

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

In the Matter of

**NATIONAL PAYMENT NETWORK, INC., a
corporation, also known as NPN, INC.**

AGREEMENT CONTAINING CONSENT ORDER

The Federal Trade Commission has conducted an investigation of certain acts and practices of National Payment Network, Inc., a corporation, also known as NPN, Inc. (“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 proposed respondent, by its duly authorized officers, and counsel for the Federal Trade Commission, that:

1. Proposed respondent National Payment Network, Inc. is a California corporation, with its principal place of business at 1875 S. Grant Street, Suite 250, San Mateo, CA 94402.
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 a 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. Proposed respondent neither admits nor denies any of the allegations in the draft complaint, except as specifically stated in this order. Only for purposes of this action, proposed respondent admits the facts necessary to establish jurisdiction.
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 This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) 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 (2) make information about it public. When so entered, the order shall have the same force and effect as, and may be altered, modified, or set aside in the same manner as, 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 in the agreement may be used to vary or contradict the terms of this order.
7. Proposed respondent has read the draft complaint and 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:

A. Unless otherwise specified, "**respondent**" means National Payment Network, Inc., also known as NPN, Inc., and its successors and assigns.

B. "**Add-on product or service**" means any product or service relating to the sale, lease, or financing of a motor vehicle that is offered, provided, or arranged by the dealer that is not provided or installed by the motor vehicle manufacturer, including but not limited to extended warranties, payment programs, guaranteed automobile protection ("GAP") or "GAP insurance," etching, service contracts, theft protection or security devices, global positioning systems or starter interrupt devices, undercoating, rustproofing, fabric protection, road service or club memberships, appearance products, credit life insurance, credit accident or disability insurance, credit loss-of-income insurance, and debt cancellation and debt suspension coverage. The term excludes any such product or service that the dealer provides to the consumer at no charge.

C. **“Clearly and conspicuously”** shall mean as follows:

1. In a print advertisement, the disclosure shall be in a type size, location, and in print that contrasts with the background against which it appears, sufficient for an ordinary consumer to notice, read, and comprehend it.
2. In an electronic medium, an audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. A video disclosure shall be of a size and shade and appear on the screen for a duration, and in a location, sufficient for an ordinary consumer to read and comprehend it.
3. In a television or video advertisement, an audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. A video disclosure shall be of a size and shade, and appear on the screen for a duration, and in a location, sufficient for an ordinary consumer to read and comprehend it.
4. In a radio advertisement, the disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it.
5. In all advertisements, the disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement or promotion.

D. **“Competent and reliable evidence”** means tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

E. **“Current customers”** means all customers who are enrolled in respondent’s biweekly payment program as of October 1, 2014.

F. **“Fee waiver period”** means the period beginning 30 days after the date of service of the order and concluding when no current customer is enrolled in respondent’s biweekly payment program.

G. **“Payment program”** means any product, service, plan, or program represented, expressly or by implication, to provide payment or meet other terms of a financing contract between a consumer and (1) a creditor, including an auto dealer, or (2) another financing entity, including a finance company, a bank, or another assignee.

I.

IT IS ORDERED that respondent, its officers, agents, representatives, and employees, directly or indirectly, in connection with the advertising, marketing, promotion, offering for sale, or sale of any payment program and add-on product or service, shall not in any manner, expressly or by implication:

- A. Represent that the payment program or add-on product or service will save any consumer money, including interest, unless:
 - 1. The amount of savings a consumer will achieve is greater than the total amount of fees and costs charged in connection with the payment program or add-on product or service and the representation is otherwise true, or
 - 2. Any qualifying information relating to the savings a consumer might achieve from the payment program or add-on product or service is clearly and conspicuously disclosed, including, but not limited to, information about the total amount of fees and costs charged in connection with such payment program or add-on product or service.
- B. Represent that the payment program or add-on product or service will save any consumer a specific amount of money, including interest, unless:
 - 1. The specified amount is the amount of savings after deducting any fees or costs charged in connection with the payment program or add-on product or service and the representation is otherwise true, or
 - 2. Any qualifying information relating to the savings a consumer might achieve from the payment program or add-on product or service is clearly and conspicuously disclosed, including, but not limited to, information about the total amount of fees and costs charged in connection with such payment program or add-on product or service.

II.

IT IS FURTHER ORDERED that that respondent and its officers, agents, representatives, and employees, directly or indirectly, in connection with the advertising, marketing, promotion, offering for sale, or sale of any payment program shall not misrepresent, in any manner, expressly or by implication:

- A. The existence, amount, timing, or manner of any fee or cost charged by respondent or a third party in connection with such payment program;
- B. That such payment program has the ability to improve, repair or otherwise affect a consumer's credit record, credit history, credit rating, or ability to obtain credit; and

- C. The benefits, performance, or efficacy of the payment program.

III.

IT IS FURTHER ORDERED that that respondent and its officers, agents, representatives, and employees, directly or indirectly, in connection with the advertising, marketing, promotion, offering for sale, or sale of any add-on product or service shall not misrepresent, in any manner, expressly or by implication:

- A. The total costs to purchase, receive, or use, or the quantity of, the add-on product or service;
- B. Any restriction, limitation, or condition on purchasing, receiving, or using the add-on product or service;
- C. Any aspect of the benefits, performance, or efficacy of the add-on product or service;
- D. Any aspect of the nature or terms of any refund, cancellation, exchange, or repurchase policy, including, but not limited to, the likelihood of a consumer obtaining a full or partial refund, or the circumstances in which a full or partial refund will be granted to the consumer; and
- E. That any add-on product or service has the ability to improve, repair or otherwise affect a consumer's credit record, credit history, credit rating, or ability to obtain credit.

IV.

IT IS FURTHER ORDERED that that respondent and its officers, agents, representatives, and employees, directly or indirectly, in connection with the advertising, marketing, promotion, offering for sale, or sale of any payment program or add-on product or service shall not make any representation or assist others in making any representation, expressly or by implication, about the benefits, performance, or efficacy of any add-on product or service or payment program, unless at the time such representation is made, the respondent possesses and relies upon competent and reliable evidence that substantiates that the representation is true.

V.

IT IS FURTHER ORDERED that the respondent and its officers, agents, representatives, and employees, whether acting directly or indirectly, shall not assess, collect, or attempt to collect any cancellation fees from current customers who complete respondent's biweekly payment program or finish paying off their financing contract.

VI.

IT IS FURTHER ORDERED that respondent shall pay two million four hundred and seventy five thousand dollars (\$2,475,000.00) as follows:

- A. Respondent shall refund customers one million five hundred and twenty-six thousand dollars (\$1,526,000.00) within thirty (30) days of the date of service of this order, or remit the balance to the FTC within forty (45) days of the date of service of this order. Such refunds shall include refunds of all cancellation fees paid by customers who remained in respondent's biweekly payment program for 48 months or more, and for the remaining amount of the \$1,526,000.00, pro rata refunds of fees assessed to current customers. Within forty five (45) days of the date of service of this order, respondent shall provide records to the Commission sufficient to show all payments made pursuant to this Section VI.A.
- B. Respondent shall waive an additional nine hundred and forty-nine thousand dollars (\$949,000.00) in fees for current customers during the fee waiver period, or remit the balance to the FTC within fifteen (15) days of the conclusion of the fee waiver period. Such waived fees shall include all remaining enrollment fees and cancellation fees, and at least 50% of each ACH fee, and may include other fees. Respondent shall provide the Commission with quarterly reports within thirty (30) days after the end of each quarter sufficient to show all fee waivers made during that quarter, until the entire amount of \$949,000.00 is waived or the balance is remitted to the FTC.
- C. In the event of default on the obligation pursuant to Sections VI.A and VI.B of this order, interest, computed pursuant to 28 U.S.C. § 1961(a), shall accrue from the date of default to the date of payment. In the event such default continues for ten (10) calendar days beyond the date that payment is due, the entire amount shall immediately become due and payable.
- D. In the event that respondent remits any balance to the FTC pursuant to Sections VI.A and VI.B, respondent shall also provide to the Commission a searchable electronic file containing the name and contact information of all consumers who enrolled in respondent's biweekly payment program, to the extent it has such information in its possession or control, including information available upon request from auto dealers and others. Such file: (1) shall include each consumer's name and address, the date of enrollment, the total amount of payments made under the biweekly payment program, the total amount of all fees paid in connection with the biweekly payment program less any amounts credited for refunds or waived by respondent, and, if available, the consumer's telephone number and email address; (2) shall be updated through the National Change of Address database; and (3) shall be accompanied by a sworn affidavit attesting to its accuracy.

- E. All funds paid to the Commission pursuant to Sections VI.A and VI.B of this order may be deposited into a fund administered by the Commission or its designee to be used for equitable relief, including consumer redress and any attendant expenses for the administration of any redress fund. If a representative of the Commission decides that direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, the Commission may apply any remaining money for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to respondent's practices alleged in the Complaint. Any money not used for such equitable relief is to be deposited to the U.S. Treasury as disgorgement. Respondent has no right to challenge any actions the Commission or its representatives may take pursuant to this Subsection. No portion of any payment under the judgment herein shall be deemed a payment of any fine, penalty, or punitive assessment.
- F. Respondent relinquishes all dominion, control, and title to the funds paid to the fullest extent permitted by law. Respondent shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise.
- G. Respondent agrees that the facts as alleged in the complaint filed in this action shall be taken as true without further proof in any bankruptcy case or subsequent civil litigation pursued by the Commission to enforce its rights to any payment or money judgment pursuant to this order, including but not limited to a nondischargeability complaint in any bankruptcy case. Respondent further agrees that the facts alleged in the complaint establish all elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and that this order shall have collateral estoppel effect for such purposes.
- H. Respondent acknowledges that its Taxpayer Identification Number (or Employer Identification Number), which respondent must submit to the Commission, may be used for collecting and reporting on any delinquent amount arising out of this order, in accordance with 31 U.S.C. § 7701.
- I. Proceedings instituted under this Section are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings the Commission may initiate to enforce this order.

VII.

IT IS FURTHER ORDERED that respondent shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representations;
- B. All materials that were relied upon in disseminating the representations;

- C. All evidence in its possession or control that contradicts, qualifies, or calls into question the representations, or the basis relied upon for the representations, including complaints and other communications with consumers or with governmental or consumer protection organizations; and
- D. Any documents reasonably necessary to demonstrate full compliance with each provision of this order, including but not limited to all documents obtained, created, generated, or that in any way relate to the requirements, provisions, or terms of this order, and all reports submitted to the Commission pursuant to this order.

VIII.

IT IS FURTHER ORDERED that respondent shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives, including auto dealerships who sell respondent's payment programs or respondent's add-on products and services, having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

IX.

IT IS FURTHER ORDERED that respondent shall notify the Commission at least thirty (30) days prior to any change in the entity 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 corporation; 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 the entity's name or address. Provided, however, that, with respect to any proposed change in the corporation 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 in writing, all notices required by this Section shall be emailed to Debrief@ftc.gov or sent by overnight courier (not U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC, 20580. The subject line must begin: FTC v. NPN, Inc.

X.

IT IS FURTHER ORDERED that respondent, within sixty (60) 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 own 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.

XI.

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 Section 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;
- C. This order if such complaint is filed after the order has terminated pursuant to this Section.

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 Section 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 17th day of November, 2014

NATIONAL PAYMENT NETWORK, INC.

By: _____
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Title: General Manager

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