

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

In the Matter of:

AG Case Number: L09-3-1197

AFNI, Inc.

Respondent  
\_\_\_\_\_ /

**ASSURANCE OF VOLUNTARY COMPLIANCE**

**PURSUANT TO** Chapter 501, Part II, “The Florida Deceptive and Unfair Trade Practices Act”, Florida Statutes (2011), the STATE OF FLORIDA, OFFICE OF THE ATTORNEY GENERAL, DEPARTMENT OF LEGAL AFFAIRS (hereafter, the “Department”) investigated certain acts and practices of AFNI, Inc. (hereinafter the “Respondent”).

Respondent enters into this Assurance of Voluntary Compliance (hereafter, the “AVC”) with the Department without an admission of any wrongdoing and for the purpose of resolving this matter only. Pursuant to Section 501.207(6), Florida Statutes (2011), the Department accepts this AVC in termination of its investigation into certain acts and practices of Respondent related to debt collection.

**1. BACKGROUND**

1.1 Respondent is an Illinois corporation with its principal place of business located at 404 Brock Drive, Bloomington, Illinois 61702. Respondent engages in debt collection activities in Florida and throughout the United States. Respondent has an A+ rating with the Better Business Bureau.

1.2 Respondent holds a license with the Florida Office of Financial Regulation as a consumer collection agency under license number CCA0900303. The license is valid through

December 31, 2012.

1.3 The Department initiated its investigation of Respondent in October 2009 based on consumer complaints. The consumer complaints which the Department received generally allege problems with misidentification of consumers as the debtor and debt validation. Respondent provided responses to the consumer complaints made to the Department and complaints from the Better Business Bureau.

1.4 Respondent has been cooperative during the investigation of this matter, and has provided documents and information in response to the Department investigative subpoena. In addition, Respondent's corporate compliance officer and department staff have provided detailed summaries for each subject account relating to the complaints and have provided responses to inquiries during the pendency of this investigation. While Respondent denies any wrongdoing or violation of any applicable laws, rules or regulations, the Parties to this Agreement nevertheless desire to resolve this matter by entering into this AVC.

## **2. JURISDICTION AND VENUE**

2.1 The parties agree that the State of Florida has jurisdiction over Respondent for the purposes of entering into this AVC and any enforcement actions arising out of the issues relating to the area of investigation associated with this AVC as mentioned in Paragraph 1.3.

2.2 It is further agreed by the parties that venue for any matters relating to or arising out of this AVC shall lie solely in Orange County, Florida.

## **3. COMPLIANCE TERMS**

3.1 Respondent agrees to maintain sufficient policies and procedures relating to its review process of consumer claims of misidentification and debt verification in order to lessen the frequency of consumer complaints in the State of Florida in areas regarding identification of

consumers and debt verification. Respondent agrees to improve the efficiency of its policies and procedures in communicating with Florida consumers that make such allegations. As such, Respondent agrees to maintain these policies with enhancements to avoid violations of applicable consumer protection statutes and similar regulations, including, but not limited to, the following: (1) The Florida Deceptive and Unfair Trade Practices Act as contained in Chapter 501, Part II, Florida Statutes (2011); (2) The Florida Consumer Collection Practices Act as contained in Chapter 559, Part VI, Florida Statutes (2011); (3) The Fair Debt Collection Practices Act as contained in 15 U.S.C. §§ 1692- 1692p; (4) The Fair Credit Reporting Act as contained in 15 U.S.C. §§1681-1681x; as it relates to claims of misidentification of consumers as the debt obligator, or debt verification under Section 1692g.

3.2 As a term and condition of this AVC, Respondent shall continue to maintain corporate policies and procedures to ensure compliance with the terms of this AVC, including reasonable quality control procedures to monitor compliance.

3.3 With respect to any Florida consumer who notifies Respondent, either orally or in writing, that he or she is not the person whom Respondent is trying to contact, or is not the person who is alleged to owe the particular debt that Respondent is attempting to collect (hereafter a “Misidentified Consumer”), Respondent shall cease collection activity with such Misidentified Consumer, except:

(a) to advise such Misidentified Consumer that Respondent is terminating its collection activities with the consumer: or,

(b) if Respondent has conducted a “bona fide investigation” which determines that the Misidentified Consumer is the person whom Respondent is attempting to contact and owes the debt, then Respondent shall provide the evidence to the Misidentified Consumer before

resuming its collection activity. For purposes of satisfying the completion of a “bona fide investigation” to verify either the consumer’s identification and/or debt verification, the Parties agree that the following criteria shall be met.

(i) Respondent may first attempt to verify accurate information by verbally requesting the consumer of alleged debt to provide biographical information, including the person’s (1) last four (4) digits of their Social Security Number, (2) current or former resident address, or the billing address on the subject account.

If the consumer or alleged consumer fails or refuses to provide sufficient information to verify their identity or to accurately verify the underlying debt obligation, the Respondent may close the account or conduct an investigation under 3.3(b)(ii); or

(ii) Respondent may conduct an internal investigation, including contacting the original creditor, obtaining information from third party vendor sources, or reviewing documentation provided by the original creditor or predecessor in interest to determine if sufficient information has been obtained to support the accuracy of the identification of the consumer contacted for collections. If sufficient information obtained from the sources mentioned in sub-sections (i) and/or (ii) above, and this information reasonably supports the accuracy of the contact information or verification of the accuracy of the debt obligation, Respondent shall have met the minimum requirements of a “bona fide investigation under this Agreement.

(iii) the Respondent shall not be required to conduct an investigation as to the identity of the consumer or verification of debt unless the consumer or alleged consumer initiates a proper investigation request to the Respondent pursuant to Section 1692g or 1681sb-2, or if the account is closed at the request of the original creditor or Respondent.

(c) Unless Respondent satisfies the conditions of Section 3.3(b)(i-iii), Respondent shall:

(i) remove the Misidentified Consumer's information from the account, including any address and telephone numbers, and shall use its best efforts to cause any Respondent-related trade-line removed from the Misidentified Consumer's credit records.

(ii) if Respondent is attempting to collect the debt on behalf of a third-party, Respondent shall advise the third party that the consumer is a Misidentified Consumer and request that the third-party correct the credit records.

3.4. If a Florida consumer notifies Respondent, either orally or in writing, that he or she has been a victim of identity theft regarding a particular debt that Respondent is attempting to collect (an "ID Theft Victim"), Respondent shall continue its procedure of ceasing collection activity on the account, requesting a Federal Trade Commission fraud affidavit, and closing the account, if owned by Respondent. For accounts which Respondent is collecting on behalf of a third-party, Respondent shall cease collection activity, code the account as potential identity theft and report it to the third party. Respondent shall continue its procedure of allowing an ID Theft Victim to complete a fraud declaration with an agent of Respondent over the telephone, and to prominently provide a webpage that an ID Theft Victim may use to declare that he or she has been a victim of identity theft. Respondent shall not resell any Respondent-owned collection accounts of any ID Theft Victims.

3.5 Respondent agrees to continue its procedure of accepting verbal and written disputes from Florida consumers regarding the validity of a debt beyond the 30-day "Section 1692g" notice period provided for in the Fair Debt Collection Practices Act.

3.6. Respondent shall continue to respond to any consumer complaints provided to it by Florida consumers, the Department, or the Better Business Bureau and will attempt in good faith to satisfactorily resolve such complaints within thirty (30) days of receipt.

#### **4. MONETARY TERMS**

4.1 Upon execution of this AVC, Respondent shall pay to the Department the total sum of Fifteen Thousand Dollars (\$15,000.00) for investigative costs, attorneys' fees and future monitoring. Payment shall be made by certified or cashier's check payable to the Department of Legal Affairs Revolving Trust Fund and shall be sent to Robert G. Clements, Assistant Attorney General, 135 West Central Blvd, Suite 1000, Orlando, FL 32801.

4.2 In the event that Respondent fails to timely pay the above amount, Respondent shall be in default of this AVC and hereby stipulates to entry of a final judgment against it in favor of the Department for the outstanding amounts due. Evidence of the failure to pay in accordance the terms and conditions of this AVC may be in the form of an affidavit from the Department.

4.3 Respondent acknowledges and agrees that the failure to comply with the specific terms and conditions of this AVC is by statute *prima facie* evidence of a violation of Chapter 501, Part II, Florida Statutes (2011), and may subject Respondent to any and all civil penalties and sanctions provided by law, including awarding of additional attorneys' fees and costs.

#### **5. EFFECTIVE UPON ACCEPTANCE**

5.1 The Department's Director of Economic Crimes may refuse to accept this AVC at his discretion, and the AVC shall only become effective upon its acceptance and signing by the Director. The receipt of or deposit by the Department of any monies pursuant to this AVC does

not constitute acceptance by said Department, and monies received will be returned if this AVC is not accepted.

5.2 This AVC may be signed in multiple counterparts, each of which shall be considered an original, and all of which together will constitute one and the same agreement.

## **6. BUSINESS RECORDS**

6.1 In connection with the Department's future monitoring of Respondent, Respondent agrees to retain consumers complaints, and other documents and information reasonably sufficient to establish its compliance with the provisions of this AVC, and shall provide the Department reasonable access to such consumer complaints, documents and information upon written request from the Department for a period of 6 months from the date of Respondent's execution of this AVC. Respondent shall produce the consumer complaints, documents and information requested by the Department within 15 days of the date of the written request.

## **7. CONSTRUCTION OF AVC**

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

7.2 Respondent shall in no way represent that the Department has approved any of the Respondent's business practices, and shall not use the existence of this AVC to in any way imply such approval.

7.3 This AVC is a result of the joint efforts of the parties and shall be not construed as an admission of liability or wrong-doing or be interpreted as a finding of any liability or wrong-doing by the Department. This Agreement was reached as a good faith effort by the parties to

address similar complaints brought by certain Florida consumers and to reach an enforceable, yet voluntary, compromise in order to lessen and avoid similar complaints in the future.

**8. APPLICABILITY**

8. This AVC shall apply to and continuously bind Respondent and its employees, directors, officers, agents, successors, assignees, affiliated entities, and subsidiaries.

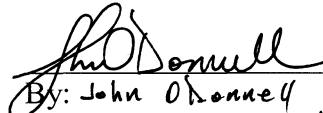
**9. CHANGES IN LAW OR BUSINESS PRACTICES**

9.1 It is further agreed by the parties that if any statutes change due to amendment, repeal, or disposition by the legislature, an agency, or court so that they would permit any action prohibited by any section of this AVC, that section of this AVC shall no longer have any force or effect.

9.2 If any clause, provision, or section of the AVC 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 AVC, and this AVC shall be construed and enforced as if such illegal, invalid, or unenforceable clause, section, or other provision had not been contained herein.

IN WITNESS WHEREOF, Respondent has caused this AVC to be executed by an authorized representative in the County and State listed below, as of the date affixed thereon.

**AFNI, Inc.**

  
By: John O'Donnell  
Its: YP Receivables Management  
Date: 4-20, 2012

STATE OF Illinois  
COUNTY OF \_\_\_\_\_

  
Initials



BEFORE ME, an officer duly authorized to take acknowledgments in the State of Illinois, personally appeared John O'Donnell, as vice president of AFNI, Inc., who acknowledged before me that he executed the foregoing instrument for the purposes therein stated, on this 20<sup>th</sup> day of April, 2012.

Sworn to and subscribed before me this 20<sup>th</sup> day of April, 2012.



Kathleen H. Sweeney  
NOTARY PUBLIC  
(print, type or stamp commissioned name of Notary Public)

Personally known  or  
Produced identification \_\_\_\_\_ (check one)  
Type of Identification Produced: \_\_\_\_\_

Robert G. Clements  
Assistant Attorney General  
Office of the Attorney General  
Department of Legal Affairs  
135 West Central Blvd., Suite 1000  
Orlando, Florida 32801  
Telephone (407) 245-0833, Fax (407) 245-0365

Accepted this 26 day of April, 2012.

[Signature]  
Director of Economic Crimes  
Office of the Attorney General  
Department of Legal Affairs  
The Capitol  
Tallahassee, Florida 32399-1050