

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

ELAVON, INC. formerly known as)	
NOVA INFORMATION SYSTEMS,)	
INC.,)	
)	
Plaintiff,)	Civil Action
)	
v.)	File No. _____
)	
TRUSTMARK NATIONAL BANK)	
and TRUSTMARK)	
CORPORATION,)	
)	
Defendants)	

COMPLAINT

Plaintiff ELAVON, INC., formerly known as NOVA INFORMATION SYSTEMS, INC., (“Elavon”) files this Complaint against Defendants TRUSTMARK NATIONAL BANK (“Trustmark Bank”) and TRUSTMARK CORPORATION (“Trustmark Corp.”) (collectively, “Trustmark”) and shows the Court as follows:

PARTIES

1.

Elavon is a corporation organized and existing under the laws of the State of Georgia with its principal place of business located in Atlanta, Georgia.

2.

Trustmark Bank is a national banking association with its principal place of business located in Jackson, Mississippi.

3.

Trustmark Corp. is a corporation organized and existing under the laws of the State of Mississippi with its principal place of business located in Jackson, Mississippi. Trustmark Corp. may be served with process through its registered agent, T. Harris Collier, III, 248 East Capitol Street, Jackson, Mississippi, 39201.

JURISDICTION AND VENUE

4.

This Court has subject-matter jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a)(1) because complete diversity of citizenship exists between plaintiff and all defendants and the amount in controversy exceeds the sum of \$75,000, exclusive of interest, costs and attorneys' fees.

5.

This Court has personal jurisdiction over Defendants pursuant to O.C.G.A. § 9-10-91 and the United States Constitution because Defendants transact business within Georgia, committed a tortious act or omission within Georgia, and committed a tortious injury in Georgia and regularly do or solicit business in Georgia. This Court also has personal jurisdiction over Defendants because Defendants consented to jurisdiction in Georgia pursuant to the terms of the contracts between the Parties.

6.

Venue is proper in this jurisdiction pursuant to 28 U.S.C. § 1391(b). In addition, Defendants consented to venue in Atlanta, Georgia pursuant to the terms of the contracts between the Parties.

FACTS

7.

Elavon, among other things, processes credit card, debit card and other transactions for merchants. Elavon is one of the largest merchant processors in the country in terms of transaction volume.

8.

Prior to August 2005, Trustmark Bank was party to certain Merchant Agreements with various merchants to which Trustmark Bank agreed to provide the merchants with various merchant services, such as processing credit card and debit card transactions and providing related payment and settlement services.

9.

Pursuant to certain contracts between Elavon and Trustmark Bank, Elavon processed these transactions for the merchants and provided related services on behalf of Trustmark Bank under those Merchant Agreements.

10.

In or around 2005, Trustmark decided to sell all of its rights under the Merchant Agreements and all of its assets utilized in connection with its Merchant Business to Elavon.

The Merchant Asset Purchase Agreement

11.

On August 31, 2005, Elavon and Trustmark entered into the Merchant Asset Purchase Agreement (“Purchase Agreement”). Pursuant to the Purchase Agreement, Trustmark Bank sold to Elavon all of Trustmark Bank’s merchant transaction processing assets and the assets and interests in its Merchant Business. The sale included all rights and interests of Trustmark Bank in and to the Merchants and Merchant Agreements, as well as all equipment, inventory, and other rights and interests related to the Merchant Business.

The Marketing and Sales Alliance Agreement

12.

In connection with the Purchase Agreement, Elavon and Trustmark also entered into a Marketing and Sales Alliance Agreement (“Marketing Agreement”) on August 31, 2005. A true and correct copy of the Marketing Agreement is attached hereto as Exhibit 1.

13.

Pursuant to the Marketing Agreement, Trustmark Bank agreed to actively cooperate with Elavon exclusively in the marketing of Merchant Services to Merchants and prospective Merchants, including customers of Trustmark Bank. Trustmark Bank also agreed to refer exclusively to Elavon any Merchants, financial institutions, independent sales organizations, or other entities that inquire about, request or otherwise evidence an interest in Merchant Services.

14.

Upon any such referral, Elavon agreed to process a merchant application for the referred entity. If the referral resulted in Elavon and the referred entity entering into a Merchant Agreement, then Elavon agreed to pay Trustmark Bank a royalty during the term of the contract.

15.

Elavon and Trustmark further agreed that any Merchant that is a party to a Merchant Agreement does and shall have a direct business relationship with Elavon. Elavon and Trustmark further agreed that Elavon does and shall own, administer and control the Merchant Agreements and the relationship created thereby.

16.

Pursuant to Section 2.9 of the Marketing Agreement, Elavon and Trustmark agreed that the parties would also enter into a Non-Competition Agreement on the same date.

The Non-Competition Agreement

17.

On August 31, 2005, at the same time the parties entered into the Purchase Agreement and Marketing Agreement, Elavon and Trustmark entered into the Non-Competition Agreement. A true and correct copy of the Non-Competition Agreement is attached hereto as Exhibit 2.

18.

Elavon and Trustmark agreed to enter into the Non-Competition Agreement as a condition precedent to entering into the Purchase Agreement and Marketing Agreement. Elavon and Trustmark agreed to enter into the Non-Competition Agreement in order to protect the goodwill and other value of the assets and interest purchased by Elavon under the Purchase Agreement and to protect Elavon's legitimate business interests.

19.

Pursuant to Section 2.1 of the Non-Competition Agreement, Trustmark agreed, during the term of the contract and for two (2) years thereafter, not to solicit or contact any Merchant, Agent Bank, ISO or Referred Merchant for the purpose of directly or indirectly providing or receiving Merchant Services in the United States.

20.

A Merchant is any Person that has entered into a Merchant Agreement prior to August 31, 2005, or that is identified in Schedule 6.7(a)(iv) of the Purchase

Agreement. An Agent Bank is a financial institution sponsored by Trustmark Bank and for which services related to the Merchant Business are provided to such financial institution and/or its merchants by or on behalf of Trustmark Bank. An ISO is an independent sales organization or other Person which is a party to an agreement or understanding with Trustmark Bank whereby the independent sales organization or other Person provides marketing and other services to merchants in connection with Merchant Business. Referred Merchant is a merchant referred to Elavon by Trustmark Bank pursuant to, and during the term of the Marketing Agreement, that, as a result of such referral, enters into a Merchant Agreement with Elavon and the Member (as the term Member is defined in the Marketing Agreement).

21.

Pursuant to Section 2.1 of the Non-Solicitation Agreement, Trustmark also agreed, during the term of the contract and for two (2) years thereafter, not to orally or in writing take any action which disparages Elavon or its practices or which materially disrupts or impairs Elavon's normal operations.

The Termination of the Marketing Agreement

22.

Pursuant to Section 5.2 of the Marketing Agreement, the term of the contract was for ten (10) years from August 31, 2005, and would automatically renew for

consecutive two-year terms unless either party provided written notice to the other party of its intent not to renew the contract at least 180 days prior to the expiration of the initial term.

23.

On or about April 6, 2015, Trustmark provided Elavon with notice that it intended not to renew the Marketing Agreement, and therefore the Marketing Agreement was set to terminate on August 31, 2015. The April 6, 2015 letter was written by Christopher Styga, Senior Vice President of Trustmark Bank and Director of Corporate Treasury Services for Trustmark.

24.

In a letter from Rick Hill, Elavon's General Manager, Community Bank Channel, to Trustmark dated May 14, 2015, Elavon stated that it "acknowledges the termination of the [Marketing and Sales Alliance] Agreement effective August 31, 2015." See May 14, 2015 Letter from Elavon to Trustmark ("May 14 Elavon Letter"), a true and correct copy of which is attached hereto as Exhibit 3. In the May 14 Elavon Letter, Elavon further quoted the provisions of Section 2.1 of the Non-Competition Agreement and reminded Trustmark of its obligations thereunder. The letter was addressed to Christopher Styga of Trustmark Bank and Trustmark Corp.

25.

On May 27, 2015, Christopher Styga of Trustmark wrote to Rick Hill of Elavon "to acknowledge receipt of your letter dated May 14, 2015 referencing the

Marketing & Sales Alliance Agreement between Trustmark and Elavon (attached). While it is Trustmark's intent to fully comply with the terms of Section 2.1 of the Non-Competition Agreement, I have several questions that require further clarity." See May 27, 2015 Letter from Trustmark to Elavon ("May 27 Trustmark Letter"), a true and correct copy of which is attached hereto as Exhibit 4. Trustmark "request[ed] that Elavon provide Trustmark with accurate listing of Merchants, Merchant ID (MID), Tax ID Number, Name, Address or any other information available that will allow Trustmark to manage solicitation activities."

26.

On July 31, 2015, Elavon and Trustmark had a telephone conference to discuss the Non-Competition Agreement and Elavon's list of Merchants, Agent Banks, ISOs, or Referred Merchants that could be provided to Trustmark to assist Trustmark in complying with its obligations under the Non-Competition Agreement. On the call for Elavon was Rick Hill and on the call for Trustmark was Christopher Styga, Jason McGee, and Dorene Breazeale. After the call, Jason McGee of Trustmark emailed Rick Hill of Elavon, copying Christopher Styga and Dorene Breazeale of Trustmark, to confirm that "you will send us the customer list as soon as after 8/31 as possible, which you expect to be around 9/2 or 9/3 – depending on how soon you can pull it together. You'll also send us the monthly sales file for updating our referral system around the same time. Please let me know if I'm off on

either of those takeaways.” See July 31, 2015 Trustmark/Elavon Email (“July 31 Trustmark/Elavon Email”), a true and correct copy of which is attached hereto as Exhibit 5.

27.

Three minutes after Trustmark sent the email, Rick Hill of Elavon responded to the email, copying Christopher Styga, Jason McGee, and Dorene Breazeale of Trustmark, by saying “[c]orrect on the customer listing. For the sales files I may not have those until later that week – I usually provide those to Nancy by the 5th business day of the following month.” *Id.* Therefore, as of no later than July 31, 2015, Trustmark (and in particular, Christopher Styga) had actual knowledge that Elavon would provide Trustmark with the list of Merchants, Agent Banks, ISOs, or Referred Merchants on either September 2 or September 3, 2015.

28.

Elavon agreed to provide the list of Merchants, Agent Banks, ISOs, or Referred Merchants, even though Elavon was under no legal or contractual obligation to do so.

29.

Trustmark also had access to the names and other identifying information of the Merchants, Agent Banks, ISOs, or Referred Merchants through Elavon’s Residuals on Demand system and Eagle referral system for several months prior to the August 31, 2015 termination of the Marketing Agreement. Trustmark had access

to these systems, which included the names and other identifying information of the Merchants, Agent Banks, ISOs, or Referred Merchants. Trustmark had access to the Residuals on Demand system through September 30, 2015, and had access to the Eagle referral system through August 31, 2015.

30.

Well before the August 31, 2015 termination of the Marketing Agreement and the beginning of the two-year non-solicitation period in Section 2.1 of the Non-Competition Agreement, Trustmark had actual and constructive knowledge of the Merchants, Agent Banks, ISOs and Referred Merchants subject to the terms of the Non-Competition Agreement.

31.

In addition, Trustmark (and in particular, Christopher Styga) knew that Elavon would be providing Trustmark with the list of Merchants, Agent Banks, ISOs, or Referred Merchants subject to the Non-Competition Agreement on either September 2 or 3, 2015.

Trustmark's Breach of the Non-Competition Agreement

32.

Despite its representations to Elavon, Trustmark had no intent to comply with its obligations under Section 2.1 of the Non-Competition Agreement.

33.

Despite access to Elavon's Residuals on Demand system and Eagle referral system, and despite Elavon's acknowledgement that it would provide a list of Merchants, Agent Banks, ISOs, or Referred Merchants on September 2 or 3, 2015, Trustmark began to actively solicit Elavon's Merchants, Agent Banks, ISOs, or Referred Merchants on September 1, 2015 – the very first day of the two-year non-solicitation period in Section 2.1 of the Non-Competition Agreement following the August 31, 2015 termination of the Marketing Agreement.

34.

Trustmark (and in particular, Christopher Styga) knew that Elavon was providing Trustmark with a list of Merchants, Agent Banks, ISOs, or Referred Merchants on September 2 or 3, 2015, but Trustmark purposefully chose to actively solicit Elavon's Merchants, Agent Banks, ISOs, or Referred Merchants before receiving the list. Trustmark also purposefully chose to ignore the information contained Elavon's Residuals on Demand system and Eagle referral system that identified the Merchants, Agent Banks, ISOs and Referred Merchants subject to the terms of the Non-Competition Agreement.

35.

For example, on September 1, 2015, Christopher Styga of Trustmark sent a solicitation letter to one of Elavon's Merchants – Mississippi Museum of Art, Inc. ("Museum of Art") – whereby Trustmark actively solicited the Museum of Art to

switch its merchant processing services from Elavon to Trustmark in clear breach of Section 2.1 of the Non-Competition Agreement. In the letter, Mr. Styga of Trustmark stated:

Trustmark is pleased to introduce Trustmark Merchant Services. Beginning September 1, 2015, Trustmark Merchant Services will leverage the very latest security and payments processing technology available by offering our business customers a full line of card based processing products and services delivered with unparalleled support. Trustmark Merchant Services is managed under Trustmark's Corporate Treasury Services Cash Management Division, and complements our full suite of existing Cash Management products. This combination positions Trustmark to support all of your business payment processing needs.

As a Trustmark customer that processes credit and debit card payments using another bank's merchant processing services, we would like the opportunity to work with you to move your merchant processing to Trustmark at costs equal to or possibly less than what you are paying today. A Trustmark Merchant Services Representative will soon be in contact with your business to introduce our new products and services and to provide advice as to how your business can take advantage of our new merchant processing capabilities.

See September 1 Trustmark Solicitation Letter ("Solicitation Letter"), a true and correct copy of which is attached hereto as Exhibit 6 (emphasis added).

36.

Upon information and belief, Trustmark and Mr. Styga sent out hundreds of identical or similar solicitation letters to Elavon Merchants, Agent Banks, ISOs and Referred Merchants on or after September 1, 2015.

37.

Not only did Trustmark send out hundreds of identical or similar solicitation letters, but, as the letters stated, Trustmark Merchant Services Representatives personally contacted Elavon's Merchants, Agent Banks, ISOs and Referred Merchants beginning on September 1, 2015, to solicit the entities to provide them with Merchant Services in breach of Section 2.1 of the Non-Competition Agreement.

38.

On September 2, 2015 – just as Elavon said to Trustmark that it would back on July 31, 2015 – Rick Hill of Elavon provided Christopher Styga and Jason McGee a list of Merchants, Agent Banks, ISOs, or Referred Merchants subject to the Non-Competition Agreement. Specifically, in a September 2, 2015 email, Rick Hill of Elavon emailed Christopher Styga, Jason McGee and Dorene Breazeale of Trustmark an Excel spreadsheet and stated:

Jason, sending along the final customer list. I think that takes care of the reports you were looking for....Good luck and I wish nothing but the best for you and everyone at Trustmark.

See September 2, 2015 Elavon Email to Trustmark (“September 2 Elavon Email”), a true and correct copy of which is attached hereto as Exhibit 7.¹ Attached to Mr.

¹ Exhibit 7 contains a true and correct copy of the September 2 Elavon Email, including page 1 of the 70 page Excel spreadsheet attached to the email. The names on page 1 have been redacted for confidentiality purposes. In addition, the remaining 69 pages of the Excel spreadsheet have been excluded from Exhibit 7 for confidentiality purposes as well. Trustmark received the email on September 2 and

Hill's email was an Excel spreadsheet listing the names, city, state and zip codes of Merchants, Agent Banks, ISOs, or Referred Merchants. *See* September 2 Elavon Email. Notably, Mr. Styga, Mr. McGee and Ms. Breazeale were the Trustmark employees on the July 31 Elavon Email, wherein Rick Hill of Elavon told them that Elavon would provide the list on September 2 or 3, 2015. *See* July 31 Email.

39.

Despite the fact that the day before receiving the September 2 Elavon Email, Trustmark, under Mr. Styga's name, had sent out hundreds of solicitation letters to Elavon's Merchants, Agent Banks, ISOs, or Referred Merchants, Mr. Styga did not respond to Mr. Hill's September 2 Email. In addition, in an effort to conceal their solicitation activities, neither Trustmark nor Mr. Styga responded to the email to inform Mr. Hill or anyone else at Elavon that Trustmark had already sent out hundreds of solicitation letters.

40.

Elavon soon independently became aware of Trustmark's solicitation activities in breach of the Non-Competition Agreement. On September 4, 2015, counsel for Elavon provided written notice to Trustmark of its breach of the Non-Competition Agreement and enclosed a copy of the Museum of Art solicitation

therefore has access to the email and the complete, unredacted copy of the Excel spreadsheet.

letter. *See* September 4, 2015 Elavon Letter, a true and correct copy of which is attached hereto as Exhibit 8. Elavon demanded that Trustmark cease and desist from further solicitation and contact of Elavon’s Merchants, Agent Banks, ISOs, or Referred Merchants. Elavon further demanded that Trustmark acknowledge its obligations under the Non-Competition Agreement, confirm that it would cease and desist its improper solicitations, confirm that it would properly refer any to Elavon any Merchants, Agent Banks, ISOs, or Referred Merchants who respond to the solicitation, and confirm that it would not enter into any contract for Merchant Services or refer any such Merchants, Agent Banks, ISOs, or Referred Merchants to another provider of Merchant Services.

41.

In response, Trustmark sent counsel for Elavon a letter purporting to represent “Trustmark’s commitment to honor the terms, particularly section 2.1, of the Non-Competition Agreement.” *See* September 9, 2015 Trustmark Letter to Elavon, a true and correct copy of which is attached hereto as Exhibit 9. Despite the statements in the letter, Trustmark had no intent to comply with its obligations under Section 2.1 of the Non-Competition Agreement, as shown by additional unlawful solicitations engaged in by Trustmark.

42.

On September 11, 2015, counsel for Elavon responded to Trustmark and provided Trustmark with a copy of the July 31 Email in which Elavon confirmed to Trustmark (and in particular, Mr. Styga) that it would provide the list to Trustmark on September 2 or 3, 2015. *See* September 11, 2015 Elavon Letter to Trustmark, a true and copy of which is attached hereto as Exhibit 10. In the letter, Elavon reiterated its demands from its September 4 Letter, and also requested a list of any Merchants, Agent Banks, ISOs, or Referred Merchants who received a solicitation letter from Trustmark “in order to, among other things, assist Elavon in responding to any inquiries” from those who had received the unlawful solicitation letters from Trustmark. Elavon made this additional demand because it had received inquiries from Merchants and Referred Merchants who had been solicited by Trustmark.

43.

On September 15, 2015, Trustmark responded to Elavon. In its letter, Trustmark “reiterate[d] its intention to comply with Section 2.1 of the Non-Competition Agreement.” *See* September 15, 2015 Trustmark Letter to Elavon, a true and copy of which is attached hereto as Exhibit 11. As with its prior letter and despite this language, Trustmark had no intent to comply with its obligations under the Non-Competition Agreement. In addition, Trustmark refused to provide Elavon a list of Elavon’s Merchants, Agent Banks, ISOs, or Referred Merchants who

received a solicitation letter from Trustmark because “Trustmark believes its list of customers who were sent solicitation letters dated September 1, 2015 is proprietary.”

44.

Trustmark made this statement and refused to provide Elavon a list of Elavon’s Merchants, Agent Banks, ISOs, or Referred Merchants who received a solicitation letter, despite the agreement between Elavon and Trustmark that “any merchant that is a party to a Merchant Agreement does and shall have a direct business relationship with NOVA [Elavon]. Subject to the Payment Network Regulations, and notwithstanding the Bank being a party to the any such Merchant Agreement, or anything to the contrary in any Merchant Agreement, NOVA [Elavon] does and shall own, administer and control the Merchant Agreements and the relationship created thereby (such control shall include, without limitation, decisions regarding continuance, amendment, assignment or termination of such Merchant Agreement).” *See* Marketing Agreement, Section 2.4.

45.

On September 22, 2015, counsel for Elavon responded to Trustmark. In the letter, Elavon explained that Trustmark’s refusal to identify the Merchants, Agent Banks, ISOs, or Referred Merchants who received unlawful solicitation letters “constitutes bad faith and further exacerbates the harm and damages to Elavon caused by Trustmark’s willful breach because Elavon has no way of knowing the

full extent of Trustmark's breach and the Merchants, Agent Banks, ISOs, or Referred Merchants affected by Trustmark's conduct. Furthermore, without such a list, Elavon will have no ability to determine whether Trustmark has complied with its commitment to refer any Agent Banks, ISOs, or Referred Merchants that contacts [Trustmark] in response to the solicitation or contact to Elavon, and, for any Merchants, Agent Banks, ISOs, or Referred Merchants who was the subject of a solicitation or contact, not to enter into any contract for Merchant Services or refer such Merchants, Agent Banks, ISOs, or Referred Merchants to another provider of Merchant Services." *See* September 22, 2015 Elavon Letter to Trustmark, a true and correct copy of which is attached hereto as Exhibit 12. Elavon again reiterated its demand for a list of the Merchants, Agent Banks, ISOs, or Referred Merchants who received an unlawful solicitation from Trustmark.

46.

On September 25, 2015, Trustmark again refused to provide Elavon with a list of the Merchants, Agent Banks, ISOs, or Referred Merchants who received an unlawful solicitation from Trustmark. *See* September 25, 2015 Trustmark Letter to Elavon, a true and correct copy of which is attached hereto as Exhibit 13. This time, Trustmark provided another invalid excuse for failing to provide Elavon a list of the Merchants, Agent Banks, ISOs, or Referred Merchants who received an unlawful solicitation from Trustmark. Trustmark stated that it "believes that it is prohibited

from disclosing the information pursuant to MS Code § 81-5-55.” Trustmark’s citation to MS Code § 81-5-55 is further evidence that Trustmark still has no intent to comply with its obligations under the Non-Competition Agreement, as nothing in that code section prohibits Trustmark from identifying to Elavon which of the entities on the list provided by Elavon to Trustmark on September 2, 2015 received a solicitation letter from Trustmark.

47.

Trustmark’s statements in its letters to, and telephone conversations with, Elavon that Trustmark intended and intends to comply its obligations under the Non-Competition Agreement were false at the time they were made and continue to be false today. Trustmark has continued to unlawfully solicit Elavon’s Merchants, Agent Banks, ISOs, or Referred Merchants, and has done so even after falsely stating to Elavon that it would not do so.

48.

For example, on September 29, 2015 and again on October 8, 2015 – despite repeated (yet obviously false) representations by Christopher Styga and Trustmark as set forth in their various letters to Elavon – a Trustmark employee actively solicited an Elavon Merchant. Specifically, on each of those two dates, a Trustmark employee within its Trustmark Merchant Services group (the group identified in Trustmark’s September 1, 2015 solicitation letter) contacted the Merchant, informed

the Merchant that Trustmark Merchant Services could provide the Merchant with Merchant Services cheaper than Elavon, asked the Merchant to switch from Elavon to Trustmark, informed the Merchant that the representative could handle the closure of the Merchant's account with Elavon and the opening of an account with Trustmark. These solicitation activities constitute a continued willful breach of the Non-Competition Agreement.

49.

Elavon learned of this latest unlawful solicitation by Trustmark directly from the Merchant. Trustmark has continued to conceal its unlawful solicitation activities from Elavon and actively prevent Elavon from protecting its rights under the Non-Competition Agreement.

COUNT I
BREACH OF CONTRACT
Section 2.1(a) of Non-Competition Agreement

50.

Plaintiff Elavon re-alleges and incorporates by reference Paragraphs 1 through 49 of the Complaint as if fully set forth herein.

51.

Elavon and Trustmark are parties to the Non-Competition Agreement, a valid and binding contract.

52.

Elavon has performed all of its obligations under the Non-Competition Agreement.

53.

Trustmark has breached Section 2.1(a) of the Non-Competition Agreement as Trustmark has solicited and contacted Merchants, Agent Banks, ISOs and Referred Merchants for the purposes of directly or indirectly providing or receiving Merchant Services.

54.

For example, on or about September 1, 2015, Trustmark sent a letter to the Museum of Art, attached hereto as Exhibit 6, for the purposes of directly or indirectly providing or receiving Merchant Services. On or about September 1, 2015, Trustmark sent the same or similar solicitation letter to hundreds of Merchants, Agent Banks, ISOs and Referred Merchants for the purposes of directly or indirectly providing or receiving Merchant Services. The sending of such solicitation letters constitutes a willful breach of Section 2.1(a) of the Non-Competition Agreement.

55.

On or after September 1, 2015, agents and representatives of Trustmark also contacted Merchants, Agent Banks, ISOs and Referred Merchants in person and by telephone, email or other means for the purposes of directly or indirectly providing

or receiving Merchant Services. Such contact by Trustmark constitutes a willful breach of Section 2.1(a) of the Non-Competition Agreement.

56.

For example, on or about September 29, 2015 and October 8, 2015, a Trustmark employee within its Trustmark Merchant Services group (the group identified in Trustmark's September 1, 2015 solicitation letter) contacted a Merchant, informed the Merchant that Trustmark Merchant Services could provide the Merchant with Merchant Services cheaper than Elavon, asked the Merchant to switch from Elavon to Trustmark, and informed the Merchant that the representative could handle the closure of the Merchant's account with Elavon and the opening of an account with Trustmark. These activities constitute a willful breach of Section 2.1(a) of the Non-Competition Agreement.

57.

As a result of Trustmark's repeated breaches of Section 2.1(a) of the Non-Competition Agreement, Elavon has suffered damages in excess of \$75,000, including, but not limited to, lost profits and costs and expenses associated with managing its relationships with its in Merchants, Agent Banks, ISOs and Referred Merchants following the actions of Trustmark.

COUNT II
BREACH OF CONTRACT
Section 2.1(c) of Non-Competition Agreement

58.

Plaintiff Elavon re-alleges and incorporates by reference Paragraphs 1 through 49 of the Complaint as if fully set forth herein.

59.

Elavon and Trustmark are parties to the Non-Competition Agreement, a valid and binding contract.

60.

Elavon has performed all of its obligations under the Non-Competition Agreement.

61.

Trustmark has breached Section 2.1(c) of the Non-Competition Agreement as Trustmark has orally or in writing taken action which disparages Elavon or its practices and which materially disrupts or impairs Elavon's normal operations.

62.

For example, on or about September 1, 2015, Trustmark sent solicitation letters to hundreds of Merchants, Agent Banks, ISOs and Referred Merchants. The solicitation letters disparage Elavon and materially disrupt and impair Elavon's normal operations. The sending of such solicitation letters constitutes a willful breach of Section 2.1(c) of the Non-Competition Agreement.

63.

On or after September 1, 2015, agents and representatives of Trustmark also contacted Merchants, Agent Banks, ISOs and Referred Merchants in person and by telephone, email or other means for the purposes of informing the Merchants, Agent Banks, ISOs and Referred Merchants that Trustmark Merchant Services could provide the Merchants, Agent Banks, ISOs and Referred Merchants with Merchant Services cheaper than Elavon, asking the Merchants, Agent Banks, ISOs and Referred Merchants to switch from Elavon to Trustmark, and informing the Merchants, Agent Banks, ISOs and Referred Merchants that the representative could handle the closure of the Merchants', Agent Banks', ISOs' and Referred Merchants' account with Elavon and the opening of an account with Trustmark. Such contact by Trustmark constitutes a willful breach of Section 2.1(c) of the Non-Competition Agreement.

64..

As a result of Trustmark's repeated breaches of Section 2.1(c) of the Non-Competition Agreement, Elavon has suffered damages in excess of \$75,000 and in an amount to be proven at trial, including, but not limited to, lost profits and costs and expenses associated with managing its relationships with its Merchants, Agent Banks, ISOs and Referred Merchants following the actions of Trustmark.

COUNT III
FRAUDULENT MISREPRESENTATION

65.

Plaintiff Elavon re-alleges and incorporates by reference Paragraphs 1 through 49 of the Complaint as if fully set forth herein.

66.

Trustmark represented to Elavon that Trustmark would fully comply with its obligations under Section 2.1 of the Non-Competition Agreement. Specifically, on May 27, 2015, Christopher Styga, Senior Vice President of Trustmark Bank, sent a letter to Rick Hill of Elavon wherein Trustmark stated that it would “fully comply with the terms of Section 2.1 of the Non-Competition Agreement.”

67.

Trustmark made this representation on May 27, 2015 knowing it was false or with reckless disregard for the truth. Trustmark made this representation on May 27, 2015 with the knowledge that it had no present intent to perform its obligations under Section 2.1 of the Non-Competition Agreement at the time of the representations and with knowledge that it would not perform such obligations.

68.

On July 31, 2015, Christopher Styga and Jason McGee, another employee of Trustmark Bank, had a telephone conversation with Rick Hill of Elavon. On the telephone call, Mr. Styga and/or Mr. McGee again represented to Elavon that

Trustmark would comply with its obligations under Section 2.1 of the Non-Competition Agreement.

69.

Trustmark made this representation on July 31, 2015 knowing it was false or with reckless disregard for the truth. Trustmark made this representation on July 31, 2015 with the knowledge that it had no present intent to perform its obligations under Section 2.1 of the Non-Competition Agreement at the time of the representations and with knowledge that it would not perform such obligations.

70.

Trustmark had no present intent to perform its obligations under Section 2.1 of the Non-Competition Agreement and knew it would not perform its obligations because, as of the time the representations were made on May 27, 2015 and July 31, 2015, Trustmark had already begun plans to send solicitation letters to Merchants, Agent Banks, ISOs and Referred Merchants as of September 1, 2015, in breach of the terms of Section 2.1 of the Non-Competition Agreement.

71.

In addition, Trustmark had no present intent to perform its obligations under Section 2.1 of the Non-Competition Agreement and knew it would not perform its obligations because, as of May 27, 2015 and as of July 31, 2015 at the time the representations were made, Trustmark had already begun plans to have agents and representatives of Trustmark contact on or after September 1, 2015, in person or by

other means, Merchants, Agent Banks, ISOs and Referred Merchants for the purposes of directly or indirectly providing or receiving Merchant Services, in breach of the terms of Section 2.1 of the Non-Competition Agreement.

72.

Trustmark made these representations with the intent to induce Elavon to rely on the representations.

73.

Elavon reasonably and justifiably relied on these representations. Elavon did not contact the Merchants, Agent Banks, ISOs and Referred Merchants in advance of September 1, 2015 or thereafter to otherwise communicate with such entities in an effort to proactively protect Elavon's relationship with them in reasonable and justifiable reliance on Trustmark's representations. Elavon did not contact Merchants, Agent Banks, ISOs and Referred Merchants in advance of September 1, 2015 or thereafter to inform such entities that Trustmark's non-competition obligations prohibited Trustmark from offering merchant services to them in reasonable and justifiable reliance on Trustmark's representations. In addition, in reasonable and justifiable reliance on Trustmark's representations, Elavon did not take action, legal or otherwise, to enforce Trustmark's non-solicitation obligations and prevent Trustmark's mass mailing solicitation prior to Trustmark sending out hundreds, if not thousands, of solicitation letters.

74.

As a result of Trustmark's fraud and misrepresentations, Elavon has suffered damages in excess of \$75,000 and in an amount to be proven at trial, including, but not limited to, lost profits and costs and expenses associated with managing its relationships with in Merchants, Agent Banks, ISOs and Referred Merchants following the actions of Trustmark.

COUNT IV
O.C.G.A. § 13-6-11

75.

Plaintiff Elavon re-alleges and incorporates by reference Paragraphs 1 through 49 of the Complaint as if fully set forth herein.

76.

Through its conduct described herein, including, but not limited to, Trustmark's refusal to provide Elavon with a list of the Merchants, Agent Banks, ISOs, or Referred Merchants who received a solicitation letter from Trustmark and Trustmark's false statements that it intended to comply with its obligations under the Non-Competition Agreement, Defendants have acted in bad faith and caused Elavon unnecessary trouble and expense.

77.

Elavon is entitled to recover its attorneys' fees and expenses of litigation from Defendants pursuant to O.C.G.A. § 13-6-11.

PRAYER FOR RELIEF

Wherefore, Plaintiff Elavon respectfully seeks judgment against Defendants as follows:

1. Preliminary and permanent injunction preventing Defendants from breaching their obligations under Section 2.1(a) of the Non-Competition Agreement, and in particular, from soliciting or contacting any Merchants, Agent Banks, ISOs, or Referred Merchants for the purpose of directly or indirectly providing or receiving Merchant Services anywhere in the United States;

2. Preliminary and permanent injunction preventing Defendants from breaching their obligations under Section 2.1(c) of the Non-Competition Agreement, and in particular, from either orally or in writing, taking any action which disparages Elavon (including its management, directors, officers, shareholders, or affiliates) or its practices or which materially disrupts or impairs its normal operations;

3. For money damages in an amount greater than \$500,000 for Defendants' breaches of contract and fraud;

4. For punitive damages in an amount to be determined at trial for Defendants' fraud against Elavon;

5. For prejudgment interest as may be appropriate;

6. For costs in this action, including reasonable attorneys' fees and expenses of litigation; and

7. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

Respectfully submitted this 3rd day of December, 2015.

/s/ Christopher Riley
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