10. No Construction Against Drafter: The Agreement is deemed to have been drafted by all parties, and any rule that a document shall be interpreted against the drafter will not apply to this Agreement.

11. Agreement Binding on Successors in Interest: This Agreement is binding on and shall inure to the benefit of the respective heirs, successors, and assigns of the parties.

12. Entire Agreement: This Agreement contains the entire agreement between the parties and supersedes all prior understandings, agreements, or writings regarding the subject matter of this Agreement. This Agreement may be amended or modified only by a written instrument signed by all parties or their successors in interest or their duly authorized representatives.

P. Miscellaneous Provisions

1. Each and every exhibit to this Agreement is incorporated herein by this reference as though fully set forth herein.

2. The provisions of the Agreement may be waived only in a writing executed by the waiving party. The waiver by one party of any breach of this Agreement by any other party shall not be deemed a waiver, by that party or by any other party, of any other prior or subsequent breach of this Agreement.

3. Each party to this Agreement warrants that he, she or it is acting upon his, her or its independent judgment and upon the advice of his, her or its own counsel and not in

reliance upon any warranty or representation, express or implied, of any nature or kind by any other party, other than the warranties and representations expressly made in this Agreement.

4. This Agreement has been carefully read by each of the parties, or their responsible officers thereof, and its contents are known and understood by each of the parties. This Agreement is signed freely by each party executing it.

5. No party to this Agreement has heretofore assigned, transferred or granted, or purported to assign, transfer or grant, any of the claims, demands, or cause or causes of action disposed of by this Agreement.

6. In the event any one or more of the provisions contained in this Agreement shall for any reason be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such invalid, illegal or unenforceable provision shall be ineffective but shall not in anyway invalidate or otherwise affect any other provision.

7. The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Agreement, and all parties submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed:

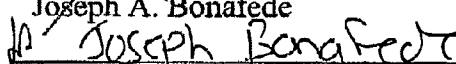
Dated: December 3, 2010

JJ MANAGEMENT INC.

By:


Joseph A. Bonafede

Its:


Joseph Bonafede

Dated: December __, 2010

MICHAEL RABINOWITZ D/B/A
GOODFELLOW AUTOMOTIVE

By:


Michael Rabinowitz

Dated: December 03, 2010

MICHAEL RABINOWITZ D/B/A
GOODEELLOW AUTOMOTIVE

By: 
Michael Rabinowitz

Dated: December ____, 2010

ADVANCEME, INC.

By: _____
Glenn S. Goldman
Its: Chief Executive Officer

APPROVED AS TO FORM AND CONTENT:

Dated: December ____, 2010

SUSMAN GODFREY L.L.P

By: _____
Marc M. Seltzer
Attorney for Plaintiffs

Dated: December ____, 2010

ANAT LEVY & ASSOCIATES, P.C.

By: _____
Anat Levy
Attorney for Plaintiffs

APPROVED AS TO FORM:

Dated: December ____, 2010

STROOCK & STROOCK & LAVAN LLP

By: _____
Scott M. Pearson
Attorney for Defendant and
Counterclaimant AdvanceMe, Inc.

Dated: December 3, 2010

ADVANCEME, INC.

By: 

Glenn S. Goldman

Its: Chief Executive Officer

APPROVED AS TO FORM AND CONTENT:

Dated: December __, 2010

SUSMAN GODFREY L.L.P

By: _____

Marc M. Seltzer

Attorney for Plaintiffs

Dated: December __, 2010

ANAT LEVY & ASSOCIATES, P.C.

By: _____

Anat Levy

Attorney for Plaintiffs

APPROVED AS TO FORM:

Dated: December 3, 2010

STROOCK & STROOCK & LAVAN LLP

By: 

Scott M. Pearson

Attorney for Defendant and
Counterclaimant AdvanceMe, Inc.

Dated: December __, 2010

ADVANCEME, INC.

By: _____
Glenn S. Goldman
Its: Chief Executive Officer

APPROVED AS TO FORM AND CONTENT:

Dated: December 3, 2010

SUSMAN GODFREY L.L.P

By: Marc M. Seltzer
Marc M. Seltzer
Attorney for Plaintiffs

Dated: December __, 2010

ANAT LEVY & ASSOCIATES, P.C.

By: _____
Anat Levy
Attorney for Plaintiffs

APPROVED AS TO FORM:

Dated: December __, 2010

STROOCK & STROOCK & LAVAN LLP

By: _____
Scott M. Pearson
Attorney for Defendant and
Counterclaimant AdvanceMe, Inc.

Dated: December ____, 2010

ADVANCEME, INC.

By: _____
Glenn S. Goldman
Its: Chief Executive Officer

APPROVED AS TO FORM AND CONTENT:


Dated: December ____, 2010

SUSMAN GODFREY L.L.P

By: _____
Marc M. Seltzer
Attorney for Plaintiffs

Dated: December 3, 2010

ANAT LEVY & ASSOCIATES, P.C.

By:  _____
Anat Levy
Attorney for Plaintiffs

APPROVED AS TO FORM:

Dated: December ____, 2010

STROOCK & STROOCK & LAVAN LLP

By: _____
Scott M. Pearson
Attorney for Defendant and
Counterclaimant AdvanceMe, Inc.

EXHIBITS

- A. Preliminary Approval Order
- B. Mailed Notice
- C. Publication Notice
- D. Publication Schedule
- E. Final Approval Order
- F. Claim Form
- G. Revision to Merchant Agreement

EXHIBIT A

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

RICHARD B. CLARK, f/d/b/a
AUSTIN'S BARBEQUE & TAVERN;
JJ MANAGMENT CO., INC.; and
MICHAEL RABINOWITZ, d/b/a
GOODFELLOW AUTOMOTIVE,
Individually and On Behalf of All Others
Similarly Situated

Plaintiff,

vs.

ADVANCEME, INC., d/b/a SUPPLY
SERVICES,

Defendant.

AND RELATED COUNTERCLAIMS.

) Case No. CV-08-3540 VBF (FFMx)

) CLASS ACTION

) **[PROPOSED] ORDER**
) **PRELIMINARILY APPROVING**
) **CLASS ACTION SETTLEMENT**
) **AND CONDITIONALLY**
) **CERTIFYING SETTLEMENT**
) **CLASS AND APPOINTING CLASS**
) **COUNSEL**

1 WHEREAS, plaintiffs JJ Management, Inc. and Michael Rabinowitz d/b/a
2 Goodfellow Automotive (together, the “Settlement Class Representatives”) and
3 defendant AdvanceMe, Inc. (“AMI”), have agreed, subject to Court approval
4 following notice to the proposed Settlement Class (as described in Paragraph 5
5 below) and a hearing, to settle this action upon the terms and conditions set forth in
6 the Settlement Agreement lodged with this Court; and

7 WHEREAS, for purposes of this Order, capitalized terms shall have the
8 meaning ascribed to them in the Settlement Agreement.

9 NOW, THEREFORE, based upon this Court’s review of the Settlement
10 Agreement and all of the files, records, and proceedings herein, and it appearing to
11 the Court, upon preliminary examination, that the Settlement Agreement and
12 settlement appear fair, reasonable, and adequate, and within the range of possible
13 approval, and that a hearing should and will be held after notice to the Settlement
14 Class (as described in Paragraph 5 below) to confirm that the Settlement Agreement
15 and settlement are fair, reasonable and adequate and to determine whether the
16 settlement should be approved and final judgment entered in this action based upon
17 the Settlement Agreement;

18 **IT IS HEREBY ORDERED THAT:**

19 **1. Preliminary Approval of Proposed Settlement.** The Settlement
20 Agreement, including all exhibits thereto, is preliminarily approved as fair,
21 reasonable and adequate and within the range of possible approval. The Court finds
22 that: (a) the Settlement Agreement resulted from extensive arm’s length negotiations;
23 and (b) the Settlement Agreement is sufficient to warrant notice thereof to Settlement
24 Class Members and a full hearing on the approval of the Settlement.

25 **2. Class Certification for Settlement Purposes.** Pursuant to Federal Rule
26 of Civil Procedure 23(c), the Court conditionally certifies, for settlement purposes
27 only, the following Settlement Class:
28

1 All Persons in the State of California who obtained a Merchant Cash
2 Advance (“MCA”) from AdvanceMe, Inc. (“AMI”), executed a
3 guaranty of an MCA in favor of AMI, or remitted or allowed to be
4 remitted any funds to AMI in connection with an MCA between May
5 29, 2004, and [the date of preliminary approval of the Settlement],
6 inclusive.

7 In connection with this conditional certification, the Court makes the following
8 preliminary findings:

9 (a) The members of the Settlement Class appear to be so numerous
10 that joinder of all members is impracticable;

11 (b) There appear to be questions of law or fact common to the
12 Settlement Class for purposes of determining whether this settlement should be
13 approved;

14 (c) The claims of the Settlement Class Representatives appear to be
15 typical of the claims being resolved through the proposed settlement;

16 (d) The Settlement Class Representatives appear to be capable of
17 fairly and adequately protecting the interests of the Settlement Class Members in
18 connection with the proposed settlement;

19 (e) For purposes of determining whether the settlement is fair,
20 reasonable and adequate, common questions of law and fact appear to predominate
21 over questions affecting only individual Settlement Class Members. Accordingly,
22 the Settlement Class appears to be sufficiently cohesive to warrant settlement by
23 representation;

24 (f) For purposes of settlement, certification of the Settlement Class
25 appears to be superior to other available methods for the fair and efficient settlement
26 of the claims of the Settlement Class Members.

27 The Settlement Class Representatives are designated as class representatives
28 for the Settlement Class.

1 **3. Class Counsel.** The Court appoints Marc M. Seltzer, Drew D. Hansen,
2 Arun S. Subramanian and Jordan Connors of Susman Godfrey L.L.P. and Anat Levy
3 of Anat Levy & Associates, P.C. as counsel for the Settlement Class. The Court
4 finds that counsel is competent and capable of exercising all responsibilities as Class
5 Counsel.

6 **4. Settlement Hearing.** A final approval hearing (the “Settlement
7 Hearing”) shall be held before the Honorable Valerie Baker Fairbank, United States
8 District Judge, in Courtroom 9 of the United States District Court for the Central
9 District of California, 312 North Spring Street, Los Angeles, California 90012, on
10 _____, at _____, as set forth in the notice to
11 the Settlement Class (described in Paragraph 5 below), to determine whether the
12 Settlement Agreement is fair, reasonable and adequate and should be approved.
13 Papers in support of final approval of the Settlement Agreement and Class Counsel’s
14 application for an award of attorneys’ fees and costs and incentive awards for the
15 Settlement Class Representatives and plaintiff Richard B. Clark (the “Fee
16 Application”) shall be filed with the Court according to the schedule set forth in
17 Paragraph 9 below. The Settlement Hearing may be postponed, adjourned, or
18 continued by order of the Court without further notice to the Settlement Class. After
19 the Settlement Hearing, the Court may enter a settlement order and final judgment in
20 accordance with the Settlement Agreement that will adjudicate the rights of the
21 Settlement Class Members with respect to the claims being settled.

22 **5. Class Notice.** Class Notice shall be provided by AMI and/or a third-
23 party settlement administrator selected by the Settling Parties (the “Settlement
24 Administrator”) within sixty (60) days following entry of this Order (the “Notice
25 Deadline”).

26 **(a) Mailed Notice.** Within fifteen (15) days after entry of this Order,
27 AMI shall provide the Settlement Administrator with the names and addresses of all
28 Settlement Class Members contained in the database it uses for day-to-day servicing

1 of accounts. AMI shall not be required to restore back-up tapes or otherwise attempt
2 to obtain names or addresses from other sources. The names and addresses shall be
3 provided in a format reasonably requested by the Settlement Administrator, with the
4 information for Open Accounts and Closed Accounts provided separately. No later
5 than the Notice Deadline, the Settlement Administrator shall mail a notice
6 substantially in the form appended as Exhibit B to the Settlement Agreement to all
7 Open Accounts and all Closed Accounts for which it has received names and
8 addresses. Closed Accounts also shall be provided with a copy of the Claim Form.
9 Prior to mailing, the Settlement Administrator will conduct a national change-of-
10 address search and update its mailing list accordingly. No further skip-trace or re-
11 mailing of returned mail will be required.

12 **(b) Publication Notice.** The Settlement Administrator shall cause a
13 summary notice of the Settlement, substantially in the form appended as Exhibit C to
14 the Settlement Agreement, to be published once in each of the publications identified
15 in Exhibit D to the Settlement Agreement. The Publication Notice shall include,
16 among other things, the address of the web site containing Internet Notice.

17 **(c) Internet Notice.** AMI shall establish an Internet web site (which
18 shall be distinct from and not linked to any websites used in AMI's business) on
19 which it will make available the Mailed Notice, the Claim Form, the Settlement
20 Agreement, contact information for the Settlement Administrator, contact
21 information for Class Counsel, and any other materials the parties agree in writing to
22 include. The domain name for the website shall be www.amisettlement.com. The
23 settlement web site shall be made accessible by the public by the earlier of the date
24 the first Publication Notice is published and the date the first Mailed Notice is
25 mailed, and shall remain accessible until the Settlement becomes Final and the net
26 Settlement Amount has been distributed to members of the Settlement Class.

27 **6. Findings Concerning Class Notice.** The Court finds that the foregoing
28 form of class notice and the manner of its dissemination is the best practicable notice

1 under the circumstances and is reasonably calculated, under all the circumstances, to
2 apprise Settlement Class Members of the pendency of this action and their right to
3 object to or exclude themselves from the Settlement Class. The Court further finds
4 that the class notice program is reasonable, that it constitutes due, adequate and
5 sufficient notice to all persons entitled to receive notice and that it meets the
6 requirements of due process and Federal Rule of Civil Procedure 23.

7 **7. Exclusion from Settlement Class.** Each Settlement Class Member
8 who wishes to be excluded from the Settlement Class and follows the procedures set
9 forth in this Paragraph shall be excluded. Any potential member of the Settlement
10 Class must mail a written request for exclusion, in the form and to the address
11 specified in the Class Notice. All such written requests must be postmarked by
12 _____ . All persons who properly make requests for
13 exclusion from the Settlement Class shall not be Settlement Class Members and shall
14 have no rights with respect to the settlement, should it be approved.

15 **8. Objections and Appearances.**

16 **(a) Written Objections.** Any potential member of the Settlement
17 Class who has not timely submitted a written request for exclusion from the
18 Settlement Class, and thus is a Settlement Class Member, may object to the fairness,
19 reasonableness or adequacy of the settlement or the Fee Application. Settlement
20 Class Members may do so either on their own or through counsel hired at their own
21 expense. Any Settlement Class Member who wishes to object to the settlement or
22 the Fee Application must, on or before _____, file a written
23 objection with the Court and serve copies on: (i) Class Counsel – Marc M. Seltzer,
24 Susman Godfrey, L.L.P., 1901 Avenue of the Stars, Suite 950, Los Angeles,
25 California 90067; and (ii) counsel for AMI – Scott M. Pearson, Stroock & Stroock &
26 Lavan LLP, 2029 Century Park East, 16th Floor, Los Angeles, California 90067.
27 Any objection that is not timely filed and served shall be forever barred.
28

1 **(b) Appearance at Settlement Hearing.** Any Settlement Class
2 Member who timely files and serves a written objection may also appear at the
3 Settlement Hearing, either in person or through counsel hired at the Settlement Class
4 Member's expense, to object to the fairness, reasonableness or adequacy of the
5 settlement or the Fee Application. Settlement Class Members or their counsel
6 intending to appear at the Settlement Hearing must file with the Court and serve on
7 Class Counsel and AMI's counsel at the addresses listed above, no later than
8 _____, a notice of intention to appear setting forth: (i) the name
9 and address of the Settlement Class Member (and, if applicable, the name, address
10 and telephone number of the Settlement Class Member's attorney); and (ii) the
11 objection, including any papers in support thereof. Any Settlement Class Member
12 who does not timely file and serve a written objection and the notice of intention to
13 appear by _____, shall not be permitted to object or appear
14 at the Settlement Hearing and shall be bound by all proceedings, orders and
15 judgments of the Court.

16 **9. Further Papers in Support of Settlement and Fee Application.** Any
17 responses to objections to the Settlement Agreement and any papers in support of the
18 Settlement and Fee Application shall be filed with the Court on or before
19 _____.

20 **10. Effect of Failure to Approve the Settlement Agreement.** In the event
21 the Settlement Agreement is not approved by the Court, or for any reason the parties
22 fail to obtain a Final Judgment as contemplated in the Settlement Agreement, or the
23 Settlement Agreement is terminated pursuant to its terms for any reason, then the
24 following shall apply:

25 (a) All orders and findings entered in connection with the Settlement
26 Agreement shall become null and void and have no further force and effect, shall not
27 be used or referred to for any purposes whatsoever, and shall not be admissible or
28 discoverable in any other proceeding;

1 (b) The conditional certification of the Settlement Class pursuant to
2 this Order shall be vacated automatically and void; no doctrine of waiver, estoppel or
3 preclusion shall be asserted in any litigated certification proceedings in the Action;
4 and the Settlement Agreement and its existence shall be inadmissible to establish any
5 fact relevant to class certification or any alleged liability of AMI for the matters
6 alleged in the Actions or for any other purpose;

7 (c) Nothing contained in this Order is, or may be construed as, any
8 admission or concession by or against AMI or the Settlement Class Representatives
9 on any point of fact or law; and

10 (d) Neither the settlement terms nor any publicly disseminated
11 information regarding the settlement, including, without limitation, the class notice,
12 court filings, orders and public statements, may be used as evidence for any purpose
13 whatsoever. In addition, neither the fact of, nor any documents relating to, AMI's
14 withdrawal from the settlement, any failure of the Court to approve the settlement
15 and/or any objections or interventions may be used as evidence for any purpose
16 whatsoever.

17 **11. Stay of Proceedings.** All proceedings in this action are stayed until
18 further order of the Court, except as may be necessary to implement the terms of the
19 settlement. Pending final determination of whether the settlement should be
20 approved, neither the Settlement Class Representatives nor any Settlement Class
21 Member, either directly, representatively or in any other capacity, shall commence or
22 prosecute against any of the Released Parties any action or proceeding in any court
23 or tribunal asserting any of the Released Claims.

24 **IT IS SO ORDERED.**

25 Dated:

26
27 By: _____
28 Valerie Baker Fairbank
UNITED STATES DISTRICT JUDGE

EXHIBIT B

Notice of Proposed Class Action Settlement and Hearing

If you are located in California and obtained a Merchant Cash Advance from AdvanceMe, Inc., signed a personal guaranty of a Merchant Cash Advance from AdvanceMe, Inc., or paid money to AdvanceMe, Inc. on a Merchant Cash Advance between May 29, 2004 and [DATE OF PRELIMINARY APPROVAL], you could get a payment from a class action settlement.

THIS NOTICE MAY AFFECT YOUR RIGHTS – PLEASE READ IT CAREFULLY

This notice summarizes a proposed class action settlement of claims brought against AdvanceMe, Inc. (“AMI”) involving alleged violations of California’s usury and lending laws. The name of the case is Clark v. AdvanceMe, Inc., No. CV 08-3540 VBF (FFMx).

The United States District Court for the Central District of California will hold a hearing on [DATE OF FINAL APPROVAL HEARING] to decide whether to give final approval to the settlement. The Court has not decided that AMI did anything wrong. The purpose of this notice is to inform you of the settlement and of your rights relating to the settlement.

1. WHAT IS THIS LAWSUIT ABOUT?

The lawsuit described above was brought against AMI alleging that Merchant Cash Advances (“MCAs”) are loans with interest rates above what the law allows. The Settlement Class Representatives and Class Counsel have concluded, after carefully considering the relevant facts and the applicable law, that it would be in the best interests of the Class to enter into this Settlement in order to avoid the uncertainties of litigation and obtain the benefits of this Settlement for the Class. After careful investigation and evaluation, the Settlement Class Representatives and Class Counsel believe the Settlement is fair, reasonable, adequate, and in the best interests of the Class.

AMI denies the allegations, any wrongdoing, and any liability whatsoever and believes it has many legal defenses to all of the claims asserted against it in the lawsuit. AMI believes that MCAs are purchases of future credit card receivables, not loans, that it complied and continues to comply in all respects with the law and that no Class Member has sustained any damages or injuries. Nonetheless, AMI has concluded that continuing the Litigation would be protracted and expensive, and therefore has agreed to the Settlement.

2. WHO IS A CLASS MEMBER?

The settlement class includes all persons in California who, between May 29, 2004 and [DATE OF PRELIMINARY APPROVAL], obtained an MCA from AMI, signed a personal guaranty of an MCA from AMI, or paid money to AMI on an MCA (either directly or through remittances of credit card receivables).

3. WHO REPRESENTS THE SETTLEMENT CLASS?

JJ Management, Inc. and Michael Rabinowitz have been designated by the Court as the settlement class representatives for purposes of the settlement approval process. The Court has appointed Marc M. Seltzer, Drew D. Hansen, Arun S. Subramanian and Jordan Connors of Susman Godfrey L.L.P. and Anat Levy of Anat Levy & Associates, P.C. as class counsel to represent your interests and those of the settlement class. You also have the right to consult with your own attorney, at your own expense, and you may enter an appearance through your own attorney if you desire.

4. WHAT ARE THE SETTLEMENT TERMS?

AMI has agreed to establish a settlement fund of \$11.5 million, which will be placed in an interest-bearing escrow account. The settlement fund and accrued interest will be used to make payments to Plaintiffs, members of the Class, and non-profit organizations; to notify the Class of the terms of the Settlement; to pay for administering the Settlement; and to pay Class Counsel's attorneys' fees and costs. AMI also has agreed to cancel approximately \$11.9 million in merchant accounts which have been in "nonperforming status" for at least 24 months, and to release approximately \$2.8 million in judgments it obtained on those accounts. AMI also has agreed to make changes to its Merchant Agreements and to implement additional training and compliance measures.

The settlement fund will be used first to pay a total of \$500,000 to the SCORE Foundation (a 501(c)(3) nonprofit organization dedicated to educating entrepreneurs and helping small businesses) to benefit those class members who will not receive a payment from the settlement, then to pay for the cost of notifying the class and administering the settlement, and then (subject to Court approval) to pay to Class Counsel up to \$4,000,000 in attorneys' fees plus costs and expenses incurred by Class Counsel not to exceed \$500,000 and \$15,000 to each of the three Plaintiffs for their services in the case. Class Counsel may apply for a second award of attorneys' fees, costs and expenses to be paid from the settlement fund for additional work, costs and expenses associated with settlement administration, subject to Court approval, without further notice to the Settlement Class. Class Counsel's initial application for an award of attorneys' fees and expenses is on file with the Court and is available for inspection at www.amisettlement.com.

The balance of the settlement fund will be paid to members of the settlement class based on the difference between the "Purchase Price" and "Specified Amount" in their agreements with AMI. Class members who have at least one account with a Specified Amount balance and who have made at least one remittance within the last 32 days are not required to submit a claim form in order to receive a payment. All other Class members must submit a properly completed claim form in order to receive a payment. If there is any money left in the settlement fund after all claims are paid, it will be paid to the SCORE Foundation.

5. DO I NEED TO DO ANYTHING TO REMAIN A MEMBER OF THE SETTLEMENT CLASS?

You do not need to do anything to remain a member of the settlement class. You will remain a member of the settlement class unless you take steps to exclude yourself, described below. If you remain a member of the settlement class, you will be bound by any judgment entered whether or not it is favorable to the settlement class.

6. HOW CAN I EXCLUDE MYSELF FROM THE SETTLEMENT?

If you do not want to remain a settlement class member and participate in the settlement, then you must sign and send an exclusion request to: [ADDRESS FOR OPT OUTS]. Your exclusion request will not be valid if mailed to any other address. Your exclusion request must: (i) be signed by the merchant and each guarantor for each MCA as to which exclusion is requested; (ii) include the full name, address and (if known) AMI account number(s) of the Person(s) requesting exclusion; and (iii) include the following statement: "I/we request to be excluded from the settlement in Clark v. AdvanceMe, Inc." No request for exclusion will be valid unless all of the information described above is included. For any person in the settlement class who has more than one account, the exclusion request must specify each separate account. Your exclusion request must be postmarked by not later than [OBJECTION DEADLINE]. The Court will exclude from the settlement class any member who timely and properly requests exclusion.

By electing to be excluded from the settlement class, you: (1) will not share in any recovery if the settlement is approved; (2) will not be bound by any further orders or judgments entered for or against the settlement class; (3) will not be entitled to comment on or object to any proposed settlement; and (4) may present any claims you have against AMI by filing your own lawsuit at your own expense.

7. WHAT IS THE SETTLEMENT APPROVAL PROCEDURE?

The Court will hold a settlement hearing on [HEARING DATE], at [TIME], before the Honorable Valerie Baker Fairbank, United States District Judge, in Courtroom 9 of the United States District Court for the Central District of California, 312 North Spring Street, Los Angeles, California 90012, to consider whether the Settlement should be approved, as well as to consider an award of attorneys' fees and costs to Class Counsel and payments to Plaintiffs for their services as class representatives. You may attend the hearing, but you do not have to.

If you exclude yourself from the settlement class, you are not entitled to comment on or object to the settlement, the award of fees and costs to Class Counsel and the payments to Plaintiffs, and you may not be heard at the settlement approval hearing.

If you decide to remain in the settlement class and you wish to comment on or object to the settlement, the award of fees and costs to class counsel or the payments to Plaintiffs, you must file your objections in writing with the Court and send copies to: (i) Class Counsel – Marc M. Seltzer, Susman Godfrey, L.L.P., 1901 Avenue of the Stars, Suite 950, Los Angeles, California 90067; and (ii) counsel for AMI – Scott M. Pearson, Stroock & Stroock & Lavan LLP, 2029 Century Park East, 16th Floor, Los Angeles, California 90067. Comments or objections must be

filed and sent to class counsel and counsel for AMI postmarked not later than [OBJECTION DEADLINE]. If you wish to address the Court at the hearing, you must indicate your intent to do so. If you do not comply with these procedures, you will not be entitled to be heard at the hearing or otherwise to contest approval of the Settlement, the award of fees and costs to Class Counsel or the payments to Plaintiffs or to appeal from any orders or judgments of the Court. If the Court approves the settlement, the approval will bind all members of the settlement class except those who have excluded themselves.

8. HOW WILL I BE PAID?

If you do not have at least one account with AMI that had a Specified Amount balance and on which at least one remittance was made between [32 day period prior to preliminary approval], you must complete and mail the claim form by [CLAIM FORM DEADLINE] in order to receive a settlement payment. If you received this notice in the mail, a claim form is enclosed only if you need to submit the form. Claim forms also are available at www.amisettlement.com or by calling (800) _____. To complete the claim form, you must provide your name, address and account number(s) (if known). You must also sign the claim form.

Claim forms must be postmarked by [CLAIM FORM DEADLINE] and mailed to the address specified on the claim form. Only one claim form will be honored per account.

9. WHEN WILL I RECEIVE A CHECK?

If the settlement is approved and no appeal is filed, checks will be mailed approximately ____ months after the date of the final settlement hearing. If someone appeals the approval of the settlement, payment will be delayed until after all appeals are resolved. In addition, payment may be delayed if judicial review of any denied claims is sought by Class Counsel.

10. RELEASE OF CLAIMS

If the settlement is approved and you do not exclude yourself from the settlement, the following release will apply:

Upon the Effective Date, the Settlement Class Representatives and the Settlement Class, on behalf of themselves and their respective heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest and assigns, shall be deemed to have, and by operation of the Judgment shall have, fully released and forever discharged AMI and each and all of its present, former and future direct and indirect parent companies, affiliates, subsidiaries, agents, successors, predecessors-in-interest, or any financial institutions, corporations, trusts, or other entities that may hold or have held any interest (including, without limitation, any security interest) in any account or any receivables relating to any account, or any receivables or group of receivables, or any interest in the operation or ownership of AMI, and all of the aforementioned's respective officers, directors, employees, attorneys, shareholders, agents, vendors and assigns, from any and all rights, duties, obligations, claims, actions, causes of action or liabilities, whether arising under

local, state or federal law (including, without limitation, under any state consumer-protection or unfair and deceptive practices acts), whether by constitution, statute, contract, common law or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, as of the Effective Date, including, without limitation: (1) that arise out of or relate in any way to any or all of the claims, causes of action, acts, omissions, facts, matters, transactions or occurrences that were or could have been directly or indirectly alleged, asserted, described, set forth or referred to in the Action; or (2) that arise out of or relate in any way to the administration of the Settlement. This release does not extend to claims that are completely unrelated to those alleged in the Action, such as claims that AMI did not credit to an account remittances that it actually received.

Without limiting the foregoing, the Released Claims specifically extend to claims that the Settlement Class Representatives and the Settlement Class Members do not know or suspect to exist in their favor at the time that the Settlement, and the releases contained therein, becomes effective. This paragraph constitutes a waiver of, without limitation as to any other applicable law, solely with respect to the Released Claims, of any of the rights and benefits of section 1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The Settlement Class Representatives understand and acknowledge, and each member of the Settlement Class shall be deemed to understand and acknowledge, the significance of these waivers of California Civil Code section 1542 and any other applicable law relating to limitations on releases. In connection with such waiver and relinquishment, the Settlement Class Representatives acknowledge, and all members of the Settlement Class shall be deemed to acknowledge, that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they now know or believe to be true with respect to the subject matter of the Settlement, but that it is their intention to release fully, finally and forever all Released Claims, and in furtherance of such intention, the release of the Released Claims will be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.

11. WHERE DO I GET ADDITIONAL INFORMATION?

If you want further information, visit www.amisettlement.com or call (800)

This is only a summary of the lawsuit and the proposed settlement. You may seek the advice of your own attorney, at your expense, if you so desire. For more detailed information, you may review the papers on file in the lawsuit, which may be inspected during regular business hours at the Clerk's Office, U.S. Courthouse, 312 North Spring Street, Los Angeles, California 90012.

DO NOT CALL OR WRITE TO THE COURT OR THE CLERK OF THE COURT. DO NOT CONTACT ADVANCEME. TELEPHONE REPRESENTATIVES ARE NOT AUTHORIZED TO CHANGE THE TERMS OF THE SETTLEMENT OR THIS NOTICE.

Dated:

The Hon. Valerie Baker Fairbank
United States District Judge

EXHIBIT C

LEGAL NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

TO: All persons and entities in California who, between May 29, 2004 and [DATE OF PRELIMINARY APPROVAL], obtained a Merchant Cash Advance from AdvanceMe, Inc., signed a personal guaranty of a Merchant Cash Advance from AdvanceMe, Inc., or paid money to AdvanceMe, Inc. on a Merchant Cash Advance

This Is Not An Advertisement Or Attorney Solicitation.

Read This Notice Carefully. A Class Action Lawsuit May Affect Your Rights.

A settlement has been proposed in a class action lawsuit relating to Merchant Cash Advances ("MCAs") made by AdvanceMe, Inc. ("AMI"). This notice is only a summary. A detailed notice of your rights is available at <http://www.amisettlement.com>.

Description of Litigation. The Settlement Class Representatives allege that AMI's MCAs are loans that charge more interest than permitted by law. AMI has denied all allegations of wrongdoing and liability. The Court has not ruled on the merits of the Settlement Class Representatives' claims or AMI's defenses.

Settlement. Class Counsel and the Settlement Class Representatives have concluded, after due investigation and after carefully considering the relevant circumstances and the applicable law, that it would be in the best interest of the class to enter into a settlement agreement in order to avoid the uncertainties of litigation and to assure that the benefits reflected in the settlement agreement are obtained for the Class. The Settlement Class Representatives and AMI have negotiated a settlement agreement which they believe will, if approved by the Court, benefit Settlement Class Members.

Who Is Included? The Settlement Class includes all persons in California who, between May 29, 2004 and [DATE OF PRELIMINARY APPROVAL], obtained an MCA from AMI, signed a personal guaranty of an MCA from AMI, or paid money to AMI on an MCA (either directly or through remittances of credit card receivables).

Settlement Payments. AMI has agreed to establish a settlement fund of \$11.5 million, which will bear interest. The settlement fund will be used to make payments to the Settlement Class Representatives, Settlement Class Members, and a non-profit organization; to pay for notice and settlement administration; and to pay Class Counsel's attorneys' fees and costs. AMI also has agreed to cancel approximately \$11.9 million in accounts which have been in "nonperforming status" for at least 24 months, and to release approximately \$2.8 million in judgments on those accounts. AMI also has agreed to make changes to its Merchant Agreements and to implement additional training and compliance measures.

The settlement fund will be used first to pay \$500,000 to a nonprofit organization to benefit those class members who will not receive a settlement payment, then to pay for notice and settlement administration costs, and then (subject to Court approval) to pay up to \$4,000,000 in attorneys' fees plus costs and expenses incurred by Class Counsel not to exceed \$500,000 and \$15,000 to each of the three Plaintiffs for their services in the case. Class Counsel may apply for a second award of attorneys' fees, costs and expenses to be paid from the settlement fund for additional work, costs and expenses associated with settlement administration, subject to Court approval, without further notice to the Settlement Class. The balance of the settlement fund will be paid to Settlement Class Members based on the difference between the "Purchase Price" and "Specified Amount" in each member's agreement with AMI relative to the sum of the differences between the "Purchase Price" and the "Specified Amount" for all members' agreements. If there is any money left after all claims are paid, it will be paid to a nonprofit organization.

How Do I Make A Claim? Claim forms are available at www.amisettlement.com or by calling (800) _____. You must complete and mail the claim form by [CLAIM FORM DEADLINE] in order to receive a settlement payment.

Other Options. If you don't want to be legally bound by the Settlement, you must request exclusion by [OBJECTION DEADLINE], or you will not be able to sue about the legal claims in this case. If you request exclusion, the Court will exclude you from the Settlement Class and you will not get money from this Settlement. If you stay in the Settlement, you may object to it by [OBJECTION DEADLINE]. The detailed notice explains how to exclude yourself or object. If you remain a member of the Settlement Class, you will be bound by any judgment entered whether or not it is favorable to the Settlement Class.

The Court will hold a hearing in this case (Clark v. AdvanceMe, Inc., No. CV 08-3540 VBF (FFMx)) to consider whether to approve the Settlement on [HEARING DATE], at [TIME], before the Hon. Valerie Baker Fairbank, United States District Judge, in Courtroom 9 of the U.S. District Court for the Central District of California, 312 North Spring Street, Los Angeles, CA 90012. The detailed notice explains what to do if you want to appear at the hearing. Requests to appear must be made by [OBJECTION DEADLINE]. For more information, visit www.amisettlement.com or call (800) _____. You may also enter an appearance through your own attorney if you desire.

DO NOT CALL OR WRITE TO THE COURT OR THE CLERK OF THE COURT. DO NOT CONTACT ADVANCEME ABOUT THE SETTLEMENT. TELEPHONE REPRESENTATIVES ARE NOT AUTHORIZED TO CHANGE THE TERMS OF THE SETTLEMENT OR THIS NOTICE.

Dated: [DATE] /s/ Valerie Baker Fairbank, United States District Judge

EXHIBIT D

Notice Publications

Bakersfield Californian

Fresno Bee

Los Angeles Times

Orange County Register

Sacramento Bee

San Diego Union-Tribune

San Francisco Chronicle

San Jose Mercury News

EXHIBIT E

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

RICHARD B. CLARK, f/d/b/a
AUSTIN'S BARBEQUE & TAVERN;
JJ MANAGMENT CO., INC.; and
MICHAEL RABINOWITZ, d/b/a
GOODFELLOW AUTOMOTIVE,
Individually and On Behalf of All Others
Similarly Situated

Plaintiff,

vs.

ADVANCEME, INC., d/b/a SUPPLY
SERVICES,

Defendant.

) Case No. CV-08-3540 VBF (FFMx)

) CLASS ACTION

) **[PROPOSED] FINAL APPROVAL
ORDER AND JUDGMENT**

AND RELATED COUNTERCLAIMS.

1 THIS MATTER came before the Court for final approval of the proposed class
2 settlement. The Court has considered all papers filed and the entire record of the
3 proceedings in this matter and held a hearing on _____, 2011, at which time
4 the parties and all other interested persons were afforded the opportunity to be heard
5 in support of and in opposition to the proposed settlement. Based on the papers filed
6 with the Court and presentations made to the Court at the hearing, and good cause
7 appearing therefor,

8 It is hereby ORDERED, ADJUDGED, AND DECREED as follows:

9 1. The definitions and provisions of the Settlement Agreement are hereby
10 incorporated as though fully set forth herein. For purposes of this Order, capitalized
11 terms shall have the meaning ascribed to them in the Agreement.

12 2. This Court has jurisdiction over the subject matter of the Agreement
13 with respect to and over all parties to the Agreement, including all members of the
14 Settlement Class.

15 3. The Court hereby approves the Settlement, including the plan of
16 distribution of the settlement relief, and finds that the Settlement is, in all respects,
17 fair, reasonable and adequate to the Settlement Class Members, within the authority
18 of the parties and the result of extensive arm's length negotiations.

19 4. Pursuant to Federal Rule of Civil Procedure 23(c), the Court certifies,
20 for settlement purposes only, the following Settlement Class:

21 All Persons in the State of California who obtained a Merchant Cash
22 Advance ("MCA") from AdvanceMe, Inc. ("AMI"), executed a
23 guaranty of an MCA in favor of AMI, or remitted or allowed to be
24 remitted any funds to AMI in connection with an MCA between May
25 29, 2004, and [the date of preliminary approval of the Settlement],
26 inclusive.

27 5. This Final Approval Order and Judgment does not constitute an
28 expression by the Court of any opinion, position or determination as to the merit or

1 lack of merit of any of the claims or defenses of the Settlement Class
2 Representatives, the Settlement Class Members or AMI. Neither this Final Approval
3 Order and Judgment nor the Agreement is an admission or indication by AMI of the
4 validity of any claims in this action or of any liability or wrongdoing or of any
5 violation of law. This Final Approval Order and Judgment and the Agreement do not
6 constitute a concession and shall not be used as an admission or indication of any
7 wrongdoing, fault or omission by AMI or any other person in connection with any
8 transaction, event or occurrence, and neither this Final Approval Order and Judgment
9 nor the Agreement nor any related documents in this proceeding nor any reports or
10 accounts thereof shall be offered or received in evidence in any civil, criminal or
11 administrative action or proceeding, other than such proceedings as may be
12 necessary to consummate or enforce this Final Approval Order and Judgment, the
13 Agreement and all releases given thereunder, or to establish the affirmative defenses
14 of res judicata or collateral estoppel.

15 6. The list of Persons excluded from the Settlement Class because they
16 timely and validly requested exclusion from the Settlement Class is attached hereto
17 as Exhibit 1 and incorporated by reference in this Final Judgment. The Persons listed
18 in Exhibit 1 to this Final Judgment are not bound by this Final Judgment or the terms
19 of the Agreement and may pursue their own individual remedies against AMI and the
20 Released Parties. However, such Persons are not entitled to any rights or benefits
21 provided to Settlement Class Members by the terms of the Agreement. Pursuant to
22 Rule 23(c) of the Federal Rules of Civil Procedure, all Settlement Class Members
23 who have not timely and validly requested exclusion from the Settlement Class are
24 bound by this Final Judgment and by the terms of the Agreement.

25 7. The Court hereby dismisses the Action, including the counterclaims
26 asserted in the Action, with prejudice, without costs as to any of the Parties against
27 the others, except for such applications as may be made pursuant to the Agreement
28

1 by Class Counsel and the Settlement Class Representatives and/or Clark to be paid
2 solely out of the Settlement Amount.

3 8. (a) Upon the Effective Date, the Settlement Class Representatives
4 and the Settlement Class, on behalf of themselves and their respective heirs,
5 executors, administrators, representatives, agents, attorneys, partners, successors,
6 predecessors-in-interest and assigns, shall be deemed to have, and by operation of the
7 Judgment shall have, fully released and forever discharged AMI and each and all of
8 its present, former and future direct and indirect parent companies, affiliates,
9 subsidiaries, agents, successors, predecessors-in-interest, or any financial institutions,
10 corporations, trusts, or other entities that may hold or have held any interest
11 (including, without limitation, any security interest) in any account or any
12 receivables relating to any account, or any receivables or group of receivables, or any
13 interest in the operation or ownership of AMI, and all of the aforementioned's
14 respective officers, directors, employees, attorneys, shareholders, agents, vendors
15 and assigns, from any and all rights, duties, obligations, claims, actions, causes of
16 action or liabilities, whether arising under local, state or federal law (including,
17 without limitation, under any state consumer-protection or unfair and deceptive
18 practices acts), whether by constitution, statute, contract, common law or equity,
19 whether known or unknown, suspected or unsuspected, asserted or unasserted,
20 foreseen or unforeseen, actual or contingent, liquidated or unliquidated, as of the
21 Effective Date, including, without limitation: (1) that arise out of or relate in any way
22 to any or all of the claims, causes of action, acts, omissions, facts, matters,
23 transactions or occurrences that were or could have been directly or indirectly
24 alleged, asserted, described, set forth or referred to in the Action; or (2) that arise out
25 of or relate in any way to the administration of the Settlement. This release does not
26 extend to claims that are completely unrelated to those alleged in the Action, such as
27 claims that AMI did not credit to an account remittances that it actually received.
28

1 (b) Upon the Effective Date, AMI, on behalf of itself and each and all
2 of its present, former and future direct and indirect parent companies, affiliates,
3 subsidiaries, agents, successors, predecessors-in-interest, and/or any financial
4 institutions, corporations, trusts, or other entities that may hold or have held any
5 interest (including without limitation any security interest) in any account or any
6 receivables relating to any account, or any receivables or group of receivables, or any
7 interest in the operation or ownership of AMI, and all of the aforementioned's
8 respective officers, directors, employees, attorneys, shareholders, agents, vendors
9 and assigns, shall be deemed to have, and by operation of the Judgment shall have,
10 fully, finally, and forever released, relinquished, and discharged the Counterclaim
11 Defendants, and each and all of their present, former and future direct and indirect
12 parent companies, affiliates, subsidiaries, agents, successors, predecessors-in-
13 interest, and all of the aforementioned's respective officers, directors, employees,
14 attorneys, shareholders, agents, vendors and assigns, from any and all rights, duties,
15 obligations, claims, actions, causes of action or liabilities, whether arising under
16 local, state or federal law, whether by constitution, statute, contract, common law or
17 equity, whether known or unknown, suspected or unsuspected, asserted or
18 unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated,
19 as of the date of Final Judgment in the Action, without limitation: (1) that arise out of
20 or relate in any way to any or all of the claims, causes of action, acts, omissions,
21 facts, matters, transactions or occurrences that were or could have been directly or
22 indirectly alleged, asserted, described, set forth or referred to in the Action; or (2)
23 that arise out of or relate in any way to the administration of the Settlement.

24 (c) Without limiting the foregoing, the Released Claims and the
25 Released Counterclaims specifically extend to claims that the Settlement Class
26 Representatives and the Settlement Class Members (as to the Released Claims) and
27 AMI (as to the Released Counterclaims) do not know or suspect to exist in their
28 favor at the time that the settlement, and the releases contained therein, becomes

1 effective. The Court finds that the Settlement Class Representatives and AMI have,
2 and the Settlement Class Members are deemed to have, knowingly waived California
3 Civil Code section 1542 and/or any other applicable law relating to limitations on
4 releases, solely with respect to the Released Claims or Released Counterclaims, as
5 applicable.

6 9. In aid to this Court's jurisdiction to implement and enforce the
7 settlement, the Settlement Class Representatives and all Settlement Class Members
8 and all persons purporting to act on behalf of Settlement Class Members are
9 enjoined, directly, on a representative basis or in any other capacity, from asserting,
10 commencing, prosecuting or continuing any of the Released Claims against AMI or
11 any of the other Released Parties in any action, arbitration or proceeding in any
12 court, arbitral forum or tribunal.

13 10. The Court finds that the program of Class Notice set forth in the
14 Agreement and preliminarily approved by the Court was the best practicable notice
15 under the circumstances. The Class Notice provided due and adequate notice of
16 these proceedings and of the matters set forth therein, including the Agreement, to all
17 parties entitled to such notice and satisfied the requirements of Federal Rule of Civil
18 Procedure 23 and the requirements of constitutional due process.

19 11. Without affecting the finality of this Final Approval Order and
20 Judgment in any way, the Court retains continuing jurisdiction over: (a)
21 implementation of the Agreement and distribution of the settlement payments
22 contemplated by the Agreement, until all acts agreed to be performed pursuant to the
23 Agreement have been performed; and (b) all parties to this action and members of
24 the Settlement Class for the purpose of enforcing and administering the Agreement.

25 12. Neither this Final Approval Order and Judgment nor the Agreement
26 constitutes an admission or concession by AMI of any fault, omission, liability or
27 wrongdoing. This Final Approval Order and Judgment is not a finding of the validity
28 or invalidity of any claims in this action or a determination of any wrongdoing by the

1 defendant. The final approval of the Agreement does not constitute any opinion,
2 position or determination of this Court, one way or the other, as to the merits of the
3 claims and defenses of the Settlement Class Representatives, AMI or the Settlement
4 Class members.

5 13. In the event that the Agreement does not become effective in
6 accordance with its terms, then this Final Approval Order and Judgment shall be
7 vacated, the Settlement Class shall be decertified (without affecting the Settlement
8 Class Representatives' right subsequently to seek certification) and the Agreement
9 and all orders entered in connection therewith shall become null and void and of no
10 further force and effect.

11 14. The Settlement is not conditioned upon the Court's approval of the plan
12 of allocation for the settlement consideration or the fees, costs, expenses and
13 incentive awards sought by Class Counsel. Any appellate proceedings relating solely
14 to such matters shall not delay the date on which this Final Approval Order and
15 Judgment becomes Final.

16 **IT IS SO ORDERED.**

17 Dated:

18
19 By: _____
20 Valerie Baker Fairbank
21 UNITED STATES DISTRICT JUDGE
22
23
24
25
26
27
28

EXHIBIT F

CLAIM FORM

Clark v. AdvanceMe, Inc.

United States District Court for the Central District of California
Case No. CV 08-3540 VBF (FFMx)

To be eligible for a settlement payment, you must follow all of the instructions in this Claim Form and provide all of the information requested below. Failure to provide all of the requested information will result in your claim being rejected. Only one claim form may be submitted per account.

You must mail your completed Claim Form to the address listed below so that it is postmarked **on or before [last day to submit claim forms]**. CLAIM FORMS POSTMARKED AFTER THE DEADLINE WILL BE REJECTED. Claim Forms submitted to any location other than to the address listed below will not be considered.

1. Provide your name and address:

Claimant's Name (First, Middle, Last or Company Name)

Current Street Address and Number

City

State

Zip Code

2. Provide your AdvanceMe account number(s) (if known):

Account Number(s)

3. You must sign below.

Dated: _____

(Sign here)

4. Return your COMPLETED Claim Form to:

Clark Settlement Claims, P.O. Box _____,

This address should only be used for submitting claims. Any other questions or requests for information sent to this address will not be responded to. If you have any questions regarding the notice or this Claim Form, visit www.amisettlement.com or contact the Settlement Administrator at (800) _____ or P.O. Box _____, _____.

Do not contact AdvanceMe or the Court. AdvanceMe telephone representatives are not authorized to change the terms of this Claim Form or the settlement.

EXHIBIT G

Processing Trial. Buyer shall have no obligation to pay Seller any interest or other compensation with respect to any such returned cash.

Section 1.9. Excess Cash. In the event that the amount of cash remitted to Buyer pursuant to this Agreement exceeds the sum of the Specified Amount and any other amounts Buyer is entitled to receive hereunder (such excess being the "Excess Cash") by at least \$20.00, Buyer agrees to pay such Excess Cash to Seller within thirty (30) days after receipt thereof by Buyer. In the event the Excess Cash is less than \$20.00, Buyer agrees to pay such Excess Cash to Seller within thirty (30) days after its receipt of a written request from Seller, provided such request is made within six months of Buyer's receipt of such Excess Cash. Seller acknowledges and agrees that Buyer has no obligation to take any action (including against Processor or Operator) with respect to any cash being held by Processor or Operator, which will become Excess Cash once it is paid by Processor or Operator to Buyer, prior to the receipt of such Excess Cash by Buyer.

Section 1.10. Reliance on Terms. The provisions of this Agreement are agreed to for the benefit of Seller, Principal(s), Buyer, Processor and Operator and, notwithstanding the fact that Processor and Operator are not parties to this Agreement, they may rely upon the terms of this Agreement and raise them as defenses in any action.

2. REPRESENTATIONS, WARRANTIES AND COVENANTS.

Seller and Principal(s) represent, warrant and covenant the following as of the date hereof and during the term of this Agreement:

Section 2.1. Seller Contractual Covenants. Seller agrees as follows (collectively, the "Seller Contractual Covenants"): (i) to not materially change the nature of the business it conducts from the type of business originally disclosed to Buyer in connection with this Agreement or to Processor as of the date of this Agreement; (ii) to exclusively use Processor for the processing of all of its Card transactions, to not change its arrangements with Processor in any way that is adverse to Buyer, and to not take any action that has the effect of causing the processor through which any Card transactions are settled to be changed from Processor to another, or additional, processor; (iii) to not take any action to discourage the use of Cards and to not permit any event to occur that could have an adverse effect on the use, acceptance or authorization of Cards for the purchase of Seller's services and products; (iv) to not open a new account other than the Account to which Card settlement proceeds will be deposited, to not take any action to cause Future Receivables or Receivables to be settled or delivered to any account other than the Account, and to not revoke or cancel any of the authorizations to debit or otherwise withdraw from, or access the Account or any other account of Seller described in this Agreement; (v) to not sell, dispose, convey or otherwise transfer its business without the express prior written consent of Buyer and the assumption of all of Seller's obligations under this Agreement pursuant to documentation reasonably satisfactory to Buyer; (vi) to not sell, assign, convey, dispose of, or otherwise transfer any of its Future Receivables to any person or entity other than Buyer; (vii) to not grant or permit any Lien (as defined in Section 2.11

hereof) upon any of its accounts receivable, including Future Receivables, for the benefit of any person or entity other than Buyer; and (viii) to maintain a Minimum Balance (as defined in Section 1.7) in the Account to the extent required as provided in Section 1.7 hereof. **Buyer, Seller and Principals acknowledge and agree that Seller going bankrupt or out of business, in and of itself, does not constitute a breach of the Seller Contractual Covenants.**

Section 2.2. Business Information. All information (financial and other) provided by or on behalf of Seller to Buyer in connection with the execution of or pursuant to this Agreement is true, accurate and complete in all respects. Seller shall furnish Buyer, Processor and Operator such information as Buyer may request from time to time.

Section 2.3. Reliance on Information. Seller acknowledges and agrees that all information (financial and other) provided by or on behalf of Seller and Principal(s) has been relied upon by Buyer in connection with its decision to purchase the Specified Amount of Future Receivables from Seller.

Section 2.4. Compliance. Seller is in compliance with any and all applicable federal, state and local laws and regulations and rules and regulations of card associations and payment networks. Seller possesses and is in compliance with all permits, licenses, approvals, consents, registrations and other authorizations necessary to own, operate and lease its properties and to conduct the business in which it is presently engaged.

Section 2.5. Authorization. Seller and the person(s) signing this Agreement on behalf of Seller have full power and authority to enter into and perform the obligations under this Agreement and the Processing Agreement, all of which have been duly authorized by all necessary and proper actions.

Section 2.6. Insurance. Seller shall maintain insurance in such amounts and against such risks as are consistent with past practice and shall show proof of such insurance upon the request of Buyer.

Section 2.7. Change of Name, Location, Etc. Seller does not and shall not conduct Seller's business under any name other than as set forth on page one of this Agreement and shall not change its place of business. Seller shall not change its legal name, entity type or state of formation, unless it has provided Buyer with at least thirty (30) days' prior written notice thereof and any documents, agreements and information requested by Buyer with respect thereto.

Section 2.8. Seller Not Indebted to Buyer. Seller is not a debtor of Buyer as of the date of this Agreement.

Section 2.9. Exclusive Use of Processor. Seller understands and agrees that the services of Processor are the exclusive means by which Seller can and shall process any and all of its Card transactions.

Section 2.10. Working Capital Funding. Seller shall not enter into any arrangement, agreement or commitment that relates to or involves Future Receivables, whether in the form of a purchase of, a loan against, or the sale or purchase of credits against, Future Receivables or future Card sales with any person or entity other than Buyer.

Section 2.11. Unencumbered Future Receivables. Seller has, and at all times will have,

good, complete and marketable title to all Future Receivables, free and clear of any and all liabilities, liens, claims, charges, restrictions, conditions, options, rights, mortgages, security interests, equities, pledges and encumbrances of any kind or nature whatsoever (collectively, "Liens") or any other rights or interests that may be inconsistent with the transactions contemplated with, or adverse to the interests of, Buyer. Without limiting the generality of the foregoing, all Future Receivables purchased by Buyer hereunder shall be free and clear of any and all Liens (other than Buyer's ownership rights therein) at the time they become Receivables. All amounts received by Buyer attributable to the Specified Amount of Future Receivables purchased by Buyer hereunder shall arise from bona fide sales by Seller of its goods and services to Card holders who present their Cards as payment therefor.

Section 2.12. Business Purpose. Seller is a valid business in good standing under the laws of each jurisdiction in which it is organized or operates, and Seller is entering into this Agreement solely for business purposes and not as a consumer for personal, family or household purposes.

Section 2.13. Conduct of Business. Seller shall conduct its business consistent with past practice. Seller has no present intention to close or cease operating its business, in whole or in part, temporarily or permanently. As of the date hereof, Seller is solvent and is not contemplating any insolvency or bankruptcy proceeding. During the four (4) months preceding the date hereof, neither Seller nor any Principal has discussed with or among Seller's management, with counsel, or with any other advisor or creditor, any potential insolvency, bankruptcy, receivership, or assignment for the benefit of creditors with respect to Seller and no such action or proceeding has been filed or is pending. Other than as disclosed to Buyer in a writing attached to this Agreement, no eviction or foreclosure is pending or threatened against Seller.

3. ADDITIONAL TERMS.

Section 3.1. Sale of Future Receivables. Seller and Buyer agree that the Purchase Price paid by Buyer in exchange for the Specified Amount of Future Receivables is a purchase of the Specified Amount of Future Receivables and is not intended to be, nor shall it be construed as, a loan or financial accommodation from Buyer to Seller. By such purchase and sale, Seller transfers to Buyer full and complete ownership of the Specified Amount of Future Receivables and Seller retains no legal or equitable interest therein. Seller sells the Specified Amount of Future Receivables to Buyer in Seller's normal course of business and the Purchase Price paid by Buyer therefor is good and valuable consideration for such sale. Seller will use the proceeds of such sale solely for business purposes.

Section 3.2. No Right to Repurchase. Seller acknowledges and agrees that it has no right to repurchase the Specified Amount of Future Receivables, or any portion thereof, from Buyer and Buyer may not force Seller to repurchase the Specified Amount of Future Receivables, or any portion thereof.

Section 3.3. Remedies. In the event that any of the representations or warranties contained in this Agreement is not true, accurate and complete, or in the event of a breach of any of the covenants