

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 OR 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported) June 27, 2019

FlexShopper, Inc.

(Exact name of registrant as specified in its charter)

<u>Delaware</u> (State or other jurisdiction of incorporation)	<u>001-37945</u> (Commission File Number)	<u>20-5456087</u> (IRS Employer Identification No.)
<u>901 Yamato Road, Ste. 260 Boca Raton, FL</u> (Address of principal executive offices)		<u>33431</u> (Zip Code)
Registrant's telephone number, including area code		(855) 353-9289

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.0001 Par Value	FPAY	The Nasdaq Stock Market LLC
Warrants, each to purchase one share of Common Stock	FPAYW	The Nasdaq Stock Market LLC

Item 1.01 Entry into a Material Definitive Agreement.

FlexShopper, LLC, a wholly-owned, direct subsidiary of FlexShopper, Inc. (the “Company”), previously entered into a letter agreement with NRNS Capital Holdings LLC (“NRNS”) pursuant to which FlexShopper LLC issued a subordinated promissory note to NRNS (the “Note”). On June 27, 2019, FlexShopper, LLC amended and restated the Note (the “revised Note”) such that the maturity date of the revised Note was set at June 30, 2021.

A copy of the revised Note is filed with this report as [Exhibit 10.1](#) and is hereby incorporated by reference herein. The foregoing description of the revised Note does not purport to be complete and is qualified in its entirety by reference to the full text of such document.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.	Description
10.1	Form of Amended and Restated Subordinated Promissory Note issued by FlexShopper, LLC to NRNS Capital Holdings LLC.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

June 28, 2019

FlexShopper, Inc.

By: /s/ Brad Bernstein
Brad Bernstein,
Chief Executive Officer

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED. IT MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED, HYPOTHECATED, OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR AN OPINION OF COUNSEL SATISFACTORY TO THE BORROWER THAT REGISTRATION IS NOT REQUIRED UNDER SUCH ACT OR UNLESS SOLD PURSUANT TO RULE 144 UNDER SUCH ACT.

SECOND AMENDED AND RESTATED SUBORDINATED PROMISSORY NOTE

\$2,500,000

January 31, 2018
Amended and Restated August 29, 2018
Further Amended and Restated June 27, 2019

FOR VALUE RECEIVED, FlexShopper, LLC, a North Carolina limited liability company (“Borrower”), hereby promises to pay to NRNS CAPITAL HOLDINGS LLC, a Florida limited liability company (“Lender”), the principal sum of up to Two Million Five Hundred Thousand and 00/100 Dollars (\$2,500,000.00) or such lesser amount as shall remain outstanding hereunder, together with interest thereon, subject to the terms and conditions set forth in this Second Amended and Restated Subordinated Promissory Note (this “Note”).

1. Payment of Principal and Interest.

(a) Payments of principal and accrued interest on this Note shall be due and payable on June 30, 2021.

(b) The unpaid principal balance of this Note shall bear interest at a rate equal to five percent (5.00%) per annum in excess of the non-default rate of interest from time to time in effect under that certain Credit Agreement dated as of March 6, 2015 among FlexShopper 2, LLC, as borrower, Wells Fargo Bank, National Association, as paying agent, WE 2014-1, LLC, as administrative agent (the “Administrative Agent”), and the lenders party thereto (as amended, restated, supplemented or otherwise modified from time to time, the “Senior Credit Agreement”) computed on the basis of a 360 day year.

(c) Interest shall be payable in arrears on the first day of each calendar month, upon any prepayment to the extent accrued on the amount being prepaid and on the Maturity Date, provided, that no interest shall be payable (and instead such interest shall continue to accrue as simple interest) at any time that the “Applicable Advance Rate” (as defined in the Senior Debt Documents) exceeds 96%. Borrower may prepay this Note in whole or in part at any time, without premium or penalty.

(d) All payments of principal and interest shall be made in lawful money of the United States of America and shall be made to Lender at Lender’s address set forth in Section 14 or at such other place as Lender may designate to Borrower in writing.

(e) Subject to the other terms set forth herein. Lender shall make a notation on Schedule A hereto of each advance made by Lender and of each prepayment or repayment made by Borrower, which schedule shall be conclusive evidence of the principal amount then outstanding hereunder, absent manifest error; subject to the next sentence. In the event that the Lender fails to make a notation on Schedule A, then the amount showing as owing from Borrower to Lender on the books and records of the Lender shall be conclusive evidence of the principal amount then outstanding hereunder, absent manifest error.

2. [Reserved].

3. Security. As collateral security for the payment and satisfaction of the unpaid principal balance of this Note and all interest accrued thereon, and subject to the rights of the Senior Creditors as described in Section 13, Borrower hereby grants to Lender a continuing, first-priority security interest in and to all of the Collateral. The Collateral means each and all of the following:

- A. the Accounts;
- B. the Equipment;
- C. the Inventory;
- D. the General Intangibles;
- E. the Negotiable Collateral;

F. any money, deposit accounts or other assets of Borrower in which Lender receives a security interest or which hereafter come into the possession, custody or control of Lender;

G. all Supporting Obligations;

H. all Investment Property;

I. all Letter of Credit Rights; and

J. the proceeds of any of the foregoing, including, but not limited to, proceeds of insurance covering the Collateral, or any portion thereof, and any and all Accounts, Equipment, Inventory, General Intangibles, Negotiable Collateral, the Investment Property, the Letter of Credit Rights, the Supporting Obligations, money, deposit accounts or other tangible and intangible property resulting from the sale or other disposition of the Collateral, or any portion thereof or interest therein, and the proceeds thereof.

The capitalized terms used in the definition of the Collateral shall have the meanings ascribed to them under the Uniform Commercial Code as adopted in the State of North Carolina (the "UCC").

4. Representations and Warranties. Borrower hereby represents and warrants to Lender that:

(a) Borrower (i) is a limited liability company duly organized, validly existing and in good standing under the laws of the State of North Carolina, (ii) has all requisite limited liability company power and authority to own and operate its property, to lease the property it operates as lessee and to conduct the business in which it is currently, or is currently proposed to be, engaged, (iii) is duly qualified as a foreign entity, licensed and in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification, except to the extent that the failure to so qualify would not have a material adverse effect on Borrower, and (iv) has the limited liability company power and authority to execute, deliver and perform its obligations under this Note and to borrow hereunder;

(b) The execution, delivery and performance by Borrower of this Note (i) has been duly authorized by all necessary action, (ii) do not and will not contravene or violate the terms of its corporate constitutional documents or any amendment thereto or any law applicable to Borrower or its assets, business or properties, (iii) do not and will not (1) conflict with, contravene, result in any violation or breach of or default under any material contractual obligation of Borrower (with or without the giving of notice or the lapse of time or both), (2) create in any other person a right or claim of termination or amendment of any material contractual obligation of Borrower, or (3) require modification, acceleration or cancellation of any material contractual obligation of Borrower, and (iv) do not and will not result in the creation of any lien (or obligation to create a lien) against any property, asset or business of Borrower; and

(c) Borrower has duly executed and delivered this Note and this Note constitutes the legal, valid and binding obligations Borrower, enforceable against Borrower in accordance with the terms hereof, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and by general principles of equity.

5. Events of Default. The following shall constitute "Events of Default" with respect to this Note:

(a) Borrower shall fail to pay the principal of, or interest on, this Note when the same becomes due and payable in accordance with the terms hereof;

(b) Any representation or warranty made by Borrower in Section 4 hereof shall fail to be true and correct in all material respects or Borrower shall default in the performance of any of its obligations under Section 2 hereof; or

(c) Borrower makes a general assignment for the benefit of its creditors or applies to any tribunal for the appointment of a trustee or receiver of a substantial part of the assets of Borrower, or commences any proceedings relating to Borrower under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debts, dissolution or other liquidation law of any jurisdiction; or any such application is filed, or any such proceedings are commenced against Borrower and Borrower indicates its consent to such proceedings, or an order or decree is entered by a court of competent jurisdiction appointing such trustee or receiver, or adjudicating Borrower bankrupt or insolvent, or approving the petition in any such proceedings, and such order or decree remains unstayed and in effect for ninety (90) days.

6. Consequences of Event of Default. Upon the occurrence of any such Event of Default and during the continuation thereof, the unpaid principal balance of this Note and accrued and unpaid interest hereon shall become immediately due and payable upon such occurrence without action by Lender and Lender shall have all other rights and remedies provided by applicable law. Lender shall have all of the rights and remedies of a secured party under the UCC.

7. Remedies are Cumulative. No failure on the part of Lender to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by Lender or any right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any right, power or remedy. The remedies herein provided are cumulative and are not exclusive of any remedies provided by law, in equity, or in other loan documents.

8. Costs of Collection. In the event that this Note is not paid when due, Borrower shall also pay or reimburse Lender for all reasonable costs and expenses of collection, including, without limitation, reasonable attorneys' fees.

9. Default Interest Rate. Upon the occurrence of any Event of Default, any principal balance remaining unpaid under this Note shall bear interest at a rate per annum equal to two percent (2%) above the interest rate otherwise applicable hereto.

10. Governing Law. This Note shall be governed by and construed in accordance with the laws of the State of North Carolina without regard to the conflicts of law provisions thereof.

11. Waiver. Borrower waives presentment for payment, demand, protest, notice of dishonor, notice of protest, diligence on bringing suit against any party hereto, and all defenses on the ground of any extension of the time of payment that may be given by Lender to it. Borrower agrees not to assert against Lender as a defense (legal or equitable), as a set-off, as a counterclaim, or otherwise, any claims Borrower may have against any other party liable to Lender for all or any part of the obligations under this Note. All rights of Borrower hereunder, and all obligations of Borrower hereunder, shall be absolute and unconditional, not discharged or impaired irrespective of (and regard less of whether Borrower receives any notice of): (i) any lack of validity or enforceability of any provision of this Note; (ii) any change in the time, manner or place of payment or performance, or in any term, of all or any of the obligations hereunder or any other amendment or waiver of or any consent to any departure from any provision herein; or (iii) any release of or modifications to or insufficiency, unenforceability or enforcement of the obligations of any guarantor or other obligor. To the extent permitted by law, Borrower hereby waives any rights under any valuation, stay, appraisal, extension or redemption laws now existing or which may hereafter exist and any other circumstance which might otherwise constitute a defense available to, or a discharge of any party with respect to the obligations of Borrower hereunder.

12. No Right of Set-Off. As of the date hereof, Borrower represents that it has no claims or offsets against Lender in breach of contract, breach of warranty, express or implied, negligence or for any other type of legal action under this Note or otherwise.

13. Subordination.

(a) Lender agrees that the obligations represented by this Note shall be in all respects subordinate in payment and junior in priority to all indebtedness, liabilities and other obligations (collectively, the "Senior Debt" and the holders of such Senior Debt, the "Senior Creditors") owing under the Senior Credit Agreement and the other agreements, instruments and documents executed and delivered in connection therewith, as amended, modified or increased (collectively, the "Senior Debt Documents").

(b) Until all Senior Debt shall have been paid in full in cash and all commitments to advance Senior Debt have terminated, (i) no payment may be made on this Note, whether of principal or interest or other obligations, at any time that the "Effective Advance Rate" (as defined in the Senior Debt Documents) exceeds 95% or an "Event of Default" (as defined in the Senior Debt Documents) exists, (ii) the Lender shall not (A) take any action or exercise any remedy against the Borrower under this Note (other than the imposition of the default rate of interest as set forth herein); or (B) commence, or join with any other creditor of the Borrower in commencing any insolvency or similar proceeding against the Borrower (iii) the Lender waives all rights of subrogation, reimbursement and any similar rights with respect to the indebtedness evidenced by this Note and (iv) any and all liens and security interests of Lender in any collateral shall be and hereby are subordinated for all purposes and in all respects to the liens and security interests of the Senior Creditors in such collateral, whether or not valid or perfected, regardless of the time, manner or order of attachment, grant or perfection of any such liens and security interests and regardless of any provision of the Uniform Commercial Code of any jurisdiction or any other law or any other circumstance.

(c) In case any funds shall be paid or delivered to the Lender in violation hereof, such funds shall be held in trust by the Lender for, and paid and delivered to, the Senior Creditors (in the form received, together with any necessary endorsements) upon demand.

(d) The priority of the Senior Debt (whether or not such amounts are deemed allowable or recoverable) set forth above shall continue during any insolvency, receivership, bankruptcy, dissolution, liquidation, or reorganization proceeding, or in any other proceeding, whether voluntary or involuntary, by or against the Borrower, under any bankruptcy or insolvency law or laws.

(e) The Lender expressly waives all notice of the acceptance by any Senior Creditor of the subordination and other provisions of this Note.

Without limitation of the foregoing, the Senior Creditors (including, without limitation, the Administrative Agent under the Senior Credit Agreement) are express third party beneficiaries of the terms and conditions contained in this Section 13 and shall be entitled to enforce such terms and conditions directly, as if they were parties to this Note. Furthermore, until all Senior Debt shall have been paid in full in cash and all commitments to advance Senior Debt have terminated, this Section 13 may not be amended, restated, supplemented or otherwise modified without the prior written consent of the Administrative Agent and the Required Lenders (as defined in the Senior Credit Agreement).

14. Notices. Any notice pursuant to this Note must be in writing and will be deemed effectively given to another party on the earliest of the date (a) three (3) business days after such notice is sent by registered U.S. mail, return receipt requested, (b) one (1) business day after receipt of confirmation if such notice is sent by facsimile, (c) one (1) business day after delivery of such notice into the custody and control of an overnight courier service for next day delivery, (d) one (1) business day after delivery of such notice in person and (e) such notice is received by that party; in each case to the appropriate address below (or to such other address as a party may designate by notice to the other party):

If to Borrower:

FlexShopper, LLC
2700 N. Military Trail, Suite 200
Boca Raton, FL 33431
Attn: Brad Bernstein

If to Lender:

NRNS Capital Holdings LLC
7809 Galleon Court
Parkland, FL 33067

15. Severability. Any provision of this Note that is determined by any court of competent jurisdiction to be invalid or unenforceable will not affect the validity or enforceability of any other provision hereof or the invalid or unenforceable provision in any other situation or in any other jurisdiction. Any provision of this Note held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

16. Counterparts. This Note may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Note constitutes the entire contract among the parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Delivery of an executed counterpart of a signature page of this Note by telecopy or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Note.

17. Second Amendment and Restatement. This Note is an amendment to, and is in substitution and replacement of, that certain Amended and Restated Subordinated Promissory Note dated as of August 29, 2018 in the stated principal amount of \$2,500,000 (the "Replaced Note"). This Note represents the same indebtedness as the Replaced Note and is secured by the same collateral securing the Replaced Note and is not intended to constitute a novation in any manner whatsoever.

IN WITNESS WHEREOF, Borrower has caused this Note to be duly executed, and Lender has accepted this Note, as of the day and year first above written.

Borrower:

FLEXSHOPPER, LLC

By: /s/ Brad Bernstein

Name: Brad Bernstein

Title: CEO

ACCEPTED:

Lender:

NRNS CAPITAL HOLDINGS LLC

By: /s/ Howard Dvorkin

Name: Howard Dvorkin

Title: Manager

Exhibit A to Subordinated Promissory Note

Advancement/Payment Schedule

Date	Amount Advanced	Principal Payment/Share Conversion	Accrued Interest	Principal Balance
February 1, 2018	\$2,500,000			
September 28, 2018		\$1,250,000.00 converted in the Equity Financing	\$303,755.00 of which \$151,877.50 converted in the Equity Financing	\$1,250,000
Various dates			Contractual Interest Payments	\$1,250,000
June 28, 2019	\$500,000			\$1,750,000