

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.

H. Before the FTC filed the FTC Action, Modern Payments provided ACH payment processing services, and ZFNB had acted as the ODFI for ACH debit transactions requested by NHS and PHS. In the FTC Action, the FTC alleged -- and the court found -- that NHS and PHS' deceptive and misleading activity included withdrawing money without authorization from consumers' bank accounts using the ACH system. Modern Payments provided NHS and PHS with the ACH payment processing services used by NHS and PHS to debit money from consumers' bank accounts.

I. In January 2010, a plaintiff filed, on behalf of a putative class of consumers, a lawsuit against Modern Payments, ZFNB, and others, captioned Reyes v. Zions First National Bank, et al., Civil Action No. 10-0345 (E.D. Pa.) (the "Civil Action"). The plaintiff later filed an amended complaint and a second amended complaint, which together with the initial complaint, are referred to collectively herein as the "Civil Action Complaints."

J. In the Civil Action Complaints, the plaintiff asserted claims under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1962(c) and (d), based upon Modern Payments' processing of ACH debit transactions, during the period of January 26, 2006 through January 26, 2010, on behalf of the following telemarketing and Internet marketing merchant-clients of Modern Payments, which the plaintiff alleged were engaged in consumer fraud: NHS, PHS, RxSmart, Vexeldale, Sourdale, ZaaZoom, Market Power Marketing Solutions, Digitel-PBG, Low Pay, and Group One (collectively, the "Suspect Marketers"). Modern Payments processed ACH transactions through ZFNB on behalf of the Suspect Marketers at different times and for different periods of time. Modern Payments received fee revenue from the Suspect Marketers of approximately \$1.2 million from processing ACH transactions on behalf of the Suspect Marketers.

K. In the Civil Action Complaints, the plaintiff alleged that the Suspect Marketers engaged in consumer fraud perpetrated by way of ACH debit transactions processed by Modern Payments through ZFNB. The plaintiff further alleged in the Civil Action Complaints that Modern Payments and ZFNB knew or were willfully blind to the Suspect Marketers' alleged fraudulent conduct by not appropriately responding to indications of potential fraud against consumers, including high rates of ACH debit transactions returned as unauthorized.

L. In November 2016, the United States District Court for the Eastern District of Pennsylvania approved a settlement of the Civil Action. Pursuant to the settlement, ZB established a settlement fund of \$37.5 million to compensate any consumers whose accounts were debited through ACH transactions initiated by the Suspect Marketers and processed by Modern Payments through ZFNB.

COVERED CONDUCT

M. The United States has investigated Modern Payments and ZFNB's conduct in connection with the activity alleged in the FTC Action and the Civil Action, including the Civil Action Complaints, (the "Investigation"). The conduct of Modern Payments and ZFNB described below in paragraphs N to P is the "Covered Conduct."

N. Based upon the Investigation, the United States alleges that, during a period of Modern Payments' business relationship with NHS, PHS, and the other Suspect Marketers, Modern Payments and ZFNB knew of or were willfully blind to NHS, PHS, and the other Suspect Marketers misusing their access to the ACH payment system through their processing of unauthorized debits from consumers' bank accounts as part of Suspect Marketers' consumer fraud schemes. The United States further alleges that Modern Payments and ZFNB knew or were willfully blind to indicators of consumer fraud, including but not limited to high rates of

ACH debit transactions returned from consumers' accounts as unauthorized, which at the relevant time was a known indicator in the banking industry of possible fraudulent transactions.

O. At relevant times, the rules of the ACH payment system prohibited processing both payments associated with outbound telemarketing, and recurring payments pursuant only to a voice-authorization. The United States further alleges that, during a period of Modern Payments' business relationship with NHS and PHS, Modern Payments and ZFNB knew or were willfully blind to the fact that NHS and PHS were initiating debits from consumers' bank accounts using bank account information obtained through outbound telemarketing calls, and were processing recurring transactions based on only a voice authorization, both of which violated the rules of the ACH payment system.

P. The United States further alleges that Modern Payments failed to conduct sufficient due diligence of the Suspect Marketers before providing them with access to consumers' bank accounts through the ACH system despite ZFNB credit officers expressing skepticism in written internal communications about the business practices of certain of the Suspect Marketers, whether ZFNB would have engaged in a direct business relationship with certain of the Suspect Marketers, and acknowledging that ZFNB would be at risk if the Suspect Marketers were indeed engaged in fraud. The United States further alleges that after Modern Payments terminated two of the Suspect Marketers for high rates of ACH debit transactions returned as unauthorized, a Modern Payments executive sent letters recommending the two Suspect Marketers as customers to Teledraft, another third-party payment processor (unaffiliated with Modern Payments and ZFNB), and Teledraft provided payment processing services to the two Suspect Marketers.

Q. The United States contends that the Covered Conduct, as described above in paragraphs N to P, violates the Financial Institutions Reform, Recovery and Enforcement Act, 12 U.S.C. § 1833a (“FIRREA”). FIRREA authorizes the imposition of civil monetary penalties for violations of enumerated criminal statutes affecting a federally-insured financial institution. These crimes include mail fraud, 18 U.S.C. § 1341, and wire fraud, 18 U.S.C. § 1343.

R. ZB and PPS deny that they or their corporate affiliates, parent, predecessors, and/or successors, including, but not limited to, ZFNB, Zions Bancorporation, and Modern Payments, engaged in any wrongdoing and further deny any violation of FIRREA arising from the Covered Conduct. ZB and PPS acknowledge in hindsight that their corporate predecessors, ZFNB and Modern Payments, should have terminated more promptly their business relationships with certain of the Suspect Marketers.

S. This Agreement is not a concession by the United States that its claims are not well-founded.

T. The parties seek to avoid the delay, uncertainty, inconvenience, and expense of protracted litigation concerning any FIRREA claim the United States could have asserted arising from the Covered Conduct, and accordingly agree as follows:

TERMS AND CONDITIONS

1. **Payment to the United States Treasury.** ZB shall pay to the United States Treasury a civil money penalty in the amount of Three Million Six Hundred Thousand Dollars (\$3,600,000.00) no later than seven days after the Effective Date of this Agreement. ZB shall make the payment by electronic funds transfer pursuant to written instructions that the United States Attorney’s Office for the Eastern District of Pennsylvania shall provide.

2. **Cooperation.** ZB shall cooperate with government and law enforcement agencies for purposes of civil and criminal investigations of the Covered Conduct as it pertains to entities and persons other than the released entities.

3. **United States' Release of Zions.** In consideration of the payment described in paragraph no. 1, above, the United States releases only ZB, N.A. and PPS Data, LLC (collectively, the "Released Entities") from any civil monetary claim under FIRREA, 12 U.S.C. § 1833a, and common law civil claims, that the United States has or may have arising from the Covered Conduct, as defined above.

4. **Reserved Claims Not Subject to United States' Release of Zions.** Notwithstanding the releases given in paragraph no. 3 of this Agreement, or any other term of this agreement, the following claims, if any, of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Any administrative liability;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability of individuals; and
- g. Any liability of entities not expressly identified as Released Entities.

5. **Zions' Release of the United States.** Zions fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Zions could

have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

6. **Zions' Waivers.** Zions waives and shall not assert any defenses it may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Agreement for purposes of the Internal Revenue laws, Title 26 of the United States Code. Zions further waives any claim that it may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Agreement, and agrees to bear its own costs and attorneys' fees.

7. **Governing Law.** This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Eastern District of Pennsylvania. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all parties to this Agreement and shall not, therefore, be construed against any party for that reason in any subsequent dispute.

8. **Integration.** This Agreement constitutes the complete agreement between the parties and may not be amended except by written consent of the parties.

9. **Authority to Execute.** The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the entities indicated below.

10. **Counterparts.** This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

11. **Facsimile Signatures.** A facsimile of signatures shall constitute an acceptable and binding signature for purposes of this Agreement.

12. **Costs and Attorney Fees.** Each party shall bear its own costs and attorney fees in connection with this matter.

13. **Binding on Successors.** This Agreement is binding upon ZB, N.A., PPS Data, LLC, and their respective successors, transferees, and assigns.

14. **Benefit of the Parties.** This Agreement is intended to be for the benefit of the parties only.

15. **Rights of Non-Signatories.** This Agreement does not extinguish or in any matter limit the rights of non-signatories.

16. **Public Document.** This Agreement is a public document and the parties consent to its disclosure.

17. **Effective Date.** This Agreement is effective on the date of the signature of the last signatory to the Agreement.

18. **No Admission or Concession.** This Agreement is neither an admission by Zions of liability under FIRREA, nor a concession by the United States that its claims under FIRREA against Zions are not well-founded.

19. **Termination of Tolling Agreement.** The Tolling Agreement between the United States and Zions Bancorp and Zions First National Bank, dated February 11, 2016, is hereby terminated.

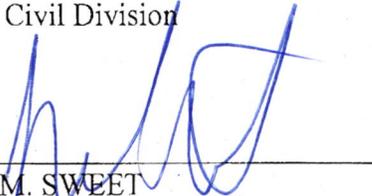
[signature page follows]

By: 
LOUIS D. LAPPEN
Acting United States Attorney

Dated: 9/20/17

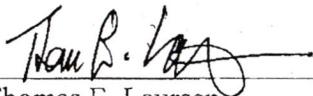

MARGARET L. HUTCHINSON
Assistant United States Attorney
Chief, Civil Division

Dated: 9-20-17


JOEL M. SWEET
Assistant United States Attorney
U.S. Attorney's Office for the
Eastern District of Pennsylvania
615 Chestnut Street, Suite 1250
Philadelphia, PA 19106
215-861-8581
joel.sweet@usdoj.gov

Dated: 9/20/17

ZB, N.A.

By: 
Thomas E. Laursen
Executive Vice President, General Counsel,
and Secretary of ZB, N.A.

Dated: 9/20/17

PPS DATA, LLC

By: 
Thomas E. Laursen
Executive Vice President, General Counsel,
and Secretary of Zions Bancorporation,
as sole member of PPS Data, LLC

Dated: 9/20/17