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Attorneys for Plaintiffs and the Class

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ADMIR KOVACEVIC and **ALEXA**
PARASHOS, individually, and on behalf of
all others similarly situated,

Plaintiffs,

vs.

INTELLITIX, INC., INTELLIPAY, INC.,
and **DOES 1-10**, inclusive,

Defendants.

) Case No.:

-) **CLASS ACTION COMPLAINT**
-) **(1) VIOLATION OF CALIFORNIA’S GIFT**
-) **CERTIFICATE LAW [CAL. CIVIL**
-) **CODE § 1749.5, et seq.]**
-) **(2) VIOLATION OF CALIFORNIA**
-) **UNFAIR COMPETITION LAW**
-) **[CAL. BUSINESS & PROFESSIONS**
-) **CODE § 17200, et seq.]**
-) **(3) MONEY HAD AND RECEIVED**
-) **(4) UNJUST ENRICHMENT; and**
-) **(5) VIOLATION OF NEW YORK**
-) **GENERAL BUSINESS LAW § 349,**
-) **et seq.**

JURY TRIAL DEMANDED

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

6 **NATURE OF THE ACTION**

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

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

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

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

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

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

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

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

21 **JURISDICTION**

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

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

1 **VENUE**

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

7 **PARTIES**

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

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

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

25 15. Defendant Intellipay is a Delaware corporation with its principal place of
26 business located in Salt Lake City, Utah. Intellipay is Intellitix's proprietary cashless payment
27 system. The Intellitix website boasts that Intellitix developed Intellipay, describing it as the
28 "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.

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

11 FACTUAL ALLEGATIONS

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

22 19. Plaintiff Kovacevic attended the Mysteryland USA Festival in Bethel, New York,
23 on or about May 22-25, 2015. In connection with the Mysteryland USA Festival, Plaintiff
24 Kovacevic was issued an RFID wristband for use at the Mysteryland USA Festival. Mr.
25 Kovacevic loaded approximately \$100.00 worth of "Birdie Bucks" onto his RFID wristband, and
26 used his RFID wristband to purchase goods and/or services at the Mysteryland USA Festival. At
27 the time Mr. Kovacevic loaded money onto his RFID wristband, he was not informed that he
28 would be charged any fee in order to receive a refund of any unused funds. Mr. Kovacevic only

1 spent approximately \$50.00 at the Mysteryland USA Festival, leaving approximately \$50.00 in
2 unused funds. However, when he subsequently received a refund for his unused funds on or
3 about May 29, 2015, Mr. Kovacevic was charged a \$5.00 (or 2.25 Birdie Bucks) “online refund
4 fee” in connection with the processing of his refund. Mr. Kovacevic received an email from “no-
5 reply-mysteryland@pay.intellifest.com” confirming his refund transaction. On information and
6 belief, pay.intellifest.com is a web domain owned and operated by Defendants. When one tries to
7 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
10 wristbands cannot be accessed outside of the Festival in connection with which the wristband
11 was issued.

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

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

19 CLASS ALLEGATIONS

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

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

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

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

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

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

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

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

- c. Whether Defendants failed to refund Class members the unused funds that were loaded on to Class members' RFID wristbands;
- d. Whether Defendants charged unlawful refund processing fees to Class members in order to access their own money that had been loaded onto RFID wristbands provided, distributed, created, and/or operated by Defendants;
- e. Whether Defendants' RFID wristbands constitute gift certificates under California and/or New York law;
- f. Whether Defendants' RFID wristbands effectively contained an expiration date because they could not be used outside of the specific Festival for which they were designated; and
- g. Whether Defendants' actions, or inactions, violated the state consumer protection statutes invoked below.

27. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' practices applicable to each individual Class member. As such, these common questions predominate over individual questions concerning each individual Class member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

28. **Typicality:** Plaintiffs' claims are typical of the claims of the other members of the Classes because, among other things, Plaintiffs and all Class members were comparably injured through Defendants' misconduct described above. As alleged herein, Plaintiffs, like the members of the Classes, were deprived of monies that rightfully belonged to them, and/or were charged illegal fees by Defendants. Further, there are no defenses available to Defendants that are unique to Plaintiffs or to either Plaintiff.

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

1 34. Defendants' RFID wrist bands are gift certificates under Cal. Civ. Code §§
2 1749.45, *et seq.*, as they are: (i) redeemable only at Festivals; (ii) contain a specified amount of
3 funds; (iii) purchased on a prepaid basis in exchange for payment; (iv) honored upon
4 presentation to purchase food, merchandise, and/or other goods or services at Festivals; and (v)
5 transferrable for the purposes of purchasing food, merchandise, and/or other goods or services
6 at Festivals.

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

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

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

15 38. As a direct and proximate result of Defendants' unlawful acts and conduct,
16 Plaintiff Parashos and members of the California Class were deprived of the use of their money
17 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
19 compensatory damages, including actual and statutory damages, injunctive and declaratory
20 relief, as well as reasonable attorneys' fees and the cost of this action, as a result of Defendants'
21 violation of Cal. Civ. Code § 1749.45, *et seq.*

22 **SECOND CAUSE OF ACTION**

23 **VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW**

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

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

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

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

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

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

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

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

19 47. Defendants' actions have caused economic injury to Plaintiff Parashos and
20 members of the California Class, in that they have either incurred a fee in order to access their
21 own money that was loaded onto a RFID wristband, and/or they have not been provided any
22 refund for unused fees left on their RFID wristband. Plaintiff Parashos and members of the
23 California Class either would not have loaded money onto the RFID wristbands at all, would
24 have loaded less money onto their RFID wristbands (to ensure that no funds would be left over),
25 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
27 refund of unused funds at all.

28 ///

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

5 49. Pursuant to Cal. Business & Professions Code § 17203, Plaintiff Parashos, on
6 behalf of herself and members of the California Class, seeks an injunction enjoining Defendants
7 from failing to refund unused funds and charging a refund processing fee, and to prevent
8 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
11 their ill-gotten gains of all money wrongfully obtained from members of the California Class as
12 permitted by Cal. Business & Professions Code § 17203.

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

15 **THIRD CAUSE OF ACTION**

16 **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
24 loaded onto their RFID wristbands, and therefore the money was not used for their benefit.

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

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

1 the members of the Class in an amount subject to proof.

2 **FOURTH CAUSE OF ACTION**

3 **UNJUST ENRICHMENT**

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

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

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

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

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

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

20 **FIFTH CAUSE OF ACTION**

21 **VIOLATION OF NEW YORK GENERAL BUSINESS LAW § 349**

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

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

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

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

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

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

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

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

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

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

21 73. Additionally, Defendants' conduct alleged herein is misleading and deceptive
22 because it violates N.Y. General Business Law § 396-i(3). Specifically, the RFID wristbands
23 provided by Defendants constitute "gift certificates" under the N.Y. General Business Law §
24 396-i(1), and the terms and conditions thereof, including policies related to refunds, were not
25 conspicuously printed on the RFID wristband, its packaging, or an accompanying printed
26 document.

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

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

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

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

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

25 **PRAYER**

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

- 28 1. For an order certifying the proposed Classes;

- 1 2. For an order appointing Plaintiffs as representatives of the Classes;
- 2 3. For an order appointing Counsel for Plaintiffs as Counsel for the Classes;
- 3 4. Upon the First Cause of Action, for compensatory damages, including actual and
- 4 statutory damages, injunctive and declaratory relief, as well as reasonable attorneys'
- 5 fees and the cost of this action;
- 6 5. Upon the Second Cause of Action, for injunctive relief, rescission, restitution,
- 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;
- 10 6. Upon the Third and Fourth Causes of action, for restitution;
- 11 7. Upon the First, Second, Third, and Fourth, Causes of Action, for prejudgment interest
- 12 on all damages pursuant to Cal. Civil Code §§3287 and 3289;
- 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
- 15 enjoining Defendants' deceptive and unfair conduct, and all other just and appropriate
- 16 relief available under N.Y. General Business Law § 349 on behalf of Plaintiff
- 17 Kovacevic and the members of the New York Class; and
- 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
23 By: s/ Adam M. Tamburelli
24 Stanley D. Saltzman, Esq.
25 Adam M. Tamburelli, Esq.
26 Cody R. Kennedy, Esq.
27 Attorneys for Plaintiffs
28

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury with respect to all issues triable by jury.

Dated: July 7, 2017

MARLIN & SALTZMAN, LLP

By: s/ Adam M. Tamburelli
Stanley D. Saltzman, Esq.
Adam M. Tamburelli, Esq.
Cody R. Kennedy, Esq.
Attorneys for Plaintiffs

CIVIL COVER SHEET

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.)

I. (a) PLAINTIFFS

Admir Kovacevic and Alexa Parashos, et al.

(b) County of Residence of First Listed Plaintiff Richmond County (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Stanley Saltzman, Adam Tamburelli/MARLIN & SALTZMAN 29800 Agoura Rd #210, Agoura Hills, CA 91301/Ph:818-991-8080

DEFENDANTS

Intellitix, Inc., Intellipay, Inc., et al.

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 (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party) 2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship options: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS (PERSONAL INJURY, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER), FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Cal Civil Code Secs 1749, et seq.; Cal. Bus. & Professions Code Secs 17200, et seq.; NY Gen. Business Law Secs 349, et seq. Brief description of cause: Violations of CA Gift Certificate Law & NY Gen Bus. Law; Unfair Competition; Money Had/Received; Unjust Enrichment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ 5,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: X Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) X SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 07/07/2017

SIGNATURE OF ATTORNEY OF RECORD

s/ Adam M. Tamburelli

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) United States defendant. 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) Diversity of citizenship. 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) Removed from State Court. 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) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. 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) Multidistrict Litigation Direct File. 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. Brief Description: 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.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Says Festival-Goers Are Owed Unspent Digital Wristband Money](#)
