

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

FILED  
2015 MAR 30 AM 10:56

VELOCITY SOLUTIONS, INC. and INTELLIGENT  
LIMIT SYSTEM, LLC;

BY \_\_\_\_\_  
NEW HANOVER COUNTY, C.S.C.

Plaintiffs,

v.

BSG, LLC d/b/a BSG FINANCIAL, LLC and d/b/a  
BANK STRATEGY GROUP; HOGHAUG  
CONSULTING, LLC; and ERIK M. HOGHAUG,  
individually,

Defendants.

**COMPLAINT**

**(JURY TRIAL REQUESTED)**

Plaintiffs, complaining of the acts of Defendants, allege and state that:

**PARTIES, JURISDICTION, and VENUE**

1. Plaintiff VELOCITY SOLUTIONS, INC. (hereinafter referred to as "VELOCITY") is a North Carolina corporation and has a place of business located in New Hanover County, North Carolina.
2. Plaintiff INTELLIGENT LIMIT SYSTEM, LLC (hereinafter referred to as "ILS") is a North Carolina limited liability company and has a place of business located in New Hanover County, North Carolina.
3. Plaintiffs VELOCITY and ILS are in this Complaint sometimes collectively referred to as the "Plaintiffs".
4. Defendant BSG, LLC (hereinafter referred to as "BSG") is a Kentucky limited liability company with its principal office being located in Jefferson County, Kentucky, and which conducts business under the names BSG FINANCIAL, LLC and BUSINESS STRATEGY GROUP.
5. Defendant HOGHAUG CONSULTING, LLC (hereinafter referred to as "HC") is a Texas limited liability company with its principal office being located in Hays County, Texas.
6. Defendant ERIK M. HOGHAUG (hereinafter referred to as "HOGHAUG") is an individual and resident of Hays County, Texas.
7. Defendants BSG, HC, and HOGHAUG are in this Complaint sometimes collectively referred to as the "Defendants". The wrongful actions of Defendant HOGHAUG and Defendant HC alleged herein were committed

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CLERK OF SUPERIOR COURT  
NEW HANOVER COUNTY  
BY: *M. Kim Olinger*  
Deputy Clerk of Superior Court

within the course and scope of their engagement with Defendant BSG. Liability for those actions is therefore properly imputed to BSG under the *respondeat superior* doctrine.

8. Subject matter jurisdiction over this cause is conferred upon and vested in this Court under and by virtue of N.C. Gen Stat. §§ 7A-240 and 7A-243.

9. This Court has personal jurisdiction over the Defendants pursuant to N.C. Gen. Stat. § 1-75.4, inasmuch as the contract at issue in the instant case was to be performed in part in North Carolina or Defendants otherwise have substantial contacts with the State of North Carolina. The exercise of personal jurisdiction over the Defendants is consistent with traditional notions of fair play and substantial justice.

10. Venue is proper.

#### **FACTS and BACKGROUND**

11. The allegations of paragraphs 1-10 of this Complaint are re-alleged and incorporated by reference as if set forth fully herein.

12. ILS is a wholly owned subsidiary of VELOCITY. VELOCITY and ILS are collectively in the business of providing overdraft program risk management and associated overdraft consulting services and software solutions for financial institutions (the "Overdraft Consulting and Software Solution Business"). VELOCITY and ILS have a nationwide customer base.

13. There are only a handful of companies in the United States that have as a primary focus the Overdraft Consulting and Software Solution Business. One of those companies is Defendant BSG.

14. Defendant HOGHAUG is a former employee of VELOCITY.

15. During his employment with VELOCITY, Defendant HOGHAUG worked as a Managing Director and Consultant. In that position, he acquired intimate knowledge of confidential and proprietary information relating to the business practices of VELOCITY and ILS in the Overdraft Consulting and Software Solution Business. This included, without limitation, client listings, contact lists for clients and prospective clients, prospective client recruitment efforts, existing client contract terms and expiration dates, product pricing lists and information, contract negotiation and pricing strategies, marketing approaches and methods, and the functional and aesthetic attributes of the Plaintiffs' software solutions sold to financial institutions as part of the Overdraft Consulting and Software Solution Business.

16. While employed by VELOCITY, Defendant HOGHAUG was one of three primary members of a team tasked with developing dynamic overdraft limit software architecture, proprietary graphical user interface (GUI), dynamic overdraft limit scoring engine functionality, and software communication strategies. In that capacity, he acquired special familiarity with the overall client experience in utilizing the dynamic overdraft limit software (i.e., knowledge and experience protected under confidentiality and nondisclosure obligations contained in client contracts). He also acquired intimate knowledge of VELOCITY's particularized data points input to the software scoring engine and utilized in the calculation of dynamic overdraft limits for account holders, the specific coefficients applied in the weighting of data points within the scoring engine, the default settings for weighting of those data points gained from experience with numerous clients, and the particularized communication strategies employed within the software solution including the specific triggers that initiate specific communications within the software (i.e., knowledge and experience protected under confidentiality and nondisclosure obligations contained in HOGHAUG's employment agreement with VELOCITY).

17. VELOCITY's proprietary assortment of data points input to the software scoring engine and utilized in the calculation of dynamic overdraft limits for account holders, the specific coefficients applied in the weighting of data points within the scoring engine, the default settings for weighting of those data points gained from experience with numerous clients and the particularized communication strategies employed within the software solution including the specific triggers that initiate specific communications make the VELOCITY software more effective than its industry competitors' software products, including without limitation the few available dynamic overdraft limit alternatives on the market and the dynamic overdraft limit solution offered by Defendant BSG before May 2012.

18. To safeguard its confidential and proprietary information, VELOCITY requires as a condition of employment that all employees with access to such information enter into confidentiality agreements. As a precondition to his employment with VELOCITY, Defendant HOGHAUG was subject to a September 2, 2008 Employment Agreement (the "VELOCITY Employment Agreement") with VELOCITY (formerly known as Image Products, Inc.) containing a confidentiality provision and separate nondisclosure provision that by their terms survived termination of Defendant HOGHAUG's employment with VELOCITY, and non-competition and non-solicitation provisions that by their terms survived for eighteen (18) months following the termination of Defendant HOGHAUG's employment relationship with VELOCITY.

19. In or about early July 2012, Defendant HOGHAUG received his final paycheck while in the employ of VELOCITY, the final paycheck covering the pay period ending June 30, 2012.

20. Upon information and belief, beginning in or about late May 2012 and prior to the termination of Defendant HOGHAUG's employment with VELOCITY, Defendant BSG communicated with and eventually engaged Defendant HOGHAUG, individually and through his consulting firm, Defendant HC, to assist Defendant BSG in the development of a financial institution overdraft management software solution (the "Competitive Software") and marketing strategy for the same. Although Defendant BSG had previously been involved in the Overdraft and Software Solution Business, it was not materially successful in marketing and selling a dynamic overdraft limit software solution within the Overdraft and Software Solution Business marketplace from 2009, when VELOCITY and ILS entered the Overdraft Consulting and Software Solution Business, until it engaged Defendant HOGHAUG at the end of his tenure with VELOCITY, bringing with him his intimate knowledge of the Plaintiffs' proprietary information relating to the confidential and proprietary business practices of VELOCITY and ILS in the Overdraft Consulting and Software Solution Business. This proprietary information included, without limitation, client listings, contact lists for clients and prospective clients, prospective client recruitment efforts, existing client contract terms and expiration dates, the wording of client contracts, product pricing lists and information, contract negotiation and pricing strategies, marketing approaches and methods, product sales successes and sales volumes, implementation management strategies, processes for handling client compliance and performance reviews, the manner in which Plaintiffs prepared revenue lift estimates, and the functional and aesthetic attributes of the Plaintiffs' software solutions sold to financial institutions as part of the Overdraft Consulting and Software Solution Business.

21. Since Defendant Hoghaug's engagement by Defendant BSG, BSG has actively marketed the Competitive Software to financial institutions nationwide. During this same period, upon information and belief, BSG made changes to its website to better promote the Competitive Software on its website, the changes made to the website specifically promoting one or more aspects of the Competitive Software conspicuously similar to the Plaintiffs' software solution and which had not been touted in prior iterations of Defendant BSG's website marketing of its overdraft solution.

22. Upon information and belief, Defendant HOGHAUG, armed with the Plaintiffs' client listings, contact lists for clients and prospective clients, prospective client recruitment efforts, existing client contract terms

and expiration dates, product pricing lists and information, contract negotiation and pricing strategies, and marketing approaches and methods, was involved in the presentation and pitching of the Competitive Software on behalf of Defendant BSG to various financial institutions, including several institutions with which VELOCITY or its affiliates had existing relationships during Defendant HOGHAUG's employment with VELOCITY.

23. Several of these institutions notified VELOCITY that they decided to buy the Competitive Software from Defendant BSG because BSG's pricing was better, typically approximately 25% better.

24. Upon information and belief, Defendant BSG was aware of Defendant HOGHAUG's contractual relationship with VELOCITY, including without limitation the VELOCITY Employment Agreement and its constituent provisions. Further, pursuant to the VELOCITY Employment Agreement, Defendant HOGHAUG owes VELOCITY an obligation to inform any person or entity employing Employee after termination of the VELOCITY Employment Agreement or evidencing an intention of employing Employee after termination of the VELOCITY Employment Agreement of the existence of the VELOCITY Employment Agreement and its non-competition and non-solicitation provisions.

25. Upon information and belief, in assisting Defendant BSG in the development of the Competitive Software and the pricing and marketing of the Competitive Software, Defendant HOGHAUG, individually and through his consulting firm Defendant HC, disclosed and exploited for pecuniary gain confidential and proprietary information belonging to the Plaintiffs that fell within the ambit of the confidentiality and non-disclosure provisions of the VELOCITY Employment Agreement.

26. Upon information and belief, Defendant BSG specifically engaged Defendant HOGHAUG and Defendant HC due to Defendant HOGHAUG's specific knowledge of the confidential and proprietary business practices and trade secrets of VELOCITY and ILS in the Overdraft Consulting and Software Solution Business, including without limitation, proprietary algorithms, client contact lists, product pricing, consulting and marketing methods, and software architecture upon which their proprietary software and solutions are based.

27. Upon information and belief, Defendant BSG further specifically engaged Defendant HOGHAUG and Defendant HC to exploit Defendant HOGHAUG's specific knowledge of the confidential and proprietary business practices of VELOCITY and ILS in the Overdraft Consulting and Software Solution Business for the purpose of enhancing Defendant BSG's own product line in the Overdraft Consulting and Software Solution

Business, thereby improving BSG's market share.

28. Upon information and belief, Defendant HOGHAUG has been in direct contact with financial institutions that were clients or prospective client relationships of the Plaintiffs during Defendant HOGHAUG's employment with VELOCITY for the purpose of soliciting business for Defendant BSG.

29. Upon information and belief, Defendant HOGHAUG boasts of his own intimate involvement in the development of the flagship ILS overdraft management software solution as a selling point for financial institutions that he is trying to convert to being clientele of Defendant BSG.

**FIRST CLAIM FOR RELIEF**  
**(Breach of Employment Contract)**

30. The allegations of paragraphs 1-30 of this Complaint are re-alleged and incorporated by reference as if set forth fully herein.

31. As a precondition to employment with VELOCITY, Defendant HOGHAUG willingly subjected himself to the terms of the VELOCITY Employment Agreement.

32. Defendant HOGHAUG breached the VELOCITY Employment Agreement by disclosing to an unauthorized third party, and exploiting for his own pecuniary gain the confidential and proprietary information of VELOCITY.

33. Upon information and belief, Defendant HOGHAUG's engagement with Defendant BSG is so similar to his employment with VELOCITY, and the information Defendant HOGHAUG acquired during his employment with VELOCITY is so valuable to Defendant BSG, that Defendant HOGHAUG has inevitably disclosed the confidential and proprietary information of VELOCITY to Defendant BSG.

34. Defendant HOGHAUG further breached the VELOCITY Employment Agreement by specifically taking action from June 2012 through December 2013 to divert business from VELOCITY, directly solicit customers and prospective customer relationships of VELOCITY, and influence or attempt to influence VELOCITY customers or VELOCITY prospective customer relationships existing during Defendant HOGHAUG's employment with VELOCITY to cease doing business with VELOCITY, and more specifically to cease doing business with VELOCITY in favor of doing business with Defendant BSG.

35. As a direct result of Defendant HOGHAUG's breach of the VELOCITY Employment Agreement, VELOCITY and ILS have, jointly and severally, sustained, and are entitled to recover from Hoghaug, damages in



excess of Twenty-Five Thousand and 00/100 Dollars (\$25,000).

36. If not permanently enjoined, unauthorized disclosure or use of the confidential and proprietary information of VELOCITY, whether by HOGHAUG, HC, or BSG, will also cause Plaintiffs permanent and irreparable harm, in that Plaintiffs' respective Overdraft Consulting and Software Solution Businesses will forever lose the competitive advantages afforded by the now unlawfully used and disclosed confidential and proprietary information of VELOCITY, thereby causing Plaintiffs to lose clients, market share, and business viability.

37. Plaintiffs have no adequate remedy at law to address the unlawful use or disclosure of their confidential and proprietary information.

**SECOND CLAIM FOR RELIEF**  
**(Unfair and Deceptive Trade Practices – All Defendants)**

38. The allegations of paragraphs 1-37 of this Complaint are re-alleged and incorporated by reference as if set forth fully herein.

39. At all relevant times, Defendants were engaged in commerce in the State of North Carolina.

40. Defendants' actions in the disclosure and unauthorized use of Plaintiffs' confidential and valuable proprietary information were in or affecting commerce and constitute unfair or deceptive trade practices, which are proscribed by Chapter 75 of the North Carolina General Statutes.

41. The Defendants' unfair and deceptive trade practices have damaged Plaintiffs, respectively, in an amount in excess of \$25,000, and Plaintiffs, respectively, are entitled to have their damages trebled and to recover the attorneys' fees incurred in this action.

**THIRD CLAIM FOR RELIEF**  
**(Punitive Damages)**

42. The allegations of paragraphs 1-41 of this Complaint are re-alleged and incorporated by reference as if set forth fully herein.

43. By reason of the willful, wanton, and intentional nature of Defendants' conduct, as more fully described above, Plaintiffs are entitled to recover punitive damages in an amount to be determined by the trier of fact, but in no event less than \$25,000.

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In a prior action (New Hanover County, 14 CVS 557), Plaintiffs and others asserted a claim for misappropriation of trade secrets against Defendants. Plaintiffs have since dismissed that action, without prejudice. The Plaintiffs' earlier misappropriation claim is presently the subject of a motion for attorney's fees pending before the Honorable James L. Gale, Chief Business Court Judge, which Plaintiffs regard to be unwarranted. Plaintiffs have not re-asserted that claim in the instant Complaint, out of deference to the Court's authority over the pending motion and out of an appreciation that, based on Defendants' prior position, the inclusion of the claim in this Complaint would inevitably draw the same motion from Defendants, triggering another round of briefing. Accordingly, Plaintiffs respectfully reserve the right to amend as a matter of right or seek leave to amend, to assert a claim for violation of the North Carolina Trade Secrets Protection Act at the appropriate time.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray the Court that:

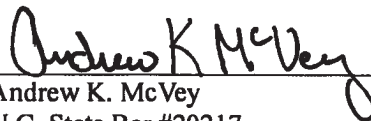
1. Judgment be entered against each of the Defendants in an amount in excess of \$25,000, the exact amount to be established at the trial of this matter;
2. Plaintiffs be awarded pre- and post-judgment interest at the prevailing legal rate;
3. Punitive damages be awarded against Defendants;
4. Damages awarded be trebled pursuant to N.C.G.S. § 75-16;
5. Plaintiffs recover the costs and expenses incurred in this action, including attorneys' fees, from Defendants, pursuant to N.C.G.S. § 75-16.1 or other applicable law;
6. Defendant HOGHAUG be permanently enjoined from using Plaintiffs' confidential and valuable proprietary information or otherwise breaching the terms of his employment agreement with VELOCITY;
7. Defendant BSG be permanently enjoined from continuing to market and sell the Competitive Software and other products and services borne of confidential and valuable proprietary information of Plaintiffs;
8. That a jury trial be had as to all issues so triable; and
9. Plaintiffs recover any further relief that the Court deems appropriate.



This the 20th day of March, 2015.

**MURCHISON, TAYLOR & GIBSON, PLLC**

*Attorneys for the Plaintiffs*

A handwritten signature in black ink, reading "Andrew K. McVey", is written over a horizontal line.

Andrew K. McVey

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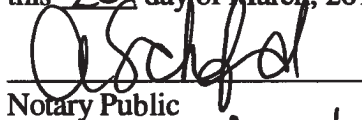
STATE OF FLORIDA

COUNTY OF BROWARD

Christopher J. Leonard, being duly sworn, deposes and says that he is the Chief Executive Officer of Plaintiffs Velocity Solutions, Inc. and Intelligent Limit System, LLC in the foregoing action, that he has read the foregoing Complaint and knows the contents thereof, that the same is true of his own knowledge, except as to those matters and things therein stated on information and belief, and as to those, he believes them to be true.

  
Christopher J. Leonard

Sworn to and subscribed before me  
this 20 day of March, 2015.

  
Notary Public

Printed Name: Angelica Schofield

My Commission Expires:

2/25/18

(seal)

