

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into between the United States of America, acting through the United States Attorney’s Office for the Eastern District of Pennsylvania, and ZB, N.A. (“ZB”), as the successor-in-interest to Zions First National Bank (“ZFNB”), and PPS Data, LLC (“PPS”), as the corporate successor-in-interest to both NetDeposit, LLC (“NetDeposit”) and MP Technologies d/b/a Modern Payments (“Modern Payments”) (collectively, “Zions”).

### RECITALS

A. ZB, formerly known as ZFNB, is a national banking association headquartered in Salt Lake City, Utah. ZB is a subsidiary of Zions Bancorporation. ZB operates in nearly 500 local financial centers across 11 western states. ZB’s primary banking regulator is the Office of the Comptroller of the Currency.

B. Modern Payments was a third-party payment processor headquartered in Salt Lake City, Utah. Modern Payments was a subsidiary of Zions Bancorporation. Effective January 1, 2009, Modern Payments merged into and became a division of NetDeposit, another subsidiary of Zions Bancorporation. In 2010, NetDeposit sold the business assets associated with Modern Payments to a third-party unaffiliated with Zions Bancorporation. Thereafter, NetDeposit changed its name to PPS. PPS represents that it is not in the business of providing third-party payment processing services to business customers.

C. Modern Payments was in the business of processing Automated Clearing House (“ACH”) transactions on behalf of its business customers, also known as “merchant-clients,” including certain telephone and Internet marketing merchants. This business activity included initiating debit transactions from consumers’ bank accounts and transferring consumers’ debited money to Modern Payments’ business customers.

**D.** ZFNB was the Originating Depository Financial Institution (“ODFI”) for Modern Payments. In other words, ZFNB was the financial institution through which Modern Payments initiated ACH debit transactions on behalf of Modern Payment’s merchant-clients. Accordingly, Modern Payments provided many of these merchant-clients with access to consumers’ bank accounts through the ACH system.

**E.** In 2008, the Federal Trade Commission filed an action in the United States District Court for the Eastern District of Pennsylvania captioned Fed. Trade Comm’n v. NHS Systems, Inc. et al., Civil Action 08-02215 (the “FTC Action”). In the FTC Action, the FTC alleged that NHS Systems, Inc. (“NHS”), Physician Health Service, LLC (“PHS”), and several individuals violated the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101-6108.

**F.** In the FTC Action, the FTC alleged that the defendants fraudulently marketed discount healthcare programs to consumers by falsely claiming during telemarketing sales calls that the healthcare programs were affiliated with United States government agencies, including the Social Security Administration, the Internal Revenue Service, and Medicare. The FTC further alleged that the defendants falsely represented to consumers that if they provided their bank account numbers to the defendants, the consumers would receive substantial deposits into their bank accounts. See Fed. Trade Comm’n v. NHS Sys., Inc. et al., Civil Action No. 08-2215 (E.D. Pa.) (Doc. No. 88).

**G.** In March 2013, a federal district judge entered summary judgment against NHS, PHS, and other defendants in the FTC Action, finding the defendants liable for the violations alleged in the FTC’s Amended Complaint.