

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

112 3143

**In the Matter of  
EPN, Inc., also d/b/a Checknet, Inc. a  
corporation.**

**DOCKET NO. C-**

**AGREEMENT CONTAINING CONSENT ORDER**

The Federal Trade Commission (“Commission”) has conducted an investigation of certain acts and practices of EPN, Inc., also d/b/a Checknet, Inc. (“EPN” or “proposed respondent”). Proposed respondent, having been represented by counsel, is willing to enter into an agreement containing a consent order, resolving the allegations contained in the attached draft complaint. Therefore,

**IT IS HEREBY AGREED** by and between EPN, Inc. and counsel for the Federal Trade Commission that:

1. Respondent EPN is a Utah corporation with its principal office or place of business at 746 East 1910 South, Suite 3, Provo, UT 84606.
2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint.
3. Proposed respondent waives:
  - a. Any further procedural steps;
  - b. The requirement that the Commission’s decision contain a statement of findings of fact and conclusions of law; and
  - c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.
4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of thirty (30) days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent,

in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.
6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent: (a) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (b) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery of the complaint and the decision and order to proposed respondent's address as stated in this agreement by any means specified in Section 4.4(a) of the Commission's Rules shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order. No agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.
7. Proposed respondent has read the draft complaint and consent order. It understands that it may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

## ORDER

### DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. Unless otherwise specified, “respondent” shall mean EPN, Inc., also dba Checknet, Inc., and each of their successors and assigns.
2. “Personal information” shall mean individually identifiable information from or about an individual consumer including, but not limited to: (a) first and last name; (b) date of birth; (c) a home or other physical address, including street name and name of city or town; (d) an email address or other online contact information, such as an instant messaging user identifier or a screen name that reveals an individual’s email address; (e) a telephone number; (f) a Social Security number; (g) credit or debit card information, including card number, expiration date, and security code; (h) a persistent identifier, such as a customer number held in a “cookie” or processor serial number; and (i) any information that is combined with any of (a) through (h) above.
3. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

#### I.

**IT IS ORDERED** that respondent and its officers, agents, representatives, and employees, directly or indirectly, or through any corporation, subsidiary, division, website or other device, in connection with the advertising, marketing, promotion, offering for sale, or sale of any product or service, in or affecting commerce, shall not misrepresent in any manner, expressly or by implication, the extent to which respondent maintains and protects the privacy, confidentiality, or security of any personal information collected from or about consumers.

#### II.

**IT IS ORDERED** that respondent, in connection with the advertising, marketing, promotion, offering for sale, or sale of any product or service, in or affecting commerce, shall, no later than the date of service of this order, establish and implement, and thereafter maintain, a comprehensive information security program that is reasonably designed to protect the security, confidentiality, and integrity of personal information collected from or about consumers. Such program, the content and implementation of which must be fully documented in writing, shall contain administrative, technical, and physical safeguards appropriate to respondent’s size and complexity, the nature and scope of respondent’s activities, and the sensitivity of the personal information collected from or about consumers, including:

- A. The designation of an employee or employees to coordinate and be accountable for the information security program.

- B. The identification of material internal and external risks to the security, confidentiality, and integrity of personal information that could result in the unauthorized disclosure, misuse, loss, alteration, destruction, or other compromise of such information, and assessment of the sufficiency of any safeguards in place to control these risks. At a minimum, this risk assessment should include consideration of risks in each area of relevant operation, including, but not limited to: (1) employee training and management; (2) information systems, including network and software design, information processing, storage, transmission, and disposal; and (3) prevention, detection, and response to attacks, intrusions, or other systems failures.
- C. The design and implementation of reasonable safeguards to control the risks identified through risk assessment, and regular testing or monitoring of the effectiveness of the safeguards' key controls, systems, and procedures.
- D. The development and use of reasonable steps to select and retain service providers capable of appropriately safeguarding personal information they receive from respondent, and requiring service providers by contract to implement and maintain appropriate safeguards.
- E. The evaluation and adjustment of respondent's information security program in light of the results of the testing and monitoring required by sub-Part C, any material changes to respondent's operations or business arrangements, or any other circumstances that respondent knows or has reason to know may have a material impact on the effectiveness of its information security program.

### III.

**IT IS FURTHER ORDERED** that, in connection with its compliance with Part II of this order, respondent shall obtain initial and biennial assessments and reports (“Assessments”) from a qualified, objective, independent third-party professional, who uses procedures and standards generally accepted in the profession. Professionals qualified to prepare such assessments shall be: a person qualified as a Certified Information System Security Professional (CISSP) or as a Certified Information Systems Auditor (CISA); a person holding Global Information Assurance Certification (GIAC) from the SysAdmin, Audit, Network, Security (SANS) Institute; or a similarly qualified person or organization approved by the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580. The reporting period for the Assessments shall cover: (1) the first one hundred and eighty (180) days after service of the order for the initial Assessment, and (2) each two (2) year period thereafter for twenty (20) years after service of the order for the biennial Assessments. Each Assessment shall:

- A. Set forth the specific administrative, technical, and physical safeguards that respondent has implemented and maintained during the reporting period;
- B. Explain how such safeguards are appropriate to respondent’s size and complexity, the nature and scope of respondent’s activities, and the sensitivity of the personal information collected from or about consumers;
- C. Explain how the safeguards that have been implemented meet or exceed the protections required by the Part II of this order; and
- D. Certify that respondent’s security program is operating with sufficient effectiveness to provide reasonable assurance that the security, confidentiality, and integrity of personal information is protected and has so operated throughout the reporting period.

Each Assessment shall be prepared and completed within sixty (60) days after the end of the reporting period to which the Assessment applies. Respondent shall provide the initial Assessment to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, within ten (10) days after the Assessment has been prepared. All subsequent biennial Assessments shall be retained by respondent until the order is terminated and provided to the Associate Director for Enforcement within ten (10) days of request. Unless otherwise directed by a representative of the Commission, initial and biennial Assessments shall be sent by overnight courier (not the U.S. Postal Service) to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, D.C. 20580, with the subject line “In re EPN, Inc., FTC File Number 1123143.” *Provided, however,* that, in lieu of overnight courier, Assessments may be sent by first-class mail, but only if an electronic version of such Assessments is contemporaneously sent to the Commission at [DEBrief@ftc.gov](mailto:DEBrief@ftc.gov).

#### IV.

**IT IS FURTHER ORDERED** that respondent shall maintain and, upon request, make available to the Federal Trade Commission for inspection and copying:

- A. For a period of five (5) years, a print or electronic copy of each document relating to compliance, including but not limited to documents, prepared by or on behalf of respondent, that contradict, qualify, or call into question respondent's compliance with this order; and
- B. For a period of three (3) years after the date of preparation of each Assessment required under Part II of this order, all materials relied upon to prepare the Assessment, whether prepared by or on behalf of respondent, including, but not limited to, all plans, reports, studies, reviews, audits, audit trails, policies, training materials, and assessments, and any other materials relating to respondent's compliance with Parts I and II of this order, for the compliance period covered by such Assessment.

#### V.

**IT IS FURTHER ORDERED** that for a period of five (5) years from the date of entry of this Order, respondent shall deliver copies of the Order as directed below:

- A. Respondent must deliver a copy of this order to (1) all current and future principals, officers, directors, and managers, (2) all current and future employees, agents and representatives who engage in conduct related to the subject matter of the Order, and (3) any business entity resulting from any change in structure set forth in Part VI. For current personnel, delivery shall be within thirty (30) days of service of this Order. For new personnel, delivery shall occur prior to them assuming their responsibilities. For any business entity resulting from any change in structure set forth in Part VI, delivery shall be at least ten (10) days prior to the change in structure.
- B. Respondent must secure a signed and dated statement acknowledging receipt of this Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order pursuant to this section.

#### VI.

**IT IS FURTHER ORDERED** that respondent shall notify the Commission at least thirty (30) days prior to any change that may affect compliance obligations arising under this order, including, but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor company; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in respondent's name or address. *Provided, however,* that, with respect to any proposed change in the entity about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the

Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission, all notices required by this Part shall be sent by overnight courier (not the U.S. Postal Service) to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, D.C. 20580, with the subject line "In re EPN, Inc., FTC File Number 1123143." *Provided, however*, that, in lieu of overnight courier, notices may be sent by first-class mail, but only if an electronic version of such notices is contemporaneously sent to the Commission at DEBrief@ftc.gov.

## VII.

**IT IS FURTHER ORDERED** that respondent within ninety (90) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of its compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, it shall submit additional true and accurate written reports. Unless otherwise directed by a representative of the Commission, each report required by this Part shall be sent by overnight courier (not the U.S. Postal Service) to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, D.C. 20580, with the subject line "In re EPN, Inc., FTC File Number 1123143." *Provided, however*, that, in lieu of overnight courier, reports may be sent by first-class mail, but only if an electronic version of such reports is contemporaneously sent to the Commission at DEBrief@ftc.gov.

## VIII.

This order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

*Provided, further*, that if such complaint is dismissed or a federal court rules that respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or

ruling is upheld on appeal.

Signed this \_\_\_\_\_ day of \_\_\_\_\_ 2012.

**EPN, INC.**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Jessica Devenish, on behalf of  
EPN, Inc., also dba Checknet, Inc.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Scott Vernick  
Fox Rothschild LLP  
Counsel for EPN, Inc., also dba Checknet, Inc.

**FEDERAL TRADE COMMISSION**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Manas Mohapatra  
Karen Jagielski  
Jessica Lyon  
Counsel for the Federal Trade Commission

**APPROVED:**

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Maneesha Mithal  
Associate Director  
Division of Privacy and Identity Protection  
Bureau of Consumer Protection

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David C. Vladeck  
Director  
Bureau of Consumer Protection