

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

15 CV 114

MASTERCARD INTERNATIONAL
INCORPORATED

Plaintiff,

-against-

NIKE, INC., WILLIAM E. DENNINGS III,
and RYAN FUSSELMAN,

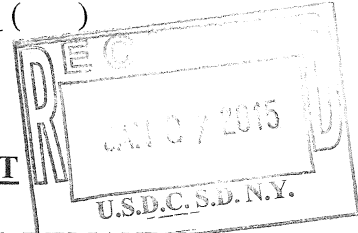
Defendants.

15 Civ. _____ ()

ECF CASE

COMPLAINT

JURY TRIAL DEMANDED



JUDGE ROMAN

Plaintiff MasterCard Incorporated (“MasterCard”), by its undersigned attorneys, and for its Complaint against defendants alleges as follows:

**ALLEGATIONS COMMON TO
ALL CAUSES OF ACTION**

Nature of Action

1. This action arises from the breach of non-solicitation and non-disclosure restrictions by two former senior managers in the Information Security Department of MasterCard, William E. Dennings III (“Dennings”) and Ryan Fusselman (“Fusselman”) (collectively, the “Former Managers”), with the knowing aid and assistance of their new employer, NIKE, Inc. (“NIKE”).

2. Until May 28, 2013, Dennings was MasterCard’s Chief Information Security Officer (“CISO”), the senior most manager in MasterCard’s Information Security Department.

3. Until October 11, 2013, Fusselman was the Senior Business Leader in MasterCard's Information Security Department, in charge of Information Security Engineering for MasterCard.

4. Each of the Former Managers had signed a MasterCard LTIP Non-Competition Agreement (the "Non-Competition Agreement"), which contained restrictions against disclosing MasterCard's confidential information and soliciting, directly or indirectly, MasterCard employees or contractors.

5. Information security is a fast growing area, including in retail industries where security breaches at Target and Home Depot have made headline news. As a technology company and payments industry leader, MasterCard has an established and accomplished Information Security Department with top quality managers, programmers, engineers and analysts.

6. In 2013, NIKE was looking to build an information security department. Because talent in this rapidly growing area is limited, in demand and not well known, NIKE, Dennings and Fusselman conspired to build NIKE's information security department by soliciting and hiring highly qualified managers and employees from MasterCard in breach of the Former Managers' contractual restrictions. In addition to the Former Managers, NIKE has hired at least seven additional MasterCard managers and employees, each of whom worked for or with Dennings and Fusselman at MasterCard's O'Fallon, Missouri offices, to work for NIKE in Portland, Oregon.

7. MasterCard seeks an injunction enjoining Dennings and Fusselman from continuing to directly or indirectly breach their non-solicitation and non-disclosure restrictions and against NIKE from continuing to induce or assist Dennings and Fusselman

in breaching their obligations. MasterCard also seeks monetary damage for existing breaches in an amount to be determined but estimated at not less than five million dollars (\$5,000,000).

The Parties

8. MasterCard is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in the State of New York.

9. Upon information and belief, NIKE is a corporation organized and existing under the laws of and with its principal place of business in the State of Oregon.

10. Upon information and belief, Dennings is a natural person who is a citizen of and currently resides in the State of Oregon.

11. Upon information and belief, Fusselman is a natural person who is a citizen of and currently resides in the State of Oregon.

Jurisdiction and Venue

12. This Court has original subject matter jurisdiction of this action pursuant to 28 U.S.C. § 1332(a)(1), as the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs, and is between citizens of different States.

13. The Former Managers are subject to personal jurisdiction in this Court pursuant to the forum selection clause set forth in the Non-Competition Agreement, which provides in relevant part:

I further acknowledge and agree that any legal suit, action or proceeding arising out of or relating to this agreement shall be instituted in a federal or state court in the State of New York, and I waive any objection which I may now or hereafter have to the laying of venue of any such suit, action or proceeding and irrevocably submit to the

jurisdiction of any such court in any suit, action or proceeding.

14. Moreover, NIKE is subject to personal jurisdiction in this Court pursuant to New York C.P.L.R. §§ 301 and 302 because it committed tortious acts that caused injury to persons or property within the State of New York, and (a) derives substantial revenue from goods used or consumed in the State of New York, and/or (b) expected or should reasonably have expected the acts to have consequences in the State of New York and derives substantial revenue from interstate commerce.

15. Venue in this District is proper pursuant to the forum selection clause and pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claim occurred here, and because the defendants are subject to personal jurisdiction in this Court.

MasterCard's Information Security Department

16. MasterCard's Information Security Department employs more than 140 persons in the United States. The Information Security Department is charged with protecting MasterCard's information technology and data and that of its contracting parties and customers.

17. To accomplish its mission, MasterCard's Information Security Department, particularly the engineering group, has worked closely with, among others, MasterCard's Integrated Processing Systems Department ("IPS") and Network Services Department ("NS").

18. With the importance of information security to MasterCard and the growth of cyber-attacks over the past several years, MasterCard has increased the size and scope of its global Information Security Department.

19. In 2013, Dennings and Fusselman were senior managers in MasterCard's Information Security Department. Among their responsibilities were to manage MasterCard's Information Security Department, sequence and carry out the initiatives needed to secure and protect data, identify other key managers and employees for promotion, identify managers and employees for hire and coordinate responsibilities with IPS and NS.

20. MasterCard had paid for Dennings to obtain a college degree and training when it promoted him to be its CISO in December 2012.

21. Fusselman reported directly to Dennings. He oversaw the engineering group, the largest and most technical unit within the Information Security Department and coordinated activities with MasterCard's IPS and NS. Fusselman also assisted Dennings in carrying out the initiatives needed to secure and protect data and identify other key managers and employees for promotion and hire.

The Contractual Restrictions

22. Both Dennings and Fusselman were subject to post-employment restrictions that protected MasterCard against improper disclosure of its confidential information and solicitation of its employees.

23. On April 4, 2012, in consideration of participating in MasterCard's Long Term Incentive Compensation Plan, Dennings entered into the Non-Competition Agreement with MasterCard.

24. On March 18, 2013, Fusselman, in consideration of participating in MasterCard's Long Term Incentive Compensation Plan also entered into the Non-Competition Agreement with MasterCard.

25. Section 2 of the Non-Competition Agreement prohibits Dennings for twenty-four (24) months and Fusselman for twelve (12) months following the termination of their respective employment at MasterCard from soliciting MasterCard employees or assisting any other person to solicit MasterCard employees. Denning's non-solicitation agreement provides:

2. Non-Solicitation. During the term of my employment and *for a period of twenty-four (24) months following the termination of my employment* for any reason, *I will not, nor will I assist any other person to, directly or indirectly, (a) solicit, induce, recruit or encourage any other employee, agent, consultant or representative to leave the service of [MasterCard] for any reason, or (b) solicit or induce any customer, supplier or other person with whom [MasterCard] is engaged in business, or to my knowledge, is planning or proposing to engage in business, to limit, forgo, divert to another, terminate or reduce any commercial relationship or prospective commercial relationship with [MasterCard] or cease to accept or issue their products.*

Emphasis added.

26. Section 3 of the Non-Competition Agreement prohibits each of the Former Managers from disclosing to NIKE confidential information of MasterCard, including, for example, the names, compensation, performance and capabilities of MasterCard's managers and employees. Section 3 provides in relevant part:

3. Non-Disclosure of Confidential Information. Both during and after my employment, I shall not directly or indirectly use or disclose Confidential Information (as hereafter defined), for so long as it shall remain Confidential Information . . .
"Confidential Information" is information generated by or entrusted to me or to which I gain access during my employment with [MasterCard], whether such information is in writing, in electronic form, or conveyed orally, that is of a confidential,

competitively sensitive, proprietary and/or secret character and is not generally available to the public. . . .

The names, compensation, performance and capabilities of MasterCard managers and employees who would be useful to NIKE in building its Information Security department were not generally available to the public.

27. Pursuant to Section 5 of the Non-Competition Agreement, each of the Former Managers agreed that, in addition to other remedies, MasterCard is entitled to an injunction to prevent breaches of the Non-Competition Agreement.

28. The Former Managers further agreed that, among other things, a violation by them of the Non-Competition Agreement would require them to return exercised stock options and previously delivered stock awards. Thus, Section 8 of the Non-Competition Agreement provides:

I acknowledge and agree, that if I violate any provision of this agreement, in addition to any other remedy available to the Company or an Affiliated Employer, including that in paragraphs 5, 6 and 7 above, I shall repay to the Company or an Affiliated Employer the gross amount of: . . . (i) any gain realized from a stock option exercised during the one year period prior to the date of my violation of any provision of this agreement, valued as of the date exercised; and (ii) the value of the last stock Award (other than stock options) that vested prior to violation of any provision of this agreement, valued as of the date of vesting.

NIKE's and the Former Managers' Scheme

29. As of May 2013, Dennings was MasterCard's CISO. As CISO, Dennings was the most senior manager in MasterCard's Information Security Department.

30. Dennings was privy to the organizational structure of MasterCard's Information Security Department, including but not limited to the managers and

employees, their expertise, their compensation, their capabilities and their performance as managers and employees.

31. In addition, as CISO, Dennings was privy to other confidential information of MasterCard including, but not limited to, the compensation, capabilities and performance of managers and employees of other Departments within MasterCard which worked closely with the Information Security Department, such as IPS and NS.

32. Prior to his departure, Dennings prepared a confidential report on, among other things, retention and development of key talent in MasterCard's Information Security Department. In his report, Dennings identified eight "key talent" employees as "flight risks," including Fusselman, Ron Yount ("Yount"), and Lisa Rachel ("Rachel").

33. All of the foregoing information was confidential to MasterCard and maintained as confidential by MasterCard.

34. On or about May 28, 2013, Dennings resigned from MasterCard to accept a position with NIKE as its CISO.

35. Upon information and belief, at or prior to his hiring by NIKE, Dennings disclosed to NIKE the restrictive covenants he had with MasterCard, including but not limited to sections 2, 3, 5 and 8 of the Non-Competition Agreement.

36. Upon information and belief, Dennings' responsibilities as NIKE's CISO has included: (i) building an information security department within NIKE; (ii) hiring talent for NIKE's information security department and those departments that work closely with the information security department, and (iii) approving all hires within NIKE's information security department.

37. At the time of his voluntary resignation from MasterCard, Dennings informed MasterCard, among other things, that: (i) he was leaving to build a new life for himself in a new location working for NIKE, (ii) NIKE had offered him the opportunity to build a new information security department, and (iii) he was aware of, and would adhere to, his non-solicitation and confidentiality obligations to MasterCard.

38. These were blatant falsehoods. Promptly after leaving MasterCard's employ in O'Fallon, Missouri and relocating to Portland, Oregon, Dennings – induced by NIKE – targeted and started soliciting MasterCard's managers and employees in MasterCard's Information Security Department and in related departments for hire by NIKE in violation of his non-solicit agreement with, and oral representations to, MasterCard.

39. In total disregard of their restrictive covenants with MasterCard, which were known to NIKE, defendants schemed to solicit from MasterCard key talent and other qualified or experienced managers and members of MasterCard's Information Security Department and related departments.

40. Upon information and belief, the Former Managers and NIKE entered into the scheme specifically because the talent in this developing area was limited and their identities were not well known. Defendants found it more expedient to use the confidential information the Former Managers learned while employed by MasterCard and to breach their contractual non-solicitation obligations to MasterCard in order to solicit new managers and employees for NIKE's emerging information security department than independently to identify and recruit such personnel.

A. Ryan Fusselman

41. The first manager solicited by Dennings and NIKE was Fusselman.

42. At MasterCard, Fusselman had been a direct report to Dennings. Fusselman was the Senior Business Leader in MasterCard's Information Security Department, in charge of Information Security Engineering for MasterCard.

43. In his managerial role with MasterCard, Fusselman was privy to MasterCard's confidential information including, but not limited to, the organizational structure of MasterCard's Information Security Department, including its other managers and employees, their expertise, their compensation, their capabilities and their performance.

44. In addition, as Senior Business Leader, Fusselman was privy to the same or similar confidential information for other departments within MasterCard with which Fusselman's Information Security Engineering group coordinated activities, including IPS and NS.

45. In a confidential report to MasterCard, Dennings had identified Fusselman as a key talent, whose "skills [are] in demand" and as an experienced leader.

46. Dennings and NIKE agreed that Fusselman was critical to begin NIKE's efforts to build its own information security department.

47. In connection with the solicitation of Fusselman, Dennings disclosed to NIKE, upon information and belief, confidential compensation and employee performance evaluation information concerning Fusselman – information that Dennings had learned solely because of his role as CISO at MasterCard.

48. Based on Dennings' solicitation and with NIKE's active assistance and interference, Fusselman resigned from MasterCard, effective October 11, 2013, and joined NIKE in Portland, Oregon.

49. Fusselman represented to MasterCard that he was accepting a job with an aerospace company in California where he would be building an information security department. Fusselman also said that the aerospace company would be paying him a “significant” sign-on bonus and higher salary. He further communicated this misinformation to a number of managers and employees at MasterCard.

50. Fusselman’s statements to MasterCard were false and made in an effort to hide his unlawful solicitation by Dennings and NIKE.

51. Upon information and belief, at or prior to his hiring by NIKE, Fusselman disclosed to NIKE the restrictive covenants he had with MasterCard, including but not limited to sections 2, 3, 5 and 8 of the Non-Competition Agreement.

B. Lisa Rachel

52. Rachel managed MasterCard’s security systems integration team in the Information Security Department. She had reported directly to Fusselman.

53. In his confidential report to MasterCard, Dennings had identified Rachel as a key talent who was a “high flight risk” and, therefore, susceptible of being successfully solicited.

54. Upon information and belief, based on Dennings’ and Fusselman’s solicitation, with NIKE’s active assistance and interference, on Friday, March 21, 2014, Rachel resigned from MasterCard, effective immediately.

55. Rachel did not give MasterCard any notice of her resignation.

56. Rachel did not disclose to MasterCard the reasons for her resignation or where she would be employed.

57. On the following Monday, March 24, 2014, a NIKE switchboard operator informed a MasterCard employee that Rachel’s telephone had not “yet” been set

up. Rachel's LinkedIn page indicates she has been employed by NIKE in Portland, Oregon since March 2014.

58. Shortly thereafter, Dennings had a conversation with a MasterCard employee where he stated falsely that he did not know Rachel had joined NIKE.

C. Steven Templeton ("Templeton")

59. Templeton was a Business Leader, who managed a team of developers in MasterCard's IPS Department. Templeton's team in IPS was responsible for, among other things, developing security specific code for banks and credit unions with which MasterCard partnered.

60. Developing and writing security specific code, and managing a team of code writers, is a highly sought after talent that is in short supply.

61. Prior to becoming a manager in IPS, Templeton had worked for the Information Security Department.

62. IPS considered Templeton to be of "high potential." In their managerial roles at MasterCard, Dennings and Fusselman became knowledgeable about Templeton's performance and capabilities.

63. Upon information and belief, based on Dennings and Fusselman's solicitation, with NIKE's active assistance and interference, Templeton resigned, effective April 4, 2014, to become a manager at NIKE

64. Templeton failed to disclose that NIKE, Dennings and Fusselman had solicited him to work for NIKE.

65. On or about April 4, 2014, MasterCard wrote to Dennings to demand that he "immediately refrain from soliciting any MasterCard employees" in

violation of Paragraph 2 of the Non-Competition Agreement, that he provide written assurances that he did not recruit MasterCard employees and that he “comply with all the provisions of the [Non-Competition] Agreement.”

66. NIKE, not Dennings, responded. It wrote, among other things, that Dennings “understands his commitments to MasterCard,” “has not recruited or solicited any former MasterCard employees . . . [and] [r]est assured that neither NIKE nor Mr. Dennings has any interest or intention of interfering with MasterCard’s business now or in the future.”

67. NIKE’s statements were false and intended to, and did induce MasterCard to forbear from further action.

68. Commencing on or about April 7, 2014, Templeton commenced employment with NIKE.

69. In continuing violation of their restrictive covenants and contractual obligations, over the course of the six months after April 7, 2014, Dennings and Fusselman, with the active assistance and interference from NIKE, solicited at least five additional managers and employees from MasterCard including, but not limited to, Christopher Guthrie (“Guthrie”), Jennifer Watson, and her husband James Watson, Yount and Matt Livingston (“Livingston”).

70. Upon information and belief, as part of their illegal scheme, defendants coached the managers and employees who received offers from NIKE not to disclose to MasterCard that they had been solicited from MasterCard and encouraged to, and intended to, join NIKE, including, where appropriate, to lie to MasterCard about their future plans or to stop working for MasterCard a short period of time before “officially”

accepting an offer of employment from NIKE that each had been promised before quitting. In addition, upon information and belief, each of the solicited managers and employees was instructed to communicate with each other using their personal social media accounts, such as LinkedIn, and personal e-mails and cell phones and not to use their office emails or office cell phones.

D. Chris Guthrie

71. Guthrie was a highly regarded and experienced information security engineer in MasterCard's Information Security Department. He had reported to Fusselman.

72. Upon information and belief, based on Dennings' and Fusselman's solicitation, with the active assistance and interference from NIKE, on or about May 5, 2014, Guthrie tendered his resignation from MasterCard, effective May 16, 2014.

73. Guthrie told MasterCard that he had accepted a job closer to his home in Missouri because he wanted a shorter commute and reduced hours.

74. In response, MasterCard offered Guthrie the opportunity to work from home. Guthrie declined MasterCard's offer.

75. Guthrie's reason for leaving MasterCard was a lie and part of the unlawful scheme concocted by the Former Managers and NIKE.

76. MasterCard learned that Guthrie had joined NIKE in Portland, Oregon within one month after he left MasterCard, where he reported to Fusselman and Dennings.

E. Jennifer Watson and James Watson

77. Jennifer Watson was a highly regarded and experienced employee, who worked in MasterCard's Information Security Department.

78. Among her other responsibilities, Jennifer Watson worked on a number of sensitive projects for the Information Security Department. Over the course of her 14 years with MasterCard, Jennifer Watson received positive reviews from her managers, who included Dennings and Fusselman.

79. Upon information and belief, based on Dennings' and Fusselman's solicitation, with the active assistance and interference from NIKE, on or about June 17, 2014, Jennifer Watson tendered her resignation from MasterCard, effective at the end of that week.

80. Jennifer Watson claimed that she was resigning to relax and to focus on her family and health.

81. Jennifer Watson's reason for leaving MasterCard was a lie and part of the unlawful scheme concocted by the Former Managers and NIKE.

82. Jennifer Watson joined NIKE in Portland, Oregon shortly thereafter.

83. James Watson also worked for MasterCard and was Jennifer Watson's spouse.

84. Until July 2014, James Watson was well-regarded and an experienced network engineer at MasterCard who worked for NS.

85. Among James Watson's responsibilities at MasterCard were to give advice on the placement of software security tools within MasterCard's network and to assist in configuring the network.

86. James Watson supported a number of the projects of the Information Security Department at MasterCard, working closely with Fusselman and other members of Fusselman's engineering group.

87. Upon information and belief, based on Dennings' and Fusselman's solicitation, with the active assistance and interference from NIKE, in early July 2014 James Watson resigned his position with MasterCard and joined NIKE.

88. In July 2014, MasterCard learned that Jennifer Watson and James Watson had relocated to Portland, Oregon and had commenced working with NIKE in Oregon.

F. Ronald Yount

89. Yount specialized in information security operations in MasterCard's Information Security Department. He had reported to Fusselman.

90. In his confidential report to MasterCard, Dennings had identified Yount as a key talent, who was a "high flight risk" and, therefore, susceptible of being solicited.

91. Upon information and belief, Fusselman communicated with Yount about opportunities at NIKE using Yount's LinkedIn account and Fusselman's personal email.

92. After accepting a promotion from MasterCard on June 26, 2014, the very next day, June 27, 2014, Yount tendered his resignation to MasterCard, effective immediately.

93. Yount told MasterCard that he had no other job and that he resigned to be accommodating to the needs of his family.

94. Yount's statements to MasterCard were lies and were part of the unlawful scheme concocted by Dennings, Fusselman and NIKE.

95. Upon information and belief, based on Dennings' and Fusselman's solicitation of Yount, with the active assistance and interference from NIKE, on or about June 27, 2014, Yount resigned from MasterCard and went to work for NIKE in Portland, Oregon.

G. Matt Livingston

96. Livingston was one of a handful of security analysts in MasterCard's Information Security Department.

97. Upon information and belief, based on Dennings' and Fusselman's solicitation of Livingston, with the active assistance and interference from NIKE, on September 15, 2014, Livingston tendered his resignation to MasterCard, effective September 30, 2014.

98. At his exit interview, Livingston told MasterCard that he had no other job. Further, Livingston affirmatively stated that he was not leaving to join NIKE and had had no contacts with anyone from NIKE about working there.

99. Livingston's representations to MasterCard were lies and were part of the unlawful scheme concocted by the Former Managers and NIKE.

100. Promptly after September 30, 2014, Livingston relocated and went to work for NIKE in Portland, Oregon.

101. Each of the managers and employees unlawfully solicited and hired by NIKE left MasterCard under unusual and suspicious circumstances. Within a

short period of time, each left his or her home in Missouri to relocate themselves and their families to Oregon, thereby evidencing a broad-based and long-running conspiracy.

102. Defendants improperly have solicited other managers and employees from MasterCard who work in, and support, MasterCard's Information Security Department. Indeed, at a recent convention in Las Vegas, NIKE solicited additional highly qualified managers and employees who work in, and support, MasterCard's Information Security Department.

103. Each such person has been targeted by Dennings and Fusselman in violation of their Non-Competition Agreements. As a result, MasterCard is entitled to injunctive relief as well as damages.

COUNT I
(BREACH OF CONTRACT – AGAINST THE FORMER MANAGERS)

104. MasterCard repeats and realleges the allegations set forth above, as if fully set forth herein.

105. Under Section 3 of the Non-Competition Agreements, the Former Managers were contractually obligated not to disclose Confidential Information, including the names, compensation, performance and capabilities of managers and employees who work in, or support, MasterCard's Information Security Department because such information was proprietary and not known to the general public.

106. Moreover, under Section 2 of the Non-Competition Agreements, the Former Managers were prohibited from soliciting or assisting any other person, including NIKE, in soliciting, directly or indirectly, any manager or employee from MasterCard.

107. The Former Managers breached the Non-Competition Agreements by disclosing the names, compensation, performance and capabilities of MasterCard managers and employees who worked in, or supported, MasterCard's Information Security Department to NIKE to facilitate their solicitation, and by soliciting and assisting NIKE in soliciting, directly or indirectly, MasterCard managers and employees to leave MasterCard.

108. MasterCard has fully performed under the Non-Competition Agreements.

109. As a result of Dennings' and Fusselman's breach of their agreements with MasterCard, MasterCard has been damaged in, among other ways: (i) having to identify, solicit, hire and train replacements for the Former Managers; and (ii) spending increased time to complete projects.

110. As a result, the Former Managers are jointly and severally liable for all damages resulting from breach of contract in an amount to be determined, but estimated at not less than \$5,000,000. In addition, because each of the Former Managers breached and failed to abide by the terms of his non-solicitation agreement with MasterCard, the Court should issue an injunction extending the term of the non-solicitation agreements for the period of time that each of the Former Managers was in breach of and failed to abide by the terms thereof in order to enjoin further breaches of contract.

COUNT II
(TORTIOUS INTERFERENCE WITH
CONTRACT - AGAINST ALL DEFENDANTS)

111. MasterCard repeats and realleges the allegations set forth above, as if fully set forth herein.

112. Defendants had knowledge of the Non-Competition Agreements between MasterCard and the Former Managers.

113. Upon information and belief, Dennings and Fusselman disclosed to NIKE their obligations to MasterCard. Moreover, in April 2014, NIKE's counsel acknowledged to MasterCard that it was aware of their obligations.

114. NIKE and each of the Former Managers, as part of their scheme to build an information security department with MasterCard's qualified managers and employees, intended to induce, and induced, the Former Managers to breach their non-disclosure and non-solicitation obligations to identify, select and solicit managers and employees who worked in, or supported, MasterCard's Information Security Department to join NIKE.

115. Between May 27, 2013, when Dennings left MasterCard's employ, and September 30, 2014 when Livingston left MasterCard's employ, only eleven managers and employees resigned from MasterCard's Information Security Department in O'Fallon, Missouri out of a total of over 135 employees. Of those eleven, eight joined the newly created NIKE information security department and, upon information and belief, relocated to Portland, Oregon.

116. The interference by NIKE and the Former Managers with the Non-Competition Agreements was intentional and deliberate, with malice and conscious disregard of MasterCard's rights.

117. As a result of defendants' tortious interference, MasterCard has suffered, and will continue to suffer, irreparable harm for which a remedy at law would be inadequate, and has incurred, and will incur, other damages to be determined at trial including, but not limited to, having to (i) recruit and train managers and employees to replace the departing managers and employees, (ii) incur increased time and costs to complete projects then underway and planned, and (iii) incur legal fees and costs in connection with the Former Managers' breach of their Non-Competition Agreements with MasterCard.

118. Defendants are jointly and severally liable for all damages resulting from their misconduct in an amount to be determined, but estimated at not less than \$5,000,000, attorneys' fees associated with proving breach of contract, plus an injunction that extends the term of the Former Managers' non-solicitation agreements for the period of time that each of the Former Managers was in breach of and failed to abide by the terms thereof in order to enjoin further misconduct.

COUNT III
(UNFAIR COMPETITION - AGAINST ALL DEFENDANTS)

119. MasterCard repeats and realleges the allegations set forth above, as if fully set forth herein.

120. MasterCard and NIKE are in direct competition for qualified managers and employees in the important area of information security.

121. In 2013 and 2014, MasterCard possessed significant advantages over NIKE in the area of information security. First, MasterCard possessed highly qualified and skilled managers and employees who worked in, and supported, its Information Security Department. Second, MasterCard possessed the bargained-for right to prevent Dennings and Fusselman from soliciting, or even encouraging the solicitation, of MasterCard's managers and employees. Third, MasterCard devoted substantial resources to training its managers and employees in the area of information security, including but not limited to disclosing to them its proprietary and internal processes.

122. By contrast, NIKE wanted to develop an information security department quickly by targeting and hiring highly-regarded managers and employees who worked in, and supported, MasterCard's established Information Security Department through intentional wrongful conduct including, but not limited to, improperly using MasterCard's Confidential Information and undermining MasterCard's contractual and common law rights.

123. Moreover, to disguise their blatant disregard for MasterCard's contractual and common law rights, defendants intentionally and wrongfully caused (i) some or all of NIKE's new hires from MasterCard's Information Security Department and related departments to lie to MasterCard about the reasons for resigning and their future plans and (ii) NIKE to provide knowingly false information to MasterCard about some of the new hires.

124. Defendants also have misappropriated MasterCard's skills, expenditures and labors in hiring key MasterCard managers and employees who worked in, and supported, MasterCard's Information Security Department.

125. As a result of defendants' unfair competition, defendants are jointly and severally liable for all damages resulting from their misconduct in an amount to be determined, but estimated at not less than \$5,000,000, attorneys' fees associated with proving breach of contract, plus an injunction that extends the term of the Former Managers' non-solicitation agreements for the period of time that each of the Former Managers was in breach of and failed to abide by the terms thereof in order to enjoin further misconduct.

WHEREFORE, MasterCard demands judgment in its favor and against defendants as follows:

- (i) On Count I, against the Former Managers, jointly and severally, in an amount not less than \$5 million, injunctive relief, and prejudgment interest;
- (ii) On Count II, against defendants, jointly and severally, in an amount not less than \$5 million, plus attorneys' fees, injunctive relief, and prejudgment interest;
- (iii) On Count III, against defendants, jointly and severally, in an amount not less than \$5 million, plus attorneys' fees, injunctive relief, and prejudgment interest;
- (iv) Awarding costs and attorneys' fees in favor of MasterCard;
- (v) Granting such other or further relief as the Court may deem just and proper in the circumstances.

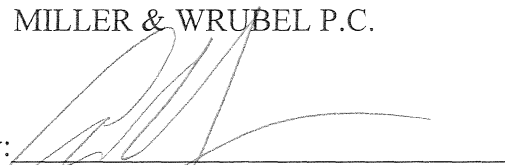
DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, plaintiff demands a jury trial on all issues so triable.

Dated: January 7, 2015

MILLER & WRUBEL P.C.

By:



Martin D. Edel

medel@mw-law.com

Adam J. Safer

asafer@mw-law.com

570 Lexington Avenue

New York, New York 10022

(212) 336-3500

Attorneys for Plaintiff

MasterCard International Incorporated