

**UNITED STATES OF AMERICA  
BUREAU OF CONSUMER FINANCIAL PROTECTION**

ADMINISTRATIVE PROCEEDING File  
No. 2020-BCFP- 0021

In the Matter of:

**AFNI, INC.**

**CONSENT ORDER**

The Bureau of Consumer Financial Protection (Bureau) has reviewed the furnishing activities of Afni, Inc. (Respondent, as defined below) and has identified the following law violations: (1) Respondent furnished inaccurate information about consumers' credit to Consumer Reporting Agencies (CRAs) that it knew or had reasonable cause to believe was inaccurate in violation of § 623(a)(1)(A) of the Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681s-2(a)(1)(A); (2) Respondent, in furnishing on certain consumer accounts, failed to provide to CRAs the date a delinquency commenced, in violation of § 623(a)(5) of the FCRA, 15 U.S.C. § 1681s-2(a)(5); (3) Respondent failed to conduct reasonable investigations of consumer disputes or to do so in a timely fashion, in violation of §§ 623(b)(1), 623(a)(8)(E)(i), 623(a)(8)(E)(iii) of the FCRA, 15 U.S.C. §§ 1681s-

2(b)(1), 1681s-2(a)(8)(E)(i), 1681s-2(a)(8)(E)(iii), and §§ 1022.43(e)(1) and 1022.43(e)(3) of Regulation V, 12 C.F.R. §§ 1022.43(e)(1), 1022.43(e)(1); (4) Respondent failed to make determinations or provide the required notices to consumers that their disputes were frivolous or irrelevant and did not require investigation, in violation of § 623(a)(8)(F) of the FCRA, 15 U.S.C. § 1681s-2(a)(8)(f)(ii), (iii), and § 1022.43(f)(2) of Regulation V, 12 C.F.R. § 1022.43(f)(2), (3); (5) Respondent failed to establish, implement, review or update reasonable policies and procedures regarding its furnishing of consumer information to CRAs in violation of 12 C.F.R. § 1022.42; and (6) Respondent, as a covered person engaging in violations of a Federal consumer financial law, violated the Consumer Financial Protection Act (CFPA), § 1036(a)(1)(A) of the CFPA, 12 U.S.C. § 5536(a)(1)(A). Under §§ 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563, 5565, the Bureau issues this Consent Order (Consent Order).

## I.

### **Jurisdiction**

1. The Bureau has jurisdiction over this matter under §§ 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563 and 5565 and § 621 of FCRA, 15 U.S.C. § 1681s(b)(1)(H).

### **III.**

#### **Stipulation**

2. Respondent has executed a “Stipulation and Consent to the Issuance of a Consent Order,” dated November 2, 2020 (Stipulation), which is incorporated by reference and is accepted by the Bureau. By this Stipulation, Respondent has consented to the issuance of this Consent Order by the Bureau under §§ 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563, 5565, without admitting or denying any of the findings of fact or conclusions of law, except that Respondent admits the facts necessary to establish the Bureau’s jurisdiction over Respondent and the subject matter of this action.

### **IV.**

#### **Definitions**

3. The following definitions apply to this Consent Order:
  - a. “Board” means Respondent’s duly-elected and acting Board of Directors.
  - b. “Compliance Committee” means Respondent’s compliance committee, which reports to Respondents’ Chief Executive Officer and Chief Financial Officer.
  - c. “Effective Date” means the date on which the Consent Order is issued.

- d. “Regional Director” means the Regional Director for the Midwest Region for the Office of Supervision for the Bureau of Consumer Financial Protection, or his or her delegate.
- e. “Related Consumer Action” means a private action by or on behalf of one or more consumers or an enforcement action by another governmental agency brought against Respondent based on substantially the same facts as described in Section V of this Consent Order.
- f. “Respondent” means Afni, Inc., and its successors and assigns.

## V.

### **Bureau Findings and Conclusions**

The Bureau finds the following:

- 4. Respondent is an Illinois corporation with its principal place of business in Bloomington, IL. Respondent collects debts on behalf of telecommunications companies and furnishes information about consumers to CRAs.
- 5. Respondent furnishes consumer-account information to CRAs. The consumer-account information Respondent has collected and provided is used or expected to be used in connection with a decision regarding the offering or provision of a consumer-financial product or service and furnishing this information is a service offered or provided for use by

consumers primarily for personal, family, or household purposes. This activity is a consumer-financial product or service under the CFPA. 12 U.S.C. § 5481(5), (15)(A)(ix).

6. Respondent regularly collects defaulted consumer debt related to a consumer financial product or service, including telecommunications debt that was owed to companies that regularly extend credit by providing telecommunications service to consumers without requiring immediate payment or by providing equipment installment plans. This activity is a consumer financial product or service under the CFPA. 12 U.S.C. § 5481(5), (15)(A)(x).
7. Respondent is a “covered person” under the CFPA because it engages in offering or providing a consumer-financial product or service, 12 U.S.C. § 5481(5), (6), 15(A)(ix).
8. Respondent regularly furnishes information relating to consumers to CRAs for inclusion in consumer reports. Therefore, it is a “furnisher” under Regulation V. 12 C.F.R. § 1022.41(c).
9. Respondent is a “person” under the FCRA. 15 U.S.C. § 1681a(b).

**Findings and Conclusions as to Violations of § 623(a)(1)(A) of the FCRA**

10. Respondent furnishes information about debt-collection accounts to CRAs, including the nationwide CRAs: Equifax, Experian, and TransUnion (the NCRAs).
11. Respondent does not, on any correspondence used generally with consumers, clearly and conspicuously specify an address to which consumers can send notice that information Respondent furnished to a CRA is inaccurate.
12. Respondent uses an automated system, which employs certain furnishing logic, to report information to the NCRAs.
13. In some instances, from at least March 2016 through July 2017, Respondent's furnishing logic incorrectly translated its account files into the format used to report consumer information to the NCRAs, which resulted in Respondent furnishing at least the following inaccurate information:
  - a. Respondent furnished actual payment amounts as zero dollars on approximately 165,600 accounts, even though those consumers had made payments.
  - b. Respondent also furnished current balances and amounts past due in amounts other than zero dollars on approximately 72,000 accounts, even though those consumers' accounts were settled in full.

14. Respondent knew or had reasonable cause to believe that this information was inaccurate because its own records reflected the correct account information.
15. Under section 623(a)(1) of the FCRA, 15 U.S.C. § 1681s-2(a)(1), unless a person clearly and conspicuously specifies to a consumer an address to which the consumer can send notice that information the person furnished to a CRA is inaccurate, a person shall not furnish any information relating to a consumer to any CRA if the person knows or has reasonable cause to believe that the information is inaccurate.
16. Respondent furnished consumer information to CRAs that it knew or had reasonable cause to believe was inaccurate, because the information it furnished was different than the information in Respondent's files.
17. Respondent did not clearly and conspicuously specify to consumers an address for receipt of notices that furnished information was inaccurate, pursuant to section 623(a)(1)(C) of the FCRA, 15 U.S.C. § 1681s-2(a)(1)(C).
18. Thus, Respondent violated section 623(a)(1)(A) of the FCRA, 15 U.S.C. § 1681s-2(a)(1)(A).

**Findings and Conclusions as to Violations of § 623(a)(5) of the FCRA**

19. On many accounts that it furnished, from at least March 2016 through July 2018, Respondent failed to report an appropriate date of first delinquency,

i.e., the month and year of the commencement of the delinquency on the account that immediately preceded the delinquent account being placed for collection.

20. Respondent's creditor clients did not furnish accounts to CRAs before sending accounts into collection and therefore did not previously furnish dates of first delinquency for those accounts.
21. When creditors would send accounts to Respondent for collection, the accounts often did not specify a date of first delinquency. Instead of establishing and following reasonable procedures to obtain dates of first delinquency from its creditor clients, Respondent would instead select from dates that the creditors did provide, including the date on which telecommunications service was disconnected, or when the debt was charged off, and Respondent would furnish such dates as the date of first delinquency.
22. The disconnect date is not an accurate date of first delinquency because telecommunications services are often not disconnected until after a consumer has been delinquent for some time. Likewise, the date on which a debt is charged off is not an accurate date of first delinquency because debts are often not charged off until a consumer has been delinquent for some time.



23. Section 623(a)(5) of the FCRA, 15 U.S.C. § 1681s-2(a)(5), requires that a person who furnishes information to a CRA regarding a “delinquent account being placed for collection” must notify the CRA of the date the delinquency commenced, subject to the rules set forth in 15 U.S.C. § 1681s-2(a)(5)(B).
24. For many accounts on which it furnished, Respondent failed to notify the CRA to which it furnished information of a date of first delinquency that complied with 15 U.S.C. § 1681s-2(a)(5).
25. Therefore, Respondent violated § 623(a)(5) of the FCRA, 15 U.S.C. § 1681s-2(a)(5).

#### **Findings and Conclusions as to Violations of § 623(b)(1) of the FCRA**

26. Consumers can dispute information furnished to a CRA either with a CRA (indirect dispute) or directly with a furnisher (direct dispute).
27. Respondent receives indirect disputes through the Online Solution for Complete and Accurate Reporting (E-OSCAR). E-OSCAR is a web-based system developed by the NCRAs to help process indirect disputes.
28. When a consumer submits an indirect dispute about a debt furnished by Respondent to one of the NCRAs, it is routed to Respondent through E-OSCAR. Any supporting documentation submitted by the consumer to the NCRA with the dispute is also sent to Respondent through E-OSCAR. In

addition, the NCRAs assign a code to each dispute, reflecting the subject matter of the dispute.

29. Upon receipt, Respondent generally has 30 days to conduct a reasonable investigation of a dispute, as required by § 623(b)(1) of the FCRA, and to submit a response through E-OSCAR that the disputed information should be deleted, modified, or verified as being accurate as reported.
30. A reasonable investigation must be responsive to the specific allegations in the consumer's dispute; the more specific a dispute is, the more thorough the investigation should be.
31. In some instances, from at least March 2016 through June 2017, when Respondent received disputes with specific allegations that could not be reasonably investigated with the limited information in Respondent's files, Respondent's employees did not reach out to the original creditor for the information required to reasonably investigate the dispute. Respondent's employees used only the inadequate information in Respondent's files to do their investigations of such disputes.
32. Respondent also uses an automated program to handle certain indirect disputes without human involvement. In investigating indirect disputes, the automated program only considered information in Respondent's own

account database, did not access any of its creditor-clients' files, and did not refer disputes to clients for further investigation.

33. In some instances, the automated software handled indirect disputes in an unreasonable manner because certain specific consumer disputes handled by the automated software that should have been referred to the client for investigation to obtain further information were not.
34. Under § 623(b)(1) of the FCRA, 15 U.S.C. § 1681s-2(b)(1), when a furnisher of information to a CRA receives a notice of dispute regarding the completeness or accuracy of the reported information from a CRA in accordance with the provisions of § 611(a)(2) of the FCRA, the furnisher is required to conduct a reasonable investigation and review all relevant information provided by the CRA.
35. In some instances, Respondent has not conducted a reasonable investigation when it has received a notice of dispute from a CRA under the provisions of § 611(a)(2) of the FCRA.
36. Therefore, Respondent has violated § 623(b)(1) of the FCRA, 15 U.S.C. § 1681s-2(b)(1).

**Findings and Conclusions as to Violations of § 623(a)(8)(E)(i) of the FCRA and § 1022.43(e)(1) of Regulation V**

37. From at least January 2016 through June 2017, Respondent failed to conduct reasonable investigations of direct disputes.
38. Respondent systematically treated direct disputes under FCRA and disputes under the Fair Debt Collection Practices Act (FDCPA) as indistinguishable. Under the FDCPA, if a consumer sends a written dispute within a specified time period, the debt collector is required to send “validation,” which is typically a bill copy or other proof of the debt. Respondent conflated FCRA and FDCPA dispute requirements and treated many direct disputes as if they were merely seeking FDCPA validation. As a result, when Respondent lacked the information to reasonably investigate a direct dispute under FCRA, Respondent would often not forward the dispute on to the client for investigation but would instead respond with bill copies or by simply checking Respondent’s own records, an approach that often failed to answer the issue raised by the consumer.
39. In addition, for the period between January and June 2017, Respondent was not able to access one of its creditor-client’s system files, and did not forward disputes on to that creditor-client for further investigation.

40. From at least April 2016 through June 2017, with respect to direct disputes relating to paid accounts, Respondent ignored all such disputes after the first two submitted by a consumer.
41. From March 2016 through May 2018, in certain instances, Respondent would cause the tradelines to be deleted from consumers' credit reports instead of investigating the disputes.
42. Section 623(a)(8)(E)(i) of the FCRA, 15 U.S.C. § 1681s-2(a)(8)(E)(i), and § 1022.43(e)(1) of Regulation V, 12 C.F.R. § 1022.43(e)(1), require Respondent, upon receipt of a direct dispute from a consumer, to conduct a reasonable investigation with respect to the disputed information.
43. In some instances, Respondent has not conducted a reasonable investigation when it has received a direct dispute from a consumer.
44. Therefore, Respondent has violated § 623(a)(8)(E)(i) of the FCRA, 15 U.S.C. § 1681s-2(a)(8)(E)(i) and § 1022.43(e)(1) of Regulation V, 12 C.F.R. § 1022.43(e)(1).

**Findings and Conclusions as to Violations of § 623(a)(8)(E)(iii) of the FCRA, and § 1022.43(e)(3) of Regulation V**

45. In addition to a failure to reasonably investigate direct disputes, from at least January 2016 through August 2018, Respondent failed to timely respond to direct disputes.
46. In some instances, Respondent failed to respond to direct disputes within 30 days, if at all.
47. This was caused by:
  - a. Respondent's treating direct disputes under FCRA the same as disputes under the FDCPA, which do not have a time limit for resolution;
  - b. significant backlogs in its dispute queues;
  - c. accounts being recalled by clients in response to disputes, after which Respondent would not respond to those consumers' disputes.
48. Where Respondent determined that a direct dispute was "frivolous" or "irrelevant" and therefore would not be investigated, from at least April 2016 through June 2017, Respondent failed to send required notices to the consumer within five days of such determination.
49. Section 623(a)(8)(E)(iii) of the FCRA, 15 U.S.C. § 1681s-2(a)(8)(E)(iii), and § 1022.43(e)(3) of Regulation V, 12 C.F.R. § 1022.43(e)(3), require

furnishers to respond to direct disputes, generally, within 30 days of receiving notice of the dispute.

50. In some instances, Respondent has not responded to consumers' direct disputes within the required time period.
51. Therefore, Respondent violated § 623(a)(8)(E)(iii) of the FCRA, 15 U.S.C. § 1681s-2(a)(8)(E)(iii), and Regulation V, 12 C.F.R. § 1022.43(e)(3).

### **Findings and Conclusions as to Violations of § 1022.42 of Regulation V**

52. Respondent did not establish or implement reasonable policies and procedures regarding its furnishing of consumer information to CRAs, as appropriate to the size, nature, and complexity of its furnishing activities.
53. Examples of the failures of its policies and procedures include:
  - a. Respondent's indirect dispute policy did not instruct employees to access clients' systems or make requests to clients to obtain information or source documentation, as needed, before attempting to resolve an indirect dispute.
  - b. Respondent had no written policies accurately explaining how its automated E-OSCAR program responds to indirect disputes.

- c. Respondent did not distinguish between direct disputes under FCRA and disputes under FDCPA, treating both as the same, and failing to adhere to the timing and notification requirements for FCRA disputes.
  - d. No policy explained how to conduct a reasonable investigation of a FCRA dispute.
  - e. Respondent's written direct dispute policy did not include procedures on how to determine whether a dispute was frivolous or irrelevant and did not require employees to send notices of such determination.
54. Respondent's policies and procedures were also not reviewed or updated as necessary for continued effectiveness. For example, prior to 2017, Respondent had not modified its automated furnishing code for at least four years. And despite Respondent's knowledge that employees were not complying with its dispute policies and with FCRA dispute requirements more generally, Respondent failed to review or update its dispute policies and procedures.
55. Part E of Regulation V, requires in 12 C.F.R. § 1022.42 that a furnisher of consumer information:
- a. establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information relating to



consumers that it furnishes to a consumer reporting agency, which must be appropriate to the nature, size, complexity, and scope of the furnisher's activities;

- b. consider and incorporate the appropriate guidelines set forth in Appendix E of 12 C.F.R. Part 1022 in developing such policies and procedures; and
  - c. review such policies and procedures periodically and update them as necessary to ensure their continued effectiveness.
56. Respondent did not establish or implement reasonable policies and procedures regarding its furnishing of consumer information to CRAs or handling of consumer disputes.
57. Respondent did not consider or incorporate, as appropriate, the guidelines set forth in Appendix E of Regulation V in developing its policies and procedures regarding the accuracy and integrity of the information it furnishes to consumer reporting agencies.
58. Respondent also failed to review or update its policies and procedures as necessary for continued effectiveness.
59. Therefore, Respondent violated 12 C.F.R. § 1022.42.

## CONDUCT PROVISIONS

### VI.

#### Required Conduct

**IT IS ORDERED**, under §§ 1053 and 1055 of the CFPA, that:

60. Respondent and its officers, agents, servants, employees, and attorneys who have actual notice of this Consent Order, whether acting directly or indirectly, may not violate §§ 623(a)(1)(A), 623(a)(5), 623(b)(1), 623(a)(8)(E)(i), 623(a)(8)(E)(iii), 623(a)(8)(F); of the FCRA, 15 U.S.C. §§ 1681s-2(a)(1)(A), 1681s-2(a)(5) 1681s-2(b)(1), 1681s-2(a)(8)(E)(i), 1681s-2(a)(8)(E)(iii) 1681s-2(a)(8)(f)(ii), (iii), and §§ 1022.42 and 1022.43(f)(2) and of Regulation V, 12 C.F.R. §§ 1022.42 and 1022.43(f)(2), and must take the following affirmative actions:
  - a. On at least a monthly basis, review samples of account information to assess the accuracy and integrity of information Respondent furnishes, including to (i) assess the accuracy and integrity of underlying account information provided by creditors; and (ii) assess the process by which Respondent converts files into industry standard formats for furnishing to consumer reporting agencies.

- b. On at least a monthly basis, review samples of consumer disputes and responses to assess whether Respondent's handling of consumer disputes complies with FCRA, Regulation V, and its own policies and procedures;
- c. On at least an annual basis, or more frequently as needed to promptly address deficiencies found in assessments described in Paragraphs 61(a)-(b) or other compliance deficiencies known to Respondent, review and update its policies and procedures and implement any updates to ensure compliance with the FCRA and Regulation V and to ensure continued effectiveness of such policies and procedures; and
- d. Provide sufficient staffing, facilities, systems, and information necessary to timely and accurately respond to disputes in accordance with the FCRA and Regulation V.

## **VII.**

### **Independent Consultant's Report and Compliance Plan**

**IT IS FURTHER ORDERED** that:

- 61. Within 30 days of the Effective Date, Respondent must secure and retain one or more independent consultants, with specialized experience in FCRA and Regulation V compliance and acceptable to the Regional Director, to conduct an independent review of Respondent's activities, policies, and

procedures relating to furnishing and credit reporting. The review must include an assessment of whether Respondent's current policies, practices, and procedures regarding furnishing of consumer information to CRAs comply with the FCRA and Regulation V. The purposes of the review must be, at the very least, to determine:

- a. whether Respondent has developed, maintained, and implemented policies and procedures to ensure compliance with Section VI of this Order;
- b. whether Respondent has developed, maintained, and implemented policies and procedures to ensure Board-level oversight of and commitment to compliance with the FCRA;
- c. whether Respondent has developed, maintained, and implemented policies and procedures, including employee training and other applicable employee guidance, to address the acts and practices that are the subject of this Order; and
- d. whether Respondent has developed, maintained, and implemented appropriate monitoring, testing, and other compliance oversight and internal controls to address the acts and practices that are the subject of this Order.

62. Within 180 days of the Effective Date, the independent consultant(s) must prepare a written report detailing the findings of the review (the Independent Consultant Report), and provide the Independent Consultant Report to the Compliance Committee.
63. Within 20 days of receiving the Independent Consultant Report, the Compliance Committee must:
  - a. Develop a plan (Compliance Plan) to: (i) correct any deficiencies identified, and (ii) implement all recommendations or explain in writing why a particular recommendation is not being implemented; and
  - b. Submit the Independent Consultant Report and the Compliance Plan to the Regional Director.
64. The Regional Director will have the discretion to make a determination of non-objection to the Compliance Plan or to direct Respondent to revise it. If the Regional Director directs Respondent to revise the Compliance Plan, the Compliance Committee must make the requested revisions and resubmit the Compliance Plan to the Regional Director within 20 days.
65. After receiving notification that the Regional Director has made a determination of non-objection to the Compliance Plan, Respondent must

implement and adhere to the steps, recommendations, deadlines, and timeframes outlined in the Compliance Plan.

## **VIII.**

### **Role of the Board**

**IT IS FURTHER ORDERED** that:

66. The Board must review all submissions (including plans, reports, programs, policies, and procedures) required by this Consent Order prior to submission to the Bureau.
67. Although this Consent Order requires Respondent to submit certain documents for the review or non-objection by the Regional Director, the Board will have the ultimate responsibility for proper and sound management of Respondent and for ensuring that Respondent complies with the laws that the Bureau enforces, including Federal consumer financial laws and this Consent Order.
68. In each instance that this Consent Order requires the Board to ensure adherence to, or perform certain obligations of Respondent, the Board must:
  - a. Authorize whatever actions are necessary for Respondent to fully comply with the Consent Order;

- b. Require timely reporting by management to the Board on the status of compliance obligations; and
- c. Require timely and appropriate corrective action to remedy any material non-compliance with any failure to comply with Board directives related to this Section.

## **MONETARY PROVISIONS**

### **IX.**

#### **Order to Pay Civil Money Penalty**

**IT IS FURTHER ORDERED** that:

- 69. Under § 1055(c) of the CFPA, 12 U.S.C. § 5565(c), by reason of the violations of law described in Section V of this Consent Order, and taking into account the factors in 12 U.S.C. § 5565(c)(3), Respondent must pay a civil money penalty of \$500,000 to the Bureau.
- 70. Within 10 days of the Effective Date, Respondent must pay the civil money penalty by wire transfer to the Bureau or to the Bureau's agent in compliance with the Bureau's wiring instructions.
- 71. The civil money penalty paid under this Consent Order will be deposited in the Civil Penalty Fund of the Bureau as required by § 1017(d) of the CFPA, 12 U.S.C. § 5497(d).

72. Respondent, for all purposes, must treat the civil money penalty paid under this Consent Order as a penalty paid to the government. Regardless of how the Bureau ultimately uses those funds, Respondent may not:
- a. Claim, assert, or apply for a tax deduction, tax credit, or any other tax benefit for any civil money penalty paid under this Consent Order; or
  - b. Seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made under any insurance policy, with regard to any civil money penalty paid under this Consent Order.
73. To preserve the deterrent effect of the civil money penalty in any Related Consumer Action, Respondent may not argue that Respondent is entitled to, nor may Respondent benefit by, any offset or reduction of any compensatory monetary remedies imposed in the Related Consumer Action because of the civil money penalty paid in this action or because of any payment that the Bureau makes from the Civil Penalty Fund. If the court in any Related Consumer Action offsets or otherwise reduces the amount of compensatory monetary remedies imposed against Respondent based on the civil money penalty paid in this action or based on any payment that the Bureau makes from the Civil Penalty Fund, Respondent must, within 30 days after entry of a final order granting such offset or reduction, notify the Bureau, and pay the



amount of the offset or reduction to the U.S. Treasury. Such a payment will not be considered an additional civil money penalty and will not change the amount of the civil money penalty imposed in this action.

**X.**

**Additional Monetary Provisions**

**IT IS FURTHER ORDERED** that:

74. In the event of any default on Respondent's obligations to make payment under this Consent Order, interest, computed under 28 U.S.C. § 1961, as amended, will accrue on any outstanding amounts not paid from the date of default to the date of payment, and will immediately become due and payable.
75. Respondent must relinquish all dominion, control, and title to the funds paid to the fullest extent permitted by law and no part of the funds may be returned to Respondent.
76. Under 31 U.S.C. § 7701, Respondent, unless it already has done so, must furnish to the Bureau its taxpayer-identification numbers, which may be used for purposes of collecting and reporting on any delinquent amount arising out of this Consent Order.

77. Within 30 days of the entry of a final judgment, consent order, or settlement in a Related Consumer Action, Respondent must notify the Regional Director of the final judgment, consent order, or settlement in writing. That notification must indicate the amount of redress, if any, that Respondent paid or is required to pay to consumers and describe the consumers or classes of consumers to whom that redress has been or will be paid.

## **COMPLIANCE PROVISIONS**

### **XI.**

#### **Reporting Requirements**

**IT IS FURTHER ORDERED** that:

78. Respondent must notify the Bureau of any development that may affect compliance obligations arising under this Consent Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor company; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Consent Order; the filing of any bankruptcy or insolvency proceeding by or against Respondent; or a change in Respondent's name or address. Respondent must provide this notice, if practicable, at least 30 days before the development, but in any case no later than 14 days after the development.

79. Within 7 days of the Effective Date, Respondent must:
  - a. designate at least one telephone number and email, physical, and postal addresses as points of contact, that the Bureau may use to communicate with Respondent;
  - b. identify all businesses for which Respondent is the majority owner, or that Respondent directly or indirectly controls, by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; and
  - c. describe the activities of each such business, including the products and services offered, and the means of advertising, marketing, and sales.
80. Respondent must report any change in the information required to be submitted under Paragraph 79 at least 30 days before the change or as soon as practicable after learning about the change, whichever is sooner.
81. To account for the time for hiring the Independent Consultant, within 180 days of the Effective Date, and again one year after the Effective Date, Respondent must submit to the Regional Director an accurate written compliance progress report (Compliance Report) that has been approved by the Board, sworn to under penalty of perjury, which, at a minimum:

- a. lists each applicable paragraph and subparagraph of the Order and describes in detail the manner and form in which Respondent has complied with each such paragraph and subparagraph of the Consent Order;
- b. describes in detail the manner and form in which Respondent has complied with the Compliance Plan; and
- c. attaches a copy of each Order Acknowledgment obtained under Section XII, unless previously submitted to the Bureau.

## **XII.**

### **Order Distribution and Acknowledgment**

**IT IS FURTHER ORDERED** that:

82. Within 7 days of the Effective Date, Respondent must submit to the Regional Director an acknowledgment of receipt of this Consent Order, sworn under penalty of perjury.
83. Within 30 days of the Effective Date, Respondent must deliver a copy of this Consent Order to each of its board members and executive officers, as well as to any managers, employees, Service Providers, or other agents and representatives who have responsibilities related to the subject matter of the Consent Order.

84. For 5 years from the Effective Date, Respondent must deliver a copy of this Consent Order to any business entity resulting from any change in structure referred to in Section XI, any future board members and executive officers, as well as to any managers, employees, service providers, or other agents and representatives who will have responsibilities related to the subject matter of the Consent Order before they assume their responsibilities.
85. Respondent must secure a signed and dated statement acknowledging receipt of a copy of this Consent Order, ensuring that any electronic signatures comply with the requirements of the E-Sign Act, 15 U.S.C. § 7001 *et seq.*, within 30 days of delivery, from all persons receiving a copy of this Consent Order under this Section.
86. Within 90 days of the Effective Date, Respondent must provide the Bureau with a list of all persons and their titles to whom this Consent Order was delivered through that date under Paragraphs 83–84 and a copy of all signed and dated statements acknowledging receipt of this Consent Order under Paragraph 85.

### **XIII.**

#### **Recordkeeping**

**IT IS FURTHER ORDERED** that:

87. Respondent must create and retain the following business records:
  - a. all documents and records necessary to demonstrate full compliance with each provision of this Consent Order, including documentation of all Board actions taken to comply with this Consent Order and all submissions to the Bureau; and
  - b. all consumer complaints relating to credit reporting (whether received directly or indirectly, such as through a third party), and any responses to those complaints or requests.
88. Respondent must make the documents identified in Paragraph 87 available to the Bureau upon the Bureau's request.

### **XIV.**

#### **Notices**

**IT IS FURTHER ORDERED** that:

89. Unless otherwise directed in writing by the Bureau, Respondent must provide all submissions, requests, communications, or other documents relating to this Consent Order in writing, with the subject line, "*In re Afni*,

*Inc.*, File No. 2020-BCFP- 0021,” and send them by overnight courier or first-class mail to the below address and contemporaneously by email to Enforcement\_Compliance@cfpb.gov:

Regional Director  
Bureau of Consumer Financial Protection Midwest Region  
230 South Dearborn St., Suite 1590  
Chicago, IL 60604

**XV.**

**Compliance Monitoring**

**IT IS FURTHER ORDERED** that:

90. Within 14 days of receipt of a written request from the Bureau, Respondent must submit additional Compliance Reports or other requested non-privileged information, related to requirements of this Consent Order, which must be made under penalty of perjury; provide sworn testimony related to requirements of this Consent Order and Respondent’s compliance with those requirements; or produce non-privileged documents related to requirements

of this Consent Order and Respondent's compliance with those requirements.

91. For purposes of this Section, the Bureau may communicate directly with Respondent, unless Respondent retains counsel related to these communications.
92. Respondent must permit Bureau representatives to interview about the requirements of this Consent Order and Respondent's compliance with those requirements any employee or other person affiliated with Respondent who has agreed to such an interview. The person interviewed may have counsel present.
93. Nothing in this Consent Order will limit the Bureau's lawful use of civil investigative demands under 12 C.F.R. § 1080.6 or other compulsory process.



## **XVI.**

### **Modifications to Non-Material Requirements**

**IT IS FURTHER ORDERED** that:

94. Respondent may seek a modification to non-material requirements of this Consent Order (*e.g.*, reasonable extensions of time and changes to reporting requirements) by submitting a written request to the Regional Director.
95. The Regional Director may, in his or her discretion, modify any non-material requirements of this Consent Order (*e.g.*, reasonable extensions of time and changes to reporting requirements) if he or she determines good cause justifies the modification. Any such modification by the Regional Director must be in writing.

## **XVII.**

### **Administrative Provisions**

**IT IS FURTHER ORDERED** that:

96. The provisions of this Consent Order do not bar, estop, or otherwise prevent the Bureau from taking any other action against Respondent, except as described in Paragraph 97. Further, for the avoidance of doubt, the provisions of this Consent Order do not bar, estop, or otherwise prevent any

other person or governmental agency from taking any action against Respondent.

97. The Bureau releases and discharges Respondent from all potential liability for law violations that the Bureau has or might have asserted based on the practices described in Section V of this Consent Order, to the extent such practices occurred before the Effective Date and the Bureau knows about them as of the Effective Date. The Bureau may use the practices described in this Consent Order in future enforcement actions against Respondent and its affiliates, including, without limitation, to establish a pattern or practice of violations or the continuation of a pattern or practice of violations or to calculate the amount of any penalty. This release does not preclude or affect any right of the Bureau to determine and ensure compliance with the Consent Order, or to seek penalties for any violations of the Consent Order.
98. This Consent Order is intended to be, and will be construed as, a final Consent Order issued under § 1053 of the CFPA, 12 U.S.C. § 5563, and expressly does not form, and may not be construed to form, a contract binding the Bureau or the United States.
99. This Consent Order will terminate 5 years from the Effective Date. The Consent Order will remain effective and enforceable until such time, except to the extent that any provisions of this Consent Order have been amended,

suspended, waived, or terminated in writing by the Bureau or its designated agent.

100. Calculation of time limitations will run from the Effective Date and be based on calendar days, unless otherwise noted.
101. Should Respondent seek to transfer or assign all or part of its operations that are subject to this Consent Order, Respondent must, as a condition of sale, obtain the written agreement of the transferee or assignee to comply with all applicable provisions of this Consent Order.
102. The provisions of this Consent Order will be enforceable by the Bureau. For any violation of this Consent Order, the Bureau may impose the maximum amount of civil money penalties allowed under §1055(c) of the CFPA, 12 U.S.C. § 5565(c). In connection with any attempt by the Bureau to enforce this Consent Order in federal district court, the Bureau may serve Respondent wherever Respondent may be found and Respondent may not contest that court's personal jurisdiction over Respondent.
103. This Consent Order and the accompanying Stipulation contain the complete agreement between the parties. The parties have made no promises, representations, or warranties other than what is contained in this Consent Order and the accompanying Stipulation. This Consent Order and the

accompanying Stipulation supersede any prior oral or written communications, discussions, or understandings.

104. Nothing in this Consent Order or the accompanying Stipulation may be construed as allowing Respondent, its Board, officers, or employees to violate any law, rule, or regulation.

**IT IS SO ORDERED**, this 9<sup>th</sup> day of November, 2020.



Kathleen L. Kraninger

Director

Bureau of Consumer Financial Protection