

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA  
CLARKSBURG DIVISION

|                                   |   |                                    |
|-----------------------------------|---|------------------------------------|
| THE HUNTINGTON NATIONAL BANK,     | ) |                                    |
|                                   | ) |                                    |
| Plaintiff,                        | ) | CIVIL ACTION NO. 1:11-cv-00063-IMK |
|                                   | ) |                                    |
| v.                                | ) |                                    |
|                                   | ) |                                    |
| SANDRA D. KOKOSKA, KIMBERLY A.    | ) |                                    |
| BARNUM, STEWART P. MCCAWE,        | ) |                                    |
| LISA A. MUSGRAVE, CARRIE J.       | ) |                                    |
| SWANIGER, and MARCIE A. LIPSCOMB, | ) |                                    |
|                                   | ) |                                    |
| Defendants.                       | ) |                                    |

**VERIFIED COMPLAINT**

NOW, comes the Plaintiff, The Huntington National Bank (“Huntington”), by and through its attorneys, Littler Mendelson, P.C., and for its Complaint states as follows:

**I. Introduction**

By this Complaint and the accompanying Motion for Temporary Restraining Order and Preliminary Injunction, Huntington comes to this Court under truly dire circumstances involving a brazen and egregious theft of trade secrets. The Defendants in this matter are former mortgage loan officers and their administrative assistants who were all employed by Huntington until their abrupt and collective resignation on Thursday, April 14, 2011. On Monday, April 18, 2011, all six Defendants opened the new Morgantown Loan Origination Office for a competitor of Huntington, MVB Bank, Inc. (“MVB”).

Over the past several days, Huntington has learned that the Defendants spent the days and weeks leading up to their resignations downloading and printing confidential customer records from Huntington’s secure database. Although Huntington’s investigation is ongoing and the scope of Defendants’ wrongdoing is not yet fully realized, the investigation conducted to date

reveals that the Defendants stole from Huntington and took with them to MVB potentially *thousands* of customer records.

These customer records did not merely include customer names, addresses and telephone numbers. In addition, the Defendants took with them what is presently known to be *over 2,000 customer social security numbers, dates of birth, bank account numbers*, and other highly confidential, personal information of Huntington's customers, the unwitting victims of this theft.

But, the Defendants did not stop there. In addition to the electronic records containing customer social security and account numbers, the Defendants also took with them to MVB the physical mortgage loan files on an as-yet undetermined number of customers and prospective customers who had active mortgage loan applications pending with Huntington. Those files contained customers' *paystubs, W-2's, tax returns, bank account and investment account statements*, and myriad other information of the highest level of confidentiality. In many instances these files were removed from Huntington's premises without the customers' knowledge or consent.

The irreparable damage that the Defendants have caused and continue to cause to Huntington and its customers is simply astonishing, and requires this Court's immediate intervention.

## **II. Parties**

1. Huntington is a bank chartered under the National Bank Act with its home office and principal place of business located at 41 South High Street, Columbus, Ohio 43287.

2. Huntington is a full-service retail and commercial bank. Huntington's business unit, Huntington Mortgage Group, specializes in mortgage loans to retail customers.

3. Defendant Sandra D. Kokoska (“Kokoska”) is an adult individual and citizen of the State of West Virginia, with a residence address of 318 Dove Drive, Morgantown, West Virginia 26508.

4. Kokoska had been employed by Huntington since 1996 and most recently held the positions of Vice President and Mortgage Sales Manager.

5. Defendant Kimberly A. Barnum (“Barnum”) is an adult individual and citizen of the State of West Virginia, with a residence address of 3201 Deerfield Court, Morgantown, West Virginia 26508.

6. Barnum had been employed by Huntington since 2004 and most recently held the position of Assistant Vice President and Mortgage Loan Officer.

7. Defendant Stewart P. McCaw (“McCaw”) is an adult individual and citizen of the Commonwealth of Pennsylvania, with a residence address of 301 Colonial Drive, Waynesburg, Pennsylvania 15370.

8. McCaw had been employed by Huntington since 1996 and most recently held the position of Staff Officer and Mortgage Loan Officer.

9. Defendant Lisa A. Musgrave (“Musgrave”) is an adult individual and citizen of the State of West Virginia, with a residence address of Rural Route 1, Box 177-F, 18 Meadland Farms, Flemington, West Virginia 26347.

10. Musgrave had been employed by Huntington since 2004 and most recently held the position of Mortgage Loan Officer.

11. Defendant Carrie J. Swaniger (“Swaniger”) is an adult individual and citizen of the State of West Virginia, with a residence address of 227 Harvest Ridge Lane, Morgantown, West Virginia 26508.

12. Swaniger had been employed by Huntington since 2008 and most recently held the position of Personal Production Assistant.

13. Defendant Marcie A. Lipscomb (“Lipscomb”) is an adult individual and citizen of the State of West Virginia, with a residence address of 782 Fairmont Road, Westover, West Virginia 26501.

14. Lipscomb had been employed by Huntington since 1991 and most recently held the position of Personal Production Assistant.

### **III. Jurisdiction and Venue**

15. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332 based on diversity of citizenship because the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between Huntington, an Ohio citizen, and Defendants, each of whom is a citizen of either West Virginia or Pennsylvania.

16. In addition, this Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1331 because this action raises a federal question under the Computer Fraud and Abuse Act, 18 U.S.C. § 1030.

17. Pursuant to 28 U.S.C. § 1391, venue is proper in the United States District Court for the Northern District of West Virginia, Clarksburg Division, because a substantial part of the events giving rise to the claims asserted herein occurred in this judicial district, specifically in Monongalia County, West Virginia, and because all Defendants are subject to personal jurisdiction in this judicial district.

#### **IV. Factual Background**

##### **A. Defendants' Employment with Huntington**

18. Until April 15, 2011, Kokoska, Barnum, McCaw, Musgrave, Swaniger and Lipscomb (collectively, the "Defendants") were employed by Huntington in its mortgage loan business unit.

19. Kokoska, Barnum, Swaniger and Lipscomb worked at Huntington's branch located at 201 High Street, Morgantown, Monongalia County, WV 26505.

20. McCaw worked at Huntington's branch located at 3120 University Drive, Morgantown, Monongalia County, WV 26505.

21. Musgrave worked at Huntington's branch located at 230 West Pike Street, Clarksburg, Harrison County, WV 26301.

22. In their respective positions, Kokoska, Barnum, McCaw, and Musgrave were responsible for selling Huntington's mortgage loan products by utilizing Huntington's internal and external referral sources to originate new loan applications and grow Huntington's mortgage loan business. They were responsible for assessing the credit-worthiness of potential customers, for analyzing customers' personal financial information to determine which products were appropriate, and for advising customers and prospective customers on Huntington's mortgage loan options and products. Additionally, they were responsible for providing excellent customer service from loan approval through closing, for working closely with loan origination sources to secure and verify all information required for underwriting and for utilizing Huntington's vast resources to market its mortgage product offerings.

23. As Vice President and Mortgage Sales Manager, Kokoska led the Morgantown and Clarksburg offices of Huntington's Mortgage Group. She was the manager and direct supervisor of Barnum, McCaw, Musgrave, Swaniger and Lipscomb.

24. As Personal Production Assistants ("PPA's"), Swaniger and Lipscomb provided administrative support to Kokoska, Barnum, McCaw and Musgrave by assisting with customer interviews, document and data collection, information verification, and the scheduling of loan closings. Swaniger and Lipscomb also played an integral role in Huntington's marketing activities, such as targeted and mass mailings to existing and prospective mortgage customers.

25. Each of the Defendants were responsible for adhering at all times to Huntington's policies and procedures and complying with all legal and regulatory requirements. They were responsible for following effective controls and processes to ensure that risks were monitored and controlled and that compliance requirements were adhered to on an on-going basis.

26. In her role as an Officer and Manager, Kokoska was ultimately responsible for ensuring that the team members under her supervision, including Barnum, Musgrave, McCaw, Swaniger and Lipscomb, complied with all applicable laws, regulations, policies and procedures.

27. In their respective positions, each of the Defendants were privy to Huntington's trade secret information, including its customer information. Much of this customer information is maintained in secure, encrypted and password-protected electronic databases because the information is both highly confidential and strictly regulated by federal law. The customer information maintained by Huntington in its electronic customer databases includes not only customer names, home addresses and phone numbers, but also social security numbers, dates of birth, employers and earnings information, and bank account information including account numbers and balances. In addition, as part of the mortgage loan process, Huntington routinely

collects and maintains information and documents from its mortgage customers that includes their paystubs, W-2's, tax returns, deposit and investment account numbers and balances, credit account numbers and balances, schedules of personal assets, and educational and employment records (collectively, the "Confidential Customer Information").

28. In addition to the Confidential Customer Information, the Defendants were privy to other confidential and proprietary information of Huntington, including its marketing information and strategies, business plans and methods, proprietary computer systems and databases, product profiles, business partner information, employee compensation and commission structures, training materials, and other proprietary and confidential information unique to Huntington's mortgage loan business (collectively, the "Huntington Information").

29. In 2010, Huntington's Morgantown loan office closed over \$150 million in mortgage loan business, making Huntington the top-producing mortgage lender in the Morgantown, West Virginia market.

30. Huntington has invested considerable effort and resources over a number of years to develop its sterling reputation – a reputation that is critical to maintaining its current position as the market leader in mortgage lending.

**B. Huntington's Efforts to Protect Its Trade Secrets, Including its Confidential Customer Information**

31. Huntington has a Code of Business Conduct and Ethics ("Code of Ethics") most recently revised and reissued on January 18, 2011. The Code of Ethics provides that "Obeying the law in letter and in spirit is the foundation of Huntington's ethical standards." In addition, the Code of Ethics provides as follows:

### **Confidentiality**

In accordance with the Gramm-Leach-Bliley Act of 1999, sensitive customer information must not be used or disclosed other than for the intended purpose and must be protected from misuse that could result in identity theft.

You must maintain the confidentiality of confidential information entrusted to you by Huntington or its customers, while associated with Huntington and afterwards, except when disclosure is authorized by the Legal Department or required by law or regulations. Confidential information includes all non-public information that might be of use to competitors, or harmful to Huntington or its customers, if improperly disclosed.

(Exhibit 1, at pp. 9-10.)

32. Each of the Defendants were required to and did annually review the Code of Ethics and electronically sign an acknowledgment whereby they agreed to abide by same.

33. To safeguard the security of its information and its information systems, Huntington has developed Information Security Policies, Standards and Guidelines (the "Information Security Policy"), last revised and reissued on December 6, 2010. The Information Security Policy is comprehensive and strictly controls the access to and use of information that is considered "Confidential," which includes the Confidential Customer Information and many categories of Huntington Information. The Information Security Policy describes the steps taken by Huntington to safeguard its data, including but not limited to restricting access to authorized users, password protection, and encryption. Section 9.0 of the Information Security Policy outlines the various federal laws that regulate the access, use and disclosure of Huntington's confidential information.

34. The Defendants, like all Huntington employees, were required to and did annually sign an agreement to abide by the Information Security Policy.



35. Huntington also has a Use of Communications Media Policy, most recently revised and reissued on January 1, 2011, which prohibits the use of personal blackberries or other communications devices to transmit Huntington's confidential information or otherwise conduct business. Upon information and belief, some or all of the Defendants transmitted, downloaded and/or stored the Confidential Customer Information on their personal communications devices, in violation of the Use of Communications Media Policy.

**C. Defendants' Contractual Non-Solicitation Covenants**

36. Each of the Defendants entered into and signed an HMG Production Commission and Incentive Compensation Plan (the "Commission Plan") with Huntington. In consideration for the substantial commissions and other compensation provided under the Commission Plan, Section 8.1 of the Compensation Plan provided as follows:

**8.1 Non-Solicitation.** In return for the benefits you will receive under this Plan, you agree that during your employment and for one year after your employment separation you will not: (1) solicit, either directly or indirectly, any person employed by the Company or its affiliates ("Company") for employment with or to provide services to any other entity that does business in any lines of business in which the Company is engaged; (2) contact any customer or prospective customer of the Company for whom you performed any services, had any direct business contact, or whose identity or other customer specific information you obtained or gained access to as a result of your access to confidential or proprietary Company information ("Confidential Information") for the purpose of identifying your new association, change of employment or current affiliation, or for the purpose of soliciting, influencing or inducing any such customers to obtain any product or service offered by the Company from any person or entity other than the Company. You also agree that during and after your employment: (1) you will maintain the confidentiality of Confidential Information; (2) you will not use Confidential Information for any purpose except the performance of your duties on behalf of the Company; and (3) you will not use Confidential Information to solicit, influence or induce any customer or prospective customer of the Company to terminate or reduce any business relationship with the Company or to obtain any product or

service provided by the Company from any person or entity other than the Company.

(Exhibit 2, 2010 Commission Plan; Exhibit 3, signed signature pages for each of the Defendants).

37. The 2010 Commission Plan was expressly extended and remained in effect until April 2011. The Defendants signed a new Commission Plan annually, but Section 8.1 remained the same from year to year.

38. In addition to the Non-Solicitation covenant contained in their Commission Plans, Kokoska and Barnum entered into Non-Solicitation covenants as part their respective cash award and stock grant agreements.

39. On August 19, 2008, Kokoska entered into a Cash Award Agreement whereby, in exchange for a \$12,500 cash award, she agreed that, both during and for a period of one year after her separation from Huntington, she would not solicit any actual or prospective customers of Huntington, nor would she use any of Huntington's proprietary information to do so. (Exhibit 4, Section 2(c).)

40. On August 29, 2007, Barnum entered into a Restricted Stock Unit Grant Agreement whereby, in exchange for the stock awarded to Barnum under the agreement, she agreed that, both during and for a period of one year after her separation from Huntington, she would not solicit any actual or prospective customers of Huntington, nor would she use any of Huntington's proprietary information to do so. (Exhibit 5, Section 4.)

#### **D. Defendants' Collective Resignation and Unlawful Conduct**

41. The Defendants abruptly and collectively tendered their resignations to Huntington on Thursday, April 14, 2011, ending their employment on Friday, April 15, 2011.

42. When they resigned, the Defendants announced that they were leaving to commence employment with MVB and open its new Morgantown Loan Production Office.

43. Prior to April 2011, MVB had only three (3) offices in Marion and Harrison Counties of West Virginia, as well as two offices in the Eastern panhandle of West Virginia.

44. On Monday, April 18, 2011, MVB opened a new location – its Morgantown Loan Production Office – located at 2400 Cranberry Square, Morgantown, West Virginia 26058. Upon information and belief, the Morgantown Loan Production Office specializes in mortgage loans to retail customers, in direct competition with Huntington.

45. In direct violation of the Defendants' legal, ethical and contractual obligations, the Defendants stole Confidential Customer Information and took it to their new employer, MVB, where they are now using the Confidential Customer Information to actively solicit Huntington's existing and prospective customers.

46. By its internal investigation over the last few days, Huntington has discovered that the Defendants spent the days and weeks leading up to their resignations downloading and printing the Confidential Customer Information from Huntington's secure database.

47. Although Huntington's investigation is ongoing and the scope of Defendants' wrongdoing is not yet fully realized, the investigation conducted to date reveals that the Defendants stole from Huntington and took with them to MVB potentially *thousands* of customer records. These electronic customer records included not only customer names, addresses and telephone numbers, but also social security numbers, dates of birth, and bank account numbers. Huntington has thus far uncovered over 2,000 customer records that were stolen.

48. In addition to the electronic database records containing customer social security and account numbers, the Defendants also took with them to MVB the physical mortgage loan files on an as-yet undetermined number of customers who had active mortgage loan applications pending with Huntington. Those files contained customers' paystubs, W-2's, tax returns, bank account and investment account statements, and myriad other information of the highest level of confidentiality.

49. Huntington began to learn of the theft of customer loan files when it received an e-mail from an existing mortgage customer on April 19, 2011, stating as follows:

Do you know where mine and [my fiancé's] documents could have ended up? I gave Kim Barnum bank statements, pay stubs, a W2 form, statements for a securities account, school transcripts, and others. Those documents have sensitive information like account numbers, SSNs, Student ID #s, addresses, DOB, etc. I am not happy that those papers have seemingly disappeared after being provided to a Huntington Bank employee for this mortgage. I am concerned about the privacy of mine and [my fiancé's] confidential financial information and education records.

\* \* \*

I had no idea that my mortgage was moving anywhere until Kim Barnum notified me on Monday afternoon from Mon Valley Bank. She explained that she had resigned from Huntington but that she would be more than happy to offer me the same mortgage terms through MVB. When would I have known that my mortgage application had not been acted upon if she did not notify me?

50. Another customer called Huntington on April 19, 2011 and stated that Barnum had called to tell him that "she was now going to handle his closing at MVB."

51. Musgrave contacted a Huntington customer who is the niece of a Huntington executive to solicit her to move her mortgage loan to MVB.

52. Several other customers have contacted Huntington over the last few days to inquire about the status of their mortgage applications. Upon investigation, Huntington has discovered that the files for these customers are also missing.

53. In one instance, a Huntington employee called Barnum to inquire about the whereabouts of one customer's file. Barnum responded, "I have it," thereby admitting that she took that customer's loan file with her to MVB.

54. On April 21, 2011, a Huntington customer filed a formal consumer complaint against Huntington with the Federal Reserve Bank. The Complaint alleges that the customer gave his personal financial records to Kokoska, and that he has learned that Kokoska left Huntington to go to another bank, presumably taking his records with her. The customer is demanding the return of his personal information.

55. The Defendants removed the customer files from Huntington and took them to MVB without the customers' knowledge or consent.

56. Huntington's investigation has further revealed that the Defendants downloaded, printed and took with them to MVB approximately 200 completed Mortgage Loan Applications that were electronically stored on Huntington's computer system. Each application contains the borrower-customers' social security numbers, dates of birth, employer and income information, schedule of assets including deposit account numbers and account balances, credit accounts including account numbers, and other Confidential Customer Information.

57. Huntington has discovered that in a number of other instances, customers with pending loan applications had their loan status changed in Huntington's computer system to "Cancelled" or "Withdrawn," when the customers themselves never requested that their application be cancelled or withdrawn. These cancellations were entered into Huntington's

computer system on or about April 14, 2011, the same date of the Defendants' resignations. Upon information and belief, the Defendants knowingly altered Huntington's computer database to indicate that pending loan applications had been canceled or withdrawn – without customer request or consent – so that they could take the loan files with them to MVB and then solicit those customers to take their business to MVB.

58. Immediately upon commencing employment with MVB on April 18, 2011, the Defendants began calling and e-mailing Huntington's actual and prospective customers for the purpose of soliciting, influencing and inducing those customers to terminate their business relationship with Huntington and, instead, obtain their mortgage loans from MVB.

59. Defendants are succeeding in their efforts to solicit Huntington's customers. On April 21, 2011, a mortgage loan valued at over \$1,000,000 that Kokoska had originated with Huntington was withdrawn from Huntington. Upon information and belief, the borrowers on that loan took their business to MVB as a result of Kokoska's solicitation.

60. In addition, it appears that a number of Huntington's actual and prospective customers were contacted by the Defendants and invited to attend a marketing reception hosted by MVB on April 20, 2011. Defendants used information from Huntington's customer database in order to solicit these customers.

61. In addition, the Defendants have been making false representations about Huntington to its current and prospective customers, as well as to its referral sources in the market, such as realtors. For example, Huntington has learned that a Huntington customer with a pending mortgage application was told by his realtor that "he needs to consider another bank because Huntington isn't able to process mortgage loans right now due to the loss of several mortgage loan officers." Statements such as this are being disseminated in the marketplace by

the Defendants. These statements are untrue and are specifically designed to tarnish Huntington's reputation and tortiously interfere with its actual and existing contractual relationships.

62. In soliciting Huntington's customers, the Defendants have also falsely represented to those customers that Huntington has taken no action on their loan applications. Huntington is aware of at least one customer who was solicited by Kokoska and who was told that an appraisal had not been ordered and no other action had been taken on his application by Huntington. In fact, the appraisal had not only been ordered, but had been completed, and the process on that application was well underway.

63. At the time of her resignation and in blatant violation of her contractual covenant not to solicit Huntington's employees, Kokoska told the remaining Huntington Mortgage Loan Officers who she left behind that she would come back for them in 6 to 12 months to take them to MVB.

64. Huntington has suffered and continues to suffer irreparable harm to its reputation and goodwill in the market, as well as immeasurable damages as a result of the Defendants' unlawful conduct.

**COUNT I**  
**MISAPPROPRIATION OF TRADE SECRETS**

**Huntington v. Defendants**

65. Huntington hereby incorporates by reference thereto paragraphs 1 through 64, inclusive, of this Complaint as though the same were set forth fully herein.

66. Huntington, Kokoska, Barnum, McCaw, Musgrave, Swaniger, and Lipscomb are "persons" pursuant to the Uniform Trade Secrets Act, W. Va. Code § 47-22-1.



67. The Uniform Trade Secrets Act defines “trade secret” as any information that (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Id.

68. Both the Confidential Customer Information and the Huntington Information constitute trade secrets under the Uniform Trade Secrets Act.

69. Huntington’s trade secrets have been wrongfully misappropriated by Defendants, as more fully described hereinabove.

70. Huntington has been in business for over 140 years and it has expended considerable effort and money in developing its trade secret information.

71. The trade secrets of Huntington have independent economic value and are not generally known to individuals who have not been employed by Huntington.

72. Absent wrongful misappropriation, third persons or competitors could not readily acquire or duplicate the trade secret information of Huntington.

73. Defendants, in their new competitive employment with MVB, have already obtained and will continue to obtain economic value from their wrongful acquisition, disclosure, use and dissemination of Huntington’s trade secrets.

74. Defendants’ wrongful acquisition, disclosure, use and dissemination of Huntington’s trade secret information has already caused irreparable harm to Huntington and will continue to irreparably harm Huntington by damaging Huntington’s reputation and competitive advantage in the mortgage lending market.



75. By its policies and procedures, including its Code of Ethics, Information Security Policy and Use of Communications Media Policy, Huntington made reasonable efforts to maintain the secrecy of its information.

76. Defendants' non-solicitation covenants also specifically provided that Defendants would maintain the confidentiality of Huntington's trade secret information and had no authority to use Huntington's trade secret information except as required in the course of their employment with Huntington.

77. By the wrongful acts described above, Defendants abused their positions of trust and confidence with Huntington to steal Huntington's trade secrets for use in their new, competitive employment with MVB.

78. It would be inequitable and unjust for Defendants to retain Huntington's trade secret information, disclose that information to others, or to make use of it for themselves and/or MVB, to the prejudice of Huntington.

79. Defendants' trade secret misappropriation as described herein was both willful and malicious.

80. Huntington has suffered and will continue to suffer irreparable harm to its reputation and goodwill in the market, as well as immeasurable damages as a result of the Defendants' unlawful conduct.

81. Pursuant to the Uniform Trade Secret Act, Huntington is entitled to affirmative equitable relief to protect its trade secrets, together with compensatory and exemplary damages, reasonable attorney's fees, and all other appropriate relief.

WHEREFORE, Huntington hereby demands judgment in its favor and against the Defendants for compensatory and exemplary damages, attorney's fees, and all other appropriate relief, including injunctive relief.

**COUNT II**  
**TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS AND**  
**PROSPECTIVE ECONOMIC ADVANTAGE**

**Huntington v. Defendants**

82. Huntington hereby incorporates by reference thereto paragraphs 1 through 81, inclusive, of this Complaint as though the same were set forth fully herein.

83. At all times material and relevant hereto, Huntington had actual and/or prospective contractual relationships with its mortgage loan customers.

84. Defendants have intentionally and improperly taken the purposeful actions described above, specifically intending to harm Huntington's existing contractual relationships, and to prevent Huntington's prospective contractual relationships from occurring, by using Huntington's trade secret information to divert Huntington's contractual business relationships and opportunities away from Huntington to its competitor, MVB.

85. Defendants had no privilege or justification for taking the actions described above.

86. As a result of the wrongful actions described herein, Defendants have tortiously interfered with the actual contracts between Huntington and its customers, as well as Huntington's prospective economic advantage.

87. Defendants have already succeeded in soliciting several of Huntington's actual and prospective mortgage loan customers to take their business away from Huntington to MVB.

88. Huntington has sustained, and will continue to sustain, monetary damages by reason of the tortious interference by Defendants with the actual and prospective contractual relationships that Huntington had with its customers.

89. Huntington is entitled to affirmative relief to protect its contractual relationships and prospective economic advantage, together with damages, reasonable attorney's fees, punitive damages, and/or other appropriate relief.

WHEREFORE, Huntington hereby demands judgment in its favor and against the Defendants for compensatory damages, punitive damages, attorney's fees, and all other appropriate relief, including injunctive relief.

**COUNT III**  
**CONVERSION**

**Huntington v. Defendants**

90. Huntington hereby incorporates by reference thereto paragraphs 1 through 89, inclusive, of this Complaint as though the same were set forth fully herein.

91. As more fully described above, during their employment with Huntington, Defendants unlawfully stole property of Huntington, specifically, the Confidential Customer Information and Huntington Information, to take to their new employer, MVB.

92. Defendants took possession of the property of Huntington for an improper purpose without the knowledge or consent of Huntington, and without lawful justification.

93. The Defendants' unlawful possession and use of the property of Huntington has deprived and interfered with the Huntington's exclusive rights of possession and use in such property.

94. By these actions, Defendants have caused and will cause Huntington damages in an amount to be determined at trial.

WHEREFORE, Huntington hereby demands judgment in its favor and against the Defendants for compensatory damages, punitive damages, attorney's fees, and all other appropriate relief, including injunctive relief.

**COUNT IV**  
**BREACH OF CONTRACT**

**Huntington v. Defendants**

95. Huntington hereby incorporates by reference thereto paragraphs 1 through 94, inclusive, of this Complaint as though the same were set forth fully herein.

96. Each of the Defendants entered into contractual non-solicitation covenants with Huntington, as more fully described above.

97. In exchange for these covenants, Defendants received valuable consideration to which they otherwise would not have been entitled.

98. Upon resigning their employment with Huntington and commencing their new, competitive employment with MVB, the Defendants have individually and collectively engaged in a course of conduct to solicit Huntington's actual and prospective mortgage loan customers, wrongfully using the Confidential Customer Information that they stole in order to do so.

99. The actions of Defendants as described above are in breach of their respective non-solicitation agreements with Huntington.

100. In addition, Kokoska violated her contractual agreement not to solicit Huntington's employees by recruiting Barnum, McCaw, Musgrave, Lipscomb and Swaniger to terminate their employment with Huntington and accept employment with Kokoska at MVB.

101. In further violation of her non-solicitation covenant, Kokoska has represented that she intends to return in 6 to 12 months to take Huntington's remaining mortgage loan officers with her to MVB.

102. As the direct and proximate result of the breach of contract by Defendants, Huntington has suffered and will continue to suffer irreparable harm, as well as immeasurable damages, as a result of the Defendants' unlawful conduct.

WHEREFORE, Huntington hereby demands judgment in its favor and against the Defendants for compensatory damages, punitive damages, attorney's fees, and all other appropriate relief, including injunctive relief.

**COUNT V**  
**DEFAMATION**

**Huntington v. Defendants**

103. Huntington hereby incorporates by reference thereto paragraphs 1 through 102, inclusive, of this Complaint as though the same were set forth fully herein.

104. As more fully described above, Defendants have made defamatory statements about Huntington to its current and prospective customers as well as to its referral sources in the market, such as realtors.

105. For example, Huntington has learned that a Huntington customer with a pending mortgage application was told by his realtor that "he needs to consider another bank because Huntington isn't able to process mortgage loans right now due to the loss of several mortgage loan officers."

106. Statements such as this are being disseminated in the marketplace by the Defendants.

107. These statements are untrue and are specifically designed to tarnish Huntington's reputation and tortiously interfere with its actual and existing contractual relationships.

108. In soliciting Huntington's customers, the Defendants have also falsely represented to those customers that Huntington has taken no action on their loan applications.

109. Huntington is aware of at least one customer who was solicited by Kokoska and who was told that an appraisal had not been ordered and no other action had been taken on his application by Huntington. This was false. In fact, the appraisal had not only been ordered, but had been completed, and the process on that application was well underway.

110. Defendants' defamatory communications to third parties are false, explicitly reference Huntington, and are not privileged.

111. Defendants have acted and continue to act with negligence, recklessness or willful intent in disseminating these false representations about Huntington to third parties.

112. Huntington has suffered and continues to suffer irreparable harm to its reputation and goodwill in the market, as well as immeasurable damages as a result of the Defendants' unlawful conduct.

WHEREFORE, Huntington hereby demands judgment in its favor and against the Defendants for compensatory damages, punitive damages, attorney's fees, and all other appropriate relief, including injunctive relief.

**COUNT VI**  
**BREACH OF COMMON LAW DUTY OF LOYALTY**

**Huntington v. Defendants**

113. Huntington hereby incorporates by reference thereto paragraphs 1 through 112, inclusive, of this Complaint as though the same were set forth fully herein.

114. As employees and agents of Huntington, Defendants had a common law duty of loyalty to Huntington.

115. By taking the actions described above, Defendants breached their common law duty of loyalty to Huntington.

116. Rather than fulfill their common law duty of loyalty, Defendants acted in their own self interest and engaged in self-dealing for the purpose of furthering their new competitive employment with MVB.

117. As a result of Defendants' breach of their common law duty of loyalty, Huntington has and will suffer damages in an amount to be determined at trial.

WHEREFORE, Huntington hereby demands judgment in its favor and against the Defendants for compensatory damages, punitive damages, attorney's fees, and all other appropriate relief, including injunctive relief.

**COUNT VII**  
**BREACH OF FIDUCIARY DUTY**

**Huntington v. Kokoska and Barnum**

118. Huntington hereby incorporates by reference thereto paragraphs 1 through 117, inclusive, of this Complaint as though the same were set forth fully herein.

119. As Vice President and Assistant Vice President of Huntington, respectively, Kokoska and Barnum had a fiduciary duty to Huntington.

120. By taking the actions described above, Kokoska and Barnum breached their fiduciary duties to Huntington.

121. Rather than fulfill their fiduciary duties, Kokoska and Barnum acted in their own self interest and engaged in self-dealing by stealing and suborning the other Defendants to steal the Confidential Customer Information and Huntington Information, while they were still employed by Huntington, for the purpose of aiding in their new competitive venture with MVB.

122. As a result of Kokoska's and Barnum's breach of fiduciary duty, Huntington has and will suffer damages in an amount to be determined at trial.

WHEREFORE, Huntington hereby demands judgment in its favor and against Kokoska and Barnum for compensatory damages, punitive damages, attorney's fees, and all other appropriate relief, including injunctive relief.

**COUNT VIII**  
**VIOLATION OF THE COMPUTER FRAUD AND ABUSE ACT**

**Huntington v. Defendants**

123. Huntington hereby incorporates by reference thereto paragraphs 1 through 122, inclusive, of this Complaint as though the same were set forth fully herein.

124. Huntington is a "person" for purposes of 18 U.S.C. § 1030.

125. The Huntington computer systems accessed by Defendants constitute a "protected computer" for the purposes 18 U.S.C. § 1030, as they were used in interstate commerce or communications. 18 U.S.C. § 1030(e)(1)-(2).

126. Defendants' authorization to access Huntington's computers was expressly defined and limited by Huntington's Information Security Policy.

127. As more fully described above, the Defendants exceeded any authorization they had by virtue of their employment relationship with Huntington when they downloaded, printed and otherwise stole Confidential Customer Information from Huntington's secure electronic databases in order to take the Confidential Customer Information to their new employer, MVB.

128. By engaging in the conduct described above, Defendants breached their respective duties of loyalty owed to Huntington, and thus terminated any authorization they had as Huntington's employees to access Huntington's computer systems.



129. Accordingly, Defendants' access and use of Huntington's computer systems as described herein was unauthorized or exceeded any authorized access, in violation of 18 U.S.C. § 1030(a).

130. By engaging in the conduct described above, Defendants intentionally accessed Huntington's protected computers, without authorization or in excess of any authorized access, and thereby obtained information from Huntington's protected computers, in violation of 18 U.S.C. § 1030(a)(2)(C).

131. By engaging in the conduct described above, Defendants intentionally accessed Huntington's protected computers without authorization, and as a result of such conduct, recklessly caused damage, in violation of 18 U.S.C. § 1030(a)(5)(B).

132. By engaging in the conduct described above, Defendants intentionally accessed Huntington's protected computers without authorization, and as a result of such conduct, caused damage and loss, in violation of 18 U.S.C. § 1030(a)(5)(C).

133. As a result of the conduct of Defendants as described above, Huntington has suffered "damage" under the Computer Fraud and Abuse Act in that the integrity of the proprietary and trade secret data and information on Huntington's protected computers has been impaired because its confidentiality and competitive value has been compromised by its wrongful acquisition, use, disclosure and transmission to third parties, including but not limited to MVB.

134. As a result of the conduct of Defendants as described above, Huntington has suffered "loss" under the Computer Fraud and Abuse Act in that it has already expended or will expend an amount in excess of \$5,000 to conduct a forensic examination in order to respond to

the offense, conduct a damage assessment, and attempt to restore Huntington's data and information.

135. That computer forensic examination has confirmed the wrongful conduct of Defendants as described above, and has confirmed that such conduct impaired the integrity of Huntington's data and information on its protected computers.

136. By engaging in the conduct described above in violation of 18 U.S.C. § 1030(a)(2)(C) and (a)(5)(A)-(C), Defendants caused loss to Huntington during a one year period aggregating at least \$5,000 in value. 18 U.S.C. §§ 1030(c)(4)(A)(i)(I), 1030(g).

137. This action has been commenced within two (2) years of the dates of the acts complained of and within two (2) years of the date of the discovery of the damage.

WHEREFORE, Huntington hereby demands judgment in its favor and against Defendants for economic damages caused by Defendants' violation of 18 U.S.C. § 1030 in an amount equal to the loss to Huntington caused by Defendants' unlawful conduct, together with interest and costs of suit.

**COUNT IX**  
**CIVIL CONSPIRACY**

**Huntington v. Defendants**

138. Huntington hereby incorporates by reference thereto paragraphs 1 through 137, inclusive, of this Complaint as though the same were set forth fully herein.

139. As described above, Defendants conspired to misappropriate Huntington's trade secrets, tortiously interfere with Huntington's actual and prospective contractual relations, unlawfully take possession of Huntington's confidential and proprietary business information, defame Huntington, cause a breach of Defendants' respective common law duties of loyalty to

Huntington, cause Kokoska and Barnum to breach their fiduciary duties to Huntington, cause Defendants to breach their respective non-solicitation covenants with Huntington, and cause a violation of the Computer Fraud and Abuse Act.

140. By taking the unlawful and tortious actions described herein, Defendants intended to cause Huntington to suffer damages.

141. As described above, the actions of Defendants have succeeded in causing Huntington to suffer damages and irreparable harm to its reputation and goodwill in the market.

142. As a result of the civil conspiracy, Huntington is entitled to damages, punitive damages, and/or other appropriate relief.

WHEREFORE, Huntington hereby demands judgment in its favor and against Defendants for compensatory damages, punitive damages, attorney's fees, and all other appropriate relief, including injunctive relief.

**JURY TRIAL DEMANDED ON ALL TRIABLE COUNTS.**

Respectfully submitted,

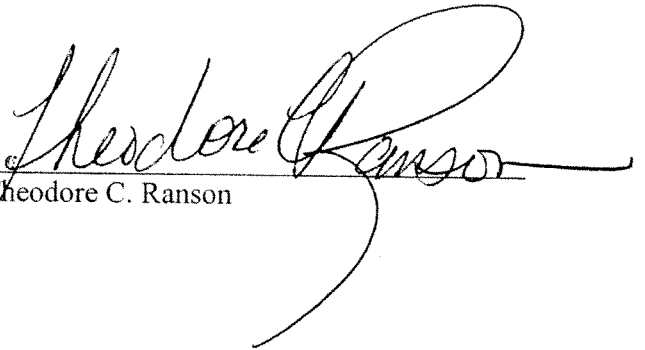
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*Attorneys for Plaintiff,  
The Huntington National Bank*

Dated: April 25, 2011

VERIFICATION

I, Theodore C. Ranson, verify that I am the Senior Vice President – East Area Manager of The Huntington National Bank, that I am authorized to make this Verification on its behalf, and that the statements of fact contained in the foregoing **Verified Complaint** are true and correct to the best of my knowledge, information and belief. I understand that this Verification is made subject to the penalties of 28 U.S.C. § 1746 relating to unsworn falsification to authorities.

  
Theodore C. Ranson

Dated: April 22, 2011