1 MARLIN & SALTZMAN LLP 2 Stanley D. Saltzman (SBN 90058) Adam M. Tamburelli (SBN 301902) Cody Kennedy (SBN 296061) 29800 Agoura Road, Suite 210 Agoura Hills, California 91301 4 Agoura Hills, California 91301 7 Telephone: (818) 991-808 8 Attorneys for Plaintiffs and the Class 9 UNITED STATES DISTRICT COURT 10 NORTHERN DISTRICT OF CALIFORNIA 11 AbMIR KOVACEVIC and ALEXA 12 PARASHOS, individually, and on behalf of all others similarly situated, 13 Class ACTION COMPLAINT 14 Plaintiffs, 15 Code § 1749.5, et seq.] 16 vs. 17 NTELLITIX, INC., INTELLIPAY, INC., and DOES 1-10, inclusive, 18 Defendants. 19 Defendants. 10 Defendants. 11 JURY TRIAL DEMANDED		Case 3:17-cv-03873 Docume	ent 1 Filed 07/07/17 Page 1 of 17							
9 UNITED STATES DISTRICT COURT 10 NORTHERN DISTRICT OF CALIFORNIA 11 ADMIR KOVACEVIC and ALEXA PARASHOS, individually, and on behalf of all others similarly situated, Case No.: 13 Case No.: 14 Plaintiffs, 15 CASS ACTION COMPLAINT 16 Vs. 17 INTELLIFIX, INC., INTELLIPAY, INC., and DOES 1-10, inclusive, 19 Defendants. 19 Defendants. 10 VS. 11 JURY TRIAL DEMANDED	2 3 4 5 6 7	Stanley D. Saltzman (SBN 90058) Adam M. Tamburelli (SBN 301902) Cody Kennedy (SBN 296061) 29800 Agoura Road, Suite 210 Agoura Hills, California 91301 Telephone: (818) 991-8080 Facsimile: (818) 991-8081 ssaltzman@marlinsaltzman.com atamburelli@marlinsaltzman.com								
10 NORTHERN DISTRICT OF CALIFORNIA 11 ADMIR KOVACEVIC and ALEXA PARASHOS, individually, and on behalf of all others similarly situated, Case No.: 13 CLASS ACTION COMPLAINT (1) VIOLATION OF CALIFORNIA'S GIFT CERTIFICATE LAW [CAL. CIVIL CODE § 1749.5, et seq.] 14 Plaintiffs, CLASS ACTION OF CALIFORNIA'S GIFT (2) VIOLATION OF CALIFORNIA 16 vs. (2) VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW (CAL. BUSINESS & PROFESSIONS CODE § 17200, et seq.] 17 INTELLITIX, INC., INTELLIPAY, INC., and DOES 1-10, inclusive, (3) MONEY HAD AND RECEIVED (4) UNJUST ENRICHMENT; and 19 Defendants. (5) VIOLATION OF NEW YORK GENERAL BUSINESS LAW § 349, et seq. 12 JURY TRIAL DEMANDED 12 JURY TRIAL DEMANDED 12 1-	9									
ADMIR KOVACEVIC and ALEXA Case No.: PARASHOS, individually, and on behalf of all others similarly situated, CLASS ACTION COMPLAINT 13 Plaintiffs, CLASS ACTION OF CALIFORNIA'S GIFT 14 Plaintiffs, (1) VIOLATION OF CALIFORNIA 15 Vs. (2) VIOLATION OF CALIFORNIA 16 vs. (CAL. BUSINESS & PROFESSIONS CODE § 1749.5, et seq.] 17 INTELLITIX, INC., INTELLIPAY, INC., and DOES 1-10, inclusive, (3) MONEY HAD AND RECEIVED 19 Defendants. (4) UNJUST ENRICHMENT; and 19 Defendants. (5) VIOLATION OF NEW YORK GENERAL BUSINESS LAW § 349, et seq. 21 JURY TRIAL DEMANDED JURY TRIAL DEMANDED 23 1- -1-	10									
12 PARASHOS, individually, and on behalf of all others similarly situated, CLASS ACTION COMPLAINT 13 all others similarly situated, (1) VIOLATION OF CALIFORNIA'S GIFT CERTIFICATE LAW [CAL. CIVIL CODE § 1749.5, et seq.] 14 Plaintiffs, (2) VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW [CAL. BUSINESS & PROFESSIONS CODE § 17200, et seq.] 16 vs. INTELLITIX, INC., INTELLIPAY, INC., and DOES 1-10, inclusive, (3) MONEY HAD AND RECEIVED 19 Defendants. (5) VIOLATION OF NEW YORK GENERAL BUSINESS LAW § 349, et seq. 20 JURY TRIAL DEMANDED 21 JURY TRIAL DEMANDED 22 -1-	11	ADMIR KOVACEVIC and ALEXA) Case No.:							
13 13 14 Plaintiffs, 15 15 16 vs. 17 INTELLITIX, INC., INTELLIPAY, INC., and DOES 1-10, inclusive, 19 Defendants. 19 Defendants. 10 VIOLATION OF CALIFORNIA'S GIFT CERTIFICATE LAW [CAL. CIVIL CODE § 1749.5, et seq.] (2) VIOLATION OF CALIFORNIA 17 INTELLITIX, INC., INTELLIPAY, INC., and DOES 1-10, inclusive, 19 Defendants. 20 (3) MONEY HAD AND RECEIVED (4) UNJUST ENRICHMENT; and (5) VIOLATION OF NEW YORK GENERAL BUSINESS LAW § 349, et seq. 21 JURY TRIAL DEMANDED 22 JURY TRIAL DEMANDED 23 -1-		PARASHOS, individually, and on behalf of)) CLASS ACTION COMPLAINT) (1) VIOLATION OF CALIFORNIA'S GIFT) CERTIFICATE LAW [CAL. CIVIL							
15 vs. 16 vs. 17 INTELLITIX, INC., INTELLIPAY, INC., and DOES 1-10, inclusive, 19 Defendants. 19 Defendants. 111 (3) MONEY HAD AND RECEIVED (4) UNJUST ENRICHMENT; and (5) VIOLATION OF NEW YORK GENERAL BUSINESS LAW § 349, et seq. 11 122 13 14 15 16 17 18 19 19 19 19 19 16 17 18 19 10 10 11 12 12 13 14 15 16 17 18 19 19 10 10 11 12 13 14 15 16										
16 vs. [CAL. BUSINESS & PROFESSIONS CODE § 17200, et seq.] 17 INTELLITIX, INC., INTELLIPAY, INC., and DOES 1-10, inclusive, (3) MONEY HAD AND RECEIVED 19 Defendants. (4) UNJUST ENRICHMENT; and 19 Defendants. (5) VIOLATION OF NEW YORK GENERAL BUSINESS LAW § 349, et seq. 20 JURY TRIAL DEMANDED 22 JURY TRIAL DEMANDED 23 -1-	15) (2) VIOLATION OF CALIFORNIA							
17 INTELLITIX, INC., INTELLIPAY, INC., and DOES 1-10, inclusive, (3) MONEY HAD AND RECEIVED 18 (4) UNJUST ENRICHMENT; and 19 Defendants. (5) VIOLATION OF NEW YORK 20 (5) VIOLATION OF NEW YORK 21 JURY TRIAL DEMANDED 22 JURY TRIAL DEMANDED 23 -1-		vs.	[CAL. BUSINESS & PROFESSIONS							
19 Defendants. (4) UNJOST ENKICHMENT; and 19 Defendants. (5) VIOLATION OF NEW YORK 20			(3) MONEY HAD AND RECEIVED							
20 et seq. 21 JURY TRIAL DEMANDED 22 23 24 25 26 27 281-		Defendants.) * *							
22 23 24 25 26 27 28	20									
23 24 25 26 27 28	21) JURY TRIAL DEMANDED							
24 25 26 27 28	22									
25 26 27 28	23									
26 27 28 -1-	24									
27 28 -1-	25									
28										
-1-										
	28		-1-							
CLASS ACTION COMPLAINT		CLASS ACT								

Plaintiffs ADMIR KOVACEVIC and ALEXA PARASHOS (collectively, "Plaintiffs"), individually and on behalf of all others similarly situated, hereby bring this Class Action Complaint against Defendant INTELLITIX, INC. ("Intellitix"), INTELLIPAY, INC. ("Intellipay"), and DOES 1 through 10 (collectively, "Defendants"), and on information and belief allege as follows:

NATURE OF THE ACTION

1. Plaintiffs and similarly situated individuals attended music festivals and/or other events (collectively, "Festivals") in California and New York. In order to purchase food, merchandise, and/or other goods or services at Festivals, consumers used Radiofrequency Identification (RFID) wristbands with a form of Festival-specific currency, such as "Bison Bucks" or "Birdie Bucks," from Defendants that they loaded onto the RFID wristbands instead of cash, credit, debit, or other forms of payment.

2. Defendants advertise the RFID wristbands as a "digital wallet," or a convenient cashless method to pay vendors for goods and/or services at events, including Festivals. They also promote their wristbands to Festival organizers and vendors as a way to reduce queues and increase "spend," which is the amount of money that customers spend on goods and services at Festivals.

3. To purchase goods or services at Festivals, patrons load money onto the RFID wristband via credit card, debit card, cash, or other methods, and use the funds loaded onto the wristbands to purchase goods or services from vendors at Festivals generally by scanning their wristbands at the individual vendors' scanners.

4. The named Plaintiffs herein loaded money onto their RFID wristbands and used
the wristbands to purchase goods and/or services at Festivals. The money that they loaded onto
their wristbands was converted to a Festival-specific currency. For example, at the Outside
Lands festival attended by Plaintiff Parashos, money loaded onto her RFID wristband was
converted to "Bison Bucks," with each Bison Buck equal to approximately \$1.00. At the
Mysteryland Festival attended by Plaintiff Kovacevic, money loaded onto his RFID wristband
was converted to "Birdie Bucks," with each Birdie Buck equal to approximately USD \$2.22.

1

-2-CLASS ACTION COMPLAINT

Case 3:17-cv-03873 Document 1 Filed 07/07/17 Page 3 of 17

5. Plaintiffs, like many Festival attendees, did not spend all of the money that had been pre-loaded onto their wristbands at the Festivals. However, Defendants failed to refund all unused funds to Plaintiffs. In Plaintiff Parashos' case, Defendants failed to refund any of her unused funds at all, despite the fact that she loaded the "Bison Bucks" onto her RFID wristband with a debit card. In Plaintiff Kovacevic's case, Defendants charged a \$5.00 processing fee before refunding the remainder of Mr. Kovacevic's leftover funds, but failed to disclose the refund processing fee in the manner required under New York law to Mr. Kovacevic at the time he loaded funds onto his wristband, or at any point thereafter until after he was provided his refund.

6. Defendants engage in the above misconduct despite the fact that on their website, they specifically represent that refunds will be provided. Specifically in a section entitled "HOW CASHLESS PAYMENT WORKS," Defendants list 3 steps: "(1) TOP-UP CASHLESS ACCOUNT; (2) TAP WRISTBAND TO PURCHASE; (3) GET POST EVENT REFUND." *See* https://www.intellitix.com/cashless-payment/ (last accessed April 27, 2017).

7. On information and belief, and based on the representations on their website, Defendants manage the systems and/or platforms that facilitate loading money onto the RFID wristbands, facilitate using wristbands to enter Festivals and purchasing goods and/or services at Festivals, and issue refunds to wristband users.

8. Further, on information and belief, Defendants are responsible for issuing refunds and charge and collect the refund processing fees.

JURISDICTION

9. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(d) because at least one member of the putative Classes is a citizen of a State other than that of the citizenship of Defendants, there are more than 100 Class members, and the damages suffered and sought to be recovered herein total, in the aggregate, in excess of \$5,000,000, exclusive of interests and costs.

27 10. At all material times, Defendants have had purposeful and continuous,
28 systematic contacts in or affecting the state of California.

-3-CLASS ACTION COMPLAINT

1

2

VENUE

11. Venue is proper under 28 U.S.C. § 1391 because Defendants, at all material times, have had continuous and systematic contacts in this District by actively doing business and perpetuating the deceptive business practices that are the subject of this lawsuit in this District. In addition, a substantial part of the events or omissions giving rise to Plaintiff Parashos' claims occurred in this District.

PARTIES

12. Plaintiff Parashos is over the age of 18 and is a California resident. Within the statute of limitations periods applicable to each cause of action alleged herein, Plaintiff Parashos was, and is, a victim of Defendants' illegal business practices complained of herein, and has lost money and/or property as a result of those illegal practices.

13. Plaintiff Kovacevic is over the age of 18 and is a New York resident. Within the statute of limitations periods applicable to each cause of action alleged herein, Plaintiff Kovacevic was, and is, a victim of Defendants' illegal business practices complained of herein, and has lost money and/or property as a result of those illegal practices.

14. Defendant Intellitix is a Nevada corporation with its principal place of business in Denver, Colorado. On information and belief, Intellitix is a subsidiary of Intellitix Holdings Ltd., a business entity organized under the laws of Cyprus, with its headquarters in Montreal, Quebec, Canada. According to the Intellitix website (www.intellitix.com), Intellitix "is the leading global provider of technology-driven solutions for festivals and live events" and provides RFID technology that delivers "world-class access control, cashless payment and brand amplification event solutions." Intellitix website boasts that its "technology platform has enhanced over 15 million guest experiences at live events around the world" and that the company is "growing rapidly" worldwide, including in the United States.

5 15. Defendant Intellipay is a Delaware corporation with its principal place of 5 business located in Salt Lake City, Utah. Intellipay is Intellitix's proprietary cashless payment 7 system. The Intellitix website boasts that Intellitix developed Intellipay, describing it as the 8 "world's most secure cashless payment system for live events." 1 16. Plaintiffs are informed and believe, and thereon allege, that at all times mentioned
 2 herein, Intellipay was licensed to do business in California and the Northern District of
 3 California.

17. DOES 1 through 10, inclusive, are now and/or at all times mentioned in this Complaint were, licensed to do business and/or actually doing business in the State of California. Plaintiffs do not know the true names or capacities, whether individual, partner, or corporate, of DOES 1 through 10, inclusive and for that reason, DOES 1 through 10 are sued under such fictitious names pursuant to California Code of Civil Procedure, section 474. Plaintiffs will seek leave of court to amend this Complaint to allege such names and capacities as soon as they are ascertained.

FACTUAL ALLEGATIONS

18. Plaintiff Parashos attended the Outside Lands Festival in San Francisco, California on or about August 5-7, 2016. In connection with the Outside Lands Festival, Plaintiff Parashos was issued an RFID wristband for use at the Outside Lands Festival. Ms. Parashos loaded \$50.00 worth of "Bison Bucks" onto her wristband using a Visa debit card at the Outside Lands Festival, and used her wristband to purchase goods and/or services at the Outside Lands Festival. At the time Ms. Parashos loaded money onto her RFID wristband, she was not informed that she would be charged any sort of fee in order to receive a refund of any unused funds. Plaintiff Parashos spent approximately \$28.00 of the money loaded onto her wristband at the Outside Lands Festival, leaving approximately \$22.00 in unused funds. To this day, Ms. Parashos still has not received a refund for any portion of her unused funds.

19. Plaintiff Kovacevic attended the Mysteryland USA Festival in Bethel, New York, on or about May 22-25, 2015. In connection with the Mysteryland USA Festival, Plaintiff Kovacevic was issued an RFID wristband for use at the Mysteryland USA Festival. Mr. Kovacevic loaded approximately \$100.00 worth of "Birdie Bucks" onto his RFID wristband, and used his RFID wristband to purchase goods and/or services at the Mysteryland USA Festival. At the time Mr. Kovacevic loaded money onto his RFID wristband, he was not informed that he would be charged any fee in order to receive a refund of any unused funds. Mr. Kovacevic only spent approximately \$50.00 at the Mysteryland USA Festival, leaving approximately \$50.00 in unused funds. However, when he subsequently received a refund for his unused funds on or about May 29, 2015, Mr. Kovacevic was charged a \$5.00 (or 2.25 Birdie Bucks) "online refund fee" in connection with the processing of his refund. Mr. Kovacevic received an email from "noreply-mysteryland@pay.intellifest.com" confirming his refund transaction. On information and belief, pay.intellifest.com is a web domain owned and operated by Defendants. When one tries to access www.intellifest.com on the web, one is directed to the Intellitix website (intellitix.com).

8 20. On information and belief, the RFID wristbands cannot be used to make 9 purchases in any other manner than described above at Festivals, and the money on the wristbands cannot be accessed outside of the Festival in connection with which the wristband 10 was issued.

12 21. Upon information and belief, Defendants continue to engage in the unlawful and 13 unfair practices alleged above.

22. Plaintiffs and the members of the Classes are likely to be injured by Defendants' conduct in the future, as they are likely to attend Festivals in the future, and avoiding the use of Defendants' RFID wristbands to purchase food, beverages, merchandise, and other goods and services at Festivals that utilize Defendants' RFID wristband services will be impossible or impractical.

19

1

2

3

4

5

6

7

11

14

15

16

17

18

20

21

22

23

24

25

26

27

28

CLASS ALLEGATIONS

23. Plaintiffs bring this action individually and as representatives of all those similarly situated, on behalf of the below-defined Classes:

California Class: All persons in the State of California who loaded money onto a RFID wristband provided, distributed, created, and/or operated by Defendants in connection with a Festival or Festivals, and did not spend all of the money that was loaded onto the wristband at the Festival(s), leaving unused funds, and: (a) did not receive a refund of their unused funds and/or (b) were charged a fee in connection with processing their refund, at any time in the four years preceding the filing of this lawsuit.

> -6-CLASS ACTION COMPLAINT

New York Class: All persons in the State of New York who loaded money onto a RFID wristband provided, distributed, created, and/or operated by Defendants in connection with a Festival or Festivals and did not spend all of the money that was loaded onto the wristband at the Festival(s), leaving unused funds, and: (a) did not receive a refund of their unused funds and/or (b) were charged a fee in connection with processing their refund, at any time in the three years preceding the filing of this lawsuit.

Excluded from the Classes are Defendants and their affiliates, parents, subsidiaries, employees, officers, agents, and directors. Also excluded are any judicial officers presiding over this matter and the members of their immediate families and judicial staffs.

24. This case is appropriate for class treatment because Plaintiffs can prove the elements of their claims on a classwide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

25. Numerosity: The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes are unknown to Plaintiffs at this time; however, it is estimated that the Classes number greater than one thousand (1,000) individuals as to each Class. The identity of such membership is readily ascertainable via inspection of Defendants' books and records or other approved methods. Similarly, Class members may be notified of the pendency of this action my mail, email, internet postings, and/or publication.

26. Common Questions of Law or Fact: There are common questions of law and fact as to Plaintiffs and all other similarly situated persons, which predominate over questions affecting only individual Class members, including, without limitation:

- Whether Defendants provided, distributed, created, and/or operated the RFID a. wristbands at Festivals;
- Whether Defendants were required to refund Class members the unused funds b. that they loaded onto the RFID wristbands provided, distributed, created, and/or operated by Defendants;

1

Whether Defendants failed to refund Class members the unused funds that 1 c. 2 were loaded on to Class members' RFID wristbands; 3 d. Whether Defendants charged unlawful refund processing fees to Class 4 members in order to access their own money that had been loaded onto RFID 5 wristbands provided, distributed, created, and/or operated by Defendants; Whether Defendants' RFID wristbands constitute gift certificates under 6 e. 7 California and/or New York law; 8 Whether Defendants' RFID wristbands effectively contained an expiration f. 9 date because they could not be used outside of the specific Festival for which 10 they were designated; and 11 Whether Defendants' actions, or inactions, violated the state consumer g. 12 protection statutes invoked below. 13 27. Predominance of Common Questions: Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common 14 questions of law set forth above are numerous and substantial and stem from Defendants' 15 16 practices applicable to each individual Class member. As such, these common questions 17 predominate over individual questions concerning each individual Class member's showing as to 18 his or her eligibility for recovery or as to the amount of his or her damages. 19 28. Typicality: Plaintiffs' claims are typical of the claims of the other members of the 20 Classes because, among other things, Plaintiffs and all Class members were comparably injured 21 through Defendants' misconduct described above. As alleged herein, Plaintiffs, like the members 22 of the Classes, were deprived of monies that rightfully belonged to them, and/or were charged 23 illegal fees by Defendants. Further, there are no defenses available to Defendants that are unique

24 to Plaintiffs or to either Plaintiff.

25 29. Adequacy of Representation: Plaintiffs are adequate class representatives 26 because they are fully prepared to take all necessary steps to represent fairly and adequately the 27 interests of the members of the Classes, and because their interests do not conflict with the 28 interests of other Class members they seek to represent. Moreover, Plaintiffs' attorneys are

⁻⁸⁻

Case 3:17-cv-03873 Document 1 Filed 07/07/17 Page 9 of 17

ready, willing and able to fully and adequately represent Plaintiffs and the members of the
 Classes. Plaintiffs' attorneys are experienced in complex class action litigation, and they will
 prosecute this action vigorously. The Classes' interests will be fairly and adequately protected by
 Plaintiffs and their counsel, who are experienced class action lawyers.

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

30. **Superiority:** The nature of this action and the laws available to Plaintiffs and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each Class member were required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with its vastly superior financial and legal resources. Moreover, the prosecution of separate actions by the individual Class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual Class members against Defendants; and which would establish potentially incompatible standards of conduct for Defendants; and/or legal determinations with respect to individual Class members which would, as a practical matter, be dispositive of the interest of the other Class members not parties to adjudications or which would substantially impair or impede the ability of the Class members to protect their interests. Further, the claims of the individual members of the Classes are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto.

31. As such, the Classes identified in Paragraph 23 are maintainable as classes under Rule 23(a) and Rule 23(b)(1) and/or (b)(3).

FIRST CAUSE OF ACTION

VIOLATION OF CALIFORNIA GIFT CERTIFICATE LAW

[Cal. Civ. Code § 1749.45, et seq.]

25 32. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set
26 forth herein.

27 33. Plaintiff Parashos brings this cause of action on behalf of herself and the
28 California Class against Defendants.

CLASS ACTION COMPLAINT

34. Defendants' RFID wrist bands are gift certificates under Cal. Civ. Code §§ 1749.45, et seq., as they are: (i) redeemable only at Festivals; (ii) contain a specified amount of funds; (iii) purchased on a prepaid basis in exchange for payment; (iv) honored upon presentation to purchase food, merchandise, and/or other goods or services at Festivals; and (v) 4 transferrable for the purposes of purchasing food, merchandise, and/or other goods or services at Festivals. 6

1

2

3

5

7

8

11

12

13

14

15

16

17

19

20

21

22

23

24

35. By failing to refund Plaintiff Parashos and members of the California Class their unused funds, Defendants violated Cal. Civ. Code § 1749(b)(1).

9 36. By charging a refund processing fee to members of the California Class, Defendants violated Cal. Civ. Code § 1749(a)(2). 10

37. By implementing an effective expiration date in Defendants' RFID wristbands by permitting the RFID wristbands to be used only at the Festival at which they are acquired, Defendants violated Cal. Civ. Code § 1749(a)(1) to the detriment of the Plaintiff Parashos and the California Class.

38. As a direct and proximate result of Defendants' unlawful acts and conduct, Plaintiff Parashos and members of the California Class were deprived of the use of their money that was charged and collected by Defendants through the sale and/or use of RFID wristbands.

18 39. Plaintiff Parashos, on behalf of herself and the California Class, seeks compensatory damages, including actual and statutory damages, injunctive and declaratory relief, as well as reasonable attorneys' fees and the cost of this action, as a result of Defendants' violation of Cal. Civ. Code § 1749.45, et seq.

SECOND CAUSE OF ACTION

VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW

[Cal. Bus. & Prof. Code § 17200, et seq.]

25 40. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth herein. 26

27 41. Plaintiff Parashos brings this cause of action on behalf of herself and the 28 California Class against Defendants.

-10-

CLASS ACTION COMPLAINT

Case 3:17-cv-03873 Document 1 Filed 07/07/17 Page 11 of 17

42. Plaintiff Parashos and the members of the California Class have standing to pursue a cause of action against Defendants for unfair and/or unlawful business acts or practices, because Plaintiff Parashos and members of the California Class have suffered an injury-in-fact and lost money as a result of Defendants' actions and/or omissions as set forth herein.

43. Defendants' actions as described herein constitute unfair competition within the meaning of Cal. Business & Professions Code § 17200, et seq., in that Defendants have engaged in unlawful business practices by violating the California Gift Card Law, as alleged herein.

44. Defendants' actions described herein are also unlawful in that they impose an unconscionable forfeiture provision in the contract between Defendants and the members of the California Class in violation of Cal. Civil Code §§ 1670.5 and 1442.

45. Defendants' actions as described herein constitute unfair competition within the meaning of Cal. Business & Professions Code § 17200, et seq., on the additional grounds that Defendants have unfairly failed to refund unused funds to Plaintiff Parashos and other consumers who had unused funds left over on their RFID wristbands, and/or have charged a fee for the refund of such funds.

46. Defendants' business practices, as detailed above, are unethical, oppressive, and unscrupulous, and they violate fundamental policies of California. Further, the adverse effects of such conduct outweigh any justifications for Defendants' wrongful conduct.

47. Defendants' actions have caused economic injury to Plaintiff Parashos and members of the California Class, in that they have either incurred a fee in order to access their own money that was loaded onto a RFID wristband, and/or they have not been provided any refund for unused fees left on their RFID wristband. Plaintiff Parashos and members of the California Class either would not have loaded money onto the RFID wristbands at all, would have loaded less money onto their RFID wristbands (to ensure that no funds would be left over), or would have otherwise ensured that no funds were left unused on their RFID wristbands, had 26 they known that Defendants would charge a refund processing fee or would fail to provide any refund of unused funds at all.

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

27

-11-**CLASS ACTION COMPLAINT**

Case 3:17-cv-03873 Document 1 Filed 07/07/17 Page 12 of 17

48. Plaintiff Parashos and the members of the California Class could not have reasonably avoided the injury each of them suffered, as reasonable consumers had no way of knowing that their unused funds would be retained by Defendants, or that Defendants would charge a fee to refund their money.

1

2

3

4

5

6

7

8

11

13

14

15

16

49. Pursuant to Cal. Business & Professions Code § 17203, Plaintiff Parashos, on behalf of herself and members of the California Class, seeks an injunction enjoining Defendants from failing to refund unused funds and charging a refund processing fee, and to prevent Defendants from continuing to engage in unfair competition or any other act prohibited by law.

9 50. Plaintiff Parashos, on behalf of herself and members of the California Class, also 10 seeks rescission and an order requiring Defendants to make full restitution and disgorgement of their ill-gotten gains of all money wrongfully obtained from members of the California Class as permitted by Cal. Business & Professions Code § 17203. 12

51. Plaintiff Parashos, on behalf of herself and members of the California Class, also seeks attorneys' fees pursuant to Cal. Code of Civil Procedure § 1021.5.

THIRD CAUSE OF ACTION

MONEY HAD AND RECEIVED

17 52. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set 18 forth herein.

19 53. Plaintiff Parashos brings this cause of action on behalf of herself and the 20 California Class against Defendants.

21 54. Defendants received money from Plaintiff Parashos and the California Class that 22 was intended to be used for the benefit of Plaintiff Parashos and the California Class.

23 55. Plaintiff Parashos and the California Class did not use all of the funds that they loaded onto their RFID wristbands, and therefore the money was not used for their benefit. 24

25 56. Defendants wrongly retained Plaintiff Parashos and the California Class' unused funds instead of refunding the full amount of their unused funds to them. 26

57. Plaintiff Parashos, on behalf of herself and members of the California Class, seeks 27 28 restitution on all of the inequitable payments and profits Defendant retained from Plaintiffs and the members of the Class in an amount subject to proof.

FOURTH CAUSE OF ACTION

UNJUST ENRICHMENT

58. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth herein.

59. Plaintiffs bring this cause of action on behalf of themselves and both the 6 7 California Class and New York Class against Defendants.

60. Plaintiffs and the members of the Classes conferred an economic benefit upon Defendants by loading funds onto RFID wristbands provided by Defendants, which were intended to be used for the benefit of Plaintiffs and members of the Classes.

61. Defendants had an appreciation or knowledge of the benefit conferred by 12 Plaintiffs and the members of the Classes.

62. Defendants accepted and retained the economic benefit conferred by Plaintiffs and members of the Classes under circumstances as to make it inequitable for Defendants to retain the benefit without payment of its value, which includes, but is not limited to, the money Defendants failed to refund to Plaintiff Parashos and the members of the Classes and/or the refund processing fees charged to Plaintiff Kovacevic and the members of the Classes.

63. Plaintiffs and the members of the Classes request restitution, attorneys' fees, and the relief described below.

VIOLATION OF NEW YORK GENERAL BUSINESS LAW § 349

FIFTH CAUSE OF ACTION

Plaintiffs re-allege and incorporate the foregoing paragraphs as if fully set forth 64. herein.

Plaintiff Kovacevic brings this cause of action on behalf of himself and the New 65. York Class against Defendants.

66. Plaintiff Kovacevic and the New York Class have standing to pursue a cause of action for unfair and deceptive trade practices in violation of N.Y. General Business Law § 349, et seq., because Plaintiff Kovacevic and members of the New York Class have suffered an

1

2

3

4

5

8

9

10

11

13

-13-CLASS ACTION COMPLAINT

Case 3:17-cv-03873 Document 1 Filed 07/07/17 Page 14 of 17

injury-in-fact and lost money as a result of Defendants' actions as set forth herein.

67. This cause of action is brought to on behalf of Plaintiff Kovacevic and the New York Class to secure redress for the unlawful, deceptive, and/or unfair trade practices perpetrated by Defendants and described herein.

5 68. Plaintiff Kovacevic and members of the New York Class are consumers of the products and services provided by Defendants. 6

69. Because Defendants' products and services are intended for use by the general public, and because Defendants' conduct affects similarly situated consumers and has a broad impact on consumers at large, Defendants are engaged in consumer-oriented conduct within the 10 intended ambit of N.Y. General Business Law § 349.

70. The State of New York enacted N.Y. General Business Law § 349 to protect consumers from deceptive, fraudulent, and/or unconscionable trade and business practices such as those alleged herein.

71. Defendants' actions and/or omissions as described herein violated N.Y. General Business Law § 349, which declares as unlawful "deceptive acts or practices in the conduct of any business, trade, or commerce or in the furnishing of any service in this state."

72. Specifically, Defendants charged Plaintiff Kovacevic and members of the New York Class a refund processing fee if they wished to recoup any funds left over on their wristbands at the end of a Festival, and/or failed to provide any refund to Festival attendees for their unused funds.

73. Additionally, Defendants' conduct alleged herein is misleading and deceptive because it violates N.Y. General Business Law § 396-i(3). Specifically, the RFID wristbands provided by Defendants constitute "gift certificates" under the N.Y. General Business Law § 396-i(1), and the terms and conditions thereof, including policies related to refunds, were not conspicuously printed on the RFID wristband, its packaging, or an accompanying printed document.

74. 27 Furthermore, Defendants engaged in materially misleading and deceptive acts 28 and practices by providing and continuing to provide its wristband service to the consuming

1

2

3

4

7

8

9

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

-14-CLASS ACTION COMPLAINT

Case 3:17-cv-03873 Document 1 Filed 07/07/17 Page 15 of 17

public while engaging in the deceptive, unconscionable, unfair, fraudulent and misleading
commercial practices described above. Defendants' objectively deceptive conduct had the
capacity to deceive reasonable consumers under the circumstances. Defendants' deceptive and
misleading actions and omissions as set forth herein have caused and continue to cause injury to
Plaintiff Kovacevic and the members of the New York Class.

75. Defendants' practices and course of conduct in providing the RFID wristband service to consumers are likely to mislead a reasonable consumer acting reasonably under the circumstances to his or her detriment. Like Plaintiff Kovacevic, members of the New York Class either would not have loaded money onto the RFID wristbands at all, would have loaded less money onto their RFID wristbands (to ensure that no funds would be left over), or would have otherwise ensured that no funds were left unused on their RFID wristbands at the end of the Festival, had they known that Defendants would charge a refund processing fee or would not refund their money.

76. As a direct and proximate result of Defendants' violations of N.Y. General Business Law § 349, Plaintiff Kovacevic and members of the New York Class have suffered and continue to suffer damages.

77. Plaintiff Kovacevic and members of the New York Class were deceived by Defendants' actions described above.

78. As a result of the foregoing wrongful conduct of Defendants, Plaintiff Kovacevic and members of the New York Class have been damaged in an amount to be proven at trial, and seek all just and proper remedies, including but not limited to: actual damages or \$50.00, whichever is greater; treble damages up to \$1,000.00; reasonable attorneys' fees and costs; an order enjoining Defendants' deceptive and unfair conduct; and all other just and appropriate relief available under N.Y. General Business Law § 349.

<u>PRAYER</u>

WHEREFORE, Plaintiffs pray for judgment for themselves and for all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

1. For an order certifying the proposed Classes;

-15-CLASS ACTION COMPLAINT

1 2. For an order appointing Plaintiffs as representatives of the Classes; 3. For an order appointing Counsel for Plaintiffs as Counsel for the Classes; 2 3 4. Upon the First Cause of Action, for compensatory damages, including actual and statutory damages, injunctive and declaratory relief, as well as reasonable attorneys' 4 fees and the cost of this action; 5 5. Upon the Second Cause of Action, for injunctive relief, rescission, restitution, 6 7 disgorgement of Intellitix's ill-gotten gains of all money wrongfully obtained from 8 Plaintiff and members of the California Class, as well as attorneys' fees pursuant to 9 Cal. Code of Civil Procedure § 1021.5; 6. Upon the Third and Fourth Causes of action, for restitution; 10 11 7. Upon the First, Second, Third, and Fourth, Causes of Action, for prejudgment interest on all damages pursuant to Cal. Civil Code §§3287 and 3289; 12 13 8. Upon the Fifth Cause of Action, for actual damages or \$50.00, whichever is greater, 14 treble damages up to \$1,000.00, reasonable attorneys' fees and costs, an order enjoining Defendants' deceptive and unfair conduct, and all other just and appropriate 15 relief available under N.Y. General Business Law § 349 on behalf of Plaintiff 16 Kovacevic and the members of the New York Class; and 17 18 9. Upon all causes of action, such other and further relief the Court may deem just and 19 proper. 20 21 Dated: July 7, 2017 MARLIN & SALTZMAN, LLP 22 By: <u>s/ Adam M. Tamburelli</u> 23 Stanley D. Saltzman, Esq. 24 Adam M. Tamburelli, Esq. Cody R. Kennedy, Esq. 25 Attorneys for Plaintiffs 26 27 28 -16-**CLASS ACTION COMPLAINT**

	Case 3:17-cv-03873 Document 1 Filed 07/07/17 Page 17 of 17								
1	DEMAND FOR JURY TRIAL								
2 3	Plaintiffs hereby demand a trial by jury with respect to all issues triable by jury.								
4									
5	Dated: July 7, 2017 MARLIN & SALTZMAN, LLP								
6	By: <u>s/ Adam M. Tamburelli</u>								
7	Stanley D. Saltzman, Esq. Adam M. Tamburelli, Esq.								
8	Cody R. Kennedy, Esq. Attorneys for Plaintiffs								
9									
10									
11									
12									
13									
14									
15									
16									
17									
18									
19									
20									
21									
22 23									
23 24									
24 25									
25 26									
20									
28									
	-17- CLASS ACTION COMPLAINT								
	CLASS ACTION COMPLAINT								

JS-CAND 44 (Rev. 06/17) Case 3:17-CV-03873 Decument 1 5 June 07/07/17 Page 1 of 2

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

Admir Kovacevic and Alexa Parashos, et al.				Intellitix, Inc., Intellipay, Inc., et al.							
(b)	County of Residence of First Listed Plaintiff Richmond County (EXCEPT IN U.S. PLAINTIFF CASES)		County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.								
	Attorneys (Firm Name, Address, and Telephone Number) nley Saltzman, Adam Tamburelli/MARLIN & SALTZMA 00 Agoura Rd #210, Agoura Hills, CA 91301/Ph:818-99)80	Attorneys	(If Known)						
II.	BASIS OF JURISDICTION (Place an "X" in One Box Only)	III.		TIZENSHI Diversity Case		RINCII	PAL PA	ARTIES (Place an "X" in One Bo and One Box for Defend		aintiff	
1	U.S. Government Plaintiff 3 Federal Question					PTF	DEF		PTF	DEF	
1	U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)		Citize	Citizen of This State		× ¹	1	Incorporated or Principal Place of Business In This State	4	4	
2	U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)		Citize	en of Another St	ate	X ²	2	Incorporated <i>and</i> Principal Place of Business In Another State	5	X 5	
	(marcale Cutzenship of Farties in tiem in)			n or Subject of gn Country	a	3	3	Foreign Nation	6	6	

IV. NATURE OF SUIT (Place an "X" in One Box Only) CONTRACT TORTS FORFEITURE/PENALTY BANKRUPTCY **OTHER STATUTES** 422 Appeal 28 USC § 158 110 Insurance 625 Drug Related Seizure of 375 False Claims Act PERSONAL INJURY PERSONAL INJURY Property 21 USC § 881 120 Marine 423 Withdrawal 28 USC 376 Qui Tam (31 USC 310 Airplane 365 Personal Injury - Product § 3729(a)) 690 Other \$ 157 130 Miller Act Liability 315 Airplane Product Liability LABOR 400 State Reapportionment PROPERTY RIGHTS 140 Negotiable Instrument 367 Health Care/ 320 Assault, Libel & Slander Pharmaceutical Personal 410 Antitrust 150 Recovery of 330 Federal Employers' 710 Fair Labor Standards Act 820 Copyrights Injury Product Liability 430 Banks and Banking Overpayment Of Liability 720 Labor/Management 830 Patent 368 Asbestos Personal Injury Veteran's Benefits 450 Commerce 340 Marine Relations 835 Patent-Abbreviated New Product Liability 151 Medicare Act 460 Deportation 345 Marine Product Liability 740 Railway Labor Act Drug Application PERSONAL PROPERTY 152 Recovery of Defaulted 470 Racketeer Influenced & 350 Motor Vehicle 751 Family and Medical 840 Trademark Student Loans (Excludes ★ 370 Other Fraud Corrupt Organizations 355 Motor Vehicle Product Leave Act SOCIAL SECURITY Veterans) 371 Truth in Lending 480 Consumer Credit 790 Other Labor Litigation Liability 153 Recovery of 861 HIA (1395ff) 380 Other Personal Property 490 Cable/Sat TV 791 Employee Retirement 360 Other Personal Injury Overpayment Damage 862 Black Lung (923) Income Security Act 850 Securities/Commodities/ 362 Personal Injury -Medical of Veteran's Benefits 385 Property Damage Product 863 DIWC/DIWW (405(g)) Exchange Malpractice 160 Stockholders' Suits IMMIGRATION Liability 864 SSID Title XVI 890 Other Statutory Actions 190 Other Contract 462 Naturalization CIVIL RIGHTS PRISONER PETITIONS 865 RSI (405(g)) 891 Agricultural Acts Application 195 Contract Product Liability 893 Environmental Matters 440 Other Civil Rights HABEAS CORPUS FEDERAL TAX SUITS 465 Other Immigration 196 Franchise 895 Freedom of Information 441 Voting 463 Alien Detainee Actions 870 Taxes (U.S. Plaintiff or REAL PROPERTY Act 442 Employment 510 Motions to Vacate Defendant) 896 Arbitration 210 Land Condemnation 443 Housing/ Sentence 871 IRS-Third Party 26 USC 899 Administrative Procedure Accommodations 530 General 220 Foreclosure \$ 7609 Act/Review or Appeal of 445 Amer. w/Disabilities-535 Death Penalty 230 Rent Lease & Ejectment Agency Decision Employment 240 Torts to Land OTHER 950 Constitutionality of State 446 Amer. w/Disabilities-Other 245 Tort Product Liability 540 Mandamus & Other Statutes 448 Education 290 All Other Real Property 550 Civil Rights 555 Prison Condition 560 Civil Detainee-Conditions of Confinement V. **ORIGIN** (Place an "X" in One Box Only) **X** 1 Original Removed from Remanded from Reinstated or 5 Transferred from Multidistrict 8 Multidistrict 2 3 4 6 Proceeding State Court Appellate Court Reopened Another District (specify) Litigation-Transfer Litigation-Direct File

VI.	CAUSE OF ACTION	Cal Civil Cada Sana 1740, at ana 1 Cal Dua, & Desfactions Cada Sana 17200, at ana 1 NV Can, Dusingsa Law Sana 240, at ana								
VII.	REQUESTE COMPLAIN		CK IF THIS IS A CL ER RULE 23, Fed. R		DEMAND	\$ 5,000,000.00	CHECK YES only if d JURY DEMAND:	emanded in complaint: X Yes No		
VIII.	RELATED C IF ANY (See	CASE(S), instructions):	JUDGE			DOCKET NUMBER				
IX. (Place	DIVISIONA an "X" in One B		ENT (Civil Loc × SAN FRAN		ILAND	SAN JOSE	EUREK	A-MCKINLEYVILLE		

SIGNATURE OF ATTORNEY OF RECORD

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- **I.** a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)."
- **II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 - (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) <u>United States defendant</u>. When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) <u>Diversity of citizenship</u>. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; NOTE: federal question actions take precedence over diversity cases.)
- **III. Residence** (citizenship) of Principal Parties. This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- **IV.** Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin. Place an "X" in one of the six boxes.
 - (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) <u>Removed from State Court</u>. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) <u>Remanded from Appellate Court</u>. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) <u>Reinstated or Reopened</u>. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) <u>Transferred from Another District</u>. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) <u>Multidistrict Litigation Transfer</u>. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) <u>Multidistrict Litigation Direct File</u>. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket.

Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.

- VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. Do not cite jurisdictional statutes unless diversity. Example: U.S. Civil Statute: 47 USC § 553. <u>Brief Description</u>: Unauthorized reception of cable service.
- VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Federal Rule of Civil Procedure 23.

Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

- VIII. Related Cases. This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- **IX.** Divisional Assignment. If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: "the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated."

Date and Attorney Signature. Date and sign the civil cover sheet.