

**STATE OF FLORIDA  
OFFICE OF THE ATTORNEY GENERAL  
DEPARTMENT OF LEGAL AFFAIRS**

IN THE MATTER OF:

AG Number: L11-03-1040

**NETSPEND CORPORATION.**

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**ASSURANCE OF VOLUNTARY COMPLIANCE**

PURSUANT to the provisions of Florida Statute, Chapter 501, Part II, (2011) (“FDUTPA”), the STATE OF FLORIDA, OFFICE OF THE ATTORNEY GENERAL, DEPARTMENT OF LEGAL AFFAIRS (the “Department”) initiated an inquiry into the advertising and business practices of companies in the Prepaid Debit Card industry, including the marketing, promotion, distribution and servicing of Prepaid Debit Cards by NetSpend Corporation (the “Respondent”).

Without any admission of wrongdoing, guilt, violation of law, or findings of fact, and without any admission of jurisdiction or that FDUTPA applies, Respondent hereby agrees to resolve this matter as set forth herein and agrees to the terms and conditions of this Assurance of Voluntary Compliance (the “Agreement”).

**A. BACKGROUND**

Prepaid Debit Cards can be obtained at various retailers or online. No bank account, credit check or minimum balance is required. Prepaid Debit Cards can be loaded and reloaded with cash or by direct deposit. The cards can be used online or wherever major credit cards or debit cards are accepted.

The Prepaid Debit Card industry has established a strong niche market serving consumers considered “underbanked” or “unbanked” by the industry. The industry generally serves consumers who: (1) do not have bank accounts; (2) cannot maintain the prerequisite minimum

balance required for a conventional bank account; (3) cannot obtain a bank account due to prior banking history; (4) are at a lower income level; (5) are students; (6) purchase goods online and pay bills online; or (7) are controlling spending. For many of these consumers, Prepaid Debit Cards offer convenient alternatives to cash and many of the benefits of traditional banking products, such as the ability to pay bills, track spending and make online purchases. The Department acknowledges the value that Prepaid Debit Cards may have to these segments of the population.

Respondent has fully cooperated with the Department and has demonstrated its support of the Department's efforts to establish adequate industry standards for the benefit of consumers. Prior to and throughout this investigation, Respondent has continued to undertake measures to improve disclosures regarding the fees related to Prepaid Debit Cards.

## **B. STIPULATED FACTS**

1. Respondent is a Delaware corporation, registered in Florida as a foreign for-profit corporation, and has its principal place of business located at 701 Brazos Street Suite 1200, Austin, TX 78701.
2. Respondent engages in trade or commerce within the State of Florida by marketing, promoting and distributing Prepaid Debit Cards to Florida consumers.
3. Respondent is authorized by the Office of Financial Regulation of the State of Florida, under license number FT20800014, to operate as a funds transmitter/payment instrument issuer.
4. During the period from January 1, 2009 until March 27, 2012 ("Relevant Period"), each of the Prepaid Debit Cards Respondent marketed, promoted, serviced and distributed in Florida were issued by banks that entered into contracts with Respondent. Pursuant to these contracts, Respondent and the issuing banks marketed, distributed and serviced

the Prepaid Debit Card programs. At various times during the Relevant Period, Respondent and the issuing banks voluntarily modified the Prepaid Debit Card-related marketing disclosures.

### C. DEFINITIONS

5. **“Advertising” (including “Advertisement” and “Advertise”)** is any message disseminated to the public in Florida, or any segment thereof, which promotes or is likely to promote, directly or indirectly, any Prepaid Debit Card, whether conveyed visually, orally, or in writing:

- a. In a newspaper, magazine, periodical, leaflet, flyer, catalog, brochure, circular, manual, report, poster, picture, illustration, drawing, invoice, estimate, contract, form, application, business card, letterhead, telefacsimile material, direct mail literature, telephone book, or any other written graphic, pictorial illustration, or printed material;
- b. On any recording, radio, television, video, computer, public address system, by telephonic transmission, telefacsimile, internet or telecopier transmission, or during any other transmission;
- c. On any inside or outside sign or display, window display, bumper or window sticker, decal, label, or bulletin board;
- d. In any point-of-sale literature, price tag, sign, or billboard; and
- e. During any in-person appearance or otherwise during any in-person contact with the public or segment thereof.

6. **“Clear and Conspicuous” (including “Clearly and Conspicuously”)** shall mean that a statement, representation, claim or term is readily noticeable and reasonably understandable by the person(s) to whom it is directed. The following shall be considered in determining whether a statement, representation, claim or term is clear or conspicuous:

- a) Whether it is presented in a coherent and meaningful sequence with respect to other statements, representations, claims, or terms being conveyed;
- b) Whether it is in close proximity to the statement, representation, claim or term it clarifies, modifies, explains, or to which it otherwise relates;
- c) Whether it is contradictory to any statement, representation, claim or term it purports to clarify, modify, or explain, or is otherwise contradictory or confusing in relation to any other statement, representation, claim or term being conveyed;
- d) Whether it is conveyed by means of an abbreviation and, if so, whether the abbreviation is commonly understood by the public, or approved by federal or state law;
- e) Whether it is legible;
- f) Whether it is of sufficient prominence in terms of print, size and contrast, as compared with accompanying statements, representations, claims or terms, so as to be readily noticeable and reasonably understandable by the person(s) to whom it is directed;
- g) Whether it is at a decibel level and speed so as to be readily noticeable and reasonably understandable by the person(s) to whom it is directed; and
- h) Whether it appears for a duration of time sufficient to allow a listener or viewer to have reasonable opportunity to notice, read, and understand.

7. **“Prepaid Debit Card”** shall mean any object or intangible that enables a consumer to utilize a Prepaid Debit Card Service. A Prepaid Debit Card may be a physical card or other object, or may be purchased through an electronic or telephonic means by which a

consumer obtains an access number and/or personal authorization code without ever receiving a physical card or other object. Prepaid Debit Card shall not be construed to include cards or other rights of use that provide access to customary or traditional bank accounts or credit services, nor shall Prepaid Debit Card include a “general-use prepaid card,” a “gift certificate,” or a “store gift card” as each is defined by 15 U.S.C.A. § 16931-1.

8. **“Prepaid Debit Card Service”** means any prepaid card payment service that allows a consumer to load and reload funds onto a card and use the card as a form of electronic payment. Prepaid Debit Card Services shall not be construed to include customary and/or traditional bank account services, such as debit cards linked to checking accounts or traditional credit card accounts.

9. **“Card Package” (including “Card Packaging”)** shall mean any materials included with the purchase of a Prepaid Debit Card that are used to advertise, display, promote, contain, explain, and/or in any way accompany that Prepaid Debit Card or Prepaid Debit Card Service. Card Package shall include any portion attached by perforation to the Prepaid Debit Card that is designed to aid in the display and advertisement of that Prepaid Debit Card.

10. **“Material”** means likely to affect a consumer’s choice of, or conduct regarding, the purchase of a Prepaid Debit Card or Prepaid Debit Card Services.

11. **“Matters Investigated”** shall mean the Department’s investigation into whether all Material fees were Clearly and Conspicuously disclosed on the Prepaid Debit Card products, related advertisements, and offers to improve consumer credit to the extent that such offers were made, during, in each case, the Relevant Period.

~~12.~~ **Any reference to “Respondent”** shall also refer to its successors, and assigns and its officers, directors, agents, servants, and employees, but shall not include any card-issuing bank for the Prepaid Debit Cards.

13. The “**Effective Date**” of this Agreement shall be the date that all Parties whose signatures appear below have accepted and executed this Agreement by way of signature.

14. The “**Compliance Date**” shall be ninety (90) days from the Effective Date.

#### **D. GENERAL COMPLIANCE & APPLICATION**

15. Respondent shall continue to comply with all applicable federal and Florida laws, including but not limited to all laws and rules relating to the Clear and Conspicuous disclosure of Material fees, and other Material terms and conditions.

16. Respondent will not be obligated to comply with any terms or conditions in this Agreement that are inconsistent with federal laws or regulations.

17. Respondent shall make the terms and conditions of this Agreement known to those persons or entities associated with Respondent who are responsible for the implementation, monitoring, and continuation of the obligations set forth in this Agreement.

18. Nothing herein shall be construed as binding on the issuing banks and the issuing banks shall remain free to make any modifications to the disclosures as they deem necessary or appropriate to continue complying with the Federal Trade Commission Act, the federal counterpart to FDUTPA, and any requirements of any federal regulator having jurisdiction over them, and Respondent shall have no liability for adhering to the direction of the issuing banks.

19. In connection with the marketing, promotion, distribution and servicing of any of the Prepaid Debit Cards or Prepaid Debit Card Services in a retail location, Respondent, within the limits of the authority granted to it by the issuing banks, shall Clearly and Conspicuously disclose, on its Card Packaging materials, all Material fees associated with the Prepaid Debit Cards or Prepaid Debit Card Services, and advise the consumers where information about any other applicable fees may be found.

20. In connection with Advertisements to Florida consumers concerning Prepaid Debit Cards or Prepaid Debit Card Services that reference any Material fee or lack of any fee for use of such card or service, Respondent, within the limits of the authority granted to it by the issuing banks, shall Clearly and Conspicuously disclose that fees apply to the Prepaid Debit Cards and disclose the location where information regarding such fees may be found.

21. If a comparison chart, graph or similar tool to Advertise the Prepaid Debit Cards or Prepaid Debit Card Services is used, such comparison shall not be misleading or deceptive.

22. Until the earlier of two years from the Effective Date, or the effective date of final rules promulgated by the Consumer Financial Protection Bureau regulating fee disclosures for Prepaid Debit Cards, this Agreement shall apply to and bind Respondent, but will not apply to or bind any bank which issues the Prepaid Debit Cards for which Respondent provides services. As noted earlier, Respondent and the issuing banks have been voluntarily modifying the Prepaid Debit Card-related marketing disclosures, and within the two-year period referenced above, Respondent shall complete the replacement of the existing Card Packaging.

#### **E. MONETARY TERMS**

23. Respondent has agreed to voluntarily make a charitable donation of \$25,000 (Twenty-Five Thousand Dollars) to the Junior Achievement of Central Florida (JACF), 2121 Camden Road Orlando, Florida 32803. On or before the Compliance Date, Respondent shall submit to the Department payment by certified check in the name of the Junior Achievement of Central Florida. The Department, in turn, will present the check to the Junior Achievement of Central Florida.

24. Respondent shall pay to the Office of the Attorney General, the sum of \$75,000 (Seventy-Five Thousand Dollars) for its costs and fees associated with the Matters Investigated payable to the Department of Legal Affairs Revolving Trust Fund. Payment shall be made by

certified funds or wire transfer made payable to the “Department of Legal Affairs Revolving Trust Fund” on or before the Compliance Date. Payment shall be delivered to Jerrett D. Brock, Assistant Attorney General, Office of the Attorney General, 135 West Central Blvd., Suite 1000, Orlando, FL 32801.

#### **F. EFFECTIVE UPON ACCEPTANCE**

25. The Deputy Attorney General, or authorized designee, may refuse to accept this Agreement at his or her discretion. The receipt of or deposit by the Department of any monies paid by the Respondent pursuant to the terms of this Agreement shall not constitute acceptance by the Department.

#### **G. CONSTRUCTION OF AGREEMENT & INTERPRETATION**

26. This Agreement is the result of joint negotiations between the Parties and shall be deemed to have been drafted by both the Department and Respondent. In the event of a dispute, this Agreement shall not be construed against the Department or Respondent.

27. This Agreement may be signed in multiple counterparts, each of which shall be considered an original, and all of which together shall constitute one and the same agreement. No waiver, modification or amendment of the terms of this Agreement shall be valid or binding unless made in writing, signed by the Party to be charged and then only to the extent set forth in such written waiver, modification, or amendment.

28. If any clause, provision, or section of the Agreement shall, for any reason, be held illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect any other clause, provision, or section of this Agreement, and this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable clause, section, or other provision had not been contained herein.



29. This Agreement will be enforced by the Department consistent with any rules and regulations promulgated by the Consumer Financial Protection Bureau.

30. If any laws change due to amendment, repeal, or disposition by any legislature, agency or court so that they would permit any action prohibited by any section of this Agreement, then that section, and only that section, shall no longer have any force or effect.

#### **H. NO ADMISSION OF LIABILITY OR WAIVER OF DEFENSES**

31. Notwithstanding its willingness to enter into this Agreement and bind itself to the terms and conditions provided herein, Respondent denies any wrongdoing or liability of any kind whatsoever arising from the distribution, marketing, servicing and/or promotion of Prepaid Debit Cards during the Relevant Period. Respondent contends that FDUTPA, by the statute's own terms as set forth in the bank exemption (section 501.212(4)(c), Florida Statutes), does not apply to Respondent's practices regarding the Prepaid Debit Cards because the programs belong to banks that are regulated by federal banking agencies, and because, pursuant to the Bank Service Company Act, Respondent is subject to regulatory oversight and administrative control by federal banking agencies. The Department contends that it has the authority to enforce FDUTPA as it relates to Respondent and the Prepaid Debit Card Industry and the Department's investigation does not constitute an exercise of visitorial authority over a bank pursuant to 12 CFR § 7.4000.

#### **I. RELEASE**

32. In exchange for the consideration set forth above, and upon execution of this agreement the Department agrees to release any and all claims, demand, rights, and causes of action of any kind or description whatsoever that it may have brought against Respondent (including its parents, subsidiary, and affiliated companies and their affiliates, assigns, officers,

directors, agents, servants and employees) arising from, based upon or relating to the Matters Investigated.

### **J. NOTICES**

33. Any notices, consents, or approvals required to be given under this Agreement shall be in writing and sent to the other party at the address set forth below (or any new address as confirmed by written notice) by either (a) recognized overnight courier, in which case it shall be deemed to have been given the next business day, or (b) facsimile, in which case it shall be deemed to have been given when dispatched, subject to confirmation of uninterrupted transmission by a transmission report:

If to Respondent:

NetSpend Corporation  
Street: 701 Brazos Street Ste. 1200  
City: Austin  
State: Texas  
Zip: 78701  
Attn: General Counsel  
Phone: 512-531-8779  
Fax: 512-531-8729

If to the Department:

Office of Attorney General  
Street: 135 W. Central Blvd., Suite 1000  
City: Orlando  
State: Florida  
Zip: 32801  
Attn: Jerrett Brock  
Phone: 407-999-5588  
Fax: 407-245-0365

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CEW/1/19/19

1/19/19

1/19/19

**BY MY SIGNATURE** I hereby affirm that I am acting in my capacity and within my authority as a corporate officer of Respondent and that by my signature I am binding Respondent to the terms and conditions of this Agreement.

**NetSpend Corporation**

By: [Signature]

Gresham  
(print name)

Its: CFO

STATE OF Texas

COUNTY OF Travis

**BEFORE ME**, an officer duly authorized to take acknowledgments in the State of Texas personally appeared George Gresham, who acknowledged before me that he executed the foregoing instrument for the purposes therein stated, on this 2<sup>nd</sup> day of October 2012.

Sworn to and subscribed before me this 2<sup>nd</sup> day of October 2012.

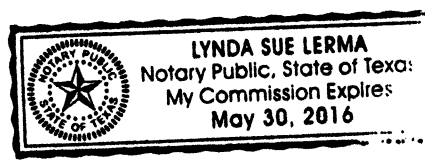
[Signature: Lynda Sue Lerma]

Notary Public

State of Texas

Type of identification produced: Driver License #

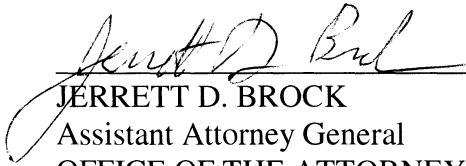
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APPROVED AS  
TO FORM BY  
NETSPEND LEGAL  
SFC

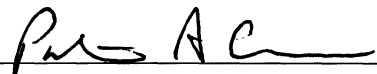
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10:00 AM  
NOTARY PUBLIC

**FOR THE OFFICE OF THE ATTORNEY GENERAL**

  
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JERRETT D. BROCK  
Assistant Attorney General  
OFFICE OF THE ATTORNEY GENERAL  
Division of Economic Crimes  
135 West Central Blvd., #1000  
Orlando, Florida 32801  
(407) 245-0833, fax 407 245-0365

Date: 10/4/2012

  
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PATRICIA A. CONNERS  
Deputy Attorney General  
OFFICE OF THE ATTORNEY GENERAL  
The Capitol  
Tallahassee, Florida 32399-105

Date: 10/16/12

RECEIVED  
OCT 17 2012  
OFFICE OF THE ATTORNEY GENERAL