

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

COMDATA, INC.,	)	
	)	
<i>Plaintiff,</i>	)	
	)	
v.	)	
	)	CASE NO.:
GREG HULSEY and	)	
COMMERCE BANCSHARES, INC.,	)	
	)	
<i>Defendants.</i>	)	
_____	)	

**VERIFIED COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES**

Plaintiff Comdata, Inc. (“Comdata” or the “Company”), alleges the following against Defendants Greg Hulsey (“Hulsey”) and Commerce Bancshares, Inc. (“Commerce Bank”).

**I. PRELIMINARY STATEMENT**

1. This action arises from Hulsey’s decision to resign from Comdata and accept a position with Commerce Bank (“Commerce Bank”) in a role where he would be competing directly with Comdata. In so doing, Hulsey is flagrantly violating the non-competition provision contained in the Confidentiality, Work Product, Non-Competition, and Non-Solicitation (the “Agreement,” attached hereto

as **Exhibit A**) that Hulsey executed on October 5, 2015 at the start of his employment.

2. Hulsey worked for Comdata as its Senior Vice President for Commercial Card Sales. After resigning on August 19, 2020 and refusing to tell Rick Fletcher (Comdata's President and Hulsey's direct supervisor) where he was going, Comdata learned on September 4, 2020 that Hulsey was moving to Commerce Bank and would work as the Senior Vice President, Head of Commerce Payment Sales, a role that is likely the same or substantially similar to what he did for Comdata.

3. Then on September 11, 2020, Comdata learned that Hulsey will be building a team at Commerce Bank to sell to the construction industry. Hulsey's potential work in the construction vertical is especially threatening to Comdata because Comdata and Commerce Bank compete directly in this space and Hulsey has all manner of highly confidential information regarding the way that Comdata identifies, solicits, and services construction customers. Given the highly confidential information that Hulsey learned about Comdata's sales processes, pricing methodologies, and customer relationships generally and its work for construction clients specifically, it is inevitable that he will disclose Comdata's trade secrets to do his job for Commerce Bank.

4. Comdata also learned on September 11, 2020 that Hulsey has started recruiting for Commerce Bank's new construction sales team on LinkedIn by sending a job description for a new position titled Commercial Payments Relationship Executive – Construction. (**Exhibit B.**) Given that Hulsey is connected to numerous Comdata sales managers and representatives on LinkedIn, his post constituted a direct solicitation in violation of the Agreement.

5. If he is allowed to begin working for Commerce Bank in the position of Senior Vice President, Head of Commerce Payments Sales or if he is allowed to compete against Comdata in the construction vertical, then Hulsey's unlawful conduct will cause tremendous damage to Comdata. Therefore, Comdata seeks injunctive relief as well as appropriate monetary damages against Hulsey.

## **II. THE PARTIES**

6. Plaintiff Comdata is a Delaware corporation with its principal place of business at 5301 Maryland Way, Brentwood, Tennessee, 30092.

7. Defendant Hulsey is a former Senior Vice President with Comdata. During his employment with Comdata, Hulsey resided at 20912 Cedar Street, Elkhorn, Nebraska 68022. At the time he signed the Agreement and started working for Comdata, Hulsey lived at 7N670 Stevens Glen Road, St. Charles, Illinois, 60175.

8. Defendant Commerce Bank is a Missouri Corporation with its primary place of business located at 1000 Walnut Street, Kansas City, Missouri, 64106.

9. According to his LinkedIn page (attached hereto as **Exhibit C**), Hulsey will be working for Commerce Bank in Kansas City, Missouri.

### **III. JURISDICTION AND VENUE**

10. This Court has jurisdiction over this entire action pursuant to 28 U.S.C. § 1332 because Comdata is a citizen of different states from Hulsey and Commerce Bank and because the matter in controversy exceeds the sum or value of \$75,000.

11. This Court has general personal jurisdiction over Hulsey because he worked for Comdata, whose parent company, FleetCor Technologies Operating Company, LLC (“FleetCor”), is headquartered in this judicial district. The executives who have ultimate oversight authority over Comdata conduct that oversight from FleetCor’s headquarters.

12. This Court has specific personal jurisdiction over Hulsey because he has intentionally and purposefully committed numerous illegal and wrongful acts against Comdata that will have a direct effect in this judicial district.

13. This Court also has personal jurisdiction over Hulsey pursuant to the forum selection clause contained in Paragraph 2.6 of the Agreement, in which he and Comdata agreed:

This Agreement shall be deemed to be made in, and in all respects shall be interpreted, construed, and governed by and in accordance with, the laws of the State of Georgia, not including the choice-of-law rules thereof. [Hulsey] and [Comdata] agree that any dispute arising under or related to this Agreement shall be brought exclusively in the state or federal courts of Georgia.

14. This Court has specific personal jurisdiction over Commerce Bank because it has intentionally interfered with Comdata's contractual relationship with Hulsey and the contract at issue requires that any litigation regarding the Agreement take place in Georgia's state or federal courts. Additionally, Commerce Bank has engaged in intentional acts that it knew would have an effect on Comdata in this judicial district.

15. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because this is a civil action wherein Hulsey and Commerce Bank have engaged in conduct that will have a direct effect in this judicial district. Additionally, venue is proper because of the forum selection clause contained in the Agreement.

#### **IV. GENERAL ALLEGATIONS**

##### **A. Comdata and its Interests in Enforcing the Agreement**

16. Comdata is a leading provider of fleet management and business-to-business payment solutions. As the largest fuel card provider and leading large market commercial MasterCard provider in North America, it offers one of the most comprehensive suites of payment solutions on the market.

17. Comdata's customers cover most major industries in the United States, including retail, hospitality, restaurants, construction, government, health care, and education.

18. Comdata offers product suites for customers in the areas of accounts payable automation, cardholder support, corporate card programs, travel expense management, and workforce payment solutions.

19. Comdata's solutions include the issuance of corporate cards that its customers can use to manage their purchases, from paying vendors to managing travel and entertainment expenses. Comdata's expense management system allows administrators to set limits on cards and restrict usage to certain merchants, dollar amounts, and/or number of transactions. Additionally, Comdata has implemented controls and reporting features that alert customers to instances of suspicious activity.

20. Comdata also offers virtual payment options that are secure, easy to administer, cheaper than traditional checks, and reduce the risk of an unauthorized user obtaining card information.

21. In exchange for the benefits that employment with Comdata confers, Comdata asks that its executives and other key employees agree not to take certain acts in direct competition with Comdata for a limited period following their

employment. Such restrictions seek to protect Comdata's confidential and trade secret business information, the goodwill and reputation Comdata has developed in the marketplace, as well as prohibiting unfair competition in the form of exploiting both the relationships that Comdata has developed and the resources expended to support Comdata's executives and key employees as they serve the needs of Comdata's customers.

22. In addition to having key employees sign restrictive covenant agreements, Comdata takes a number of steps to protect its critical information concerning business and marketing strategies, pricing, product development, and customer relationships from being available to competitors. These steps include: (1) physical security at Comdata's Brentwood, Tennessee facility that prevents non-authorized individuals from entering the Company's offices; (2) IT security, such as password protection, termination of access rights at the close of employment, and safeguards to prevent the computer system from being hacked; (3) exit procedures, including exit memoranda sent to departing employees and exit interviews, in which departing employees are reminded of their obligations to return all Comdata proprietary materials and information; (4) need-to-know restrictions that limit the dissemination of confidential information to particular employees; and (5)

confidentiality and trade secret protections in key employee agreements such as Hulsey's Agreement.

23. Comdata also maintains policies to protect its confidential information, which prohibit unauthorized use of Comdata information and systems for personal gain or in competition with the Company. Comdata's policies further describe the Company's computer security requirements. (See **Exhibit D**, including Comdata's Corporate Opportunities, Protection and Proper Use of Company Assets, Confidentiality, Theft, Comdata Property, and Electronic Media Policies.)

24. Comdata's Electronic Media Policy provides that:

Electronic media are the property of COMDATA and have been provided by COMDATA for use in conducting company business. All communications and information transmitted by, received from, or stored in this system are COMDATA's records and property. Electronic media are to be used for COMDATA business purposes only and may not, under any circumstances, be accessed or utilized for personal reasons.

**Exhibit D**, p. 2.

25. Comdata's policies specifically state that employees who violate its policies related to computer access to confidential business information may be subject to prosecution under the Computer Fraud and Abuse Act. **Exhibit D**, p. 5 (Comdata's Enforcement Policy).



**B. Hulsey's Position with Comdata**

26. Hulsey joined Comdata in October 2015 as its Senior Vice President for Commercial Card Sales. This was the first position in his working career for which he had a Senior Vice President title.

27. In his Senior Vice President for Commercial Card Sales position, Hulsey worked on the side of Comdata's business that sells corporate credit cards for its customers to use for business expenses, as well as purchasing cards for use in making purchases on behalf of a customer, and virtual cards that are used for accounts payable expenses instead of a check or ACH payments.

28. Hulsey managed sales for Comdata's West Region, which is roughly everything west of the Mississippi River (inclusive of Chicago). He managed all aspects of the sales process in that region, from identifying prospective customers, to landing their business, and then to taking care of those customers to assure long-term relationships. As such, Halsey was intimately involved in the planning for and direction of Comdata's West Region.

29. Hulsey's duties required him to use his advanced knowledge of business practices and sales processes, which he acquired through a prolonged course of specialized intellectual instruction.

30. Hulsey earned his degree in Business Administration and Management from the University of Nebraska at Omaha.

31. Comdata paid Hulsey handsomely throughout his employment with the Company. His starting salary when he began working for Comdata in 2015 was \$170,000, along with incentive commissions set forth in Comdata's sales commissions plan. *See Exhibit E*, Hulsey's Signed Offer Letter. His salary was \$180,000 at the time of his resignation. Additionally, he received commissions between \$72,000 and \$100,800 during his tenure with Comdata.

32. Throughout his employment with Comdata, the Company compensated Hulsey for handling all aspects of Comdata's sales process in its West Region and exposed Hulsey to highly confidential information. In his approximately five years of employment with the Company, Comdata paid Hulsey roughly \$1.5 million dollars in salary and commissions.

**C. Hulsey's Creation of Pricing Methodology.**

33. Hulsey had substantial visibility into sales activities for Comdata's East Region. Hulsey and his East Region counterpart, Greg Koren, had regular meetings with Fletcher to discuss and develop Comdata's pricing methodology, customer relationships, prospects, and other high-level matters. As such, Hulsey was exposed to and regularly worked with confidential information critical to Comdata's

commercial payments business concerning customers throughout the Continental U.S.

34. Hulsey's work alongside Koren and Fletcher to develop Comdata's pricing structure was especially important. Hulsey not only knows Comdata's pricing in the commercial cards business, but he also was integrally involved in creating that pricing based on market factors and a number of other elements. As part of these efforts, Hulsey created tiers of pricing. Additionally, after FleetCor purchased NVoicepay (an accounts payable automation firm), Hulsey took the lead in incorporating NVoicepay's pricing into Comdata's structure.

35. In addition to knowing Comdata's pricing methodology, Hulsey also is intimately aware of how Comdata makes individual pricing decisions when trying to land specific accounts. For instance, the provision of signing bonuses and rebates is critical for obtaining new business or matching offers to retain existing accounts, as is the decision on matching bank terms. Hulsey was one of the select few at Comdata who participated in making these decisions, so he knows how Comdata strategically prices to land and retain business. Hulsey also has substantial knowledge regarding Comdata's underwriting tolerance and strategies in different industries, another key competitive element in the industry.

**D. Hulsey's Knowledge of Comdata's Future Plans, Especially Regarding the Construction Industry.**

36. Hulsey is also familiar with Comdata's plans for the future, such as its integration and marketing of NVoicepay's services, its integration with Enterprise Resource Planning ("ERP") software, and its plans to expand its business in the construction vertical.

37. Hulsey's Comdata team focused on mid-sized and smaller construction companies. Comdata has had historical success in the construction vertical in the past, as has NVoicepay. Comdata has concrete plans to increase its share of business in the construction industry in 2020, especially through partnerships with construction industry ERPs. Hulsey had knowledge about these relationships, as well as the specifics of the plans to increase business in the construction industry.

**E. Hulsey's Management of the West Region Sales Team.**

38. Hulsey managed a team of roughly 32 employees comprised of four sales managers, a subject matter expert, and 28 field representatives. Hulsey directed the work of these employees and had the power to hire and fire them. Hulsey was also connected to many of these employees on LinkedIn.

39. Hulsey is intimately aware of the strengths and weaknesses of the employees who reported to him. This is important because Comdata operates in a niche business where knowledge of the ins and outs of business-to-business

payments solutions is critical. Thus, it is important for Comdata to retain its employees with experience in the business and who have been trained on its nuances.

**F. Hulsey's Knowledge of Comdata's Customer Relationships.**

40. Throughout his employment with Comdata, including in the year prior to his resignation from Comdata, Hulsey directly solicited Comdata's customers and prospects. Hulsey would typically get involved in the sales process for high-value targets and on implementation calls.

41. Hulsey also got involved in the sales process for existing customers, typically to close new lines of business or to address particularly important challenges that Comdata was facing with the customers. Hulsey was especially involved in negotiating and deciding credit terms and contractual elements like length and exclusivity, pricing, and rebates.

42. As a result of occupying an SVP position for Comdata and being called in for the most important sales opportunities, Hulsey gained a high level of influence and credibility with its customers.

43. Based on his direct interactions with customers, as well as his supervision of a team of 32 who had more mundane interactions, Hulsey is intimately aware of the contours of Comdata's relationships with those customers. He knows the clients with whom Comdata's relationships are especially strong or

weak. With respect to vulnerable relationships, he knows pressure points with the customers. He also knows the customers that are especially profitable for Comdata, as well as those for which margins are low.

44. Hulsey worked closely with business partners like TPG Capital (a private equity company) and Concur. These business partners were used to help develop customers and Comdata's ongoing relationship with them is critical to its continued success with those customers.

45. Hulsey acknowledges in his own LinkedIn profile that he was "[r]esponsible for building and leading a diverse sales organization throughout the Central and Western U.S." (**Exhibit C.**)

**G. Hulsey's Execution of the Agreement to Protect Comdata's Confidential Information and Key Relationships.**

46. On October 5, 2015, after Hulsey accepted employment with Comdata, he and the Company entered into an "Agreement on Confidentiality, Work Product, Non-Competition, and Non-Solicitation" (the "Agreement"), attached here as **Exhibit A.**

47. Although the Agreement is between Hulsey and FleetCor, the definition of FleetCor includes "itself and its applicable parent and subsidiary companies." Comdata is a wholly owned subsidiary of FleetCor.

48. The Agreement includes a confidentiality provision, a limited covenant not to compete with Comdata,<sup>1</sup> and a covenant not to solicit certain customers or employees.

49. The Agreement's confidentiality provision states as follows:

- (a) Employee hereby agrees that (i) with regard to each item constituting all or any portion of the Trade Secrets and/or Confidential Information, at all times during the term of employment and all times during which such item continues to constitute a Trade Secret and/or Confidential Information under applicable law:
  - (i) Employee shall hold in confidence all Trade Secrets and all Confidential Information and will not, either directly or indirectly, use, publish or disclose any Trade Secrets or Confidential Information, without the prior written consent of Employer;
  - (ii) Further, Employee shall hold in the strictest of confidence all Confidential Information related to private label / co-brand card sponsors, resellers, product providers, and participants, Employee shall take proper precautions to safeguard Confidential Information related to private label card program sponsors and their customers. During the term of employment, Employee will only utilize Confidential Information within the context of servicing the private label card program sponsor, shall take all necessary precautions to ensure Confidential Information related to private label card sponsor is protected from unauthorized use by employees in other departments and shall take all precautions to ensure private label program

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<sup>1</sup> In the Agreement, Hulsey is referred to as the "Employee," and Comdata is the "Employer."

sponsor Confidential Information is segregated from all other Employer data; and

- (iii) Employee shall immediately notify Employer of any unauthorized disclosure or use of any Trade Secrets or Confidential Information of which Employee becomes aware, and Employee shall assist Employer, to the extent necessary, in the procurement or any protection of Employer's rights to or in any of the Trade Secrets or Confidential Information.
- (b) Employee hereby acknowledges and agrees that the prohibitions against disclosure of Confidential Information and Trade Secrets recited herein are in addition to, and not in lieu of, any rights or remedies that Employer may have available pursuant to the laws of any jurisdiction, to prevent the disclosure of trade secrets or privileged or proprietary information, and the enforcement by Employer of its rights and remedies pursuant to this Agreement shall not be construed as a waiver of any other rights or remedies that it may possess in law or equity.
- (c) Upon the request of Employer and, in any event, upon the termination of Employee's employment with Employer, Employee shall deliver to Employer all memoranda, notes, records, manuals and other documents, including all copies of such materials and all documentation prepared or produced in connection therewith, pertaining to the performance of Employee's services hereunder or Employer's business or containing Trade Secrets or Confidential Information, whether made or compiled by Employee or furnished to Employee from another source by virtue of Employee's employment with Employer.
- (d) To the greatest extent possible, all Work Product shall be deemed to be "Work made for hire" (as defined in the-Copyright Act, 17 U.S.C.A. §§ 101 et seq., as amended) and owned exclusively by Employer. Employee hereby unconditionally and irrevocably transfers and assigns to Employer all rights, title and interest



Employee may have in or to any and all Work Product, including, without limitation, all patents, copyrights, trademarks, service marks and other intellectual property rights. Employee agrees to execute and deliver to Employer any transfers, assignments, documents or other instruments which Employer may deem necessary or appropriate to vest complete title and ownership of any and all Work Product, and all rights therein, exclusively in Employer.

**Exhibit A, ¶ 1.2.**

50. The Agreement’s noncompetition provision provides, in relevant part, “Employee agrees that Employee will not, within the Territory and during the Noncompete Period, either directly or indirectly, either alone or with any individual partnership, corporation, association, or other entity, compete with the Employer performing Restricted Activities in the Restricted Business.” **Exhibit A, ¶ 1.3.**

51. The Territory referred to in the noncompetition provision is defined as “any geographic area in which Employer provided services to its Customers and the businesses with which it transacted business within the one (1) year prior to Employee’s termination, for any reason, from the Employer’s employment.”

**Exhibit A, ¶ 1.1(h).**

52. The Noncompete Period referred to in the noncompetition provision is defined as “the period beginning on the date of this Agreement and ending on the

first anniversary of the termination of Employee's employment with Employer for any reason.” **Exhibit A**, ¶ 1.1(d).

53. The Restricted Activities referred to in the noncompetition provision “means working in any executive capacity.” **Exhibit A**, ¶ 1.1(f).

54. The Restricted Business referred to in the noncompetition provision is defined as:

A business of the type conducted by Employer during Employee's employment, such as (i) issuing, processing or servicing any Payment / Control / Loyalty (PCL) Product (ii) developing, marketing or providing software, related support or services for such PCL products. PCL Products include:

- (i) Payment mechanism used by commercial or business entities (or their respective employees) including but not limited to: fuel cards, fleet cards, vehicle maintenance management, OTR cards, oil company cards, food cards, meal cards, toll cards, commuter benefit cards, payroll cards, purchasing cards, T&E cards, virtual cards, lodging cards;
- (ii) Lodging management programs provided to commercial or business entities (or their respective employees including) including without limitation to: rate negotiation, consolidated billing, electronic auditing, and reporting services;
- (iii) Vehicle tracking or telematics solutions used by commercial or business entities (or their respective employees)
- (iv) Gift card programs.

**Exhibit A**, ¶ 1.1(g).

55. The Agreement's customer and employee non-solicitation provision provides:

Employee hereby agrees that Employee will not, during the Nonsolicitation Period, either directly or indirectly, alone or in conjunction with any other party:

- (a) solicit, divert or appropriate or attempt to solicit, divert or appropriate, any business related to the Restricted Business from any of Employer's Customers; provided, however, that the covenant in this clause shall limit Employee's conduct only with respect to those Customers with whom Employee had material business contact (through direct or supervisory interaction with the Customer or the Customer's account) during a period of time up to but no greater than one (1) year prior to the last day of Employee's employment; or
- (b) solicit or attempt to solicit any "key" employee, consultant, contractor or other personnel of Employer or any of its subsidiaries to terminate, alter or lessen that party's affiliation with Employer or such subsidiary; provided, however, that the covenant in this clause shall limit Employee's conduct only with respect to those "key" employees, consultants, contractors, or other personnel with whom Employee had material business contact in connection with Employee's duties for Employer during a period of time up to but no greater than one (1) year prior to the last day of Employee's employment. For purposes of this clause (b), "key" employees, consultants, contractors, or other personnel are those with knowledge of or access to Trade Secrets and Confidential Information.

**Exhibit A, ¶ 1.5.**

56. A Customer, as referred to in the Agreement, is defined as: "actual customers (including licensees, participants of Employer's networks and private

label / co-brand card 'program sponsor customers) or actively sought prospective customers (including licensees, participants of Employer's networks and private label / cobrand card program sponsor prospective customers).” **Exhibit A**, ¶ 1.1(c).

57. Hulsey acknowledged in the Agreement that the restrictions included in the Agreement were reasonable and necessary to protect Comdata’s legitimate business interests – including its confidential business and marketing plans and strategies:

- (a) Employee acknowledges that during the course of Employee's employment with Employer that Employee has received or will receive and has had or will have access to Confidential Information and Trade Secrets of Employer, including but not limited to confidential and secret business and marketing plans, strategies, and studies, detailed client/customer lists and information relating to the operations and business requirements of those clients/customers and, accordingly, Employee is willing to enter into the covenants contained in this Agreement in order to provide Employer with what he considers to be reasonable protection for its interests.
- (b) Employee acknowledges that the restrictions, prohibitions and other provisions in this Agreement are reasonable, fair and equitable in scope, terms and duration, are necessary to protect the legitimate business interests of Employer, and are a material inducement to Employer to provide the consideration set forth in this Agreement.

**Exhibit A**, ¶ 1.7.

58. Additionally, upon executing his Agreement, Hulsey expressly agreed that Comdata would suffer irreparable harm in the event Hulsey did not honor his

contractual obligations and that a court could modify the Agreement to make it fair and reasonable:

1.6 Severability. If a judicial or arbitral determination is made that any of the provisions of this Section 1 constitutes an unreasonable or otherwise unenforceable restriction against Employee the provisions of this Section 1 shall be rendered void only to the extent that such judicial or arbitral determination finds such provisions to be unreasonable or otherwise unenforceable with respect to Employee. In this regard, Employee hereby agrees that any judicial or arbitral authority construing this Agreement shall be empowered to sever or modify any prohibited business activity or any time period from the coverage of this Agreement, and to apply the provisions of this Agreement to the remaining business activities, and the remaining time period not so severed or modified by such judicial or arbitral authority.

.....

2.9 Specific Performance. Each party hereto hereby agrees that any remedy at law for any breach of the provisions contained in this Agreement shall be inadequate and that the other parties hereto shall be entitled to specific performance and any other appropriate injunctive relief in addition to any other remedy such party might have under this Agreement or at law or in equity.

**Exhibit A, ¶ 1.6, 2.9.**

**H. Hulsey's Resignation and Subsequent Violations of the Agreement on Behalf of Commerce Bank.**

59. Without warning, Hulsey informed Fletcher on August 10, 2020 that Hulsey was preparing to leave Comdata and that he had another job offer that he was inclined to take. Hulsey's terms for staying were more money, a greater equity stake

in the Company, and a bigger role, namely that he wanted to report directly to John Coughlin (“Coughlin”), FleetCor’s Group President for Corporate Payments.

60. Comdata considered Hulsey’s requests, but determined that it could not immediately change its operational structure as Hulsey requested because it already had an outside consultant working on an assessment of the organization. Fletcher informed Hulsey that the consultant’s work would not be done by the end of August, the date by which Hulsey had demanded an answer. That said, Comdata did offer Hulsey a substantial increase in compensation (including a large equity grant) and a promotion along one of two different paths.

61. Hulsey rejected this generous offer and instead submitted a resignation letter was dated August 19, 2020, which stated formally that he was resigning and that he would work for Comdata until September 2, 2020. (**Exhibit F.**) Hulsey’s last day that he actually worked from Comdata was August 28, 2020.

62. On numerous occasions, Fletcher asked Hulsey where he was going. Hulsey refused to provide an answer, although he admitted that Comdata would be sensitive to the company where he was going. Additionally, Hulsey was not forthcoming about his new position, other than that he was going to be a sales leader at his new employer.

63. Both Fletcher and Coughlin reminded Hulsey that he had a non-compete restriction in the Agreement and that Comdata would insist that he abide by those restrictions. Hulsey did not dispute that he had signed the Agreement.

64. Comdata provided Hulsey with a separation document in which it reminded him of his obligation to return all Comdata property in his possession. **(Exhibit G.)**

65. Despite the existence of the Agreement and a wealth of legitimate interests to support its enforcement, Hulsey has flagrantly violated its terms. Comdata has learned about Hulsey's intent to breach the Agreement and use its trade secrets in drips and drabs.

66. First, Comdata learned on September 4, 2020 that Hulsey was moving to Commerce Bank and would work as the Senior Vice President, Head of Commerce Payment Sales. Comdata learned of this fact based on Hulsey updating his LinkedIn profile. Just based on the title alone, as well as the nature of organizational structures in the commercial payments business, this role is almost certainly the same or substantially similar to what Hulsey did for Comdata.

67. Commerce Bank offers commercial payments services throughout the Continental U.S. **(Exhibit H.)** As such, Hulsey's territory for Commerce Bank will almost certainly overlap with that of his role at Comdata.

68. Commerce Bank is a direct competitor of Comdata in the commercial payments space, increasingly so in recent years. They have gone head-to-head for numerous significant accounts on numerous occasions in recent years, including for at least one construction industry client. Commerce Bank is unusual among banks in that it has a dedicated team for corporate payments and makes this line of business a point of emphasis.

69. Next, on September 11, 2020, Comdata learned that one of Hulsey's initial tasks at Commerce Bank is to build a team to sell to the construction industry. Specifically, Comdata found out on that date that Hulsey has started recruiting for Commerce Bank's new construction sales team on LinkedIn by sending a job description for a new position titled Commercial Payments Relationship Executive – Construction. (**Exhibit B.**) Hulsey stated that “[w]e are looking for a sales leader that is experienced in the Construction vertical. This is a critical role that will lead the teams [sic] efforts to grow this important segment of the Commercial Payments business.” This post reflects that Hulsey will be competing with Comdata within a critical vertical, one for which he has recent, highly confidential knowledge regarding Comdata's plans and capabilities.

70. Additionally, Hulsey is connected to numerous Comdata sales managers and field representatives on LinkedIn. Thus, by posting the job description



and soliciting his connections to apply for the role, Hulsey's post constituted a direct solicitation of his former co-workers in violation of the Agreement.

71. Comdata informed both Hulsey and Commerce Bank of Hulsey's obligations under the Agreement and the fact that Comdata expected him to abide by those restrictions. **(Exhibit I.)** Neither Hulsey nor Commerce Bank have responded to those letters.

72. Upon information and belief, Hulsey has been and will be performing a number of duties on behalf of Commerce Bank that are the same or similar to the executive duties he performed for Comdata in the last year of his employment. He will be performing these same duties in the same geographic area in which Comdata provides services to its customers, and will almost certainly be targeting the same categories of customers and prospects (if not the very same specific customers and prospects) with which Comdata transacts business.

73. Comdata is threatened with immediate and irreparable harm as a result of Hulsey's actions. Hulsey worked as an SVP of Comdata for five years, so he knows vast quantities of trade secret information regarding pricing methodologies, client relationships, and near-term business initiatives. Indeed, he is one of the only employees at Comdata who has this level of highly sensitive information.

74. If he is permitted to fill an executive role for Commerce Bank in the corporate payments space, then Hulsey will inevitably use and disclose that information. It is simply not possible to manage a sales team and perform high level sales functions for a direct competitor without utilizing in some way the highly confidential information that Hulsey possesses about Comdata, its customers, and the ways that Comdata solicits, services, and retains those customers. This is especially true with respect to the construction vertical, which is a point of emphasis for Comdata and that appears to be an immediate priority for Hulsey and Commerce Bank.

75. In every instance in which Comdata and Commerce Bank compete for clients and prospects, Commerce Bank will have an unfair advantage because Hulsey knows how Comdata sets pricing, offers signing bonuses and rebates, and pairs its products with those of business partners while Comdata does not know the same about Commerce Bank. Furthermore, Hulsey knows the contours of Comdata's relationships with existing customers, so he will have an unfair advantage in knowing how to tailor pitches and which clients represent the most lucrative opportunities. In short, Comdata will be forced to compete against Commerce Bank in a metaphorical football game in which one coaching staff has both teams' playbooks.

76. As a result, Comdata is threatened with erosion of its market position in the commercial payments lines of business. Hulsey's actions create the strong possibility that Commerce Bank would be able to take Comdata's business with key clients and prospects. Comdata therefore seeks immediate injunctive relief and recovery of money damages.

**COUNT I**  
**BREACH OF CONTRACT**  
**(Against Hulsey)**

77. Comdata alleges and incorporates by reference the preceding paragraphs as if set forth herein.

78. Hulsey is subject to the Agreement. As part of that agreement, Hulsey agreed that he would not “directly or indirectly, either alone or with any individual partnership, corporation, association, or other entity, compete with [Comdata]” by “working in any executive capacity” in the type of business conducted by Comdata during Hulsey's employment, “such as (i) issuing, processing or servicing any Payment / Control / Loyalty (PCL) Product (ii) developing, marketing or providing software, related support or services for such PCL products, including ... Payment mechanism[s] used by commercial or business entities.”

79. Hulsey has, upon information and belief, breached the Agreement by acting on behalf of one or more entities engaged in competition with Comdata,

including, but not limited to Commerce Bank. Specifically, Hulsey has accepted with a direct competitor a position that is the same or similar as the one that he occupied for Comdata and having responsibility for much of or all of the same territory.

80. Hulsey is also bound by the Agreement's confidentiality provision, which requires Hulsey to "hold in confidence all [Comdata] Trade Secrets and all Confidential Information and will not, either directly or indirectly, use, publish or disclose any Trade Secrets or Confidential Information, without the prior written consent" of Comdata.

81. Hulsey has breached and/or is poised to breach the Agreement by taking a position with Commerce Bank that will require him to use and disclose confidential business information, including: (a) information regarding Comdata's relationships with its customers and prospects; (b) pricing information and methodologies; (c) methods of obtaining and retaining customers; (d) business plans; and (e) employee information.

82. Hulsey is also bound by the Agreement's non-solicitation of employees provision, which states that Hulsey is not permitted to "solicit or attempt to solicit any 'key' employee, consultant, contractor or other personnel of Employer or any of

its subsidiaries to terminate, alter or lessen that party's affiliation with Employer or such subsidiary.”

83. Despite having worked for Commerce Bank only for a matter of days, Hulseley breached the Agreement by soliciting a key role with Commerce Bank on LinkedIn, knowing that the post would go to a host of his former co-workers, all of who fit within the definition of “key employee” set forth in the Agreement.

84. Comdata has complied with the terms of the Agreement in all material respects.

85. As a direct and proximate result of Hulseley’s breaches of the Agreement, Comdata has suffered and continues to suffer damages and irreparable harm and is entitled to damages to be proven at trial, pre- and post-judgment interest, court costs, attorneys’ fees, and injunctive relief.

**COUNT II**  
**THREATENED MISAPPROPRIATION UNDER**  
**THE MISSOURI<sup>2</sup> UNIFORM TRADE SECRETS ACT**  
**(Against Hulsey and Commerce Bank)**

86. Comdata alleges and incorporates by reference the preceding paragraphs as if set forth herein.

87. The Missouri Uniform Trade Secrets Act (“MUTSA”), codified at Mo. Rev. Stat. §417.450 *et seq.*, prohibits persons from misappropriating trade secrets.

88. Comdata exposed Hulsey to a bevy of its trade secrets regarding the sale of commercial payments services, including highly confidential information regarding: (a) information regarding Comdata’s relationships with its customers and prospects; (b) pricing information and methodologies; (c) methods of obtaining and retaining customers; (d) business plans; and (e) employee information.

89. The trade secrets misappropriated by Comdata derive independent economic value from not being generally known or ascertainable by proper means. The information is the result of years of investment by Comdata and allows Comdata to remain competitive in the marketplace.

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<sup>2</sup> Upon information and belief, Hulsey is performing at least some of his job in Missouri. To the extent that another state’s law has a closer connection to this dispute, then Comdata will amend the Complaint to reference that state’s applicable trade secret law.

90. Comdata takes, and at all time here relevant, has taken reasonable measures to maintain the confidential and secret nature of this information. Those steps include restricting availability of confidential information to key employees, requiring key employees such as Hulsey to execute agreements with confidentiality provisions and restrictive covenants, physical security efforts to protect against the disclosure of sensitive materials to third parties, and IT security measures.

91. On information and belief, Hulsey has used and/or will continue to use Comdata's trade secret information, without Comdata's authorization, to improve Commerce Bank's business and to gain a competitive advantage over Comdata. Specifically, Hulsey has accepted an executive sales position with Commerce Bank in which he will inevitably use and disclose Comdata's trade secrets because he will not be able to manage a sales team, supervise efforts to obtain customers, and engage in strategic initiatives without knowing exactly how one of Commerce Bank's main rivals in the commercial payments space approaches the same tasks.

92. Hulsey will be using and disclosing these trade secrets on behalf of Commerce Bank in compliance with management-level job duties assigned by Commerce Bank and with Commerce Bank having full knowledge of Hulsey's utilization of Comdata's trade secrets. As such, Comdata is threatened by misappropriation on the part of Commerce Bank as well as Hulsey.

93. As a direct and proximate cause of Hulsey's and Commerce Bank's threatened misappropriation of Comdata's trade secrets, Comdata has suffered irreparable harm and will continue to suffer irreparable harm that cannot be adequately remedied at law unless Hulsey and Commerce Bank are enjoined from engaging in any further acts of misappropriation and from occupying a position in which he will inevitably disclose Comdata's trade secrets.

94. As a direct and proximate result of Hulsey's and Commerce Bank's threatened misappropriation, Comdata will suffer damages and irreparable harm, and is entitled to all damages, attorneys' fees, costs and remedies permitted under the MUTSA. To the extent that the acts of misappropriation are done maliciously by Hulsey and/or Commerce Bank, Comdata will be entitled to exemplary damages to be proved at trial.

**COUNT III: TORTIOUS INTERFERENCE WITH CONTRACT**  
**(Against Commerce Bank)**

95. Comdata alleges and incorporates by reference the preceding paragraphs as if set forth herein.

96. Hulsey and Comdata had a legal contract in the form of the Agreement. As an employee of Comdata, Hulsey agreed to refrain from competing with Comdata in certain ways after the end of his employment, from soliciting particular categories



of Comdata personnel, from using or disclosing Comdata's confidential information, and from performing certain additional acts of unfair competition.

97. Comdata had a valid expectation that Hulseley would comply with the terms of the Agreement.

98. Commerce Bank knows of Hulseley's contractual obligations to Comdata. At the latest, Commerce Bank learned of the Agreement when it received a reminder letter from Comdata on September 10, 2020, if not sooner if Hulseley informed Commerce Bank of the existence of the Agreement during the hiring process.

99. With full knowledge of such agreement, Commerce Bank maliciously intended to induce and did indeed induce Hulseley to breach his non-competition obligations with Comdata by hiring and employing him in the position of Senior Vice President, Head of Commerce Payment Sales, a role that is substantially similar to the one that Hulseley performed for Comdata and is in both the same industry and territory as what Hulseley did for Comdata. Commerce Bank encouraged, ratified, and approved Hulseley's violation of the non-competition provision in the Agreement.

100. With full knowledge of such agreement, Commerce Bank maliciously intended to induce and did indeed induce Hulseley to breach his non-solicitation of employees obligations with Comdata by, upon information and belief, tasking him

to recruit for the position of Commercial Payments Relationship Executive – Construction. Hulsey did so by soliciting his former co-workers using LinkedIn. Commerce Bank encouraged, ratified, and approved Hulsey’s violation of the non-competition provision in the Agreement.

101. With full knowledge of such agreement, Commerce Bank maliciously intended to induce and did indeed induce Hulsey to breach his non-disclosure of confidential information obligations with Comdata by occupying a role in which he will necessarily use and disclose highly confidential information regarding Comdata, its customer relationships, its pricing methodology, and its business plans. Commerce Bank encouraged, ratified, and approved Hulsey’s violation of the non-competition provision in the Agreement.

102. Commerce Bank does not have any justification to induce Hulsey to breach the Agreement.

103. As the direct and proximate result of the inducement of Hulsey to breach the Agreement, Comdata has suffered damages and irreparable injury. Comdata is entitled to damages to be proven at trial and injunctive relief.

## **PRAYER FOR RELIEF**

WHEREFORE, Comdata respectfully requests:

- A. A temporary restraining order, preliminary injunction, and a permanent injunction requiring Hulsey (and any persons acting in concert with him or on his behalf, including Commerce Bank) to: (i) comply with the non-compete restriction by refraining from competing with Comdata (within the Territory and during the Noncompete Period) by performing Restricted Activities in the Restricted Business (as those terms are defined in the Agreement); (ii) comply with the employee non-solicitation provision by refraining during the Nonsolicitation Period from the solicitation or attempted solicitation of key employees, consultants, contractors, or other personnel of Comdata to terminate, alter, or lessen that party's affiliation with Comdata (as those terms are defined in the Agreement); (iii) otherwise comply with the obligations set forth in the Agreement; and (iv) refrain from occupying any executive position with Commerce Bank that would likely lead to the use or disclosure of Comdata's trade secrets, including the position of Senior Vice President, Head of Commerce Payment Sales;
- B. Judgment in favor of Comdata and against Hulsey and Commerce Bank;

C. An award to Comdata of actual damages and disgorgement of amounts by which Hulseley and Commerce Bank were unjustly enriched, or in the alternative, a reasonable royalty;

D. An award to Comdata of punitive and/or exemplary damages;

E. An award to Comdata of prejudgment interest; and

F. An award to Comdata of its reasonable attorneys' fees and its costs incurred in this action; and

G. Such other and further relief as this Court deems just and proper.

**COMDATA DEMANDS A TRIAL BY JURY ON ALL COUNTS.**

Respectfully submitted this 18th day of September, 2020.

/s/ Michael P. Elkon

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**VERIFICATION**

I, Rick Fletcher, Comdata's President, do hereby certify under penalty of perjury that the facts contained in the foregoing Verified Complaint for Injunctive Relief and Damages are true and correct to the best of my personal knowledge, information, and belief.

By:   
Rick Fletcher

Dated: September 17, 2020.