

Ross E. Shanberg (SBN 179842)
Shane C. Stafford (SBN 216151)
SHANBERG STAFFORD LLP
4100 Newport Beach Place, #820
Newport Beach, California 92660
Telephone: (949) 205-7515
Facsimile: (949) 205-7144
rshanberg@ssbfirm.com
sstafford@ssbfirm.com

Attorneys for Plaintiff
VALERIE FURNIA
on behalf of herself and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

VALERIE FURNIA, an individual on
behalf of herself and others similarly
situated,

Plaintiff,

vs.

HEARTLAND PAYMENT SYSTEMS,
LLC., a Delaware limited liability
company; GLOBAL PAYMENTS, INC.,
a Georgia corporation; and DOES 1-10
inclusive,

Defendants.

Case No.: 24STCV00988

**FIRST AMENDED COMPLAINT FOR
CIVIL PENALTIES UNDER THE PRIVATE
ATTORNEYS GENERAL ACT (“PAGA”)
[California Labor Code §§2698, et seq.]**

DEMAND FOR JURY TRIAL

Complaint Filed: January 12, 2024

1 **I. INTRODUCTION**

2 Plaintiff Valerie Furnia, on behalf of herself and all others similarly situated, for her causes
3 of action against Defendants HEARTLAND PAYMENT SYSTEMS, LLC. ("Heartland"),
4 GLOBAL PAYMENTS, INC. ("Global Payments"), and DOES 1-10 inclusive, (hereinafter
5 Heartland, Global Payments, and DOES 1 through 10 are sometimes collectively referred to herein
6 as "Defendants"), hereby complains and alleges as follows:

7 1. This lawsuit is directed at Defendants' California state law violations of wage and
8 hour laws and other Labor Code violations -- it is a representative action seeking recovery of civil
9 penalties under the Private Attorneys General Act of 2004 ("PAGA"), and the California Labor
10 Code ("Labor Code") §§2698, et seq. PAGA permits "aggrieved employees" to bring a lawsuit as
11 a representative action on behalf of themselves and other aggrieved current and former employees
12 to recover civil penalties for Defendant's violations of the Labor Code, including, but not limited to
13 Labor Code §§200, et seq., 232, 232.5, 432.5, 500, et seq., 1102.5, 1174, 1194, 1197.5, 1198, 2699,
14 and all applicable Industrial Welfare Commission ("IWC") Orders.

15 2. This action is brought as a representative action on behalf of all current and former
16 aggrieved employees who were employed by Defendants in California and who work or worked as
17 non-exempt employees and/or who were misclassified as exempt employees during the applicable
18 time period and who were subject to Defendants' wage and hour policies and/or practices.

19 3. As set forth in detail below, Defendants consistently implemented, maintained and
20 enforced unlawful policies and practices regarding Plaintiff in violation of California's wage and
21 hour laws, which led to Defendants' violations of Labor Code §§ 201, 202, 203, 204, 221, 223,
22 226, 226.7, 510, 1174, 1194, 1197, 1197.1, 2751, and 2802, and applicable IWC Wage Orders due
23 to Defendants': (1) failure to pay all wages, including minimum wages, straight time wages, and
24 overtime compensation; (2) illegal deductions from earned wages; (3) commissions contracts
25 violations; (4) failure to provide meal periods or provide compensation in lieu thereof; (5) failure to
26 authorize and permit rest periods or provide compensation in lieu thereof; (6) failure to properly
27 maintain and submit accurate itemized wage statements; (7) failure to timely pay all wages owed;
28 and (8) failure to reimburse for necessary business expenditures.

1 4. As a matter of policy and practice, Defendants have adopted, implemented, and
2 enforced a program whereby it requires employees to execute and agree to restrictive covenants
3 and confidentiality provisions that clearly violate California law. These unlawful provisions are
4 most clearly identified in the California Sales Employee Agreement, which states, among other
5 things, that information regarding “personnel training,” “support and development programs and
6 materials,” “operating procedures,” compensation schedules and reports,” “and any other
7 information concerning HPS or any of its affiliates or the business of HPS or any of its affiliates or
8 any employees” is considered “Confidential Information” and shall be kept in strict confidence
9 during employment and “thereafter.” These overly restrictive, and unlawful, provisions are then
10 reinforced by HPS Sales Policy 42.0 – Sales Policy on Restrictive Covenant Compliance. Upon
11 separation from employment employees are reminded “Please note that you are not entitled to
12 keep, maintain, divulge or use any Heartland confidential information for any reason.”

13 5. Defendants have therefore committed numerous additional violations of the
14 California Labor Code, including, but not limited to, Labor Code §§ 232, 232.5, 432.5, 1102.5,
15 1197.5 due to Defendants’ confidentiality policies that prohibit employees from disclosing the
16 amount of their wages; require employees to refrain from disclosing information about the
17 employer’s working conditions; require employees to agree to terms and conditions which are
18 known by Defendants to be prohibited by law; prohibit disclosure of information to the
19 government or a law enforcement agency; and restrict employees from reporting violations of the
20 law to an employee who has the authority to investigate, discover, or correct the violation of law.

21 6. Such policies and practices, as described herein, violate the Labor Code, and
22 therefore trigger civil penalties under Labor Code §2699. Therefore, Plaintiff, on behalf of herself
23 and all aggrieved employees, brings this representative PAGA action pursuant to the provisions of
24 the Labor Code as referenced herein. Plaintiff seeks recovery of civil penalties, reasonable
25 attorney’s fees and costs, and other relief as deemed proper.
26
27
28

1 **II. VENUE**

2 7. Venue in Los Angeles is proper in this matter as Defendants' liabilities and
3 obligations arose in Los Angeles. In addition, the employment agreement between the parties
4 states the parties agree any action shall be filed in Los Angeles Superior Court, Central Civil West.

5 **III. PARTIES**

6 8. Plaintiff worked for Defendants as a Relationship Manager from April 2023 to
7 August 2023. Her duties included prospecting and closing new merchant account sales and
8 providing service to customers when necessary.

9 9. Plaintiff is informed and believes, and thereon alleges, that Defendant Heartland is a
10 Delaware limited liability company, with operations and employees throughout California and the
11 United States. Heartland offers payment processing services throughout the United States and
12 California, including in Los Angeles. Defendant Heartland is, and at all times relevant to this
13 Complaint was, an employer and limited liability company covered by California's Business &
14 Professions Code.

15 10. Plaintiff is further informed and believes, and thereon alleges, that Defendant
16 Global Payments is a payment technology company providing software and services to customers.
17 Defendant Global Payments is, and at all times relevant to this Complaint was, an employer and
18 corporation covered by California's Business & Professions Code.

19 11. Plaintiff is ignorant of the true names and capacities of Doe Defendants and
20 therefore sues them by fictitious names. Plaintiff will amend this Complaint to allege the true
21 names and capacities of the Doe Defendants when ascertained. Plaintiff is informed and believes,
22 and thereon alleges, that each of the Doe Defendants is responsible in some manner for the
23 occurrences alleged herein. Plaintiff is further informed and believes, and alleges thereon, that at
24 all relevant times, Doe Defendants have held executive positions with Defendants, and/or have
25 acted on behalf of Heartland and/or Global Payments by exercising decision-making responsibility
26 for and by establishing unlawful policies for Heartland. Plaintiff is informed and believes, and on
27 that basis alleges, that at all times relevant to this Complaint, Doe Defendants, and each of them,
28 acted as an employer of Plaintiff and the members of the Class within the definition of California's

1 Wage Orders and Labor Code. Heartland, Global Payments, and Doe Defendants are collectively
2 hereinafter referred to as “Defendants.”

3 12. At all times herein mentioned, each of the Defendants participated in the doing of
4 the acts hereinafter alleged to have been done by the named Defendants; and furthermore,
5 Defendants, and each of them, were the agents, servants, and employees of each and every one of
6 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
7 were acting within the course and scope of said agency and employment. Plaintiff herein alleges
8 that Defendants and each of them is the joint employer of Plaintiff and the aggrieved employees.

9 13. At all times mentioned herein, Defendants, and each of them, were members of and
10 engaged in a joint venture, partnership, and common enterprise, and acting within the course and
11 scope of and in pursuance of said joint venture, partnership, and common enterprise.

12 14. At all times herein mentioned, the acts and omissions of various Defendants, and
13 each of them, concurred and contributed to the various acts and omissions of each and every one of
14 the other Defendants in proximately causing the complaints, injuries, and damages alleged herein.

15 15. At all times herein mentioned, Defendants, and each of them, approved of,
16 condoned, and/or otherwise ratified each and every one of the acts or omissions complained of
17 herein. At all times herein mentioned, Defendants, and each of them, aided and abetted the acts
18 and omissions of each and every one of the other Defendants, thereby proximately causing the
19 damages, as herein alleged.

20 **IV. PRIVATE ATTORNEYS GENERAL ACT CLAIM**

21 16. The California Superior Court has jurisdiction in this matter because both the
22 individual and aggregate penalties sought herein exceed the minimal jurisdictional limits of the
23 Superior Court and will be established at trial, according to proof. The California Superior Court
24 also has jurisdiction in this matter because the Plaintiff and the aggrieved employees herein were
25 all California citizens.

26 17. On or about October 5, 2023, Plaintiff provided written notice via certified mail to
27 the Labor and Workforce Development Agency (“LWDA”), and Defendants, of the specific
28 provisions of the Labor Code alleged to have been violated, including the facts and theories to
support the alleged violations.

1 18. The LWDA failed to respond to Plaintiff's correspondence and failed to notify
2 counsel as to whether it would investigate the allegations contained therein, within 65 calendar
3 days of the postmark date of Plaintiff's correspondence as required under Labor Code § 2699.3.
4 Plaintiff has fully complied with the notice requirements set forth in Labor Code § 2699.3 in order
5 to commence a civil action against an employer pursuant to Labor Code § 2699.

6 19. On or about December 29, 2023, Plaintiff provided supplemental written notice via
7 certified mail to the LWDA, and Defendants, of the additional provisions of the Labor Code
8 alleged to have been violated, including the facts and theories to support the alleged violations. The
9 LWDA failed to respond to Plaintiff's supplemental correspondence and failed to notify counsel as
10 to whether it would investigate the allegations contained therein, within 65 calendar days of the
11 postmark date of Plaintiff's supplemental correspondence as required under Labor Code § 2699.3.
12 Plaintiff has fully complied with the notice requirements set forth in Labor Code § 2699.3 in order
13 to commence a civil action against an employer pursuant to Labor Code § 2699.

14 20. Defendants' failure to pay Plaintiff and the aggrieved employees for all hours
15 worked, minimum wages, overtime compensation, illegal deductions from earned wages,
16 commissions contracts violations, failure to provide meal periods, failure to authorize and permit
17 rest periods, failure to provide accurate itemized wage statements, failure to pay all wages upon
18 termination or resignation, failure to reimburse for necessary business expenditures, and unlawful
19 restrictive covenants and confidentiality provisions will subject Defendants to civil penalties
20 pursuant to Labor Code § 2699, et seq.

21 21. Plaintiff is an aggrieved employee as defined in Labor Code §§ 2699(a) and (c), and
22 related Labor Code provisions. Plaintiff brings the cause of action below on behalf of herself, as
23 private attorneys general, and in a representative capacity on behalf of other aggrieved employees
24 affected by the labor law violations alleged herein.

25 **A. FAILURE TO PAY PROPER WAGES AND OVERTIME**
26 **COMPENSATION**

27 22. California Labor Code 510(a) and the IWC Wage Orders regulating payment of
28 wages in California, provide that eight (8) hours of labor constitutes a day's work and any work in
excess of eight (8) hours in one (1) workday and any work in excess of forty (40) hours in any one

workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for each employee and any work in excess of twelve (12) hours in any one workday shall be compensated at the rate of no less than twice the regular rate of pay for each employee.

23. California Labor Code § 1194 states that any employee receiving less than the legal overtime compensation due is entitled to recover the unpaid balance of the full amount of this overtime compensation, including interest, reasonable attorney's fees, and costs of suit.

24. Plaintiff is informed and believes and thereon alleges that as part of Defendants' ongoing practices, Defendants' hourly employees worked in excess of eight (8) hours per day, and in excess of forty (40) hours per week, without receiving the proper overtime compensation.

25. As a matter of policy and practice, Defendants have adopted, implemented and enforced a program whereby it underpays, does not pay at all, and/or fails to pay overtime to, its employees for certain work performed for Defendants. Before being hired as full-time employees, Plaintiff Furnia, and all other similarly situated aggrieved employees, are required to go through a "Field Week" program with Defendants. Under the Field Week program, Defendants requires prospective employees to generate at least 10 first time appointments (FTAs) with a decision maker for the business, and set 4 coffee dates with sales professionals, CPAs, industry professionals, bankers, or the like within a 10-day period. During this period of time, the participants in Field Week are paid below the minimum wage for their hours worked, are not paid overtime for their hours worked, and/or are not paid at all. Typically, a participant in Field Week works between 45-60 hours to generate the 10 FTAs and 4 coffee dates required for full time employment.

B. UNLAWFUL DEDUCTIONS FROM WAGES – Labor Code § 221

26. Defendants have also engaged in illegal deductions from Plaintiffs' earned wages. Defendants, for instance, have adopted, implemented, and enforced a "Portfolio Buyout" program whereby Defendants deduct from Plaintiffs' vested wages amounts purportedly owed to Defendants, without authorization from the Plaintiffs, and without any basis for doing so. Plaintiff Furnia, as an example, received "bridge compensation" during the course of her employment, whereby Defendants agreed to pay her a salary in lieu of commissions for a period of weeks until Plaintiff Furnia could secure enough clients to obtain meaningful commissions. However, even though Defendants had no right to recoup the "bridge compensation" at any time, Defendants setoff

1 such “bridge compensation” from Plaintiff Furnia’s wages in order repay themselves. Plaintiff
2 Furnia is informed and believes, and based thereon alleges, that Defendants engaged in the same
3 practices with other similarly situated employees as Plaintiff Furnia.

4 27. Further, Heartland unilaterally and regularly makes unlawful deductions from
5 Salespersons’ earned wages, including Salespersons’ vested portfolio equity in customer accounts.
6 As an example, Salespersons are entitled to residual commissions for life as part of Heartland’s
7 sales compensation policies. Notwithstanding Salespersons’ vested rights in residual commissions,
8 Heartland regularly and without proper notice conducts forced “Portfolio Buyouts” of those
9 commissions to purportedly repay Heartland for monies that Heartland contends Salespersons owe
10 Heartland, even though such monies include reimbursable business expenses, bridge compensation,
11 and other amounts (commonly referred to as “A/R Balances”) that are actually owed by Heartland
12 to Salespersons. This amounts to wage theft.

13 28. In addition, Plaintiff Furnia is informed and believes, and based thereon alleges, that
14 when initiating a “Portfolio Buyout,” Heartland “buys out” the most profitable customer accounts,
15 thus depriving the Plaintiff Furnia and other similarly situated aggrieved employees of future
16 residual commissions for the life of the account. Further, Defendants fail and refuse to identify
17 how such accounts are chosen, or how the amounts are calculated as part of the “Portfolio Buyout.”

18 29. Heartland has also adopted, implemented, and enforced policies and practices
19 whereby Heartland “grosses up” monies allegedly owed to Heartland by Salespersons, by
20 improperly deducting taxes in addition to the principal amount allegedly owed to Heartland by
21 Salespersons. Heartland further engages in other illegal deductions without notice or authorization,
22 and by which Heartland puts the burden on its employees to be the insurer of Heartland’s business
23 losses, which is patently illegal.

24 30. As a result, Defendants have violated Labor Code §§ 221 and 223.

25 31. Pursuant to Labor Code §§ 2699, 2699.3, and/or 2699.5, Plaintiff is an aggrieved
26 employee, entitled to recover civil penalties pursuant to the Labor Code, including but not limited
27 to Labor Code §§ 558 and 2699(f).
28

1 **C. COMMISSIONS CONTRACTS - Labor Code § 2751**

2 32. Pursuant to Labor Code § 2751, “Whenever an employer enters into a contract of
3 employment with an employee for services to be rendered within this state and the contemplated
4 method of payment of the employee involves commissions, the contract shall be in writing and
5 shall set forth the method by which the commission shall be computed and paid. The employer
6 shall give a signed copy of the contract to every employee who is a party thereto and shall obtain a
7 signed receipt for the contract from the employee.”

8 33. Contrary to this Labor Code provision, Plaintiff Furnia and other aggrieved
9 employees were not provided with a signed employment contract detailing all requirements of LC
10 2751, including the method by which commissions shall be computed and paid. Plaintiff and other
11 aggrieved employees signed employment agreement did not include sales commission details,
12 including how commissions were to be computed and paid. Defendants “commission plan” was
13 not memorialized in Plaintiff’s signed employment agreement, nor was the precise method of
14 computation and payment identified therein. On the contrary, Defendants maintained numerous,
15 separate, “sales policies” and other documents which purported to specify the method of
16 computation for payment of commissions, however, Plaintiff and the aggrieved employees were
17 unable to comprehend these numerous convoluted documents and policies which failed to identify
18 in clear and concise terms how commissions were to be computed, earned, and paid. In other
19 words, Defendants failed to maintain a clear and unambiguous commission plan for which
20 employees understood precisely how commissions would be paid and what commission payments
21 they would receive as part of the services rendered.

22 34. Pursuant to Labor Code §§ 2699, 2699.3, and/or 2699.5, Plaintiff is an aggrieved
23 employee, entitled to recover civil penalties pursuant to the Labor Code, including but not limited
24 to Labor Code §§ 558 and 2699(f).

25 **D. VIOLATION OF MEAL PERIOD PROVISIONS**

26 35. California Labor Code § 512 and applicable IWC Wage Orders state that an
27 employer may not employ an employee for a work period of more than five (5) hours per day
28 without providing the employee a meal period of not less than 30 minutes, and an employer may

1 not employ an employee for a work period of more than 10 hours per day without providing the
2 employee with a second meal period of not less than 30 minutes.

3 36. Unless the employee is relieved of all duty during a 30-minute meal period, the
4 meal period shall be considered an “on duty” meal period and counted as time worked. California
5 Labor Code § 226.7(a) further states that no employer shall require any employee to work during
6 any meal mandated by an applicable order of the IWC.

7 37. Employers are prohibited from exerting coercion against the taking of, creating
8 incentives to forego, or otherwise encouraging the skipping of legally protected breaks.

9 38. Defendants failed to provide Plaintiff with meal periods under California law.
10 Plaintiff Furnia, and all other similarly situated aggrieved employees who participated in “Field
11 Week” were never afforded any ability to take meal periods, as they were under Defendants’
12 direction and control to set up the requisite number of appointments and referrals in a limited time.

13 39. Pursuant to California Labor Code § 226.7(c) and applicable IWC Wage Orders, if
14 an employer fails to provide an employee a meal period in accordance with the applicable
15 provisions of the IWC Wage Orders, the employer shall pay the employee one (1) hour of pay at
16 the employee’s regular rate of pay for each workday that the meal period is not provided. As such,
17 Plaintiff is entitled to an additional one hour’s pay for each day in which Plaintiff was not provided
18 a proper meal break.

19 40. Defendants failed to pay Plaintiff and all other similarly situated aggrieved
20 employees one hour of pay at the regular rate of pay for each workday that a 30-minute duty-free
21 meal period was not provided.

22 41. Defendants’ improper meal period policies are in violation of California law
23 including, but not limited to Labor Code § 226.7, 512, and applicable IWC Wage Orders.
24 Defendants failed and continue to fail to pay for meal period violations at the employees’ regular
25 rate of pay in violation of the applicable Wage Orders.

26 42. Plaintiff requests that the Court award interest on all unpaid wages at the legal rate
27 specified by California Civil Code § 3289(b), accruing from the date the wages were due and
28 payable pursuant to Labor Code § 218.6.

1 43. Pursuant to Labor Code §§ 2699, 2699.3, and/or 2699.5, Plaintiff is an aggrieved
2 employee, entitled to recover civil penalties pursuant to the Labor Code, including but not limited
3 to Labor Code §§ 558, 2699(f), and applicable IWC Wage Orders.

4 **E. FAILURE TO AUTHORIZE OR PERMIT REST PERIODS**

5 44. The IWC Wage Orders state that every employer shall authorize and permit all
6 employees to take rest periods. The authorized rest period time shall be based on the total hours
7 worked daily at the rate of ten (10) minutes net rest time per four hours of work, or major fraction
8 thereof. An employer must provide employees with 10 minutes' rest for shifts from three and one-
9 half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes
10 for shifts of more than 10 hours up to 14 hours, and so on.

11 45. Defendants failed to adopt, implement, and enforce a uniform rest period policy that
12 complied with California law. Defendants failed to authorize and permit Plaintiff and all other
13 similarly situated aggrieved employees to take duty free rest periods of 10 minutes for every four
14 hours worked or major fraction thereof, by requiring Plaintiff and all other similarly situated
15 aggrieved employees to regularly work through rest periods to complete the job duties. As a
16 commissioned salesperson, Plaintiff Furnia was also not paid separately for rest periods in violation
of California law.

17 46. Pursuant to California Labor Code § 226.7(c) and the applicable IWC Wage Orders,
18 if an employer fails to provide an employee a rest period in accordance with the applicable IWC
19 Wage Orders, the employer shall pay the employee one (1) hour of pay at the employee's regular
20 rate of compensation for each workday that the rest period is not provided.

21 47. Defendants failed to pay Plaintiff and all other similarly situated aggrieved
22 employees a missed rest period premium pursuant to Labor Code § 226.7 for each rest period that
23 was not authorized or permitted, and/or failed to pay such rest period premium at their regular rate
24 of pay. As a result of Defendant's lack of any rest break policy that complies with California law,
25 Defendants have violated Labor Code § 512 and 226.7 and the applicable Industrial Welfare
26 Commission wage order.

27 48. Pursuant to Labor Code § 2699, Plaintiff seeks to recover civil penalties, as
28 otherwise provided by statute and wage order, for which Defendants are liable as a result of their

1 violations of the Labor Code and applicable wage order(s) in an amount to be proven at trial.
2 These penalties include, but are not limited to, those provided by Labor Code §§ 210, 225.5, 226.3,
3 256, 558, 1174.5, 1197.1, and 2699. Plaintiffs further seek an award of reasonable attorneys' fees
4 and costs pursuant to the Labor Code §2699(g)(1) and any other applicable statute.

5 49. Pursuant to Labor Code §§ 2699, 2699.3, and/or 2699.5, Plaintiff is an aggrieved
6 employee, entitled to recover civil penalties pursuant to the Labor Code, including but not limited
7 to Labor Code §§558, 2699(f), and applicable IWC Wage Orders.

8 **F. FAILURE TO PROVIDE ITEMIZED WAGE STATEMENTS**

9 50. Labor Code § 226(a) provides that every employer shall, semi-monthly or at the time
10 of each payment of wages, furnish each its employees, an accurate, itemized statement in writing,
11 showing (1) gross wages earned, (2) total hours worked, (3) the number of piece rate units earned if
12 applicable, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which
13 the employee was paid, (7) the name of the employee and last 4 digits of the social security number,
14 (8) the name of the employer and (9) all applicable daily rates in effect during the pay period and
corresponding number of hours worked.

15 51. Plaintiff is informed, and believes, and thereon alleges, that Defendants, and each of
16 them, failed to provide Plaintiff Furnia and other similarly situated aggrieved employees who
17 participate in the Field Week program with any wage statements setting forth any of the
18 information required under California Labor Code § 226, including but not limited to total hours
19 worked, any applicable hourly rates in effect during the Field Week period, including the regular
20 hourly rate and overtime rate, and all other information required by California law.

21 52. Defendants' pay stubs are also invalid because Plaintiff Furnia and other similarly
22 situated aggrieved employees are not paid all wages due, their wage statements fail to accurately
23 state all gross wages earned, in violation of Labor Code § 226(a)(1), net wages earned, in violation
24 of Labor Code § 226(a)(5), total hours worked, in violation of Labor Code §226(a)(2), and all
25 applicable hourly rates in effect during the pay period and the corresponding number of hours
26 worked at each hourly rate, in violation of Labor Code § 226(a)(9). The wage statements also fail
27 to accurately report on Plaintiffs' wage statements proper deductions, in violation of Labor Code §
28 226(a)(4). Thus, Heartland will be responsible for penalties under Labor Code § section 226.

1 53. Defendants also willfully failed to provide compliant wage statements to Plaintiff
2 Furnia and other similarly situated aggrieved employees by failing and refusing to identify wage
3 deductions or other information required by Labor Code § 226, and as such, Plaintiff and cannot
4 promptly and other similarly situated aggrieved employees cannot easily determine the accuracy of
5 such information from the wage statements alone.

6 54. As a direct and proximate result of Defendants' conduct, Plaintiff and other
7 similarly situated aggrieved employees suffered substantial losses, and they have been deprived of
8 compensation to which they were entitled, according to proof, including monetary damages, pre-
9 judgment interest, costs, and attorneys' fees for the prosecution of this action.

10 55. As a direct and proximate result of Defendants' conduct, Plaintiff and other
11 similarly situated aggrieved employees are each entitled to recover \$50 for the initial pay period in
12 which a violation of Labor Code § 226 occurred, and \$100 per each violation in a subsequent pay
13 period, not to exceed \$4000 per Plaintiff, pursuant to Labor Code §226(e).

14 56. Pursuant to Labor Code §§ 2699, 2699.3, and/or 2699.5, Plaintiff is an aggrieved
15 employee, entitled to recover civil penalties pursuant to the Labor Code, including but not limited
16 to Labor Code §§ 558, 2699(f), and applicable IWC Wage Orders.

17 **G. VIOLATION OF LABOR CODE § 200, ET SEQ.**

18 57. Labor Code § 200, et seq. provides that an employer is required to pay an employee
19 all wages immediately upon the employee's involuntary separation from employment; immediately
20 upon his or her voluntary separation if the employee gave at least seventy-two (72) hours' notice,
21 and within seventy-two (72) hours, if the employee voluntarily separated, but did not give at least
22 seventy-two (72) hours' notice.

23 58. Plaintiff is informed and believes and thereon alleges that as part of Defendants'
24 ongoing practices, Defendants failed to provide all employees all wages at the time of their
25 separation in violation of Labor Code § 200, et. seq.

26 59. Plaintiff is informed and believes and thereon alleges that Defendants willfully
27 failed and refused to timely pay all compensation due and owing to Plaintiff Furnia and other
28 similarly situated aggrieved employees who participate in the Field Week program whose
employment was terminated during the relevant time period, as required by Labor Code §§ 201 and

1 202. For instance, Plaintiff Furnia and other similarly aggrieved employees have been paid below
2 the minimum wage for their hours worked during the Field Week program, and others similarly
3 situated have not been paid at all, and oftentimes, the monies owed are not paid for weeks or
4 months after the work is performed. As such, Defendants are liable for accrued wages due, and
5 waiting time penalties owed, in accordance with Labor Code § 203.

6 60. Pursuant to Labor Code § 200, et seq. employees that no longer work for
7 Defendants, and who were not timely paid, are entitled to one (1) day of pay in penalties for each
8 day that he or she was paid late, until payment was made, up to a maximum of thirty (30) days.

9 61. Pursuant to Labor Code §§ 2699, 2699.3, and/or 2699.5, Plaintiff is an aggrieved
10 employee, entitled to recover civil penalties pursuant to the Labor Code, including but not limited
11 to Labor Code §§ 558 and 2699(f).

12 **H. FAILURE TO INDEMNIFY AND/OR REIMBURSE EXPENSES**

13 62. California Labor Code § 2802 provides that "[a]n employer shall indemnify his or
14 her employee for all necessary expenditures or losses incurred by the employee in direct
15 consequence of the discharge of his or her duties."

16 63. Defendants failed and refused to reimburse Plaintiff Furnia and other similarly
17 situated aggrieved employees for expenses incurred in performing their job duties. As a matter of
18 policy and practice, Defendants requires all sales employees to maintain increased limits and
19 additional coverage on their auto insurance policies for the direct benefit of Defendants. For
20 instance, Plaintiff Furnia and others similarly situated are required to obtain auto insurance with
21 minimum liability policies of \$300,000 per incident, add Heartland as an additional insured to their
22 auto insurance policies, and declare that their vehicles were used for business purposes.

23 64. To obtain such insurance policies, Plaintiff Furnia incurred extra auto insurance
24 expenses of at least \$30 per month, and Plaintiff is informed and believes, and based thereon alleges,
25 that other similarly situated aggrieved employees incurred additional auto insurance expenses based
26 on Defendants' enhanced insurance requirements. Notwithstanding that these requirements
27 increased the insurance premiums for Plaintiff, Defendants failed and refused to reimburse Plaintiff
28 for such premium increases.

1 65. Moreover, Defendants have adopted and implemented a reimbursement policy
2 whereby sales employees, including Plaintiff, are not compensated for all of their other reimbursable
3 expenses. For instance, Defendants allocate 25 percent of Salespersons' commissions to
4 reimbursements for expenses, but then regularly classify those same commissions as "advances", not
5 earned wages, such that Defendants recoup such advanced amounts through various means,
6 including through the use of "true-ups" and "portfolio buyouts," thus making the expense
7 reimbursement allocation illusory.

8 66. Plaintiff is further informed and believes, and based thereon alleges, that Defendants
9 failed and refused to pay Plaintiff and other similarly situated aggrieved employees enhanced sales
10 commissions to compensate Salespersons for their substantial business expenses or any other means
11 of lawfully reimbursing Salespersons for their business expenses.

12 67. Plaintiff is informed and believes, and based thereon alleges, that Defendants
13 allocate a certain percentage of Plaintiff's commissions to reimbursements for expenses, but at the
14 same time fails and refuses to pay Plaintiff enhanced sales commissions. Additionally, Defendants
15 have adopted policies and procedures that expressly state that Defendant does not pay for mileage
16 driven to merchant locations, and Defendants do not pay for other expenses incurred that are
17 necessary to carry out Plaintiff's sales activities.

18 68. Additionally, Defendants required Plaintiff and others similarly situated to use their
19 personal cell phones, computers, and home internet to carry out their job duties. Defendants failed
20 to indemnify or reimburse Plaintiff and other aggrieved employees for these expenses.

21 69. Finally, Defendants have had no policy or practice of reimbursing trainees
22 participating in "Field Week" for mileage incurred in using their personal vehicles or for personal
23 cell phone use, both of which were reasonably necessary to perform the work of a trainee.

24 70. Pursuant to Labor Code §§ 2699, 2699.3, and/or 2699.5, Plaintiff is an aggrieved
25 employee, entitled to recover civil penalties pursuant to the Labor Code, including but not limited
26 To Labor Code §§558, 2699(f), and applicable IWC Wage Orders.
27
28

1 **I. ILLEGAL PROHIBITION ON DISCLOSURE OF INFORMATION ABOUT**
2 **WAGES IN VIOLATION OF LABOR CODE §§ 232**

3 71. As described above, Defendants require employees, as a condition of employment,
4 to refrain from disclosing information about or discussing wages. This is a violation of California
5 Labor Code §§ 232(a) and (b).

6 72. Under the Private Attorneys General Act (PAGA), the penalty for a violation of
7 Labor Code § 232 is “one hundred dollars (\$100) for each aggrieved employee per period for the
8 initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for
9 each subsequent violation.”

10 73. Plaintiff seeks from Heartland and Global Payments separately, on behalf of herself,
11 the State of California, and all of the aggrieved employees, PAGA penalties as set forth above for
12 each employee per pay period within the statutory time frame.

13 **J. ILLEGAL PROHIBITION ON DISCLOSURE OF INFORMATION ABOUT**
14 **WORKING CONDITIONS**

15 74. As described above, Defendants require employees, as a condition of employment,
16 to refrain from disclosing information about Defendants’ working conditions. This is a violation of
17 California Labor Code §§ 232.5(a) and (b).

18 75. Under the Private Attorneys General Act (PAGA), the penalty for a violation of
19 Labor Code § 232.5 is “one hundred dollars (\$100) for each aggrieved employee per period for
20 the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period
21 for each subsequent violation.”

22 76. Plaintiff seeks from Heartland and Global Payments separately, on behalf of
23 herself, the State of California, and all aggrieved employees, PAGA penalties as set forth above for
24 each employee per pay period within the statutory time frame.

25 **K. ILLEGALLY REQUIRING EMPLOYEES TO AGREE TO TERMS AND**
26 **CONDITIONS KNOWN BY EMPLOYER TO BE PROHIBITED BY LAW**

27 77. Labor Code § 432.5 provides that no employer shall require any employee or
28 applicant for employment to agree, in writing, to any term or condition which is known by the
29 employer to be prohibited by law. Defendants’ confidentiality policies clearly violate the law as

discussed herein. The restrictive covenants also violate Business & Professions Code § 16600 and 17200, thereby further demonstrating the violations of Labor Code § 432.5.

78. Defendants, through their agreements and other documents, did or do require its employees to agree in writing to terms and conditions prohibited by law.

79. Defendants know or should have known that its agreements and other documents are prohibited by law.

80. Under the Private Attorneys General Act (PAGA), the penalty for a violation of Labor Code § 432.5 “is one hundred dollars (\$100) for each aggrieved employee per period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.”

81. Plaintiff seeks from Heartland and Global Payments separately, on behalf of herself, the State of California, and all aggrieved employees, PAGA penalties as set forth above for each employee per pay period within the statutory time frame.

L. ILLEGAL PROHIBITION ON WHISTLEBLOWING

82. Labor Code § 1102.5(a) states that an employer “shall not make, adopt, or enforce any rule, regulation or policy preventing an employee from disclosing information to a government or law enforcement agency . . . if the employee has reasonable cause to believe that the information discloses a violation [of the law].” Defendants’ policy that employees sign certain illegal confidentiality agreements and other documents violate this provision. Moreover, the fact that employees cannot discuss Defendants’ confidential information “for any reason” demonstrates how they prohibit disclosure of information to the government or a law enforcement agency of potential violations of the law. The agreements and policies thus violate Labor Code § 1102.5(a).

83. Labor Code § 1102.5(a) also states that an employer shall not make, adopt, or enforce any policy that prevents an employee from disclosing information to a person with authority over the employee, or to an employee who has the authority to investigate, discover, or correct the violation of law, if the employee has reasonable cause to believe that the information discloses a violation of the law. Defendants’ unlawful policies restrict employees from reporting violations of the law internally as employees are prohibited from communicating with other employees that Defendants’ conduct is illegal. This violates Labor Code § 1102.5(a).

1 84. Under the Private Attorneys General Act (PAGA), the penalty for a violation of
2 Labor Code § 1102.5 is both \$10,000 per employee violation and “one hundred dollars (\$100)
3 for each aggrieved employee per period for the initial violation and two hundred dollars (\$200)
4 for each aggrieved employee per pay period for each subsequent violation.”

5 85. Plaintiff seeks from Heartland and Global Payments separately, on behalf of herself,
6 the State of California, and all aggrieved employees, PAGA penalties as set forth above for each
7 employee per pay period within the statutory time frame.

8 **M. ILLEGAL PROHIBITION ON DISCLOSURE OF INFORMATION ABOUT**
9 **WAGES IN VIOLATION OF LABOR CODE § 1197.5(j)/(k)**

10 86. Labor Code § 1197.5(k) states that “an employer shall not prohibit an employee
11 from disclosing the employee’s own wages, discussing the wages of others, inquiring about
12 another’s wages, or aiding or encouraging any other employee to exercise his or her rights under
13 this section.” Defendants’ confidentiality agreements and policies prohibit employees from
14 engaging in any of these acts. This is a violation of Labor Code § 1197.5(k).

15 87. Plaintiff seeks from Heartland and Global Payments separately, on behalf of herself,
16 the State of California, and all aggrieved employees, PAGA penalties for each employee currently
17 or formerly employed by Heartland and Global Payments in California, per pay period, within the
18 statutory time frame.

19 **WHEREFORE**, Plaintiff prays:

20 a. For civil penalties pursuant to Labor Code § 2699(f), in addition to and entirely
21 independent and apart from other penalties in the Labor Code and for Labor Code violations
22 without a specific civil penalty, in the amount of \$100 for each aggrieved employee per pay period
23 for each violation, and \$200 for each aggrieved employee per pay period for each subsequent
24 violation;

25 b. For civil penalties pursuant to Labor Code § 558, as follows:

- 26 i. For any initial violation, fifty dollars (\$50) for each aggrieved underpaid
27 employee for each pay period for which the employee was underpaid;
28 ii. For each subsequent violation, one hundred dollars (\$100) for each

aggrieved underpaid employee for each pay period for which the employee was underpaid;

c. For civil penalties pursuant to Labor Code § 1197.1, as follows:

i. For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid;

ii. For each subsequent violation for the same offense, two hundred fifty dollars (\$250) for each aggrieved underpaid employee for each pay period for which the employee was underpaid regardless of whether the initial violation is intentionally committed;

d. For civil penalties per Labor Code § 225.5 in the amount of \$100 for each failure to pay each employee, and \$200 for each subsequent failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

e. For civil penalties per Labor Code § 226.3 in the amount of \$250 for each aggrieved employee per pay period for each violation, and \$1,000 for each aggrieved employee per pay period for each subsequent violation;

f. For civil penalties per Labor Code § 1174.5 in the amount of \$500 for each willful failure to maintain records as required by Labor Code § 1174(c).

g. For civil penalties per Labor Code § 256 in the amount of one day of pay, at the same rate, for each day that an aggrieved employee was paid late, at the time of termination, until payment was/is made, up to a maximum of thirty (30) days;

h. For civil penalties per Labor Code § 210 in the amount of \$100 for each failure to pay each employee, and for each subsequent violation, or any willful or intentional violation, \$200 for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

///

///

///

///

- 1 i. For reasonable attorneys' fees and costs incurred; and
2 j. For such relief as this Court may deem just and proper.

3
4 Dated: March 12, 2024

SHANBERG STAFFORD LLP

5 By: /s/ Shane C. Stafford /s/
6 Ross E. Shanberg
7 Shane C. Stafford
8 Attorneys for Plaintiff VALERIE FURNIA,
9 on behalf of herself and all other aggrieved
10 employees
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **DEMAND FOR JURY TRIAL**

2 Plaintiffs demand a jury trial on all issues triable to a jury.

3
4 Dated: March 12, 2024

SHANBERG STAFFORD LLP

5
6 By: /s/ Shane C. Stafford /s/
7 Ross E. Shanberg
8 Shane C. Stafford
9 Attorneys for Plaintiff VALERIE FURNIA,
on behalf of herself and all other similarly
situated employees

I, the undersigned, am employed in the County of Orange, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 4100 Newport Place Dr. Suite 820, Newport Beach, California 92660.

On March 12, 2024, I served true copies of the foregoing documents described as: **FIRST AMENDED COMPLAINT FOR CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT** on the interested parties in this action, addressed as follows:

Nathan D. Chapman
Kristapor Vartanian
Adria K. Harris

Attorneys for Defendants Heartland Payment Systems, LLC and Global Payments, Inc.

KABAT CHAPMAN & OZMER LLP

333 S. Grand Avenue, Suite 2225

Los Angeles, CA 90071

nchapman@kcozlaw.com

kvartanian@kcozlaw.com

aharris@kcozlaw.com

Labor and Workforce Development Agency

LWDA - Via online submission

<https://dir.govfa.net/314>

() BY U.S. MAIL: The documents were placed in sealed, addressed envelopes on the above date and placed for collection and mailing at my place of business. I am "readily familiar" with the firm's practice of collecting and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Newport Beach, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

(X) BY ELECTRONIC TRANSMISSION: I transmitted a PDF version of this document by electronic mail to the party(s) identified on the above service list using the e-mail address(es) indicated.

(X) (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 12, 2024, at Newport Beach, California.

Jordan Carter

Jordan Carter