

VT SUPERIOR COURT  
WASHINGTON UNIT  
CIVIL DIVISION

STATE OF VERMONT  
SUPERIOR COURT  
WASHINGTON UNIT

2014 OCT -11 P 3:07

In Re: Intercept Corporation

FILED

Civil Division

Docket No. 591-10-14Wncv

**ASSURANCE OF DISCONTINUANCE**

The State of Vermont, by and through Vermont Attorney General William H. Sorrell, and Intercept Corporation ("Intercept" or "Respondent"), hereby enter into this Assurance of Discontinuance ("AOD") pursuant to 9 V.S.A. § 2459.

**Background**

***Respondent***

1. Respondent Intercept Corporation is a North Dakota company with offices located at 1700 42<sup>nd</sup> Street South, Fargo, ND 58103
2. Prior to August 2013, Respondent processed electronic payments in connection with consumer loans made by lenders, some of whom did not hold a state lending license in the state of Vermont.

***Regulatory Framework***

3. The Vermont Consumer Protection Act ("the Act") authorizes the Attorney General to take actions to restrain unfair and deceptive acts in commerce. 9 V.S.A. §§ 2453 & 2458.

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4. On May 18, 2012, the Vermont Legislature added section 2481w to the Act (the unlicensed lender law), to address unlicensed loan transactions.  
9 V.S.A. § 2481w.
5. Under section 2481w(b), it is an unfair and deceptive act in commerce for any lender to solicit or make loans in Vermont unless the lender is in compliance with all statutory requirements under Vermont's lending and banking laws contained in Title 8, chapter 73 of the Vermont Statutes Annotated.
6. Under section 2481w(c), it is an unfair and deceptive act in commerce for a processor to process checks or debits, or to transfer any electronic funds in connection with a loan, unless the lender is in compliance with all requirements under Title 8, chapter 73.
7. Chapter 73 of Title 8 requires all lenders to obtain a state license from the Vermont Department of Financial Regulation. 8 V.S.A. § 2201.
8. Lenders who are not licensed under 8 V.S.A. § 2201 are hereinafter referred to as "unlicensed lenders."
9. Chapter 73 of Title 8 also requires that all loans made in Vermont comply with the interest rate limits contained in Title 9, chapter 4. 8 V.S.A. § 2233(b).
10. Chapter 4 of Title 9 caps the interest any person may charge on loans at between 12-24% per annum, depending on the type of loan. 9 V.S.A. § 41a.

### ***Respondent's Payment Processing Practices***

11. Respondent is a provider of software systems to process electronic financial transactions using the Automated Clearing House ("ACH") Network. The ACH Network is a system that allows electronic transfer of funds for participating financial institutions.
12. During 2012-2013, Respondent engaged in processing electronic transfers from various financial institutions employing routing numbers associated with Vermont, totaling over \$680,000 in net transfers from individual bank accounts.
13. The total amounts processed were collected on behalf of at least 26 separate lenders (the amounts vary for each lender) in connection with high-interest, small-dollar consumer loans made via the internet.
14. The Attorney General's Office determined that none of the lenders were licensed to make loans in Vermont.
15. As of August 2013, Intercept ceased processing electronic payments in connection with online consumer loans in Vermont.
16. Intercept admits the truth of the facts described in ¶¶ 1-2; 11-13; 15.

### ***The State's Allegations***

17. The Vermont Attorney General's Office alleges the Respondent processed electronic transfers from Vermont consumers' bank accounts on behalf of unlicensed lenders and said processing violated the Vermont Consumer Protection Act, 9 V.S.A. §§ 2453(a) and 2481w(c).

18. The State of Vermont alleges that the above behavior constitutes unfair and deceptive acts and practices in commerce under 9 V.S.A. § 2453.
19. Intercept denies that it violated Vermont law.
20. The parties agree that this AOD is entered into for settlement only and does not constitute an admission of the violation of any law, rule, or regulation by Respondent.

#### **Assurances and Relief**

21. In exchange for dismissing the lawsuit filed by the Vermont Attorney General in Vermont Superior Court, Washington Unit (*State of Vermont v. Intercept*, Docket No. 246-4-14 Wncv), and in lieu of instituting any further action or litigation, the Attorney General and Respondent are willing to accept this AOD pursuant to 9 V.S.A. § 2459 as a just resolution of this matter, and the parties agree as follows:
22. To the extent not already done, Respondent shall immediately cease processing any electronic transfers from Vermont financial accounts on behalf of any unlicensed lender.
23. Prior to doing any future business in Vermont, Respondent shall comply with all applicable state law requirements, including without limitation, the following sections of the Vermont Statutes Annotated: Title 9, Chapter 63 (Consumer Protection statutes).

#### ***Payments to Consumers***

24. The parties have agreed on a list of lenders (see Ex. A) whose borrowers shall be entitled to a payment.

25. Intercept shall make restitution of exactly \$75,000.
26. Intercept shall make restitution by crediting each eligible consumer's bank account as agreed between the parties; in issuing the credit(s) Intercept shall use its best efforts to include a notation or other indication listing the lender's name in any applicable transaction note. Within 10 business days of filing this AOD, Intercept shall provide the Attorney General's Office with a list of the proposed payments, including the lender's name, bank name, bank account number, and the proposed amount to be credited. Within 10 days of receiving the list, the parties shall agree on the exact payments to be made to each borrower ("the consumer restitution amount"). Upon agreeing on the list, Intercept shall pay the consumer restitution amount totaling \$75,000.
27. If any of the payments made by Intercept pursuant to ¶ 26 cannot be completed (i.e., the credit is returned, or undeliverable), then Intercept shall use its best efforts to identify the consumer's name and address, and mail a check for the amount to be repaid, along with an explanatory letter from the Attorney General that is agreed to by the parties, in an envelope to be provided by the Attorney General's Office. The Vermont Attorney General understands that Intercept's records do not include consumers' name and address, and agrees that Intercept will attempt to identify this information – to the extent possible – by reviewing the ACH files submitted by its lenders for processing, and contacting lenders to ask for consumer contact information (names and addresses).

28. Any returned checks made pursuant to ¶ 27 shall be treated as unclaimed property, pursuant to Vermont's unclaimed property statute.
29. If applicable, within 120 days after sending any checks pursuant to ¶ 27, Intercept shall mail to the Attorney General's Office:
  - (a) A single check, payable to "Vermont State Treasurer" in the total dollar amount of all checks that were returned as undeliverable or that otherwise went uncashed because the consumer could not be located all be treated as unclaimed funds, under Vermont's unclaimed property statute, Title 17, Vermont Statutes Annotated, Chapter 14;
  - (b) A list, in electronic Excel format, of the consumers whose checks were returned or were not cashed (which list shall set out the first and last names, if known, of the consumers in distinct fields or columns), and for each such consumer, the last known address, if known, and consumer restitution amount; and
  - (c) The company's corporate address and federal tax identification number.

*Payment to the State of Vermont*

30. Within 10 business days of filing this AOD, Respondent shall pay to the State of Vermont \$10,000. Payment shall be made by check to the "State of Vermont" and shall be sent to the Vermont Attorney General's Office at the following address: Justin E. Kolber, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, Vermont 05609.

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05609

### Other Terms

31. Respondent shall, upon request by the Attorney General, provide all documentation and information necessary for the Attorney General to confirm compliance with, and assist in implementation of, this AOD.
32. The parties agree that this AOD is based, in part, upon certain understandings between the parties to resolve the Attorney General's efforts relating to unlicensed lending in Vermont and third-party payment processing thereof. To that end, Intercept agrees to respond to reasonable requests by the Attorney General's Office that are consistent with those understandings and to assist the Attorney General's efforts regarding unlicensed lending in Vermont.
33. Acceptance of this AOD by the Vermont Attorney General's Office shall not be deemed approval by the Attorney General of any practices or procedures of Respondent not required by this AOD, and Respondent shall make no representation to the contrary.
34. This AOD and all terms therein shall be binding on Respondent, all of their affiliate companies doing business in Vermont, their officers, directors, owners, managers, successors and assigns.
35. The undersigned authorized agent(s) of Respondent shall promptly take reasonable steps to ensure that copies of this document are provided to all relevant officers, directors, owners and managers of the company, and all of its affiliate companies doing business in Vermont.

36. This AOD constitutes a complete settlement and general release by the Attorney General of all claims, causes of action, damages, restitution, fines, costs, attorneys' fees, penalties and other remedies, monetary or otherwise, that the Vermont Attorney General could have asserted or obtained under any applicable law, state or federal, including but not limited to the Vermont Consumer Protection Act and Vermont common law, relating to or arising from the conduct that is the subject of this AOD against Respondent.
37. The Superior Court of the State of Vermont, Washington Unit, shall have Jurisdiction over this AOD and the parties hereto for the limited purpose of enabling any of the parties to apply to this Court at any time for orders and directions as may be necessary or appropriate to carry out or construe this AOD, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions. Respondent does not otherwise waive any defense it may have to the jurisdiction of Vermont state courts.
38. All notice related to this AOD shall be given to:
- (a) **Respondent** at: Richard J. Zack, Pepper Hamilton LLP, 3000 Two Logan Square, Eighteenth and Arch Streets, Philadelphia, PA 19103-2799.
  - (b) **The Attorney General** at: Justin Kolber, Assistant Attorney General, Office of the Attorney General, 109 State Street Montpelier, VT 05609, [justin.kolber@state.vt.us](mailto:justin.kolber@state.vt.us).




39. For a period of two years beginning from the date of this AOD, Respondent shall notify the Attorney General of any change of business name or address within 20 business days.

\*\*\* SIGNATURES APPEAR ON NEXT PAGE \*\*\*

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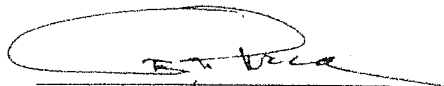
DATED at Montpelier, Vermont this 25<sup>th</sup> day of September, 2014.

STATE OF VERMONT  
WILLIAM H. SORRELL  
ATTORNEY GENERAL

By:   
Justin E. Kolber  
Assistant Attorney General  
Office of the Attorney General  
109 State Street  
Montpelier, VT 05609  
(802) 828-5620  
jkolber@atg.state.vt.us

DATED this 12<sup>th</sup> day of September, 2014


INTERCEPT CORPORATION

By:   
Its Authorized Agent

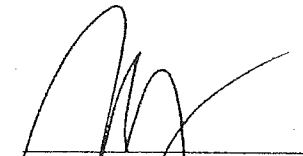
 **CEO**  
Name and Title of Authorized Agent

APPROVED AS TO FORM:

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109 State Street  
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Justin E. Kolber  
Assistant Attorney General  
Office of Attorney General  
109 State Street  
Montpelier, VT 05609

For the State of Vermont

  
Richard J. Zack, Esq.  
Pepper Hamilton LLP  
3000 Two Logan Square  
Eighteenth and Arch Streets  
Philadelphia, PA 19103

For Respondent

## Exhibit A

### **List of Lenders**

1	Red Cedar Services, Inc.
2	MNE Services, Inc.
3	SFS, Inc.
4	Tribal Lending Enterprises
5	Sequoia Tribal Enterprises
6	Makes Cents, Inc.
7	Tribal Ventures Management Group A
8	Tribal Ventures Management Group C
9	DMA Financial Corp.
10	The Cash Line, LLC
11	Platinum Finance DBA 2GOCash
12	Platinum Finance Co, LLC
13	Payment Direct, Inc.
14	Nationwide FNL, Inc.
15	SSK, LLC
16	Northway Financial Corp., Ltd.
17	Northway-Pixycash
18	Northway-Cashtaxi
19	24/7Greenstreet.com
20	National Payday Advance, LLC
21	Fresh Start Finance, Inc.
22	Cashtree, LLC
23	Cash in Advance of Florida, Inc.
24	National Title Loans, Inc.
25	Americash Advance, LLC
26	Cash on Wheels, LLC

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