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12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN JOSE DIVISION

15 LORENA HERNANDEZ and )  
16 MALYNDA HERNANDEZ on )  
17 Behalf of Themselves and All Others )  
18 Similarly Situated, )

19 Plaintiff, )

20 vs. )

21 GOOGLE, INC. (a Delaware )  
22 Corporation) and GOOGLE )  
23 PAYMENT CORPORATION, )  
24 Defendants. )

Case No.

CLASS ACTION

**COMPLAINT FOR:**

(1) **VIOLATION OF CALIFORNIA CIVIL CODE §1749.5(b)(2) et seq.;**

(2) **BREACH OF CONTRACT**

(3) **VIOLATION OF THE UNFAIR COMPETITION LAW, CALIFORNIA BUSINESS AND PROFESSIONS CODE §17200 et seq.;**

(4) **VIOLATIONS OF THE CONSUMER LEGAL REMEDIES ACT, CALIFORNIA CIVIL CODE §1750 et seq.;**

(5) **VIOLATIONS OF THE FALSE ADVERTISING LAW, CALIFORNIA BUSINESS AND PROFESSIONS CODE §17500 et seq.;**

(6) **UNJUST ENRICHMENT; and**

(7) **CONSTRUCTIVE FRAUD**

## **COMPLAINT**

1  
2 Plaintiffs Lorena Hernandez and Malynda Hernandez (collectively  
3 "Plaintiffs") by and through their undersigned attorneys, bring this action on behalf  
4 of themselves and all others similarly-situated against Defendant Google, Inc., and  
5 its wholly owned subsidiary Google Payment Corporation ("GPC") (collectively  
6 "Google" or "Defendants") for compensatory damages and equitable, injunctive  
7 and declaratory relief. Plaintiffs allege the following upon information and belief  
8 based on the investigation of counsel, except as to those allegations that  
9 specifically pertain to Plaintiffs (which are alleged upon personal knowledge).  
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### **NATURE OF ACTION**

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15 1. Plaintiffs bring this action on behalf of themselves and all others  
16 similarly-situated (collectively "Class Members" as defined in ¶ 44) who  
17 purchased, received, held, used or redeemed (collectively "holders" or  
18 "consumers") Google Play Gift Cards (also referred to herein as "Gift Cards") from  
19 March 6, 2012 to the present. As more fully described below, these Google Play  
20 Gift Cards are marketed, sold and issued by Google and select retailers in a  
21 deceptive and illegal manner.  
22  
23

24 2. Defendants' Google Play Gift Cards' Terms & Conditions state:  
25 "When you purchase, receive or redeem a Gift Card, you agree that the laws of the  
26 State of California apply, without regard to principles of conflict of laws, and that  
27  
28

1 such laws will govern these Gift Card terms and conditions." The stated "Terms &  
2 Conditions" or "Terms of Service" of the Google Play Gift Cards specifically state  
3 that "[t]he Gift Card is not redeemable for cash or other cards... *except as required*  
4 *by law.*" (Emphasis supplied.) Under the laws of the state of California, with very  
5 limited exceptions not applicable here, any gift certificate with a cash value of less  
6 than \$10.00 is redeemable in cash for its cash value. California Civil Code §  
7  
8 1749.5(b)(2) *et seq.*

9  
10 3. As a matter of practice, *and in utter violation of the law*, Defendants  
11 refuse to redeem Google Play Gift Cards with cash values under \$10.00, and so  
12 refused to do so when, on March 23, 2015, Plaintiff Lorena Hernandez inquired  
13 about securing a cash refund in the amount of \$7.03, the balance left on a Google  
14 Play Gift Card that she had purchased and gifted to her daughter, Plaintiff Malynda  
15 Hernandez. Google's practice of refusing to redeem for cash Gift Cards with  
16 balances under \$10.00 was and continues to be widespread, and has been designed  
17 by Defendants to unfairly, illegally and deceptively force Plaintiffs and all other  
18 similarly-situated Class Members entitled to a cash redemption of their Gift Cards  
19 with balances less than \$10.00 to forfeit those balances or spend additional monies  
20 purchasing services, items and additional Gift Cards or credits that they otherwise  
21 would not have purchased. When Plaintiff Lorena Hernandez and all other  
22 similarly-situated Class Members purchased Google Play Gift Cards, they did so  
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1 without any disclosure by the Defendants that such consumers were, in effect,  
2 being forced onto a financial merry-go-round as more fully described below, in  
3 violation of California law.

4  
5 4. Defendants' practices, which force consumers to either forfeit their  
6 Gift Card balances or spend more money than they would otherwise spend — thus  
7 unfairly increasing Google's revenues at consumers' expense — constitutes a  
8 flagrant violation of a law that was intended and designed to protect consumers  
9 from the very practice that Defendants have been engaging in and continue to  
10 engage in.  
11

12  
13 5. By engaging in the foregoing practices, Defendants consciously and  
14 deliberately disregarded Plaintiffs' rights and the rights of all other similarly-  
15 situated Class Members. Plaintiffs bring this suit on behalf of themselves and all  
16 other similarly-situated Class Members to recover compensatory and exemplary  
17 damages from Defendants and to enjoin or otherwise put an end to Defendants'  
18 unfair and deceptive practices.  
19  
20

### 21 **PARTIES**

22  
23 6. Lorena Hernandez, a citizen of California residing at all material  
24 times in Costa Mesa, California, purchased a Google Play Gift Card in the amount  
25 of \$25 for her nineteen year old daughter, Malynda Hernandez, who is also a  
26 California citizen residing at all times material in Costa Mesa, California.  
27  
28

1           7.     Google, Inc. ("Google") is a Delaware Corporation that maintains its  
2 principal place of business in Mountain View, California. Google markets and  
3 sells digital media such as music, magazines, books, movies and television  
4 programs in its store, Google Play. GPC maintains its principle place of business in  
5 Mountain View, California and is incorporated in Delaware. GPC is a wholly  
6 owned subsidiary of Google and is the issuer of the Google Play Gift Cards.  
7  
8

9           8.     Google is a U.S. multinational corporation that specializes in internet-  
10 related services and products. Google developed, manages, and oversees the  
11 Android operating system, which operates most non-Apple mobile devices.  
12

### 13                                   **JURISDICTION AND VENUE**

14           9.     This Court has original jurisdiction pursuant to 28 U.S.C.  
15 §1332(d)(2). The matter in controversy, exclusive of interest and costs, exceeds  
16 the sum or value of \$5,000,000 and is a class action in which at least one Class  
17 Member is a citizen of a state different from the citizenship of Defendants.  
18  
19

20           10.    Venue is proper in this District pursuant to 28 U.S.C. §1391 in that  
21 Google maintains its principal place of business within this District, many of the  
22 acts and transactions giving rise to this action occurred in this District and because  
23 Google:  
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- 1 (a) asserts that claims arising from the use or purchase of Google  
2 Play Gift Cards are to be litigated exclusively in the federal or  
3 state courts of Santa Clara County, California, USA;  
4  
5 (b) is authorized to conduct business in this District and has  
6 intentionally availed itself of the laws and markets within this  
7 District through the promotion, marketing, distribution and sale  
8 of its products in this district;  
9  
10 (c) does substantial business in this District; and  
11  
12 (d) is subject to personal jurisdiction in this District.

13 **FACTUAL ALLEGATIONS**

14 **A. Background**

15 11. Google Play is a digital distribution platform operated by Google,  
16 primarily for users of smartphones and tablets using Google's Android operating  
17 system.  
18

19 12. There are over one billion Android users throughout the world.

20 13. Google Play serves as the official application (hereinafter "app") for  
21 the Android operating system that allow users to browse and purchase items by  
22 downloading apps developed by Google and third parties.  
23

24 14. Google Play also serves as a digital media store and offers music,  
25 magazines, books, movies and television programs.  
26  
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1 15. Google Play was launched on March 6, 2012 as a result of the merger  
2 of Android Market, Google Music and Google eBook store.

3  
4 16. Today, the following services operate under Google Play: Google  
5 Play Music, Google Play Books, Google Play Newsstand, Google Play Movies and  
6 TV, and Google Play Games.

7  
8 17. Google Play reports that its users have made more than fifty billion  
9 downloads from the Google Play store since its inception.

10  
11 18. Google Play Gift Cards are sold by over fifty-five retail store chains,  
12 including, among others, Wal-Mart, Target, Best Buy, Rite-Aid, Walgreens and  
13 Sam's Club.

14  
15 19. Google Play Gift Cards are sold only in the following denominations:  
16 \$10, \$15, \$25, \$50, \$100. Consumers who have or who establish online Google  
17 Wallet accounts may also purchase non-transferrable "Google Play Credits," which  
18 are only sold electronically through the Google Play Store and only in the  
19 following denominations: \$5, \$10, \$15, \$25 and \$50. Thus, Plaintiffs and Class  
20 Members are unable to purchase Google Play Gift Cards in increments of less than  
21 \$10 or Google Play Credits in increments of less than \$5.

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23  
24 20. To purchase content on Google Play, users of a Google Play Gift Card  
25 are required to establish a Google Wallet account, if they do not already have such  
26 an account. The Google Wallet account is a mobile payment system developed by  
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1 Google that allows users to store forms of payment such as credit cards, debit cards  
2 and gift cards.

3  
4 21. An overwhelming percentage of the items sold on Google Play cost  
5 less than \$15, but more than \$0.98. In fact, Google Play does not sell any items for  
6 less than \$0.99.

7  
8 22. As a result of these requirements, it is nearly impossible for a holder  
9 to use value on a Gift Card without leaving a balance. Because Google refuses to  
10 refund the balance in cash, holders are left with the choice of forfeiting the balance  
11 or expending additional money by purchasing additional Google Play Gift Cards or  
12 Google Play Credits to purchase other items. There will virtually always be a  
13 balance that cannot be spent and that Defendants will not refund. This is exactly  
14 the result that California Civil Code § 1749.5 was enacted to prevent. In adopting  
15 a SB 250, a 2007 amendment to Cal. Civ. Code § 1749.5, the California State  
16 Senate noted that in 2006 approximately 10% of gift card sales were “lost to  
17 consumers due to unredeemed value on the cards, or expiration or loss of the gift  
18 card.” The legislative intent of SB 250 was “to give California consumers the full  
19 value of their gift cards by allowing consumers to redeem for cash” gift cards with  
20 a value of less than \$10. (Cal. Senate Judiciary Comm., 2007-2008 Reg. Sess.,  
21 Analysis on SB 250 (2007).)  
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**B. Deceptive and Misleading Gift Card Terms & Conditions**

1           **B. Deceptive and Misleading Gift Card Terms & Conditions**  
2           23. The Google Play Gift Card contains Terms & Conditions printed on  
3 the back of each card as well as a web address for "Google Play Gift Card Terms  
4 of Service," found on Google Play's website (collectively referred to as the  
5 "Google Play Terms of Service"). Both the Terms & Conditions and Terms of  
6 Service applicable to the use of the Google Play Gift Card state that the "Gift Card  
7 is not redeemable for cash ... *except as required by law.*" (Emphasis supplied.)  
8

9  
10           24. Upon redemption for less than the entire amount, the unused balance  
11 of a Google Play Gift Card is transferred to a user's Google Wallet, but segregated  
12 from other funding mechanisms in the Google Wallet. Defendants segregate funds  
13 in these Gift Card accounts because, according to the Google Play Terms of  
14 Service, the use of Google Play Gift Cards is limited to "purchases of eligible  
15 items on Google Play only," whereas non-gift card balances in Google Wallet  
16 contain no such limitations.  
17  
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19  
20           25. The Google Play Gift Card Terms of Service further provide that  
21 Google Play Gift Cards are "not reloadable or refundable [and] cannot be  
22 combined by you with other non-Google Play balances in your Google Wallet  
23 account." The Google Play Gift Card Terms & Conditions further state that "[i]f  
24 you have insufficient Google Play balances to pay for an item on Google Play, you  
25 may use a credit or debit card to purchase additional value so that you may  
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1 complete your payment for that item." This statement is not true. In fact, if Gift  
2 Card holders do not have sufficient balances in their "Gift Card account" to pay for  
3 a Google Play purchase, they are given the option of (a) paying the entire cost of  
4 the item with a different form of payment, such as a credit card, *i.e.*, not use the  
5 Gift Card; (b) purchasing additional Google Play Gift Cards in increments of no  
6 less than \$10 or Gift Play Credits in increments of no less than \$5, effectively  
7 forcing consumers to spend more money than they would otherwise have spent; or  
8 (c) forfeit their Gift Card balance. This practice was not adequately disclosed at the  
9 point of purchase, which itself was in violation of California law, as more fully  
10 discussed below.  
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14 **C. Plaintiffs Are Harmed by Defendants Unfair and Deceptive**  
15 **Practices**

16  
17 26. Plaintiff Lorena Hernandez purchased a \$25 Google Play Gift Card on  
18 or about March 9, 2015 at a Target store to give to her nineteen year old daughter,  
19 Plaintiff Malynda Hernandez, as a present.  
20

21 27. Plaintiff Malynda Hernandez redeemed the \$25 Google Play Gift  
22 Card on or about March 10, 2015, at which point the \$25 value was loaded into the  
23 Gift Card account in her Google Wallet.  
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1           28.    On March 23, 2015, Plaintiff Malynda Hernandez, using her Google  
2 Play Wallet account purchased *The Lego Movie* for \$9.99; rented the movie *As*  
3 *Above, So Below* for \$4.99; and rented the movie *Bridesmaids* for \$2.99.  
4

5           29.    After the aforementioned three movies were purchased or rented and  
6 downloaded, Plaintiff Malynda Hernandez was left with a balance of \$7.03 in the  
7 Gift Card account of her Google Wallet from the \$25 Google Play Gift Card.  
8

9           30.    On March 23, 2015, at the request of Plaintiff Malynda Hernandez,  
10 Plaintiff Lorena Hernandez called the phone number listed on the Google Play Gift  
11 Card Terms & Conditions to inquire about obtaining a cash refund in the amount  
12 of \$7.03, the balance remaining from the Google Play Gift Card. A representative  
13 of Google refused this request for a cash refund, based upon the Google Play Gift  
14 Card Terms of Service.  
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17           31.    In that same call, the Google representative informed Plaintiff Lorena  
18 Hernandez that a Google Play Gift Card balance could not be combined with any  
19 other payment methods. Thus, in order to purchase any item costing more than  
20 \$7.03, Lorena or Malynda would have to purchase an additional Google Play Gift  
21 Card, effectively preventing Malynda from accessing the full value of the Gift  
22 Card. Left with no other satisfactory choices, Plaintiff Lorena Hernandez was  
23 forced to purchase another Google Play Gift Card for her daughter, or forfeit the  
24 \$7.03 balance on the Card, thus spending more money than she otherwise would  
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1 have spent if Defendants had simply refunded the \$7.03 balance remaining on the  
2 Gift Card.

3  
4 32. Because Google refused to provide a cash payment for the remaining  
5 \$7.03 balance, Plaintiff Malynda Hernandez was forced into a position of having to  
6 forfeit the \$7.03 balance on the Gift Card she had received from her mother or  
7  
8 purchase an additional Google Play Gift Card, costing no less than \$10, in order to  
9 make another purchase on Google Play. Because Plaintiff Malynda Hernandez did  
10 not want to waste the \$7.03 balance, she decided to purchase the movie *Toy Story*  
11 *2*, which cost \$14.99, \$7.96 more than her Gift Card balance.

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14 33. As a consequence, Plaintiff Lorena Hernandez used her credit card to  
15 purchase an additional \$10 Google Play Gift Card on March 25, 2015 so that her  
16 daughter would be able to use the balance of \$7.03 and purchase *Toy Story 2*. In  
17 reality, Plaintiff Lorena Hernandez needed only an additional \$7.96 to purchase  
18 *Toy Story 2*, but was forced to buy a \$10 Google Play Gift Card because Google  
19 does not offer Google Play Gift Cards in a lesser amount and Google would not  
20 accept a credit card payment to make up the difference between the balance on the  
21 Google Play Gift Card and the price of the item.

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23  
24 34. Plaintiff Malynda Hernandez redeemed the \$10 Google Play Gift  
25 Card on or about March 25, 2015 and purchased the movie *Toy Story 2* for \$14.99  
26 using her Google Play account.  
27  
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1           35. After the purchase of *Toy Story 2*, Plaintiff Malynda Hernandez had a  
2 balance of \$2.04 in her Google Wallet from the Google Play Gift Card purchased  
3 by her mother, Plaintiff Lorena Hernandez.  
4

5           36. Rather than forfeit the \$2.04 balance, on April 1, 2015, Plaintiff  
6 Malynda Hernandez purchased the app *Tap Heroes! - Idle Clicker* for \$0.99, which  
7 she did not really care to purchase. She also purchased the song, *One Hundred*  
8 *Sleepless Nights* on April 1, 2015 for \$0.99, which she would not have purchased  
9 but for Google's practice of not refunding the balance on the cards.  
10  
11

12           37. The remaining balance on the second of the two Google Play Gift  
13 Cards held by Plaintiff Malynda Hernandez, the first of which her mother Plaintiff  
14 Lorena Hernandez purchased for \$25 and the second of which Plaintiff Lorena  
15 Hernandez was forced to purchase for \$10, is \$0.06.  
16

17           38. Google Play sells nothing on its website that Plaintiff Malynda  
18 Hernandez can buy for \$0.06. Based on the Terms & Conditions, if the Plaintiffs  
19 wanted to use the balance on the Google Play Gift Card, they would be forced to  
20 purchase an additional Google Play Gift Card or Google Play credits, and the  
21 merry-go-round would continue to Plaintiffs' detriment, much to Google's financial  
22 – albeit unfair – advantage and benefit.  
23  
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25           39. Defendants receive the benefit of selling additional Google Play Gift  
26 Cards or credits because Plaintiffs and Class members are unable either to obtain  
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1 cash refunds for balances of less than \$10 or to use credit cards or other forms of  
2 payment in conjunction with the Google Play Gift Cards to make up the difference  
3 between the balance on the Google Play Gift Card and the price of an item. In this  
4 respect, Google Play Gift Cards function differently from gift cards offered by  
5 competitors such as Amazon or Apple, Inc. In either Apple's iTunes Store or  
6 Amazon's online store, if users want to purchase an item that costs more than the  
7 balance remaining on a gift card, they can pay the remainder, with another  
8 payment method, such as a credit card, and thus zero out the balance of their gift  
9 card. Defendants also receive the benefit of selling products that members of the  
10 Class did not and do not really want to purchase.

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15 40. California Civil Code §1749.5(b)(2) mandates that "any gift certificate  
16 with a cash value of less than ten dollars (\$10) is redeemable in cash for its cash  
17 value." Hence, where for example a customer held a Google Play Gift Card with a  
18 balance remaining on the Gift Card under \$10, that holder would be entitled to  
19 receive in cash the amount of that cash value balance, and Defendants were  
20 required by California law to so redeem the Gift Card in that amount.

21  
22  
23 41. However, as a matter of practice, and in violation of California law,  
24 Google refused to give the Plaintiffs and refuses to give Class Members the cash  
25 value of their Gift Cards with balances of less than ten dollars. Consumers are  
26 forced either to forfeit the balance of their Google Play Gift Cards by not spending  
27  
28

1 the balance or to purchase a new Google Play Gift Card in a minimum amount of  
2 \$10, or to purchase credits in \$5 increments to add to their balance in order to  
3 purchase an item on Google Play.  
4

5 42. Plaintiff Lorena Hernandez, like many unsuspecting consumers  
6 nationwide, fell victim to Google's deceptive and unlawful conduct and purchased  
7 a Google Play Gift Card without knowing that, as a practicable matter, the full  
8 amount on the face of said gift card cannot be used. As a consequence of  
9 Defendants' unfair and deceptive practice, Plaintiff Malynda Hernandez was  
10 unable to realize the full benefit of the Google Play Gift Card that she had received  
11 from her mother, Plaintiff Lorena Hernandez.  
12  
13

14 43. Plaintiffs, on behalf of themselves and Class Members, therefore  
15 bring this action against Google for equitable (injunctive and/or declaratory) relief  
16 as well as monetary damages, for violations of California Civil Code  
17 §1749.5(b)(12) *et seq.*; breach of contract; violations of California's Unfair  
18 Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.* ("UCL" or "17200"),  
19 False Advertising Law, Cal. Bus. & Prof. Code § 17500 *et seq.* ("FAL", "False  
20 Advertising Law" or "17500"), violations of California's Consumer Legal  
21 Remedies Act, Cal Civ. Code §1750 *et seq.* ("CLRA"), for unjust enrichment and  
22 for constructive fraud. Plaintiffs seek damages and equitable relief on behalf of  
23 themselves and the Class including, but not limited to, full refunds for Plaintiffs  
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1 and Class Members' compensatory damages, and/or an order enjoining Defendants  
2 from selling and issuing the Google Play Gift Cards that cannot be used in  
3 conjunction with other forms of payment, such as credit cards, as well as Plaintiffs'  
4 reasonable attorneys' fees and expenses, expert fees, and any additional relief that  
5 this Court determines to be necessary or appropriate to provide complete relief to  
6 Plaintiffs and the Class.  
7

### 8 **CLASS DEFINITION AND ALLEGATIONS**

9  
10 44. Pursuant to 23(a) and 23(b)(1)-(3) of the Federal Rules of Civil  
11 Procedure, Plaintiffs bring this action on behalf of themselves and members of a  
12 Class defined as:  
13

14 All persons in the United States who purchased, received, held, used  
15 or redeemed a Google Play Gift Card from March 6, 2012 to the  
16 present, consisting of a sub-class of such persons who purchased a  
17 Google Play Gift Card (represented by plaintiff Lorena Hernandez)  
18 (hereafter "Purchaser Sub-Class") and a sub-class consisting of such  
19 persons who received, held, used or redeemed a Google Play Gift  
20 Card (represented by plaintiff Malynda Hernandez) (hereafter  
21 "Holder/User Sub-Class"). Excluded from the Class are Defendants  
22 and their officers, directors and employees and those who purchased a  
23 Google Play Gift Card for the purpose of resale.  
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1  
2 45. ***Numerosity - Rule 23(a)(1) of the Federal Rules of Civil Procedure:***

3 The members of the Class are so numerous that their individual joinder is  
4 impracticable. Plaintiffs are informed and believe, and on that basis allege, that the  
5 proposed Class, including the Purchaser Sub-Class and the Holder/User Sub-Class,  
6 contains hundreds of thousands of members. The precise number of Class  
7 members is unknown to Plaintiffs. As Google developed, manages, and oversees  
8 the Android operating system, the Google Play Store and Google Wallet, and the  
9 issuance and redemption of Gift Cards, the true number of Class Members is  
10 known by Defendants. Thus, Defendants may notify all putative Class members of  
11 the pendency of this action by first class mail, electronic mail, and/or by published  
12 notice. Google has the account information of all persons who have loaded a  
13 Google Play Gift Card into his/her Gift Card account in Google Wallet as well as  
14 all Class Members who currently hold a balance of less than \$10 in their Gift Card  
15 accounts.  
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21 46. ***Existence of Common Questions of Law and Fact – Rule 23(a)(2) of***  
22 ***the Federal Rules of Civil Procedure:*** Common questions of law and fact exist as  
23 to all Class Members. These common legal and factual questions include, but are  
24 not limited to, the following:  
25  
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28

1 (a) whether Google's Terms of Service and Terms and Conditions  
2 for Google Play Gift Cards violate the provisions of California statutory law as  
3 alleged in this Complaint;  
4

5 (b) whether Google breached the contract created by the Terms of  
6 Service and Terms and Conditions for Google Play Gift Cards with the members of  
7 the Class;  
8

9 (c) whether Google was unjustly enriched by the misconduct  
10 alleged in this Complaint;  
11

12 (d) whether Plaintiffs and members of the Class are entitled to  
13 declaratory and/or injunctive relief based on the misconduct alleged in this  
14 Complaint; and  
15

16 (e) whether Plaintiffs and members of the Class sustained  
17 monetary loss and are entitled to an award of monetary damages.  
18

19 **47. *Typicality – Rule 23(a)(3) of the Federal Rules of Civil Procedure:***

20 Plaintiffs' claims are typical of the claims of the members of the Class and each of  
21 the Sub-Classes in that (1) Plaintiffs and absent Class Members have been harmed  
22 by Defendants' refusal to permit a cash refund of the remaining balance of less than  
23 \$10 on their Google Play Gift Cards, (2) Plaintiffs and absent Class Members were  
24 led to believe that their Google Play Gift Cards had a specific monetary value  
25 when, in fact, as a practical matter, they cannot use that entire value to purchase  
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1 products on the Google Play Store, (3) Plaintiffs and absent Class members, as a  
2 practical matter, are prevented from using the full value of their Google Play Gift  
3 Cards, and (4) Defendants were unjustly enriched as a result of Plaintiffs' and the  
4 Class' respective purchases, gifting, holding and use of Google Play Gift Cards.  
5

6       48. *Adequacy of Representation – Rule 23(a)(4) of the Federal Rules of*  
7 *Civil Procedure*: Plaintiffs will fairly and adequately protect the interests of the  
8 members of the Class and each of the Sub-Classes. Plaintiffs have retained  
9 counsel experienced in complex consumer class action litigation, and Plaintiffs  
10 intend to prosecute this action vigorously. Plaintiffs have no interests that are  
11 adverse or antagonistic to those of the Class.  
12  
13

14       49. The Class and each of the Sub-Classes may be certified pursuant to  
15 *Rule 23(b)(1) of the Federal Rules of Civil Procedure* because:  
16

17           (a) the prosecution of separate actions by individual Class  
18 Members would create a risk of inconsistent or varying adjudication with respect  
19 to individual Class Members that would establish incompatible standards of  
20 conduct for the Defendants; and  
21

22           (b) the prosecution of separate actions by individual Class  
23 Members would create a risk of adjudications with respect to them that would, as a  
24 practical matter, be dispositive of the interests of other Class Members not parties  
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1 to the adjudications, or substantially impair or impede their ability to protect their  
2 interests.

3  
4 50. The Class and each of the Sub-Classes may also be certified pursuant  
5 to ***Rule 23(b)(2) of the Federal Rules of Civil Procedure*** because Defendants have  
6 acted or refused to act on grounds generally applicable to the Class thereby making  
7 appropriate final declaratory and/or injunctive relief with respect to the members of  
8 the Class as a whole.

9  
10 51. Moreover, certification pursuant to Rule 23(b)(2) is appropriate  
11 because unless such a Class is certified, Defendants will retain monies received as  
12 a result of their offending conduct that was taken from Plaintiffs and Class  
13 Members. Unless a Class-wide injunction is issued, Defendants will continue to  
14 commit the violations alleged, and the members of the Class and the general public  
15 will continue to be misled and/or damaged.

16  
17 52. Class certification pursuant to ***Rule 23(b)(3) of the Federal Rules of***  
18 ***Civil Procedure*** is also warranted because a class action is superior to all other  
19 available means for the fair and efficient adjudication of this controversy. The  
20 common questions of fact and law identified above predominate over any issues  
21 relating to individual members of the Class. Moreover, the damages or other  
22 financial detriment suffered by individual Class Members is relatively small  
23 compared to the burden and expense that would be entailed by individual litigation  
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1 of their claims against the Defendants. It would thus be virtually impossible for  
2 the Class, on an individual basis, to obtain effective redress by way of damages for  
3 the wrongs done to them. Furthermore, even if Class Members could afford such  
4 individualized litigation, the court system could not. Individualized litigation  
5 would create the danger of inconsistent or contradictory judgments arising from the  
6 same set of facts. Individualized litigation would also increase the delay and  
7 expense to all parties and the court system from the issues raised by this action. By  
8 contrast, the class action device provides the benefits of adjudication of these  
9 issues in a single proceeding, economies of scale, and comprehensive supervision  
10 by a single court, and presents no unusual management difficulties under the  
11 circumstances here.

### 12 **COUNT I**

#### 13 **Violation of California Consumer Protection Statute, 14 California Civil Code §1749.5(b)(2) *et seq.***

15 53. Plaintiffs repeat and re-allege the allegations contained in the  
16 paragraphs above, as if fully set forth herein.

17 54. This Count is brought on behalf of the entire Class.

18 55. California Civil Code § 1749.5(b)(2) *et seq.* provides that any gift  
19 certificate, with limited exceptions not applicable here, with a cash value of less  
20 than \$10 is redeemable in cash for its cash value.  
21  
22  
23  
24  
25  
26  
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28



1           59. This Count is brought on behalf of the entire Class, including the  
2 Purchaser Sub-Class and the Holder/User Sub-Class.

3  
4           60. The Google Play Gift Card Terms & Conditions obligated Defendants  
5 to abide by California law, as alleged above. Consumers such as Plaintiff Lorena  
6 Hernandez, who purchased Google Play Gift Cards, are entitled to the benefit of  
7  
8 such Terms & Conditions and Defendants are obligated to adhere to such Terms &  
9 Conditions. The Terms & Conditions also inure to the benefit of individuals to  
10 whom such cards are gifted, such as Plaintiff Malynda Hernandez, who, as holders,  
11 are intended beneficiaries.  
12

13           61. Defendants were contractually obligated to holders of Google Play  
14 Gift Cards with a cash value balance of less than \$10 to redeem and pay such  
15 balances to the holders of the cards pursuant to Google Play Gift Cards' Terms &  
16 Conditions and as required by law.  
17

18  
19           62. Defendants were contractually obligated to holders of Google Play  
20 Gift Cards to allow holders to add value sufficient to Google Play Gift Cards to  
21 allow the completion of a purchase without requiring holders to add more value  
22 than necessary to complete the transaction.  
23

24           63. Defendants' refusal to refund the remaining cash value balance of  
25 under \$10 on Google Play Gift Cards, or to allow holders to add sufficient value to  
26 Google Play Gift cards in order to allow the completion of a purchase, violated the  
27  
28

1 Google Play Gift Card Terms & Conditions that Defendants was required to honor,  
2 thereby constituting a breach of contract with Plaintiffs and other similarly situated  
3 consumers.  
4

5 64. As a consequence of Defendants' breach, Plaintiffs and other similarly  
6 situated members of the Class have suffered direct and consequential damages to  
7 be determined in accordance with proof at the time of trial, for which Defendants  
8 are liable.  
9

10 **COUNT III**

11 **Violation of the California Unfair Competition Law,**  
12 **California Civil Code §17200 *et seq.***  
13

14 65. Plaintiffs repeat and re-allege the allegations contained in paragraphs  
15 1 through 52 above, as if fully set forth herein.  
16

17 66. This Count is brought on behalf of the entire Class.

18 67. The UCL prohibits any "unlawful," "fraudulent," or "unfair" business  
19 act or practice and any false or misleading advertising. Cal. Bus. Prof. Code  
20 §17200.  
21

22 68. Defendants' business acts and practices complained of herein were  
23 centered in, emanated from and were carried out, effectuated and perfected in the  
24 United States and from within the State of California. In addition, the Google Gift  
25 Card Terms & Conditions clearly state that when consumers "purchase, receive or  
26 redeem a Gift Card" they "agree that the laws of the State of California apply,  
27  
28



1 without regard to principles of conflict of laws, and that such laws will govern  
2 these Gift Card Terms & Conditions."

3  
4 69. Beginning in at least March 2012, Defendants committed acts of  
5 unfair competition, as defined by California Business and Professions Code §  
6 17200 *et seq.*, by engaging in the acts and practices specified herein.  
7

8 70. Defendants engaged in "unfair" and deceptive business acts and  
9 practices by, among other things, selling Google Play Gift Cards ostensibly under  
10 and pursuant to California law while, in truth, intending to commit and in fact  
11 committing wholesale violations of California's law requiring the cash redemption  
12 of gift certificate balances under \$10, and by structuring their pricing and payment  
13 protocols and practices in such a way so as to make it impossible for consumers to  
14 fully redeem balances under \$10 for cash without having to spend further sums of  
15 money they otherwise would not have spent by being forced to purchase additional  
16 Google Play Gift Cards with no less than \$10 of additional value or Google Play  
17 Credits with no less than \$5 of additional value.  
18

19  
20  
21 71. Plaintiffs and all members of the Class were harmed by Defendants'  
22 aforementioned unlawful unfair and fraudulent business acts and practices  
23 occurring in the State of California. As alleged herein, Plaintiffs have been  
24 victimized by, and have suffered injury in fact and lost money or property as a  
25 result of, Defendants' conduct associated with the failure and refusal to provide  
26  
27  
28

1 cash refunds on balances under \$10 on Google Play Gift Cards they purchased or  
2 held.

3  
4 72. Defendants' actions and practices, as alleged in this Complaint, were  
5 unfair, deceptive, misleading and likely to deceive the consuming public within the  
6 meaning of Business & Professions Code §17200 *et seq.*

7  
8 73. As stated in this Complaint, Defendants' violations of consumer  
9 protection laws and their unfair competition resulted in harm to consumers that is  
10 ongoing. Defendants' acts constitute violations of the unfair prong of Business &  
11 Professions Code §17200 *et seq.*

12  
13 74. There were reasonably available alternatives to further Defendants'  
14 legitimate business interests, other than the conduct described herein.  
15 As a result of their deception, Defendants have been able to reap unjust revenue  
16 and profit.

17  
18  
19 75. Unless restrained and enjoined, Defendants will continue to engage in  
20 the above-described conduct. Accordingly, injunctive relief is appropriate.

21  
22 76. Plaintiffs, on behalf of themselves and all other Class Members, seek  
23 restitution and disgorgement of all money obtained from Plaintiffs and the  
24 members of the Class collected as a result of Defendants' misconduct and  
25 injunctive relief in the form of an order prohibiting Defendants from continuing  
26 such practices and requiring Defendants to engage in and undertake corrective  
27

1 measures, and all such other and further relief this Court deems appropriate,  
2 consistent with Business & Professions Code §17203.

3  
4 **COUNT IV**

5 **Violation of the Consumers Legal Remedies Act,**  
6 **California Civil Code §1750 *et seq.***

7 77. Plaintiffs repeat and re-allege the allegations contained in paragraphs  
8 1 through 52 above as if fully set forth herein.

9  
10 78. This Count is brought on behalf of the entire Class.

11 79. Defendants are "persons" within the meaning of California Civil Code  
12 §§ 1761(c) and 1770, and provide "goods" within the meaning of Civil Code §§  
13 1761(a) and 1770. Defendants' customers, including Plaintiffs and Class Members,  
14 are "consumers" within the meaning of Civil Code §§ 1761(d) and 1770. Each  
15 purchase of Defendants' Google Play Gift Cards by Plaintiff and each Class  
16 Member as alleged herein constitutes a "transaction" within the meaning of Civil  
17 Code §§ 1761(e) and 1770. Each Class Member purchased goods from Defendants  
18 that was primarily for personal, family, or household purposes.

19  
20  
21  
22 80. The Consumer Legal Remedies Act makes it unlawful for a company  
23 to:

24  
25 (a) Misrepresent the certification of goods. Cal. Civ. Code §  
26 1770(a)(2)(3);  
27  
28

1 (b) Represent that goods have characteristics or approval that they  
2 do not have. Cal. Civ. Code § 1770(a)(5);

3 (c) Represent that goods are of a particular standard, quality, or  
4 grade, if they are of another. Cal. Civ. Code § 1770(a)(7);

5 (d) Advertise goods with intent not to sell them as advertised. Cal.  
6 Civ. Code § 1770(a)(9); and

7 (e) Represent that the subject of a transaction has been supplied in  
8 accordance with a previous representation when it has not. Cal. Civ. Code §  
9 1770(a)(16).

10 81. Defendants' conduct that violated and continues to violate the CLRA  
11 includes, without limitation, the following:

12 (a) Representing that California law applies with respect to the  
13 purchase, receipt and redemption of Google Play Gift Cards while refusing as a  
14 matter of practice to redeem the cards for their cash value balances under \$10  
15 despite the fact that California requires such redemption; and

16 (b) Deceptively representing that customers may use their credit  
17 cards when they have "insufficient Google Play balances to pay for an item on  
18 Google Play" and deliberately using vague language that they may use credit cards  
19 to "purchase additional value so that you may complete your payment for that  
20 item" — thus conveying the false impression that customers will be able to access  
21

1 their remaining Gift Card balances through credit card purchases — without  
2 explaining that the customer must purchase an additional Google Play Gift Card  
3 for a minimum of \$10 or a Google Play Credit in a minimum amount of \$5 in order  
4 to utilize any existing balance, and that Google will nonetheless not redeem for  
5 cash the value of the Gift Card balance below \$10 in any event.  
6

7  
8 82. Google violated the CLRA by representing, through its website  
9 advertisements and Terms & Conditions, the Google Play Gift Card as described  
10 above when it knew, or should have known, that the representations and  
11 advertisements were unsubstantiated, false and misleading.  
12

13 83. Throughout the period during which they have sold and offered for  
14 sale Google Play Gift Cards, Defendants violated and continue to violate the  
15 above-mentioned provisions.  
16

17 84. As a direct and proximate result of Defendants' violations, Plaintiffs  
18 and Class Members have suffered and are continuing to suffer harm.  
19

20 85. Defendants' wrongful business practices constituted, and constitute, a  
21 continuing course of conduct in violation of the CLRA because Defendants are  
22 continuing to engage in the practices complained of herein and which have injured  
23 Plaintiffs and Class Members.  
24

25 86. Pursuant to §1782 of the CLRA, by letter dated May 13, 2015,  
26 Plaintiffs' counsel notified Google in writing by certified mail of the particular  
27  
28

1 violations of §1770 of the CLRA and demanded that Google rectify the problems  
2 associated with the actions detailed above and give notice to all affected consumers  
3 of its intent to so act. A copy of the letter dated May 13, 2015, is attached hereto  
4 as "Exhibit A." While Google, by its counsel, responded to the letter, it did not  
5 admit to having violated the CLRA and it has not cured such violations. Pursuant  
6 to California Civil Code §1782(d), Plaintiffs, on behalf of themselves and other  
7 Class Members, seek a court order enjoining the above-described wrongful acts  
8 and practices of Defendants and further seek an order and awards for restitution,  
9 disgorgement, and for such other relief, including attorneys' fees and costs, as  
10 provided in Civil Code § 1780 and the Prayer for Relief.  
11  
12  
13

#### 14 COUNT V

#### 15 **False and Misleading Advertising in Violation of California Business** 16 **& Professions Code §17500 *et seq.***

17  
18 87. Plaintiffs repeat and re-allege the allegations contained in paragraphs  
19 1 through 52 above as if fully set forth herein.

20  
21 88. This Count is brought on behalf of the Purchaser Sub-Class.

22 89. Throughout the period during which they have sold and offered for  
23 sale Google Play Gift Cards, Defendants engaged in unlawful and/or fraudulent  
24 conduct under California Business & Professions Code §§ 17500, *et seq.*, by  
25 engaging in the sale of Google Play Gift Cards based on publically disseminated  
26 advertisements, and terms and conditions that Defendants knew or reasonably  
27  
28

1 should have known were unfair, deceptive, untrue and/or misleading. Defendants  
2 committed such violations of the False Advertising Law with actual knowledge or  
3 knowledge fairly implied on the basis of objective circumstances.  
4

5 90. Defendants' advertisements, representations, and labeling as described  
6 herein were designed to, and did, result in the purchase and use of the Google Play  
7 Gift Cards and related products, items and services and Defendants profited from  
8 the sales of these products to unwary consumers.  
9

10 91. As a direct result of Defendants' violations, Plaintiffs and the Class  
11 Members suffered injury in fact and lost money.  
12

13 92. Accordingly, Plaintiffs, on behalf of themselves and all other Class  
14 Members, seek restitution and injunctive relief against Defendants in the form of  
15 an order prohibiting Defendants from engaging in the alleged misconduct  
16 described herein, and other relief as specifically prayed for herein.  
17

18  
19 **COUNT VI**

20 **Unjust Enrichment**

21 93. Plaintiffs repeat and re-allege the allegations contained in paragraphs  
22 1 through 52 above as if fully set forth herein.  
23

24 94. This Count is brought on behalf of the Holder/User Sub-Class.  
25

26 95. Defendants have received, and will continue to receive, a benefit at  
27 the expense of Plaintiffs and Class Members.  
28

1 96. Defendants knowingly and/or recklessly sold and issued or agreed to  
2 sell and issue Google Play Gift Cards with deceptive terms and conditions and  
3 pursuant to a merry-go-round practice that forces consumers, including giftees, to  
4 purchase goods or services from Defendants that they otherwise would not  
5 purchase but for Defendants' unfair practices and that prevents consumers from  
6 using the full value of their Google Play Gift Cards.  
7

9 97. As a direct and proximate result of Defendants' unlawful acts and  
10 conduct, Plaintiffs and Class Members were deprived of the use of their money  
11 that was unlawfully charged and collected by Defendants, and are therefore  
12 entitled to reimbursement and disgorgement of any money unjustly paid to  
13 Defendants in connection with the sale of Google Play Gift Cards.  
14

15  
16 **COUNT VII**

17 **Constructive Fraud**

18  
19 98. Plaintiffs repeat and re-allege the allegations contained in paragraphs  
20 1 through 52 above as if fully set forth herein.

21 99. This Count is brought on behalf of the Purchaser Sub-Class.

22  
23 100. In issuing, advertising and selling Google Play Gift Cards, Defendants  
24 misrepresented material facts, including Google's compliance with the laws of the  
25 state of California and Google's assertion that that "[i]f you have insufficient  
26 Google Play balances to pay for an item on Google Play, you may use a credit or  
27  
28



1 debit card to purchase additional value so that you may complete your payment for  
2 that item." Defendants lacked a reasonable basis for believing these statements to  
3 be true.  
4

5 101. Defendants' misrepresentations were made with the intent to induce  
6 reliance by Plaintiff Lorena Hernandez and Purchaser Sub-Class Members.  
7

8 102. Plaintiff Lorena Hernandez and Purchaser Sub-Class Members did not  
9 know, and could not know, that, having purchased or otherwise acquired Google  
10 Play Gift Cards, they would be unable to obtain a refund of any balance under \$10  
11 as required by California Law.  
12

13 103. Plaintiff Lorena Hernandez and Purchaser Sub-Class Members also  
14 did not know, and could not know, that because of Google's practice of selling  
15 Google Play Gift Cards only in increments of \$10 or more, and refusing to refund  
16 balances having purchased or otherwise acquired Google Play Gift Cards, they or  
17 their giftees would, as a practical matter, be unable to use the entire balance of said  
18 cards.  
19  
20

21 104. Plaintiff Lorena Hernandez and Purchaser Sub-Class members did not  
22 know, and could not know, that because Defendants refuse to refund Google Play  
23 Gift Card balances of less than \$10, Purchaser Sub-Class members or their giftees  
24 would be forced to make purchases on the Google Play Store that they otherwise  
25 would not have made.  
26  
27  
28



**JURY DEMAND**

Plaintiffs demand a trial by jury on all issues so triable.

Dated: July 16, 2015

Respectfully submitted,

By: /s/ Stephen R. Basser

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## General Information

<b>Court</b>	United States District Court for the Northern District of California; United States District Court for the Northern District of California
<b>Federal Nature of Suit</b>	Contract - Other[190]
<b>Docket Number</b>	5:15-cv-03303