

1
2
3
4
5
6
7
8

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JB Carter Enterprises, LLC dba ATM
Merchant Systems,

Plaintiff

v.

Elavon, Inc.,

Defendant

Case No.: 2:18-cv-00394-JAD-NJK

**Order Granting Defendant's Motion for
Summary Judgment, Denying Plaintiff's
Motion for Partial Summary Judgment,
Granting Motions to Seal, and Closing this
Case**

[ECF Nos. 58, 59, 62, 64, 75]

9
10
11
12
13
14
15

In response to large-scale data breaches and increased counterfeiting, the debit- and credit-card industry adopted a technology called EMV to authenticate chip-card transactions.

Plaintiff JB Carter Enterprises, LLC dba ATM Merchant Systems (ATMMS) purchased Equinox L5200 terminals from its payment processor, defendant Elavon, Inc., in preparation for the shift. Elavon promised that these terminals were EMV-ready, but they were unable to support PIN-debit EMV transactions by the time liability for disputed transactions shifted from card-issuers to merchants.

16
17
18
19
20
21
22
23

ATMMS sues for breach of contract, breach of the implied covenant of good faith and fair dealing, fraud, negligent misrepresentation, international interference with business relations, and intentional interference with contractual relations. The parties filed cross-motions for summary judgment, and Elavon filed motions to seal proprietary business information in the briefing. Because the so-called Master Agreement between ATMMS and Elavon bars the alleged oral agreement to be EMV-compliant by the deadline, I grant summary judgment in favor of Elavon on ATMMS's contract-related claims. I also grant summary judgment in favor

1 of Elavon on ATMMS’s other claims because there is no genuine issue of fact as to elements of
2 each of these claims. And I grant Elavon’s motions to seal.

3 **Background**

4 In April 2011, ATMMS entered into a “Member Service Provider Sales and Service
5 Agreement”—referred to by the parties as the “Master Agreement”—with Elavon.¹ Michael
6 Poggi, ATMMS’s general manager, testified that the purpose of the agreement was for Elavon
7 and ATMMS to perform debit- and credit-card processing services together.² Under the Master
8 Agreement, ATMMS agreed to market “Merchant Services,” which are defined as “[p]ayment
9 device processing services.”³ In turn, “[p]ayment [d]evice” is defined as “any device or method
10 used for the purpose of obtaining credit or debiting a designated account, including a [c]redit
11 [c]ard, [d]ebit [c]ard, and any other financial transaction device or method . . . that is now or
12 hereafter utilized to effect [t]ransactions.”⁴ Schedule C to the agreement includes equipment
13 pricing, including for the Equinox L5200 terminals at issue in this case.⁵

14 The Master Agreement limits liability with a monetary cap on damages and a prohibition
15 of consequential damages.⁶ The agreement’s integration clause provides that the “agreement
16 represents the entire understanding among [ATMMS], Elavon, and [U.S. Bank National
17 Association] with respect to the matters contained herein and, except as provided in this
18 Agreement, it may be amended only by an instrument in writing signed by each of the parties
19

20 ¹ ECF No. 63 at 5.

21 ² ECF No. 60 at 8–9.

22 ³ ECF No. 63 at 6–7.

23 ⁴ *Id.* at 7.

⁵ *Id.* at 20.

⁶ *Id.* at 13.

1 hereto.”⁷ And the choice-of-law-provision requires that the agreement be “governed by and
2 construed in accordance with the laws of the State of Georgia.”⁸

3 In 2012, credit- and debit- card issuers announced that that they would migrate to a new
4 technology called EMV (Europay, Mastercard, Visa).⁹ The technology uses cards embedded
5 with computer chips in order to enhance fraud protection.¹⁰ As part of the transition to EMV,
6 liability for disputed transactions (chargebacks) shifted on October 1, 2015, from the card’s
7 issuing bank to merchants, if the merchant was unable to process EMV transactions.¹¹

8 Elavon told ATMMS to purchase Equinox L5200 terminals, promising that they would
9 be EMV-compliant and EMV-enabled.¹² And Elavon made numerous representations that it,
10 and the Equinox L5200 terminal, would be EMV-ready by the crucial shift in liability.¹³ Elavon
11 purchased 197 terminals in reliance on these representations.¹⁴

12 Elavon knew that ATMMS had casino clients that relied on receiving cash back via credit
13 services.¹⁵ Elavon also knew that PIN-debit transactions were “crucial to the application that
14 ATMMS has in the casinos.”¹⁶ But throughout 2014 and 2015, Elavon representatives
15 communicated multiple delays in making the Equinox L5200 terminals ready for EMV
16

17 ⁷ *Id.* at 17.

18 ⁸ *Id.*

19 ⁹ ECF No. 64-2 at 20.

20 ¹⁰ *Id.* at 11.

21 ¹¹ *Id.* at 5–6.

22 ¹² ECF No. 64-2 at 10.

23 ¹³ ECF No. 64-4 at 4, 10–20.

¹⁴ ECF No. 64-2 at 26; ECF No. 64-4 at 38.

¹⁵ ECF No. 64-3 at 14; ECF No. 64-1 at 10.

¹⁶ ECF No. 64-3 at 28.

1 transactions, culminating in an announcement that the terminals would never be EMV-capable.¹⁷
2 Elavon’s 30(b)(6) witness described the continual delays as “moving-target development,”
3 explaining that “when we would give dates, those are target dates; and then based on
4 development and priority, those target dates would shift and then we would communicate that
5 back to ATMMS.”¹⁸

6 By the time of the liability shift, Elavon “could not process an EMV PIN-debit
7 transaction” through the platform used by ATMMS.¹⁹ Elavon sold ATMMS replacement
8 Ingenico isc250 terminals at a discount,²⁰ but, at the time of the filing of these motions, those
9 terminals could not process PIN-debit transactions through the platform used by ATMMS.²¹
10 Elavon was aware that ATMMS was losing business due to the delays, and that ATMMS’s
11 ability to bid new business was impacted by the delays.²²

12 Discussion

13 I. Cross-motions for summary judgment [ECF Nos. 59, 62, 64]

14 Elavon moves for summary judgment on all of ATMMS’s claims.²³ ATMMS moves for
15 partial summary judgment on its claims for fraud, negligent misrepresentation, intentional
16 interference with contractual relations, and intentional interference with business relations.²⁴

18 ¹⁷ ECF No. 64-4 at 20, 29–30, 35–38.

19 ¹⁸ ECF No. 64-2 at 9.

20 ¹⁹ ECF No. 64-1 at 70.

21 ²⁰ ECF No. 70 at 135.

22 ²¹ See ECF No. 64-1 at 18.

23 ²² ECF No. 64-3 at 33.

24 ²³ ECF No. 59 (redacted motion for summary judgment); ECF No. 62 (sealed motion for
summary judgment).

²⁴ ECF No. 64.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

A. Summary-judgment standard

The principal purpose of the summary-judgment procedure is to isolate and dispose of factually unsupported claims or defenses.²⁵ The moving party bears the initial responsibility of presenting the basis for its motion and identifying the portions of the record or affidavits that demonstrate the absence of a genuine issue of material fact.²⁶ If the moving party satisfies its burden with a properly supported motion, the burden then shifts to the opposing party to present specific facts that show a genuine issue for trial.²⁷

Who bears the burden of proof on the factual issue in question is critical. When the party moving for summary judgment would bear the burden of proof at trial (typically the plaintiff), “it must come forward with evidence [that] would entitle it to a directed verdict if the evidence went uncontroverted at trial.”²⁸ Once the moving party establishes the absence of a genuine issue of fact on each issue material to its case, “the burden then moves to the opposing party, who must present significant probative evidence tending to support its claim or defense.”²⁹ When instead the opposing party would have the burden of proof on a dispositive issue at trial, the moving party (typically the defendant) doesn’t have to produce evidence to negate the opponent’s claim; it merely has to point out the evidence that shows an absence of a genuine material factual

²⁵ *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24 (1986).
²⁶ *Celotex*, 477 U.S. at 323; *Devereaux v. Abbey*, 263 F.3d 1070, 1076 (9th Cir. 2001) (en banc).
²⁷ Fed. R. Civ. P. 56(e); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Auvil v. CBS 60 Minutes*, 67 F.3d 816, 819 (9th Cir. 1995).
²⁸ *C.A.R. Transp. Brokerage Co. v. Darden Rest.*, 213 F.3d 474, 480 (9th Cir. 2000) (quoting *Houghton v. South*, 965 F.2d 1532, 1536 (9th Cir. 1992) (citation and quotations omitted)).
²⁹ *Intel Corp. v. Hartford Accident & Indem. Co.*, 952 F.2d 1551, 1558 (9th Cir. 1991) (citation omitted).

1 issue.³⁰ The movant need only defeat one element of the claim to garner summary judgment on
2 it because “a complete failure of proof concerning an essential element of the nonmoving party’s
3 case necessarily renders all other facts immaterial.”³¹ “When simultaneous cross-motions for
4 summary judgment on the same claim are before the court, the court must consider the
5 appropriate evidentiary material identified and submitted in support of”—and against—“both
6 motions before ruling on each of them.”³²

7 **B. Contract-related claims**

8 Elavon argues that ATMMS’s claims for breach of contract and breach of the implied
9 covenant of good faith and fair dealing fail because an alleged oral agreement to provide EMV-
10 enabled terminals by October 1, 2015, was subject to the Master Agreement’s integration clause
11 and was not supported by consideration.³³ ATMMS responds that the Master Agreement did not
12 contemplate the transition to EMV and that the oral agreement was supported by consideration.³⁴

13 The Master Agreement includes a choice-of-law-provision designating Georgia law.³⁵
14 Under Georgia law, contract interpretation is a matter of law for the court.³⁶ Courts must first
15
16
17

18 ³⁰ See, e.g., *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 885 (1990); *Celotex*, 477 U.S. at 323–
24.

19 ³¹ *Celotex*, 477 U.S. at 322.

20 ³² *Tulalip Tribes of Washington v. Washington*, 783 F.3d 1151, 1156 (9th Cir. 2015) (citing *Fair
Hous. Council of Riverside Cnty., Inc. v. Riverside Two*, 249 F.3d 1132, 1134 (9th Cir. 2001)).

21 ³³ ECF No. 62 at 10–16.

22 ³⁴ ECF No. 71 at 8–9.

23 ³⁵ ECF No. 63 at 17 (“This Agreement shall be governed by and construed in accordance with
the laws of the State of Georgia, without regard to its conflict of law principles.”).

³⁶ *Hall v. Ross*, 616 S.E.2d 145, 147 (Ga. Ct. App. 2005).

1 decide whether the language is clear and unambiguous.³⁷ “If it is, the court simply enforces the
2 contract according to its clear terms; the contract alone is looked to for its meaning.”³⁸

3 Elavon’s 30(b)(6) representative testified that the Master Agreement did not contemplate
4 EMV and did not address the transition to EMV,³⁹ but ATMMS’s own witness admitted that the
5 contract’s purpose was “processing of credit card transactions, both the quasi-cash type -- all
6 types.”⁴⁰ And more importantly, the Master Agreement’s terms encompass a broad array of
7 financial processing. The crucial term, “[p]ayment [d]evice,” is defined as “any device or
8 method used for the purpose of obtaining credit or debiting a designated account, including a
9 [c]redit [c]ard, [d]ebit [c]ard, and any other financial transaction device or method . . . that is
10 now or hereafter utilized to effect [t]ransactions.”⁴¹ The inclusion of the term “hereafter”
11 suggests that the Master Agreement was intended to encompass new forms of financial
12 processing, like EMV. The agreement also included pricing for the Equinox L5200 terminals at
13 issue in this litigation,⁴² further suggesting that the agreement encompasses the subject matter of
14 the alleged oral agreement.

15 Under the terms of the Master Agreement’s integration clause, the contract represented
16 the entire agreement between ATMMS and Elavon, and any subsequent amendments were
17 required to be in writing.⁴³ So, any purported amendment to provide EMV-enabled terminals by

19 ³⁷ *Id.*

20 ³⁸ *Id.* (quoting *Woody’s Steaks, LLC v. Pastoria*, 584 S.E.2d 41, 43 (Ga. Ct. App. 2003)).

21 ³⁹ ECF No. 71-2 at 20, 31.

22 ⁴⁰ ECF No. 77 at 47.

23 ⁴¹ ECF No. 63 at 7.

⁴² *Id.* at 20.

⁴³ *Id.* at 17.

1 the October 1, 2015, transition date was required to be in writing. As no written amendment
2 addressing the transition to EMV was executed, the master agreement bars the alleged oral
3 agreement regarding the transition. I thus grant Elavon’s motion for summary judgment on
4 ATMMS’s breach-of-contract claim.⁴⁴ And because ATMMS’s breach-of-the-implicit-covenant
5 claim is based on the alleged oral contract that is barred under the Master Agreement’s
6 integration clause, I grant summary judgment in favor of Elavon on that claim as well.

7 **C. Fraud and negligent-misrepresentation claims**

8 Elavon argues that ATMMS’s fraud and negligent-misrepresentations claims fail because
9 ATMMS has no evidence that Elavon knowingly made false representations or that Elavon failed
10 to exercise reasonable care in communicating information to ATMMS.⁴⁵ Elavon also argues that
11 the economic-loss doctrine bars ATMMS’s negligent-misrepresentation claim.⁴⁶ ATMMS
12 responds that the economic-loss doctrine does not apply and that it is entitled to summary
13 judgment on the fraud and negligent-misrepresentation claims.⁴⁷

14 **1. Elements of fraud and negligent misrepresentation**

15 In Nevada, negligent misrepresentation and fraudulent misrepresentation both require
16 proof that (1) the defendant supplied false information or made a false representation,⁴⁸ (2) the

18 ⁴⁴ Because I grant summary judgment on this basis, I need not and do not address Elavon’s other
19 argument that the alleged oral agreement was unsupported by consideration.

20 ⁴⁵ ECF No. 62 at 16–18.

21 ⁴⁶ *Id.* at 18–19.

22 ⁴⁷ ECF No. 71 at 9–18; ECF No. 64 at 17–20.

23 ⁴⁸ The tort of negligent misrepresentation “requires an affirmative false statement; a mere
omission will not do[.]” so alleged omissions can be pursued only under the theory of fraudulent
misrepresentation. *See Republic Bank & Trust Co. v. Bear, Stearns & Co., Inc.*, 707 F. Supp. 2d
702, 713–14 (W.D. Ken. 2010) (applying Kentucky law, which, like Nevada, “follows the
Restatement” for negligent misrepresentation).

1 plaintiff justifiably relied on the misrepresentation, and (3) damage to the plaintiff resulting from
2 his reliance.⁴⁹ Negligent misrepresentation also requires proof that the defendant “failed to
3 exercise reasonable care or competence in obtaining or communicating the information.”⁵⁰
4 Fraudulent misrepresentation, on the other hand, also requires proof of the “[d]efendant’s
5 knowledge or belief that the representation is false (or had an insufficient basis for making the
6 misrepresentation)” and “intention to induce plaintiff to act or refrain from acting in reliance
7 upon the misrepresentation.”⁵¹

8 Elavon points to its 30(b)(6) witness’s testimony that the ultimately false representations
9 regarding when it could process EMV transactions were a symptom of “moving-target
10 development,” thus showing an absence of evidence of a knowingly false misrepresentation.⁵²
11 ATMMS responds with evidence that decisions were made within Elavon impacting these
12 moving targets, but the decisions would not be communicated to Elavon employees
13 communicating to customers like ATMMS.⁵³ Although this evidence suggests a genuine issue
14 of material fact with respect to Elavon’s use of reasonable care in communicating target dates to
15 ATMMS, it does not show that Elavon knowingly communicated false target dates to ATMMS.
16 Because ATMMS does not respond with evidence of a genuine issue of material of fact on this

18 ⁴⁹ Compare *Halcrow, Inc. v. Eighth Judicial Dist. Ct.*, 302 P.3d 1148, 1153 (Nev. 2013) (quoting
19 Restatement (Second) of Torts § 552 for the elements of negligent misrepresentation), with
Bulbman, Inc. v. Nev. Bell, 825 P.2d 588, 592 (Nev. 1992) (stating the elements of fraudulent
misrepresentation).

20 ⁵⁰ *Halcrow*, 302 P.3d at 1153.

21 ⁵¹ *Bulbman*, 825 P.2d at 592.

22 ⁵² ECF No. 62 at 17.

23 ⁵³ ECF No. 71 at 11–13. ATMMS also points to deposition testimony by an Elavon witness that
“[o]ur product was never striving to be ready for the EMV deadline.” ECF No. 71-3 at 5. But
this testimony refers to the platform ATMMS decided to use to integrate EMV into its system,
id., and ATMMS had the option to directly integrate to Elavon, *see* ECF No. 70 at 30.

1 necessary element, I grant summary judgment in favor of Elavon on ATMMS’s fraudulent-
2 misrepresentation claim and turn to ATMMS’s negligent-misrepresentation claim.

3 **2. Economic-loss doctrine**

4 The “economic loss doctrine is a rule of judicial creation” under Nevada law that “marks
5 the fundamental boundary between contract law, which is designed to enforce the expectancy
6 interests of the parties, and tort law, which imposes a duty of reasonable care and thereby
7 encourages citizens to avoid causing physical harm to others.”⁵⁴ “[C]utting off tort liability at
8 the point where only economic loss is at stake without accompanying physical injury or property
9 damage provides incentives and disincentives to engage in economic activity or to make it
10 safer.”⁵⁵ “[T]he doctrine primarily functions to bar the recovery of purely monetary losses in
11 certain . . . unintentional tort actions,” including negligent misrepresentation.⁵⁶ “[E]xceptions to
12 the doctrine apply in certain categories of cases when strong countervailing considerations weigh
13 in favor of imposing liability,”⁵⁷ including actions against attorneys and “cases where there is
14 significant risk that the law would not exert significant financial pressures to avoid such
15 negligence.”⁵⁸ In *Halcrow, Inc. v. Eighth Judicial District Court*, the Nevada Supreme Court
16 applied the economic-loss doctrine to a negligent-misrepresentation claim because “contract law

17
18

⁵⁴ *Davis v. Beling*, 278 P.3d 501, 514 (Nev. 2012) (quotation omitted).

19 ⁵⁵ *Terracon Consultants W., Inc. v. Mandalay Resort Grp.*, 206 P.3d 81, 88 (Nev. 2009)
(quotation and alterations omitted).

20 ⁵⁶ *Id.*; *Halcrow*, 302 P.3d at 1154. ATMMS argues that *Halcrow* is limited to claims against
21 design professionals, but *Terracon* recognizes that the doctrine could apply to negligent-
22 misrepresentation claims against others. *Cf. Terracon*, 206 P.3d at 87 (recognizing that courts
have carved out exceptions to the economic-loss doctrine in negligent-misrepresentation cases
against attorneys, accountants, and others).

23 ⁵⁷ *Terracon*, 206 P.3d at 86.

⁵⁸ *Halcrow*, 302 P.3d at 1153 (quotation omitted).

1 is better suited” to resolve such claims in the context of commercial construction projects, where
2 contracts “delineate[] each party’s risks and liabilities.”⁵⁹

3 In deposition, ATMMS’s representative identified only economic damages for processing
4 fees, the cost of the terminals, and future business losses.⁶⁰ So, Elavon shows an absence of
5 evidence of non-economic damages and ATMMS is required to “produce evidence of a genuine
6 dispute of material fact that could satisfy its burden at trial.”⁶¹ Although ATMMS identified
7 “damage to its business reputation” in its Rule 26(a) disclosures, it provides no evidence of these
8 non-economic damages.

9 ATMMS argues that an exception to the economic-loss doctrine should apply here. But,
10 as in *Halcrow*, contract law is better suited to resolve disputes in this context. The economic-
11 loss doctrine serves to incentivize parties to make economic activity safer in cases like this one,
12 where a written amendment to the Master Agreement would have clarified the parties’
13 obligations and expectations for the transition to EMV processing. Had the parties done so, the
14 contract would have “exert[ed] significant financial pressures to avoid . . . negligence.”⁶²
15 Because the economic-loss doctrine bars ATMMS’s negligent-misrepresentation claim, I grant
16 summary judgment in favor of Elavon on that claim.

17 **D. Intentional-interference-with-contractual- and prospective-business-relations**
18 **claims**

19 Elavon argues that ATMMS’s intentional-interference claims must fail because there is
20 no evidence that Elavon intended to disrupt an existing contract or intended to harm ATMMS by

21 ⁵⁹ *Id.*

22 ⁶⁰ ECF No. 60 at 36.

23 ⁶¹ *Sonner v. Schwabe N. Am., Inc.*, 911 F.3d 989, 992 (9th Cir. 2018).

⁶² *Halcrow*, 302 P.3d at 1153 (quotation omitted).

1 preventing a specific prospective business relationship.⁶³ ATMMS responds that Elavon knew
2 of its existing and prospective relationships with casino clients that relied on PIN-debit
3 transactions and that Elavon’s decision to delay EMV PIN-debit processing was intentional
4 conduct designed to harm ATMMS, entitling ATMMS to summary judgment on these claims.⁶⁴

5 Under Nevada law, a claim for intentional interference with contractual relations requires
6 proof of “(1) a valid and existing contract; (2) the defendant’s knowledge of the contract; (3)
7 intentional acts intended or designed to disrupt the contractual relationship; (4) actual disruption
8 of the contract; and (5) resulting damage.”⁶⁵ “[M]ere knowledge of [a contract between the
9 plaintiff and a third-party] is insufficient to establish that the defendant intended or designed to
10 disrupt the plaintiff’s contractual relationship; instead, the plaintiff must demonstrate that the
11 defendant intended to induce the other party to breach the contract with the plaintiff.”⁶⁶

12 Additionally, a claim for interference with prospective business relations under Nevada law
13 requires proof of (1) a prospective contractual relationship between the plaintiff and a third party;
14 (2) the defendant’s knowledge of the prospective relationship; (3) the defendant’s intent to harm
15 the plaintiff by preventing the relationship; (4) the defendant’s conduct was not privileged or
16 justified; and (5) the plaintiff’s actual harm as a result.⁶⁷

17 ATMMS provides evidence of Elavon’s knowledge of contractual and prospective
18 business relationships with casino clients reliant on PIN-debit transactions,⁶⁸ but it fails to

19 ⁶³ ECF No. 62 at 19–21.

20 ⁶⁴ ECF No. 71 at 18–20; ECF No. 64 at 20–21.

21 ⁶⁵ *J.J. Indus., LLC v. Bennett*, 71 P.3d 1264, 1267 (Nev. 2003) (quoting *Sutherland v. Gross*, 772
22 P.2d 1287, 1290 (Nev. 1989)).

23 ⁶⁶ *Id.* at 1268.

⁶⁷ *In re Amerco Deriv. Litig.*, 252 P.3d 681, 702 (Nev. 2011) (en banc).

⁶⁸ *See, e.g.*, ECF No. 64-3 at 28, 33.

1 identify any evidence that Elavon delayed PIN-debit functionality with the intent of disrupting
2 ATMMS's contractual relationships with those casino clients or harming ATMMS by preventing
3 prospective business relations. Rather, the evidence identified by ATMMS and Elavon shows
4 that the PIN-debit delay resulted from shifting development priorities and the platform chosen by
5 ATMMS to integrate the new technology.⁶⁹ ATMMS essentially asks me to infer intent from
6 Elavon's knowledge of ATMMS's relationships with casino clients and the unique impact of the
7 PIN-debit delay on these clients,⁷⁰ but I will not make that inference when the evidence compels
8 a different conclusion as to Elavon's intent. I thus grant summary judgment in favor of Elavon
9 on ATMMS's intentional-interference claims, leaving no claims remaining.

10 **II. Motions to seal [ECF Nos. 58, 75]**

11 Elavon moves to seal the Master Agreement, which was attached as Exhibit A to
12 Elavon's summary judgment motion.⁷¹ Elavon also moves to redact portions of its motion for
13 summary judgment and reply brief in support of that motion that refer to the agreements.⁷²
14 ATMMS does not oppose the motions.

15 "The public has a 'general right to inspect and copy public records and documents
16 including judicial records and documents.'"⁷³ "Although the common law right of access is not
17 absolute, '[courts] start with a strong presumption in favor of access to court records.'"⁷⁴ "A

19 ⁶⁹ ECF No. 64-2 at 9; ECF No. 70 at 34–36.

20 ⁷⁰ ECF No. 71 at 19–20.

21 ⁷¹ ECF No. 58.


21 ⁷² ECF Nos. 58, 75.

22 ⁷³ *In re Midland Nat. Life Ins. Co. Annuity Sales Practices Litig.*, 686 F.3d 1115, 1119 (9th Cir.
2012) (quoting *Nixon v. Warner Commc'ns., Inc.*, 435 U.S. 589, 597 (1978)).

23 ⁷⁴ *Id.* at 1119 (quoting *Foltz v. St. Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir.
2003)).

1 **DENIED.** I grant summary judgement in favor of Elavon and against ATMMS. The Clerk of
2 Court is directed to **ENTER FINAL JUDGMENT ACCORDINGLY** and **CLOSE THIS**
3 **CASE.**

4 Dated: January 21, 2020

5 
6 _____
7 U.S. District Judge Jennifer A. Dorsey

10
11
12
13
14
15
16
17
18
19
20
21
22
23