

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

ADMINISTRATIVE PROCEEDING
File No. 2018-BCFP-0006

In the Matter of:

**Bluestem Brands, Inc.; Bluestem
Enterprises, Inc.; and Bluestem
Sales, Inc., also doing business as
Fingerhut and Gettington.com**

CONSENT ORDER

The Bureau of Consumer Financial Protection (Bureau) has reviewed the debt-collection and debt-sales acts and practices of Bluestem Brands, Inc.; Bluestem Enterprises, Inc.; and Bluestem Sales, Inc., also doing business as Fingerhut and Gettington.com (collectively, Bluestem or Respondents, as defined below), relating to consumer debts sold to debt buyers, and has identified the following law violations: Bluestem engaged in unfair acts and practices by substantially delaying forwarding post-sale payments made by consumers to Bluestem.

Under §§ 1053 and 1055 of the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5563, 5565, the Bureau issues this Consent Order (Consent Order).

I. Overview

1. Bluestem, an online retailer that operates through several brands, including Fingerhut and Gettington.com, generally sells products, mostly through revolving-credit accounts and installment-credit accounts issued through its third-party partner bank, and sells charged-off accounts to third-party debt buyers. Some consumers continued to make payments on their defaulted accounts directly to Bluestem after their accounts had been sold. Where it received such direct payments, due to operational errors, Bluestem substantially delayed sending some of these consumers' payments to the third-party debt buyers. This practice was likely to subject consumers to misleading debt-collection efforts and inaccurate credit reporting, and is unfair under the CFPA.

II. Jurisdiction

2. The Bureau has jurisdiction over this matter under §§ 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563 and 5565.

III. Stipulation

3. Respondents have executed a "Stipulation and Consent to the Issuance of a Consent Order," dated September 27, 2018 (Stipulation), which is incorporated by reference and is accepted by the Bureau. By this Stipulation, Respondents have consented to the issuance of this Consent Order by the Bureau under §§ 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563 and 5565, without admitting or denying any of the findings of fact or conclusions of law, except that Respondents admit the facts necessary to establish the Bureau's jurisdiction over Respondents and the subject matter of this action.

IV. Definitions

4. The following definitions apply to this Consent Order:
- a. “Board” means Respondents’ duly-elected and acting Boards of Directors.
 - b. “Direct Pay” means a payment made by or on behalf of a consumer to Bluestem after Bluestem has sold the consumer’s account to a third party.
 - c. “Effective Date” means the date on which this Consent Order is issued.
 - d. “Enforcement Director” means the Assistant Director of the Office of Enforcement 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 one or more of the Respondents based on substantially the same facts as described in § V of this Consent Order.
 - f. “Respondents” or “Bluestem” means Bluestem Brands, Inc.; Bluestem Enterprises, Inc.; and Bluestem Sales, Inc., also doing business as Fingerhut and Gettington.com; and their successors and assigns.

V. Bureau Findings and Conclusions

The Bureau finds the following:

- 5. Bluestem Brands, Inc., is a Delaware corporation with its principal place of business in Eden Prairie, Minnesota.
- 6. Bluestem Enterprises, Inc., a wholly owned direct subsidiary of Bluestem Brands, Inc., is a Delaware corporation with its principal place of business in Eden Prairie, Minnesota.

7. Bluestem Sales, Inc., a wholly owned direct subsidiary of Bluestem Brands, Inc., is a Delaware corporation with its principal place of business in Eden Prairie, Minnesota.
8. Bluestem Brands, Inc., Bluestem Enterprises, Inc., and Bluestem Sales, Inc., operating together, purchase, service, collect on, and furnish consumer-report information on loans that are primarily used by consumers for personal, family, or household purposes. The entities are therefore “covered persons” under the CFPA. 12 U.S.C. § 5481(5), (6), (15)(A)(i), (ix), and (x).
9. Bluestem partners with a third-party bank to sell Bluestem merchandise on closed-end or open-end revolving credit. Generally, the bank originates the loans and sells the receivables to Bluestem within a few days. Once Bluestem purchases the receivables, it services the debts itself and sells the receivables to a third party.
10. When consumers default on their Bluestem accounts, the accounts are charged off and sold to third-party debt buyers. Bluestem does not take affirmative steps to notify consumers when their accounts are sold or to inform consumers of the new owners of their debts.
11. Bluestem continued to accept payments from consumers after it had sold their accounts to debt buyers. Bluestem refers to payments on sold debts as “direct pays.”
12. Bluestem substantially delayed forwarding some Direct Pays and information about those Direct Pays to debt buyers.
13. For example, since 2013 there have been over 3,500 instances where the delay was over 365 days. Between 2013 and August 2016, Bluestem received more

than 18,000 Direct Pays—totaling more than \$1 million—that it delayed forwarding for at least 31 days.

14. Most of the delayed Direct Pays referenced in Paragraphs 12 and 13 resulted from a conversion of Bluestem's accounts receivable system in March 2014 or other technical system issues that resulted in direct pays made on certain debt-sale files not being timely forwarded to debt buyers.
15. By substantially delaying forwarding some Direct Pays and information about those Direct Pays, Bluestem prevented debt buyers from timely updating account balances.
16. As a result, debt buyers were likely to subject consumers to misleading and, in situations where consumers have completely paid off their account, completely unnecessary debt-collection efforts.
17. Any misleading collection efforts were likely to cause consumers to make payments based on debt buyers' misstatements about the amounts owed on consumers' accounts, including in situations where consumers had completely paid off their accounts.
18. Bluestem's conduct was also likely to cause some debt buyers to furnish inaccurate information to consumer-reporting agencies.
19. Consumers have no control over Bluestem's processes for identifying, tracking, and forwarding Direct Pays. Bluestem's contracts with debt buyers require Bluestem to forward Direct Pays within 30 days of receipt.
20. Once Bluestem accepts a payment from a consumer, the consumer loses access to that money, which prevents the consumer from paying that money to the current debt owner.

21. Consumers have no reason to anticipate that Bluestem will accept their payments but then hold the payments for months or years before forwarding them. And so consumers have no reason to anticipate the inaccurate debt collection or consumer reporting that could result.

Violation of the CFPA

22. Section 1036(a)(1)(B) of the CFPA prohibits “unfair” acts or practices. 12 U.S.C. § 5536(a)(1)(B). An act or practice is unfair if it causes or is likely to cause consumers substantial injury that is not reasonably avoidable and is not outweighed by countervailing benefits to consumers or to competition. 12 U.S.C. § 5531(c)(1).
23. Bluestem’s substantial delay in forwarding consumers’ Direct Pays or informing debt buyers about the Direct Pays was unfair.
24. Consumers were likely to suffer substantial injury because Bluestem’s practice precluded debt buyers from timely updating account balances. As a result, consumers were likely to be subjected to misleading and, in situations where consumers have completely paid off their account, completely unnecessary debt-collection efforts; consumers were likely to make payments based on debt buyers’ misstatements about the amounts owed on consumers’ accounts, including in situations where consumers have completely paid off their accounts; and some debt buyers were likely to furnish inaccurate information to consumer-reporting agencies.
25. This injury is not reasonably avoidable because Bluestem does not inform consumers when it has sold their accounts; consumers have no control over Bluestem’s processes for identifying, tracking, or forwarding Direct Pays; once

Bluestem accepts a Direct Pay, the consumer loses the ability to send that money to the current debt owner; and consumers have no reason to anticipate that Bluestem will accept but not timely forward their payments.

26. This injury is not outweighed by countervailing benefits to consumers or competition.
27. Therefore, Bluestem has engaged in unfair acts or practices that violate §§ 1031(c)(1) and 1036(a)(1)(B) of the CFPA. 12 U.S.C. §§ 5531(c)(1), 5536(a)(1)(B).

ORDER

VI. Conduct Provisions

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

28. Within 90 days of the Effective Date, Bluestem shall update, as necessary, its processes, systems, and controls to ensure that:
 - a. Bluestem timely identifies and forwards Direct Pays to the appropriate debt buyers;
 - b. Bluestem has in place policies and procedures reasonably designed to (i) prevent accepting Direct Pays by phone on sold accounts, and (ii) inform any consumer who tries to make a Direct Pay by phone that the consumer's account has been sold, and provide the name and contact information (at a minimum, phone number and address) of the appropriate debt buyer;
 - c. Bluestem has in place policies and procedures reasonably designed to (i) prevent accepting Direct Pays through any of Bluestem's websites, and (ii) ensure that when a consumer whose account has been sold seeks to make a payment through any of Bluestem's websites, the website will inform the

consumer that the consumer's account has been sold and provide the name and contact information (at a minimum, phone number and address) of the debt buyer that purchased the consumer's account; and

- d. Bluestem has in place policies and procedures reasonably designed to provide the notice described below to a consumer whose account has been sold and for whom, after the account has been sold, Bluestem has received a payment by check. Bluestem's policies and procedures shall also be reasonably designed to provide the notice within 12 business days of receiving the payment and to include in the notice, at a minimum:

- i. a statement that the consumer's account has been sold;
- ii. the name and contact information (at a minimum, phone number and address) of the debt buyer;
- iii. a description of the methods by which consumers can obtain account information from Bluestem; and
- iv. a statement that the notice is not a bill and the consumer should not send payment to Bluestem.

29. Consistent with its current practices, when Bluestem sells an account to a debt buyer after the Effective Date, Bluestem shall continue to provide the debt buyer, at the time of sale, with at least the following information and documentation for each account sold:

- a. the effective credit agreement that obligates the consumer to pay the debt sold; and
- b. copies of the last 12 monthly account statements or, if the account was open for less than 12 months, all monthly account statements.

30. Consistent with its current practices, after the Effective Date, Bluestem shall not sell accounts for which Bluestem is unable to provide the information and documentation required in Paragraph 29.

VII. Compliance Plan

IT IS FURTHER ORDERED that:

31. Within 30 Days of the Effective Date, Bluestem must submit to the Enforcement Director for review and determination of non-objection a comprehensive compliance plan designed to ensure that Bluestem's Direct Pay practices comply with all applicable Federal consumer financial laws and the terms of this Consent Order (Compliance Plan). The Compliance Plan must include, at a minimum:
- a. detailed steps for addressing each action required by this Consent Order;
 - b. exemplars of the notices required under Paragraph 28; and
 - c. specific timeframes and deadlines for implementation of the steps described above.
32. The Enforcement Director will have the discretion to make a determination of non-objection to the Compliance Plan or direct Bluestem to revise it. If the Enforcement Director directs Bluestem to revise the Compliance Plan, Bluestem must make the revisions and resubmit the Compliance Plan to the Enforcement Director within 30 days.
33. After receiving notification that the Enforcement Director has made a determination of non-objection to the Compliance Plan, Bluestem must implement and adhere to the steps, timeframes, and deadlines outlined in the Compliance Plan.

VIII. Role of the Board

IT IS FURTHER ORDERED that:

34. The Board, or a committee thereof, must review all submissions required by this Consent Order prior to submission to the Bureau.
35. Although this Consent Order requires Bluestem to submit certain documents for the review or non-objection by the Enforcement Director, the Board will have the ultimate responsibility for proper and sound management of Bluestem and for ensuring that Bluestem complies with Federal consumer financial law and this Consent Order.
36. In each instance that this Consent Order requires the Board to ensure adherence to or perform certain obligations of Bluestem, the Board, or a committee thereof, must:
 - a. authorize whatever actions are necessary for Bluestem to fully comply with the Consent Order;
 - b. require timely reporting by management to the Board, or a committee thereof, on the status of compliance obligations; and
 - c. require timely and appropriate corrective action to remedy any material non-compliance or any failures to comply with Board directives related to this Section.

IX. Order to Pay Civil Money Penalties

IT IS FURTHER ORDERED that:

37. Under § 1055(c) of the CFPB, 12 U.S.C. § 5565(c), by reason of the violations of law described in § V of this Consent Order, and taking into account the factors

in 12 U.S.C. § 5565(c)(3), Bluestem must pay a civil money penalty of \$200,000 to the Bureau.

38. Within ten days of the Effective Date, Bluestem 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.
39. 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 CFPB, 12 U.S.C. § 5497(d).
40. Bluestem must treat the civil money penalty paid under this Consent Order as a penalty paid to the government for all purposes. Regardless of how the Bureau ultimately uses those funds, Bluestem 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.
41. To preserve the deterrent effect of the civil money penalty in any Related Consumer Action, Bluestem may not argue that Bluestem is entitled to, nor may Bluestem 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. If the court in any Related Consumer Action offsets or otherwise reduces the amount of compensatory monetary remedies imposed against Bluestem based on the civil money penalty paid in this action or based on any payment that the Bureau makes from the Civil

Penalty Fund, Bluestem 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:

42. In the event of any default on Bluestem'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.
43. Bluestem 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 Bluestem.
44. Under 31 U.S.C. § 7701, Bluestem, unless it has already done so, must furnish to the Bureau its taxpayer-identifying number, which may be used for purposes of collecting and reporting on any delinquent amount arising out of this Consent Order.
45. Within 30 days of the entry of a final judgment, consent order, or settlement in a Related Consumer Action, Bluestem must notify the Enforcement Director of the final judgment, consent order, or settlement in writing. That notification must indicate the amount of redress, if any, that Bluestem 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.

XI. Reporting Requirements

IT IS FURTHER ORDERED that:

46. Bluestem 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 any Respondent; or a change in any Respondent's names or addresses. Bluestem 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.
47. Within seven days of the Effective Date, Respondents must each designate at least one telephone number and email, physical, and postal address as points of contact, which the Bureau may use to communicate with the Respondents.
48. Bluestem must report any change in the information required to be submitted under Paragraph 47 at least 30 days before the change or as soon as practicable after the learning about the change, whichever is sooner.
49. Within 120 days of Bluestem's receiving notice of the Enforcement Director's non-objection to the Compliance Plan, and again 245 days later, Bluestem must submit to the Enforcement Director an accurate written compliance-progress report (Compliance Report) that has been approved by the Board, or a committee thereof, which, at a minimum:

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

XII. Order Distribution and Acknowledgment

IT IS FURTHER ORDERED that:

50. Within 30 days of the Effective Date, Bluestem must deliver a copy of this Consent Order to each of their 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.
51. For five years from the Effective Date, Bluestem must deliver a copy of this Consent Order to any business entity resulting from any change in structure referred to in § 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.
52. Bluestem 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.

XIII. Recordkeeping

IT IS FURTHER ORDERED that:

53. Bluestem must create, or if already created, must retain for the duration of the Consent Order, all documents and records necessary to demonstrate full compliance with each provision of this Consent Order, including information about Direct Pays provided to Debt Buyers, the notices required by Paragraph 28, and all submissions to the Bureau.
54. Bluestem must retain the documents identified in Paragraph 53 for the duration of the Consent Order.
55. Bluestem must make the documents identified in Paragraph 53 available to the Bureau upon the Bureau's request.

XIV. Notices

IT IS FURTHER ORDERED that:

56. Unless otherwise directed in writing by the Bureau, Bluestem must provide all submissions, requests, communications, or other documents relating to this Consent Order in writing, with the subject line, "*In re* Bluestem Brands, Inc., File No. 2018-BCFP-0006," and send them by overnight courier or first-class mail to the below address and contemporaneously by email to Enforcement_Compliance@cfpb.gov:

Assistant Director for Enforcement
Bureau of Consumer Financial Protection
ATTENTION: Office of Enforcement
1700 G Street, N.W.
Washington D.C. 20552

XV. Compliance Monitoring

IT IS FURTHER ORDERED that, to monitor Bluestem's compliance with this Consent Order:

57. Within 14 days of receipt of a written request from the Bureau, Bluestem 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 Bluestem's compliance with those requirements; or produce non-privileged documents related to requirements of this Consent Order and Bluestem's compliance with those requirements.
58. Bluestem must permit Bureau representatives to interview about the requirements of this Consent Order and Bluestem's compliance with those requirements any employee or other person affiliated with Bluestem who has agreed to such an interview. The person interviewed may have counsel present.
59. 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:

60. Bluestem 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 Enforcement Director.
61. The Enforcement 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 Enforcement Director must be in writing.

XVII. Administrative Provisions

IT IS FURTHER ORDERED that:

62. The provisions of this Consent Order do not bar, estop, or otherwise prevent the Bureau, or any other governmental agency, from taking any other action against Bluestem, except as described in Paragraph 63.
63. The Bureau releases and discharges Bluestem from all potential liability for law violations that the Bureau has or might have asserted based on the practices described in § 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 Bluestem, 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.
64. 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.

65. This Consent Order will terminate five 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.
66. Calculation of time limitations will run from the Effective Date and be based on calendar days, unless otherwise noted.
67. Should Bluestem seek to transfer or assign all or part of their operations that are subject to this Consent Order, Bluestem 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.
68. 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 Respondents wherever Respondents may be found and Respondents may not contest that court's personal jurisdiction over Respondents.
69. 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.

70. Nothing in this Consent Order or the accompanying Stipulation may be construed as allowing the Respondents, their Boards, officers, or employees to violate any law, rule, or regulation.

IT IS SO ORDERED, this 2nd day of October, 2018.



Mick Mulvaney
Acting Director
Bureau of Consumer Financial Protection