

Richard J. Williams, Jr., Esq. -- #021451996
MCELROY, DEUTSCH, MULVANEY & CARPENTER, LLP
1300 Mount Kemble Avenue
P.O. Box 2075
Morristown, New Jersey 07962-2075
(973) 425-8773
rwilliams@mdmc-law.com
Attorneys for Defendant, Heartland Payment Systems, LLC

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

JOSEPH SORANNO, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

HEARTLAND PAYMENT SYSTEMS,
LLC, successor in interest to HEARTLAND
PAYMENT SYSTEMS, INC.,

Defendant.

Civil Action No.

NOTICE OF REMOVAL

TO: William T. Walsh
Clerk of the District Court
United States District Court
District of New Jersey
Martin Luther King, Jr. Building & U.S. Courthouse
50 Walnut Street
Newark, New Jersey 07101

ON NOTICE TO: Clerk, Superior Court of New Jersey
Mercer County
175 South Broad Street
Trenton, NJ 08650-0068

John E. Keefe, Jr., Esq.
Paul A. DiGiorgio, Esq.
The Keefe Law Firm
125 Half Mile Road, Suite 100
Red Bank, NJ 07701

PLEASE TAKE NOTICE that Defendant Heartland Payment Systems, LLC (“Defendant” or “Heartland”) files this Notice of Removal of this action from the Superior Court of New Jersey, Law Division – Mercer County, Civil Action No. MER-L-002139-18, to the United States District Court for the District of New Jersey, Trenton Vicinage, pursuant to 28 U.S.C. §§ 1332(d) (the “Class Action Fairness Act”), 1441(b), and 1446. In addition, removal is also proper under 28 U.S.C. § 1332(a) (diversity). In support of its Notice of Removal and as grounds for removal, Heartland states as follows:

STATEMENT OF JURISDICTION

1. This Court has diversity jurisdiction over this action under 28 U.S.C. § 1332(a). Complete diversity exists between Plaintiff and Defendant, and the amount in controversy exceeds \$75,000, exclusive of interest and costs. As set forth below, this case meets all of the requirements for removal under the Court’s diversity jurisdiction and is timely and properly removed by the filing of this Notice.

2. This Court also has original jurisdiction over this action under the Class Action Fairness Act of 2005 (“CAFA”). *See* 28 U.S.C. § 1332(d). In relevant part, CAFA grants district courts original jurisdiction over civil class actions filed under federal or state law in which any member of a class of plaintiffs is a citizen of a state different from any defendant and where the amount in controversy for the putative class members in the aggregate exceeds the sum or value of \$5,000,000, exclusive of interest and costs. CAFA authorizes removal of such actions pursuant to 28 U.S.C. § 1446. As set forth below, this case meets all of CAFA’s requirements for removal and is timely and properly removed by the filing of this Notice.

PLEADINGS AND PROCEDURAL HISTORY

3. On October 15, 2018, Plaintiff Joseph Soranno (“Plaintiff”) filed a Complaint in the Superior Court of New Jersey, Law Division – Mercer County (“State Court”): *Joseph Soranno, individually and on behalf of all others similarly situated v. Heartland Payment Systems, LLC, successor in interest to Heartland Payment Systems, Inc., Defendant*, Civil Action No. MER-L-002139-18 (“Complaint”). In the Complaint, Plaintiff asserts three (3) causes of action: (1) Breach of Contract; (2) Breach of Implied Covenant of Good Faith and Fair Dealing; and (3) Unjust Enrichment.

4. Plaintiff alleges he was employed as a sales representative for Heartland in various commission-only sales positions, selling, among other things, Heartland’s processing services for American Express card-payment transactions, and that he earned recurring monthly commissions for the same. (Compl. ¶ 4.) Plaintiff further alleges that he attained “Vested” status while employed with Heartland, entitling him to monthly commission payments *in perpetuity* for American Express transactions processed by Heartland for customers Plaintiff signed up. (*Id.* ¶¶ 5–7.)

5. Plaintiff resigned his employment with Defendant in December 2012. (*Id.* ¶¶ 8, 49.) Because of his “Vested” status, Plaintiff continued to receive commission payments for certain customers to whom he sold Heartland’s processing services for American Express card-payment transactions until February 2015, when he alleges Heartland improperly ceased paying him commissions on American Express transactions. (*Id.* ¶¶ 8, 12, 18, 50, 62–64.) In his Complaint, Plaintiff seeks to represent all “Vested former sales employees of Defendant, who stopped receiving commissions in pay-month February 2015, for Merchant accounts that continued to process American Express transactions through Defendant after conversion to the

OptBlue pricing scheme; and who were not terminated for cause, or adjudicated to have violated any Vesting agreement.” (*Id.* ¶ 97.)

6. Plaintiff is seeking compensatory and statutory damages, punitive damages, and an award of attorney’s fees, among other relief. (*Id.* at 27 (“Prayer for Relief” paragraph).) Specifically, Plaintiff is seeing “back-pay for the unpaid commissions [from February 2015 to present], as well as reinstatement of future commission payments, and such other further relief as th[e] Court deems appropriate, including but not limited to attorney’s fees and costs.” (*Id.* ¶ 26.) Plaintiff does not temporally limit his request for future commission payments and thus seeks such payments in perpetuity. (*See generally* Compl.)

7. On October 19, 2018, Plaintiff caused to be served on Heartland a copy of the Complaint.

8. A true and correct copy of all State Court pleadings is attached hereto as “Exhibit A.”

DIVERSITY JURISDICTION

9. Removal of this action is proper under 28 U.S.C. § 1332(a) because the citizenship of all parties is fully diverse and the amount in controversy for Plaintiff’s individual claims exceeds \$75,000.00, exclusive of interest and costs.

Complete Diversity of Citizenship Exists

10. Plaintiff avers that he is a resident of the State of New Jersey. (Compl. ¶ 27.)

11. For diversity jurisdiction purposes, Defendant is a citizen of the State of Georgia. “[T]he citizenship of an LLC is determined by the citizenship of its members” under the diversity removal statute. *Zambelli Fireworks Mfg. Co., Inc. v. Wood*, 592 F.3d 412, 420 (3d Cir. 2010). Heartland’s sole member is Global Payments Inc. “A corporation is a citizen both of

the state where it is incorporated and of the state where it has its principal place of business.” *Id.* at 419 (citing 28 U.S.C. § 1332(c)). Global Payments Inc. is a Georgia corporation with its principal place of business in Georgia.

12. Accordingly, Plaintiff is not a citizen of the same state as Defendant, and therefore, complete diversity exists.

Amount in Controversy Exceeds \$75,000

13. Plaintiff seeks an award of “back-pay for the unpaid commissions [from February 2015 to present], as well as reinstatement of future commission payments, and such other further relief as th[e] Court deems appropriate, including but not limited to attorney’s fees and costs.” (*Id.* ¶ 26.) Here, Defendant’s records show that the commissions calculated for American Express payments Heartland processed for merchants signed up by Plaintiff total \$35,863.55 for the period of February 2015 to March 2018—a period of thirty-eight months. (Ex. B, Declaration of Mindy Moretti (“Moretti Decl.”) ¶ 3, submitted contemporaneously herewith.) This amounts to approximately \$943.78 per month. Plaintiff does not temporally limit his request for future commission payments and thus seeks such payments in perpetuity. (*See generally* Compl.) Using this monthly average, if Plaintiff were awarded the damages from his back pay claim (\$35,863.55) plus six years’ worth of future commission payments (\$67,952.16)—a far more reasonable award than the perpetual revenue stream he is in fact seeking—that would amount to \$103,815.71, easily exceeding the threshold \$75,000 amount-controversy-requirement without taking into consideration the other damages and fees Plaintiff seeks. *See, e.g., Encore Capital Fin., Inc. v. Heartland Payment Sys., LLC*, No. 18-8512, 2018 WL 2723880, at *2 n.2 (D.N.J. June 6, 2018) (noting future commissions claimed by plaintiff included in calculation of amount in controversy); *Candor Hosiery Mills, Inc. v. Int’l Networking*

Group, Inc., 35 F. Supp. 2d 476, 481 (M.D.N.C. 1998) (holding future potential commissions properly considered in determining amount in controversy for removal purposes).

14. Additionally, Plaintiff is seeking an award of attorney's fees and punitive damages, "both of which may be aggregated with the compensatory damages when determining the amount in controversy." *See, e.g., Andrews v. Home Depot U.S.A., Inc.*, No. 04-5200, 2010 WL 5464303, at *3 (D.N.J. Dec. 29, 2010). Under New Jersey law, Plaintiff can recover punitive damages of up to "five times the liability of [Heartland] for compensatory damages or \$350,000, whichever is greater." *See* N.J. Stat. Ann. § 2A:15-5.14 (2014). N.J. Stat. Ann. § 2A:15-5.14. Five times \$103,815.71 is \$519,078.55. *Carevel, LLC v. Aspen Am. Ins. Co.*, No. 2:13-cv-7581, 2014 WL 1922826, at *4 (D.N.J. May 14, 2014). Additionally, Plaintiff's claim for attorney's fees could be worth "as much as thirty percent of the judgment." *See, e.g., Andrews*, 2010 WL 5464303, at *3. Thirty percent of \$103,815.71 amounts to \$31,144.71.

15. Thus, the amount in controversy for Plaintiff's individual claims far exceeds the \$75,000 threshold required for removal under 28 U.S.C. § 1332(a).

Timeliness of Removal

16. Plaintiff served Defendant with a copy of his Complaint on October 19, 2018. The instant Notice of Removal is being filed within thirty days of October 19, 2018. Accordingly, Defendant's removal of this action is timely. 28 U.S.C. § 1332(b)(1).

JURISDICTION PURSUANT TO THE CLASS ACTION FAIRNESS ACT

17. Section 4 of the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d)(2),¹ as amended, provides in pertinent part as follows:

¹ While there are a number of exceptions to this new rule of original jurisdiction contained in amended 28 U.S.C. § 1332(d)(3)–(5), none of these exceptions are applicable to the instant action.

The district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and is a class action in which . . .

(A) any member of a class of plaintiffs is a citizen of a State different from any defendant.

18. This is a civil action over which this Court has original jurisdiction under 28 U.S.C. § 1332(d), and one that may be removed to this Court by Defendants pursuant to 28 U.S.C. §§ 1441(b) and 1446.

Purported Class Action under State Law

19. This action has been styled as a class action. (Compl., page 1.)

20. The putative class Plaintiff purports to represent consists of more than 100 individuals. (Moretti Decl. ¶ 4.) *See* 28 U.S.C. § 1332(d)(5).

Diversity of Citizenship Exists

21. Plaintiff avers that he is a resident of the State of New Jersey. (Compl. ¶ 27.)

22. For CAFA purposes, Defendant is a citizen of the States of Delaware and Georgia. Unincorporated associations like limited liability companies are deemed citizens of “the State where it has its principal place of business and the State under whose laws it is organized” under CAFA. *See* 28 U.S.C. § 1332(d)(10); *see also, e.g., Coleman v. Chase Home Finance, LLC*, No. 08–2215, 2009 WL 1323598, at *2–3 (D.N.J. May 11, 2009). Heartland is a Delaware limited liability company with its principal place of business in Georgia.

23. Accordingly, Plaintiff is a citizen of a state different from Defendant, and the diversity requirement for CAFA removal has been satisfied.

Amount in Controversy Exceeds \$5,000,000

24. As noted above, Plaintiff seeks an award of “back-pay for the unpaid commissions [from February 2015 to present], as well as reinstatement of future commission

payments, and such other further relief as th[e] Court deems appropriate, including but not limited to attorney’s fees and costs” on behalf of himself and the putative class. (*Id.* ¶ 26.) For CAFA purposes, “the claims of the individual class members [are] aggregated to determine whether the matter in controversy exceeds . . . \$5,000,000.” 28 U.S.C. § 1332(d)(6). Here, Defendant’s records show that the commissions generated for American Express payments Heartland processed for merchants signed up by members of the putative class total \$1,996,109.91 for the period of February 2015 to March 2018—a period of thirty-eight months. (Moretti Decl. ¶ 5.) This amounts to approximately \$52,529.21 per month. Plaintiff does not temporally limit his request for future commission payments and thus seeks such payments in perpetuity. (*See generally* Compl.) Using this monthly average, and if the class was awarded the damages sought from the back pay claim (\$1,996,109.91) plus six years’ worth of future commission payments (\$3,782,103.12)—a far more reasonable award than the perpetual revenue stream Plaintiff is in fact seeking—that would amount to \$5,778,213.03, easily satisfying CAFA’s amount-in-controversy requirement without taking into consideration the other damages and fees Plaintiff seeks. *See, e.g., Encore Capital Fin., Inc.*, 2018 WL 2723880, at *2 n.2 (noting future commissions claimed by plaintiff included in calculation of amount in controversy); *Candor Hosiery Mills, Inc.*, 35 F. Supp. 2d at 481 (holding future potential commissions properly considered in determining amount in controversy for removal purposes).

25. Moreover, Plaintiff is seeking an award of punitive damages and attorneys’ fees, each of which are taken into consideration for purposes of determining the amount in controversy. *Frederico v. Home Depot, Inc.*, 507 F. 3d 188, 199 (3d Cir. 2007); *Lee v. Central Parking Corp.*, No. 2:15-CV-0454, 2015 WL 4510128, at *12 (D.N.J. July 24, 2015) (including punitive damages and attorney’s fees in considering whether amount in controversy satisfied for

CAFA removal purposes). The Third Circuit has recognized that attorneys' fees can be "as much as thirty percent of the judgment." *Frederico*, 507 F.3d at 199 (citing *In re Rite Aid Corp. Securities Litigation*, 395 F.3d 294, 303 (3d Cir. 2005)). Thirty percent of a \$5,778,213.03 judgment is \$1,733,463.91. *Id.* As noted above, under New Jersey law, Plaintiff can recover punitive damages of up to "five times the liability of [Heartland] for compensatory damages or \$350,000, whichever is greater." See N.J. Stat. Ann. § 2A:15–5.14 (2014). Five times \$5,778,213.03 amounts to \$28,891,065.15.

26. Thus, CAFA's amount-in-controversy requirement is satisfied.

Timeliness of Removal

27. Plaintiff served Defendant with a copy of his Complaint on October 19, 2018. The instant Notice of Removal is being filed within thirty days of October 19, 2018. Accordingly, Defendant's removal of this action is timely. 28 U.S.C. § 1332(b)(1).

NOTICE TO PLAINTIFF

28. Contemporaneously with the filing of this Notice of Removal in the United States District Court for the District of New Jersey, written notice of such filing will be served on Plaintiff's counsel of record. In addition, a copy of this Notice of Removal will be filed with the Clerk of Court for the Superior Court of New Jersey, Law Division – Mercer County.

29. WHEREFORE, having provided notice as required by law, the above-entitled action should be removed from the Superior Court of New Jersey, Law Division – Mercer County.

Dated: November 16, 2018

**McELROY, DEUTSCH, MULVANEY &
CARPENTER, LLP**
Attorneys for Defendant

By: Richard J. Williams, Jr.
Richard J. Williams, Esq.

EXHIBIT A



125 Half Mile Road, Suite 100
Red Bank, New Jersey 07701
T. 732-224-9400
T. 866-575-5000
F. 732-224-9494
www.keefe-lawfirm.com

Paul A. DiGiorgio, Esq.
Counsel

pdigiorgio@keefe-lawfirm.com

Admitted to Practice in: N.J.

October 15, 2018

VIA ELECTRONIC FILING

R.J. Hughes Justice Complex
Superior Court Clerk's Office
25 W. Market Street
Sixth Floor, North Wing
Trenton, New Jersey 08611

Re: Joseph Soranno v. Heartland Payment Systems, LLC

Dear Clerk:

With regard to the above-referenced matter, enclosed for filing please find a Class Action Complaint and Jury Demand. Please file accordingly and return a stamped "filed" copy to me as soon as possible. Finally, please charge our Superior Court Attorney Collateral Account #141574 the fee for filing same.

Thank you for your attention to this matter.

Very truly yours,

PAUL A. DIGIORGIO
For the Firm

PAD/lms
enclosure



KEEFE LAW FIRM

125 Half Mile Road, Suite 100

Red Bank, New Jersey 07701

(732) 224-9400

(732) 224-9494 (fax)

Attorneys for Plaintiff and the Proposed Class and Subclasses

JOSEPH SORANNO, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

HEARTLAND PAYMENT SYSTEMS, LLC,
successor in interest to HEARTLAND
PAYMENT SYSTEMS, INC.,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MERCER COUNTY

Docket No.

Civil Action

**CLASS ACTION COMPLAINT
AND JURY DEMAND**

Plaintiff, Joseph Soranno (“Plaintiff” and/or “Soranno”), on behalf of himself and others (“Class Members”) similarly situated (collectively, the putative “Class”), by way of Complaint against the above-named Defendant, Heartland Payment Systems, Inc. (“Heartland”), says as follows:

INTRODUCTION

1. Heartland is engaged primarily in the business of processing payment card transactions for Merchants.
2. Heartland employed Soranno in various commission-only sales positions.
3. Heartland built its brand, business model, customer marketing, and employee recruitment, upon the concepts of fair dealing and transparency.
4. For years, Heartland’s sales employees, like Plaintiff, sold Heartland’s processing services for American Express (“Amex”) card payment transactions (among other products and

services) to Merchants, for Heartland's financial benefit, in order to earn recurring monthly commissions for same.

5. During his employment, Plaintiff achieved "Vested" status and entered into a Vesting Agreement with Defendant.

6. The Vesting Agreement guaranteed that Plaintiff would continue to receive his commissions so long as the Merchants to whom he sold Heartland's processing services for card payment (like Amex) transactions continued to process transactions through Heartland.

7. The Vesting Agreement also provides that Plaintiff's commissions would be paid in accordance with Heartland's Sales Policy Manual ("Sales Policies"), as such manual may be amended from time to time.

8. After Plaintiff resigned from employment with Heartland, he continued to receive his Amex commissions, pursuant to the Vesting Agreement, and in accordance with Heartland's Sales Policies.

9. Thereafter, Amex mandated that its card processors (like Heartland) implement a new pricing scheme for its card processing services.

10. As such, Heartland converted all qualifying Merchants (including Plaintiff's Merchants) to the new pricing for Amex processing services.

11. Heartland contemporaneously amended its Sales Policies to reflect the commission plan for Merchant accounts converted to the new pricing.

12. For a short while, Heartland paid Plaintiff Amex commissions pursuant to the new commission plan; but then Heartland unilaterally decided to stop paying Amex commissions to Plaintiff and all other Vested former sales employees. However, Heartland continued to pay Amex commissions to its active sales force for Merchant accounts identically converted to the new Amex pricing

13. Plaintiff inquired of Heartland why he was no longer being paid Amex commissions, and Heartland's position, or attempted justification, was that:

"The American Express program that was sold has ended. All Merchants on that program had to go through extensive analysis and re-pricings of American Express and therefore are now House accounts."

14. First, Plaintiff did not sell a "program" – rather, he sold a "service": Heartland's processing service for Amex transactions. Second, from all relevant perspectives, the "program" change was merely a pricing change for the same product/service; and nothing "ended" – it just converted from one pricing scheme to another. In any event, all of that same reasoning should have applied equally to the active sales force, but it did not – as Heartland continued to pay the active sales force, under identical circumstances.

15. Despite any internal changes Heartland may have undertaken as the result of Amex changing the way it did business and/or any subtle distinctions Heartland might try to make between the old and the new programs, the bottom line is that the new state of affairs still involves: Plaintiff's same Merchant, accepting the same form of payment (Amex), which transaction is still processed through Heartland, for which the Merchant is charged (more), and for which Heartland makes a profit (more), and for which the active sales force is still compensated. The only meaningful difference is that Heartland stopped honoring its contractual obligation to continue sharing a portion of its increased profits with the Class.

16. Note that Heartland's then-active sales personnel are subject to the same Sales Policies as the Class of Vested former sales personnel. Yet, Heartland continues to pay commissions to that group for the same type of Merchant accounts that were converted to the new pricing in the same manner, but not to the Class. Again, Heartland's own words reveal that all Merchants had to go through extensive analysis and re-pricing – including those of active and

former sales employees alike. Yet, Heartland continued to pay Amex commissions to its active sales employees but not to its Vested former employees.

17. Purportedly in order to cover the cost of “extensive analysis”, “re-pricings”, program changes, and adjustments, Heartland added an Exhibit E Transaction Expense of \$0.08 cents to the converted Merchant accounts of its then-active sales force. It is inconceivable then why Heartland would even try to use these same issues as fabricated obstacles against continued payment to the Class of Vested former salespersons – when it simply could have continued to apply the new compensation policy to both groups equally, as it always had in the past.

18. Heartland, without legal justification or notice, wrongfully terminated Amex commission payments to Plaintiff and the Class.

19. There is no provision, language, or term in any controlling document (or elsewhere for that matter) that supports Heartland’s stated reason for terminating the subject commissions.

20. The Vesting Agreement clearly requires that Heartland continue paying commissions to Plaintiff so long as Plaintiff’s Merchants continue to process transactions through Heartland; and Plaintiff’s Merchants have continued to process transactions through Heartland.

21. Neither the Vesting Agreement nor the Sales Policies makes commissions contingent upon a “program” continuing. Plaintiff sold a “service”, and the Vesting Agreement guarantees his commissions for the service he sold – not the particular pricing program dictated/offered by the card issuer at any given time.

22. Any contrary interpretation of the controlling documents (which were drafted solely by Heartland) could only have been made in bad faith.

23. Heartland continues to receive income as the result of Plaintiff's Merchants continuing to process Amex transactions through Heartland.

24. In fact, Heartland is making more profit under its new pricing scheme than it did under its old pricing scheme. Moreover, Merchant accounts which may have aged-out under Amex's old pricing and became non-revenue producing for Heartland before the conversion but which continued processing through Heartland post-conversion, resumed generating revenue for Heartland under the new pricing. Yet, Heartland no longer shares with the Class, the portion of those increased and revived profits it contractually (and otherwise, repeatedly) promised to the Class.

25. Plaintiff individually, and on behalf of all other similarly situated Vested former sales employees of Heartland who lost their Amex commissions, brings claims for breach of contract and the implied covenant of good faith and fair dealing, as well as unjust enrichment.

26. Plaintiff seeks back-pay for the unpaid commissions, as well as reinstatement of future commission payments, and such other further relief as this Court deems appropriate, including but not limited to attorney's fees and costs.

PARTIES

27. Plaintiff, Joseph Soranno, is a resident of Bayville, New Jersey.

28. Upon information and belief and at all times mentioned in this Complaint, Defendant Heartland is a domestic profit corporation authorized to do business under the laws of the State of Delaware.

29. Upon information and belief and at all times mentioned in this Complaint, Defendant's main business address is in the Township of Princeton, County of Mercer, State of New Jersey.

VENUE

30. Venue in this action properly lies in Mercer County due to a choice of venue clause in the controlling Vesting Agreement between Defendant and Plaintiff.

31. Upon information and belief, the aggregate amount in controversy does not exceed five million dollars (\$5,000,000), exclusive of interest and costs.

BACKGROUND

32. Heartland hired Soranno in January 2007, as a Relationship Manager, an entry-level sales position.

33. Upon information and belief and at all times relevant herein, all sales positions at Heartland are commission only – i.e. with no base pay.

34. Upon information and belief and at all times relevant herein, all sales positions at Heartland are eligible to attain “Vested” status, which enables the employee to continue earning commissions even after their employment with Heartland ends – i.e. as if they were still employed.

35. During his employment, Soranno “signed-up” Merchants to process Amex transactions (among other products or services offered by Heartland) though Heartland.

36. Effective in or about February or March of 2008, Soranno achieved Vested status; and he executed Heartland’s form Vested Relationship Manager Agreement (“RM Vesting Agreement”).

37. Upon information and belief and at all times relevant herein, Heartland used the same RM Vesting Agreement for all Relationship Managers.

38. In April 2008, Soranno took a new position as a Territory Manager; and he executed Heartland's form Territory Manager / Senior Territory Manager Agreement ("TM/STM Agreement").

39. Upon information and belief and at all times relevant herein, Heartland used the same TM/STM Agreement for all TMs and STMs.

40. The RM Vesting Agreement guarantees Plaintiff's contractual right to receive, and Defendant's contractual obligation to pay, commissions to Plaintiff on Merchant accounts he signed-up while holding the Relationship Manager position, as follows:

"As a Vested RM, unless RM's employment is terminated for cause as defined herein, ..., RM shall continue to receive Residual Commissions so long as Merchants signed by RM continue to process ... transactions ... through HPS" (emphasis added)

41. The RM Vesting Agreement also provides that Plaintiff "shall receive compensation in accordance with the provisions of the HPS Sales Policy Manual as such manual may be amended from time to time." (emphasis added)

42. Similarly, the TM/STM Agreement provides that:

"Once Vested, unless TM/STM's employment is terminated for cause as defined herein, ..., TM/STM shall continue to receive Residual Commissions so long as Merchants signed by TM/STM continue to process ... transactions ... through HPS" (emphasis added)

43. The TM/STM Agreement also provides that:

"TM/STM shall receive over-ride compensation for Merchants signed by Relationship Managers within his or her Territory in accordance with the provisions of the HPS Sales Policy Manual as such manual may be amended from time to time. TM/STM shall receive Relationship Manager compensation for all direct Merchant sales as defined in HPS Sales Policy." (emphasis added)

44. So, despite any language or operation of contract law regarding the later agreement superseding the earlier one, the RM Vesting Agreement and the TM/STM Agreement both Vest/guarantee the commissions Plaintiff earned at the time he held the position

corresponding to the respective agreement, so long as Plaintiff's Merchants continue to process through Heartland. In addition, both agreements reference the HPS Sales Policy Manual for specific compensation details.

45. Due to the identical operative Vesting language in both agreements, they are interchangeably and/or collectively referred to throughout this pleading as the "Vesting Agreement".

46. According to the Sales Policies themselves, a series of separate formal documents, with various "Revised" dates, together with written policy communications sent via email by corporate (collectively referred to herein as Heartland's "Sales Policies"), constitute the "HPS Sales Policy Manual" referenced in the Vesting Agreement.

47. Vested former sales personnel in the following positions (without limitation) are adversely impacted by Heartland's decision to terminate the subject Amex commissions: Relationship Manager, Territory Manager, Senior Territory Manager, Division Manager, and Regional Manager (collectively referred to herein as "Class Members").

48. Upon information and belief, each member of the Class signed at least one employment agreement (either the same form RM Vesting Agreement as Plaintiff's, or another position-specific employment agreement like the TM/STM Agreement Plaintiff signed) with language regarding "Vesting" and "compensation" that is identical to, or substantially similar to, the operative language in Plaintiff's Vesting Agreement.

49. In December 2012, Soranno voluntarily resigned from employment with Heartland.

50. Post-employment, Heartland continued to pay (as a "W-2 employee") Soranno his Vested Amex commissions, in accordance with the Sales Policies. Heartland continues to pay

Plaintiff commissions on products/services he sold – other than Amex – to present (and again, as a W-2 employee).

51. In early 2014, Amex announced that it changed its pricing for card transaction processing; and Amex mandated that all of its card processors, like Heartland, had to convert Merchants to the new pricing during 2014. Note that the program name of Amex's old pricing program was OnePoint, and the new pricing program is called OptBlue.

52. During the conversion, Plaintiff was still subject to restrictive covenants in the Vesting Agreement to not solicit any of Heartland's Merchants.

53. Heartland behaved with improper motive in that it took advantage of Plaintiff's restrictive covenants, and the entirety of this situation, by delaying termination of the commissions and by not providing any advance notice of such termination, until *after* the Merchants were all converted to Heartland's new higher pricing. By that point, the Merchants were no longer vulnerable to potential competitive efforts to switch them to another processor.

54. Upon information and belief, the Heartland Service Center – not active sales personnel – handled the entire process of converting Merchants to the new pricing. Merchants did not sign a new contract, and they did not have to change their Point-of-Sale equipment. All a Merchant had to do in order to "opt-in" to the new pricing was to swipe a customer's card after the pricing conversion. The Merchants did not request any of this – it was all driven by Amex and Heartland.

55. In a June 13, 2014 letter advising Merchants of the launch of the new Amex pricing program, Heartland stated that: "**There is nothing you need to do.** Simply continue to process American Express Card Transactions exactly the way you do today – we'll take care of the rest." (emphasis in original)

56. Again, the pricing conversion was not the Merchant's choice; and the Merchant did not place an order for, or otherwise request, a new product or service. Rather Amex mandated, and Heartland's non-sales personnel implemented, the new pricing scheme.

57. The product/service Plaintiff sold to the Merchants was the same before, during and after conversion to the new pricing: Amex transaction processing. In addition, there was only one "sale" made per Merchant – i.e. when Plaintiff convinced the Merchant to process Amex transactions through Heartland. Anything that occurred after the original sale is merely the Merchant opting to continue processing its Amex transactions through Heartland at a new price. That is not a new sale – it is just a price change to an existing customer.

58. In fact, Heartland had very specific criteria for what constitutes a new and/or returning customer, for commission purposes; and the present situation does not meet those criteria – not for active, or Vested former, sales personnel.

59. Upon information and belief, Heartland's corporate representative, Chief Sales Officer, Tony N. Capucille, sent a series of emails in October and November of 2014, regarding the Sales Policies for commissions on converted Amex accounts.

60. These emails amended Heartland's Sales Policies, and they are therefore part of the binding agreement between the parties; because the Vesting Agreement binds the parties to the "as amended" Sales Policies.

61. Upon information and belief, in 2015 or later, Heartland eventually more formally revised its Sales Policies to reflect the new commission plan for Amex processing services under the new pricing. Any such subsequent formal "Revised" (or release dated) formal policy documents reflecting compensation for converted Amex accounts is part of the binding agreement between the parties; because the Vesting Agreement binds the parties to the "as amended" Sales Policies.

62. Heartland paid monthly Amex commissions in December 2014 and January 2015, in accordance with the amended Sales Policies, to all of its active sales employees as well as Plaintiff and the Class of Vested former sales employees.

63. Plaintiff experienced a spike (nearly double) in the amount of his Amex commissions for December 2014 and January 2015 – which indicates that Heartland makes even more money from his Merchants under the new pricing than it did under the old pricing.

64. Then, in February 2015, Heartland unilaterally stopped paying Amex commissions to only Plaintiff and the Class – in violation of its Vesting Agreement and Sales Policies.

65. Also in February 2015, Plaintiff made email inquiries to Heartland executive managers about why he was no longer being paid Amex commissions.

66. Several of Heartland's executive management repeated the following, apparently official, company response:

“The American Express program that was sold has ended. All Merchants on that program had to go through extensive analysis and re-pricings of American Express and therefore are now House accounts”

67. Note that Heartland's then-active sales personnel are subject to the same Sales Policies as Plaintiff and all other Vested former sales personnel; and that the Amex program ended for the Merchants of both groups at the same time and in the same manner. Yet, Heartland inexplicably and inexcusably continues to pay commissions to its then-active sales force, but not to Plaintiff and the Class.

68. Per the terms of Heartland's Agreements, the Sales Policies, and any other document or communication published by Heartland, Vested former employees are in the same position as active employees – particularly, as relates to the payment of commissions.

69. Also, there is no provision, language, or term in any controlling document (or elsewhere for that matter) that supports Heartland's purported reasons for terminating the subject commissions.

70. Based on Heartland's obviously manufactured and non-credible reasons, Plaintiff maintains that Heartland's decision was driven by improper motives.

71. Upon information and belief, Heartland (and Amex) represented to Merchants that the transition from Amex's old program to the new one was a simple pricing change (lower), with consolidated statements and simpler processing and servicing. Again, this indicates substantial similarity between the old and new pricing programs – not a new product/service (for which Heartland would likely insist is not eligible for compensation).

72. During the course of Plaintiff's employment, card issuers like Amex periodically changed the names of, and pricing for, their program offerings to Merchants – sometimes triggering Heartland to modify its employee commission rates; but Heartland never before (to Plaintiff's knowledge) eliminated commissions altogether in these situations – that is, not until the particular situation giving rise to this lawsuit.

73. Upon information and belief, Heartland's executive management consistently represented that: when Heartland is making profits from a relationship that a salesperson built, Heartland focuses on ensuring that it is sharing a healthy portion of those earnings with that salesperson. Heartland did not share its profits from the Merchant relationships Plaintiff and the Class built.

74. In bad faith, and with improper motive, Heartland did not provide any warning or notice to Plaintiff of the drastic reduction (approximately \$2,000.00 per month) in his livelihood caused by Heartland's decision.

75. Vested former employees, like Plaintiff, are not wealthy; and they came to rely on all of their commissions within their respective household budgets. In addition to the contractual illegality of Heartland's conduct, it is simply cruel to take anticipated income away from them without any advance notice that could have enabled them to plan accordingly.

76. Upon information and belief, Heartland has a company-wide policy prohibiting the communication of compensation (or other) policy changes to Vested former employees – despite Heartland's attempts, in form agreements, to bind said Vested former employees to the Sales Policies and amendments to them. To wit, all of Heartland's form Vesting Agreements require that: "RM shall follow all policies and procedures described in the Sales Policy Manual." Heartland's attempt to shackle Plaintiff to covenants restricting him from competing for or soliciting Merchants, and binding him to ever-changing Sales Policies – while deliberately refusing to communicate any policy changes to Plaintiff, and attempting to exclude Plaintiff from notice of the subject Amex commission policy changes, is another example of Heartland's bad faith conduct and improper motives.

77. In addition, Heartland does not permit Vested former employees access to the underlying data upon which Vested commissions are calculated – leaving Plaintiff and the Class further at the mercy of Heartland's abuse of its unilateral authority over key terms and conditions of the relationship between the parties.

78. Heartland further demonstrates its improper motives (and the illegality of its decision) through its inconsistent treatment of two groups situated substantially and substantively the same. To this day, Heartland continues to pay commissions on identically converted Amex accounts to its then-active sales personnel – despite the fact that the compensation of such active sales personnel was (and still is) governed by the same Sales Policies that apply equally to Plaintiff and the Class of Vested former sales personnel.

79. Upon information and belief, at the time Heartland decided to stop paying the subject Amex commissions, it was facing increased competition from other payment processing companies that were expanding their businesses into Heartland's primary market of small to medium-sized enterprises ("SMEs"). For example, Heartland filed an antitrust lawsuit in 2014 against Mercury Payment Systems, LLC, claiming that Mercury was charging Merchants undisclosed fees, in an attempt to keep this direct competitor of theirs for SMEs (particularly restaurants and retailers) in check.

80. Heartland could not afford to alienate their active sales force at that critical time in the company's existence; so it cheated money from the only group it could afford to swindle: former employees – with respect to whom Heartland stood nothing to lose because they are not a source of future sales/revenue.

81. A team of Heartland's executive managers (led by final decision-maker: founder and former CEO, Robert O. Carr) who concocted (over a period of many months) an excuse for their illegal decision to stop paying the subject commissions, were also shareholders. Around the relevant time, these same Heartland shareholder-executives were attempting to sell or merge the company, and therefore had a strong financial incentive to reduce expenses/commissions to make Heartland a more attractive merger candidate and/or acquisition target. This is yet another indication of the improper motives behind Heartland's bad faith decision to take Vested income away from Plaintiff and the Class.

82. Also at this same time, Heartland over-charged and illegally back-billed its Amex Merchants (after promising to lower their charges), under the guise of Amex's new pricing scheme. This move dramatically increased Heartland's profits on Amex processing services. This conduct also landed Heartland in a class action lawsuit by the Merchants (*Rudel Corp. v. Heartland*, U.S. District Court, D.N.J., 3:16-cv-02229-AET-LHG). The Merchants' class action

is further indication of Heartland's then-desperate attempt to improve its bottom line in order to attract a merger/acquisition before the competition could further hurt them financially. Upon information and belief, the Merchants received a several-million-dollar settlement from Heartland as the result of this behavior. That case is also a good example of Heartland's pattern of breaking its promises. It is also an example of Heartland's brazen refusal to give warning or notice to a contracted party, when it is going to deliberately adversely impact that party financially.

83. Note that Heartland did not pay commissions to Plaintiff on the amounts it received as the result of the late-2014 back-billing of Amex Merchants; and that Plaintiff seeks compensation for same in this action.

84. While Heartland was artificially trying to improve its bottom line, its founder and former CEO, Robert O. Carr, was touting Heartland's brand and business model of transparency and fair dealing (directly, via media, and as reflected in its Sales Professional Bill of Rights and Merchant Bill of Rights) to the market of potential buyers.

85. Upon information and belief, Mr. Carr initially considered "buying-out" the subject commissions – i.e. paying a large multiple (typically 30 times) of the monthly average commissions in a lump sum, in lieu of paying recurring future commissions owed.

86. Further upon information and belief, Mr. Carr (on behalf of Heartland) later reversed course by suspiciously, in bad faith and with bad motive, taking the untenable position that the new Amex pricing program was the equivalent of a "new product" (e.g. like payroll processing services), and therefore it was ineligible for commissions post-employment.

87. Yet, any person in the card processing industry – much less one as experienced as the founder of Heartland – knows that Amex card processing services under a replacement pricing program mandated by the card issuer (Amex) does not even remotely resemble the

equivalent of an existing customer ordering an entirely new and different product like payroll processing services. This willful ignoring of an obvious fact highlights Defendant's bad faith and improper motives.

88. All of the subject Merchants merely continued to process Amex card transactions through Heartland – they did not order a new product. Rather, Amex imposed new pricing on them if they wished to continue accepting Amex cards in the course of their business. To suggest otherwise is a disingenuous act of bad faith by Defendant in the performance of the subject contract.

89. Apparently, the questionable motives and efforts of Heartland's founder/CEO and other executives were successful. By December 2015, Global Payments, Inc. ("Global") announced that it entered into an agreement to acquire Heartland.

90. By April 2016, Global's merger with Heartland was complete.

91. By July 2018, the Securities and Exchange Commission charged Heartland's founder and former CEO, Robert O. Carr, in an insider-trading scheme connected to Heartland's merger with Global Payments, Inc.

92. In hindsight, Heartland's motives for cheating Vested former sales personnel, as well as Merchants, out of millions of dollars, are clearer.

93. Prior to Heartland's illegal cessation of the subject commissions, it strived to portray a consistent culture, and set a common expectation among all of its employees, in a wide variety of its recruiting, advertising, solicitation, and other company publications, for example, but not limited to:

- a) The aforementioned Sales Professional Bill of Rights (SPBOR"), established in around 2012 – promised, among other things, the following to its sales personnel: (i) "[t]he right to the opportunity to earn and own a portion of the

recurring revenues added to the employer's income statement"; and (ii) a "clearly explained and meticulously practiced" "system for calculating and paying commissions". Heartland obviously falls far short of fulfilling both of these promises.

b) Heartland's 2014 10-K: "We pay our salespersons residual commissions based on the gross margin generated from the monthly processing activity of ... Merchant accounts signed by them. We refer to these residual commissions as the 'owned' portion of such commissions, or 'portfolio equity'. The salesperson has no obligation to perform additional services for the Merchant for so long as the Merchant continues processing with us." ... "Vested status entitles the salesperson to his or her residual commissions for as long as the Merchant processes with us, even if the salesperson is no longer employed by us." (emphasis added).

c) The recruiting section of Defendant's website (www.heartlandpaymentsystems.com/careers), under the "Sales" heading, states: "At Heartland, your expertise is valued and rewarded. We inspire our salespeople to build a personal portfolio – not just earn income. While other sales job salaries may depend on a base pay with incentives, we offer no restraints with 100 percent commission-based salary. Our model not only pays you unlimited commission while you work for us, but also is uncapped, creating lifetime residuals that build wealth even after you retire or leave the company." (emphasis added)

d) Defendant published a White Paper entitled "Income Does Not Equal Wealth", on the internet, which states: "'Portfolio ownership' builds wealth

for Vested employees for the lifetime of each account in their portfolio (even if they choose to leave the company).” (emphasis added)

94. Defendant obviously and consistently acknowledges, in all places, that Vested commissions should survive for the lifetime of the Merchant account – not the lifetime of the card issuer’s particular pricing program.

95. During Plaintiff’s tenure as a TM for Heartland, he recruited sales employees for the company by communicating these same concepts which he later learned were all company lies.

96. Despite its contractual obligations, company policy, history, culture, and clear effort to set employee expectations to the contrary, Heartland stopped paying Amex commissions to Vested former employees in January 2015 – without warning, notice, explanation, or justification.

CLASS ALLEGATIONS

97. Pursuant to *R. 4:32-1*, this action may properly proceed as a class action. Plaintiff brings this action on behalf of himself and all other persons similarly situated – the putative “Class Members”. The Class is initially defined as follows:

All Vested former sales employees of Defendant, who stopped receiving commissions in pay-month February 2015, for Merchant accounts that continued to process American Express transactions through Defendant after conversion to the OptBlue pricing scheme; and who were not terminated for cause, or adjudicated to have violated any Vesting agreement.

98. This Class excludes any judge or magistrate assigned to this case, Defendants and any entity in which Defendants have a controlling interest, and Defendant’s officers, directors, legal representatives, successors, and assigns.

99. Certification of Plaintiff's claims for class-wide treatment is appropriate because Plaintiff can prove the elements of these claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claim.

100. There are questions of law and fact that are common to all Members of the Class, which predominate over any question affecting only individual Class Members.

101. The principal common issues include, but are not limited to, whether Defendant breached its Agreements with Plaintiff and the Class Members; or, in the alternative, whether Defendant was unjustly enriched.

102. The operative language of the subject Vesting Agreements is uniform for the entire Class.

103. Plaintiff's claims are typical of the claims of the Class because the claims are based on the same legal and remedial theories, and each Class Member was not paid, or underpaid in some way, in breach of an employment contract, and in violation of law.

104. The Class is readily identifiable from Defendant's employment and payment records.

105. The prosecution of separate actions by individual Class Members would run the risk of inconsistent or varying adjudications, which could establish incompatible standards of conduct for the Defendant in this action. Prosecution as a class action will also eliminate the possibility of repetitious litigation.

106. The prosecution of separate actions by individual Class Members would create the risk that adjudications with respect to individual Class Members would, as a practical matter, be dispositive of the interests of absent Class Members, or substantially impair or impede their ability to protect their own interests.

107. Plaintiff Soranno will fairly and adequately protect the interests of all Class Members in the prosecution of this action and in the administration of all matters relating to the claims stated herein.

108. Plaintiff Soranno is similarly situated with, and has suffered similar injuries as, the Class Members that he seeks to represent.

109. Plaintiff has no interests antagonistic to the those of the rest of the Class.

110. Plaintiff Soranno has retained counsel experienced in complex litigation and class action cases.

111. Neither Plaintiff Soranno nor counsel has any interest that may cause them to not vigorously pursue this action.

112. A class action is superior to other available methods for the fair and efficient adjudication of the controversy, because:

- a) Concentration of the litigation concerning this matter in this Court is desirable;
- b) Failure of justice will result from the absence of a class action;
- c) The Class and the difficulties likely to be encountered in the management of this class action are negligible; and
- d) The Class is so numerous as to make it impracticable to join all Members of the Class as plaintiffs. Upon information and belief, there are approximately 300 members of the Class.

113. Defendant has acted or refused to act on grounds generally applicable to Plaintiff and all Class Members, thereby making it appropriate to seek/grant final injunctive relief with respect to the Class as a whole.

COUNT ONE
(Breach of Contract)

114. Plaintiff repeats and re-alleges the allegations set forth in the previous paragraphs of this Complaint as if they were set forth in full herein.

115. Plaintiff sold Heartland's Amex transaction processing services to Merchants.

116. Heartland benefitted, and continues to benefit, financially and otherwise from such Merchant relationships established by Plaintiff.

117. Plaintiff executed Defendant's Vesting Agreement.

118. Unless Plaintiff was terminated for cause, the Vesting Agreement obligated Heartland to continue paying Amex commissions to Plaintiff, so long as Plaintiff's Merchants continued to process through Heartland.

119. Plaintiff was not terminated for cause – he voluntarily resigned.

120. Plaintiff did not otherwise violate the Vesting Agreement.

121. Plaintiff's Merchants continue to process Amex transactions through Heartland.

122. Defendant breached its obligation in its Vesting Agreement by failing to pay Amex commissions to Plaintiff since January 2014; and Defendant continues such breach to the present.

123. Defendant also breached its obligation under the Vesting Agreement by failing to pay Plaintiff commissions on the amounts it back-billed Plaintiff's Merchants in around October 2014.

124. As a result of Defendant's continued breach, Plaintiff and the Class Members have suffered damages.

125. Plaintiff brings these breach of contract claims under the laws of the State of New Jersey, in compliance with the choice of law provision in the Vesting Agreement.

COUNT TWO
(Breach of Implied Covenant of Good Faith and Fair Dealing)

126. Plaintiff repeats and re-alleges the allegations set forth in the previous paragraphs of this Complaint as if they were set forth in full herein.

127. Defendant and Plaintiff entered into a contract with one another; and every contract imposes the duty of good faith and fair dealing upon the parties in performance and enforcement of the contract.

128. A covenant of good faith and fair dealing is implied in every contract under New Jersey law.

129. Implied covenants are as effective components of an agreement as those covenants that are express.

130. Although the implied covenant of good faith and fair dealing cannot override an express term in a contract, a party's performance under a contract may breach that implied covenant even though that performance does not violate a pertinent express term.

131. Defendant acted in bad faith by not giving equal consideration to the interests of the Plaintiff and the Class Members as they have given to their own interests.

132. Defendant acted in bad faith and with the improper motive of manufacturing a reason to terminate the subject commissions in order to be a more desirable takeover target, at the expense of Plaintiff and the Class.

133. Heartland concealed and misrepresented the reason for terminating the subject commissions.

134. Defendant's disingenuous and self-serving interpretation of its own documents, and its contrived conclusions from same, was done with improper motive and without legitimate purpose.

135. Heartland's attempt to shackle Plaintiff to covenants restricting him from competing for or soliciting Merchants, and binding him to ever-changing Sales Policies – while deliberately refusing to communicate any policy changes to Plaintiff, and attempting to exclude Plaintiff from notice of the subject Amex commission policy changes, is another example of Heartland's bad faith conduct and improper motives.

136. In addition, Heartland does not permit Vested former employees access to the underlying data upon which Vested commissions are calculated – leaving Plaintiff and the Class further at the mercy of Heartland's abuse of its unilateral authority over key terms and conditions of the relationship between the parties.

137. Heartland further demonstrates its improper motives (and the illegality of its decision) through its inconsistent treatment of two groups situated substantially and substantively the same. To this day, Heartland continues to pay commissions on identically converted Amex accounts to its then-active sales personnel – despite the fact that the compensation of such active sales personnel was (and still is) governed by the same Sales Policies that apply equally to Plaintiff and the Class of Vested former sales personnel.

138. The benefit of the bargain originally intended by the parties is that once Plaintiff attained Vested status, he owned the residuals associated with the Merchants he signed up to process with Heartland; and that as long as Heartland was making money from Plaintiff's Merchants, Heartland would share a healthy portion of those profits with Plaintiff.

139. Their objectively-reasonable common expectation was clearly that no minor changes to a program by a card issuer/processor would get in the way of the transparency and fairness concept supposedly at the very “heart” of the company that hired them – as evidenced by the many places that concept is communicated to employees during the recruiting, hiring and training process, and beyond.

140. Defendant, in bad faith, with malicious motive, and without any legitimate purpose, denied Plaintiff the benefit of the bargain originally intended by the parties.

141. Upon information and belief, Heartland treated its former employees disparately than it treated its active employees, by its continued payment of residuals on converted OptBlue accounts to its active employees, but not its former Vested employees. In addition, upon information and belief, Heartland may have permitted active RMs to get themselves undeservedly listed as the “selling RM” on Plaintiffs’ accounts.

142. Per the terms of Heartland’s Agreements, the Sales Policies, and any other document or communication published by Heartland, Vested former employees are in the same position as active employees – particularly, as relates to the payment of commissions.

143. Heartland acted in bad faith and with malicious motive against its former Vested employees, by singling them out and denying them the benefit of the bargain originally intended by the parties.

144. Heartland further dealt unfairly with the Class by taking advantage of its highly complex compensation structure to retain millions of dollars of commissions it owed to the Class.

145. During Heartland’s conversion of Merchants to its new higher pricing for Amex processing, Plaintiff was still subject to restrictive covenants in the Vesting Agreement to not solicit any of Heartland’s Merchants.

146. Heartland behaved with improper motive in that it took advantage of Plaintiff’s restrictive covenants, and the entirety of this situation, by delaying termination of the commissions and by not providing any advance notice of same, until *after* the Merchants were all converted to Heartland’s new higher pricing – at which time the Merchants were no longer vulnerable to potential competitive efforts to switch the Merchants to another processor.

147. Heartland has wrongfully and intentionally breached the duty of good faith and fair dealing by denying Plaintiff and the Class Members the compensation to which they are entitled.

148. Defendant Heartland's breaches of the covenant of good faith and fair dealing have proximately and directly caused damages to Plaintiff and the Class Members.

COUNT THREE
(Unjust Enrichment)

149. Plaintiff repeats and re-alleges the allegations set forth in the previous paragraphs of this Complaint as if they were set forth in full herein.

150. In the alternative to a finding of a valid, binding, and enforceable agreement between the parties that governs Defendant's obligations and/or Plaintiff's rights specifically with respect to the subject Amex commissions, Plaintiff alternatively pleads that Defendant was unjustly enriched by its conduct.

151. The Amex OptBlue program is substantively the same as the OnePoint program (from which the subject Merchants were converted), as evidenced by the facts that new contracts were not even required from Merchants. The "service" was the same, and the "program" was merely a new pricing scheme. In addition, sales personnel didn't even have to contact the Merchants to discuss any changes and/or to seek authorization to the conversion – rather the conversion was automatic.

152. As relates to Plaintiff's compensation, the service sold to his Merchants is the same: Amex transaction processing.

153. Plaintiff conferred a benefit upon Defendant by signing Merchants up to process Amex transactions through Heartland; and Plaintiff reasonably and objectively expected remuneration from Defendant at the time he conferred that benefit.

154. In addition, Plaintiff conferred a benefit upon Defendant by refraining from soliciting the Merchants he signed up to process Amex transaction through Heartland; and Plaintiff reasonably and objectively expected continued remuneration from Defendant at the time he conferred such benefit.

155. Heartland continues to receive income from the Merchant relationships for Amex processing services that Plaintiff established for Heartland's benefit.

156. Heartland's retention of this benefit that Plaintiff conferred upon it is unjust and inequitable.

157. Defendant's continued receipt of this benefit without payment to Plaintiff is unjust and inequitable.

158. Heartland's conversion of Plaintiff's Merchant accounts to "house accounts" is unjust and inequitable.

159. Defendant has been enriched by its acts, omissions and/or contractual breaches as described in Count One above.

160. Defendant's acts, omissions and/or contractual breaches allowed Defendant to acquire the use and benefit of Plaintiff's and the Class Members' Vested commissions that Heartland would not have acquired but for its acts, omissions and/or contractual breaches.

161. Defendant has been unjustly enriched as a result of its acts, omissions and/or contractual breaches.

162. Plaintiff and the Class Members suffered damages due to Defendant's acts, omissions and/or contractual breaches.

163. Defendant lacks any legal justification for having engaged in the acts, omissions and/or contractual breaches alleged herein at Plaintiff's and the Class Members' expense.

164. Defendant wrongfully enriched itself at the expense of Plaintiff and the Class by paying Vested Amex commissions for years after employment, only to later, prospectively and retroactively, stop paying them under the false pretense of a "program" ending.

165. No other remedy at law can adequately compensate Plaintiff and the Class Members for the damages occasioned by Defendant's conscious choice to engage in the acts, omissions and/or contractual breaches alleged herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that the Court issue an Order and grant Judgment to the Plaintiff and the Class Members as follows:

- a) Certifying this action as a Class Action pursuant to Rule 4:32 of the New Jersey Court Rules;
- b) Naming Plaintiff Joseph Soranno as the representative of the absent Class Members;
- c) Appointing Keefe Law Firm as Class Counsel for all purposes in this action;
- d) Granting Plaintiff and Class Members compensatory and statutory relief, common law and punitive damages, and applicable pre- and post-judgment interest, in full recompense for their damages;
- e) Enjoining Defendant from violating any applicable contracts for payment of compensation to Plaintiff and the Class Members and from violating any applicable statutory or case law;

- f) Entering judgment according to the injunctive, equitable and declaratory relief sought;
- g) Granting Plaintiff and Class Members such other and further relief as the Court deems just in all the circumstances;
- h) Granting an Incentive Award to Plaintiff as Class Representative for his impartial, loyal and dedicated service to the Class; and
- i) Granting Class Counsel an award of their attorneys' fees and costs of suit, reflective of the work done in prosecuting this action, the time spent, the effort and hard costs invested, and results obtained, in light of the Court's judgment informed by awards in other similar cases of comparable difficulty and complexity.

JURY DEMAND

Plaintiffs hereby demand a trial by jury as to all of the issues contained herein.

NOTICE TO ATTORNEY GENERAL OF ACTION

A copy of this Complaint will be mailed to the Attorney General of the State of New Jersey within ten days after filing with the Court, pursuant to N.J.S.A. 56:8-20.

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, John E. Keefe, Jr., Esq. is hereby designated as trial counsel for Plaintiff in the within matter.

KEEFE LAW FIRM

Attorneys for the Plaintiffs

Dated: 10/15/18

By: 

PAUL A. DIGIORGIO, ESQ.

For the Firm

Civil Case Information Statement

Case Details: MERCER | Civil Part Docket# L-002139-18

Case Caption: SORANNO JOSEPH VS HEARTLAND

PAYMENT SY STEMS, LL

Case Initiation Date: 10/15/2018

Attorney Name: PAUL ANTHONY DI GIORGIO

Firm Name: KEEFE LAW FIRM

Address: 125 HALF MILE RD STE 100

RED BANK NJ 07701

Phone:

Name of Party: PLAINTIFF : Soranno, Joseph

Name of Defendant's Primary Insurance Company

(if known): Unknown

Case Type: CONTRACT/COMMERCIAL TRANSACTION

Document Type: Complaint with Jury Demand

Jury Demand: YES - 12 JURORS

Hurricane Sandy related? NO

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? YES

If yes, is that relationship: Employer/Employee

Does the statute governing this case provide for payment of fees by the losing party? NO

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule 1:38-7(b)*

10/15/2018

Dated

/s/ PAUL ANTHONY DI GIORGIO

Signed

MERCER COUNTY COURTHOUSE
CIVIL CASE MANAGMENT OFFICE
175 SOUTH BROAD ST P O BOX 8068
TRENTON NJ 08650-0068

TRACK ASSIGNMENT NOTICE

COURT TELEPHONE NO. (609) 571-4200
COURT HOURS 8:30 AM - 4:30 PM

DATE: OCTOBER 15, 2018
RE: SORANNO JOSEPH VS HEARTLAND PAYMENT SY STEMS, LL
DOCKET: MER L -002139 18

THE ABOVE CASE HAS BEEN ASSIGNED TO: TRACK 2.

DISCOVERY IS 300 DAYS AND RUNS FROM THE FIRST ANSWER OR 90 DAYS
FROM SERVICE ON THE FIRST DEFENDANT, WHICHEVER COMES FIRST.

THE PRETRIAL JUDGE ASSIGNED IS: HON WILLIAM X. ANKLOWITZ

IF YOU HAVE ANY QUESTIONS, CONTACT TEAM 020
AT: (609) 571-4200.

IF YOU BELIEVE THAT THE TRACK IS INAPPROPRIATE YOU MUST FILE A
CERTIFICATION OF GOOD CAUSE WITHIN 30 DAYS OF THE FILING OF YOUR PLEADING.
PLAINTIFF MUST SERVE COPIES OF THIS FORM ON ALL OTHER PARTIES IN ACCORDANCE
WITH R.4:5A-2.

ATTENTION:

ATT: PAUL A. DI GIORGIO
KEEFE LAW FIRM
125 HALF MILE RD STE 100
RED BANK NJ 07701

ECOURTS

EXHIBIT B

JOSEPH SORANNO, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

HEARTLAND PAYMENT SYSTEMS,
LLC, successor in interest to HEARTLAND
PAYMENT SYSTEMS, INC.,

Defendant.

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

Civil Action No.

DECLARATION OF MINDY MORETTI

I, Mindy Moretti, declare as follows:

1. I am employed by Global Payments Inc. as a VP-Program Strategy, in Pittsburgh, PA. I have personal knowledge of the matters set forth herein, including knowledge based upon corporate records and data of Heartland Payment Systems, LLC (“Heartland” or “Defendant”), which are within my custody and control, and the knowledge gained from reviewing those corporate records, which are maintained in the ordinary course of business. If called and sworn as a witness, I could and would competently testify thereto.

2. This declaration is submitted in support of the removal of the above-captioned matter.

3. The commissions calculated for American Express payments Heartland processed for merchants signed up by Plaintiff Joseph Soranno total \$35,863.55 for the period of February 2015 to March 2018—a period of thirty-eight months.

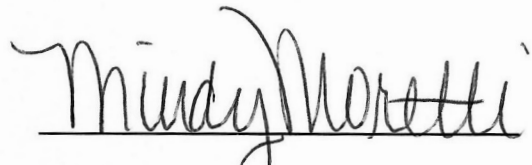
4. The putative class Plaintiff purports to represent in this case encompasses more than 100 individuals. Specifically, there are no fewer than 300 former Heartland sales employees who achieved “vested” status before their employment with Heartland was discontinued, who were not terminated for cause, who were not adjudicated to have violated any

agreements related to their “vested” status, and who stopped receiving commissions in February 2015 for American Express payments processed by Heartland for merchants those employees signed up.

5. The commissions calculated for American Express payments Heartland processed for merchants signed up by members of the putative class in this case total \$1,996,109.91 for the period of February 2015 to March 2018.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 16 day of November, 2018, at Pittsburgh, PA.


MINDY MORETTI

Richard J. Williams, Jr., Esq. -- #021451996
MCELROY, DEUTSCH, MULVANEY & CARPENTER, LLP
1300 Mount Kemble Avenue
P.O. Box 2075
Morristown, New Jersey 07962-2075
(973) 425-8773
rwilliams@mdmc-law.com
Attorneys for Defendant, Heartland Payment Systems, LLC

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

JOSEPH SORANNO, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

HEARTLAND PAYMENT SYSTEMS,
LLC, successor in interest to HEARTLAND
PAYMENT SYSTEMS, INC.,

Defendant.

Civil Action No.

Document Electronically Filed

CERTIFICATION OF FILING

I, Richard J. Williams, Jr., am a member of the firm of McElroy, Deutsch, Mulvaney & Carpenter, LLP, attorneys for Defendant Heartland Payment Systems, LLC (“Defendant”) in the above-captioned matter. On November 16, 2018, I caused following documents to be electronically filed with the Clerk, United States District Court, District of New Jersey:

1. Notice of Removal, with Exhibits A & B;
2. Corporate Disclosure;
3. Civil Cover Sheet;
4. Certification of Filing/Mailing.

On November 16, 2018, I served, via electronic mail and Federal Express Delivery, true and accurate copies of the above-referenced documents on:

John E. Keefe, Jr., Esq.
Paul A. DiGiorgio, Esq.
The Keefe Law Firm
125 Half Mile Road, Suite 100
Red Bank, NJ 07701
Pdigiorgio@keefe-lawfirm.com

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Richard J. Williams, Jr.

Richard J. Williams, Jr.

Dated: November 16, 2018

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Heartland Payment Systems Hit with Class Action Over Alleged Termination of Vested Commissions](#)
