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CGC-23-610333

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF SAN FRANCISCO

14 UNLIMITED JURISDICTION

15 PEOPLE OF THE STATE OF CALIFORNIA, Case No.
16 acting by and through San Francisco City
Attorney DAVID CHIU,

17 Plaintiff,

18 vs.

19 INCOMM FINANCIAL SERVICES, INC.;
20 TBBK CARD SERVICES, INC.; SUTTON
BANK; PATHWARD N.A.; and DOES 1
21 through 10,

22 Defendants.

**COMPLAINT FOR INJUNCTIVE RELIEF
AND CIVIL PENALTIES FOR VIOLATIONS
OF BUSINESS AND PROFESSIONS CODE
SECTION 17200**

23
24 Plaintiff, the People of the State of California (the “People”), acting by and through San
25 Francisco City Attorney David Chiu, brings this action against Incomm Financial Services, Inc.
26 (“Incomm”), TBBK Card Services, Inc., Sutton Bank, and Pathward N.A. (together, the “Bank
27 Defendants”), and alleges as follows:
28

1 **INTRODUCTION**

2 1. Each year, people in the United States load more than half a trillion dollars onto prepaid
3 cards. The cards are popular gifts, often given as an alternative to cash. They are also used by many
4 without access to a credit cards or traditional bank account to pay bills, make online purchases, and
5 pay for transactions that are difficult or impossible to complete with cash. As with traditional bank
6 deposit accounts accessible through bank debit cards, consumers rightfully expect the money they put
7 on prepaid cards to be available to spend when they or the gift recipient uses their card.

8 2. Incomm is a major provider of prepaid nonreloadable debit cards that are accepted
9 everywhere debit cards are accepted, which it sells as “Vanilla”-branded cards (hereinafter “Vanilla
10 cards”)¹ throughout California and the United States in retailers such as Safeway and Target. For
11 years, numerous cardholders of nonreloadable Vanilla debit cards (hereinafter “Vanilla cardholders”)
12 have discovered, often when using their card for the first time, that the money put on their cards is
13 gone and the balance is \$0. Hundreds of consumers have reported remarkably similar experiences of
14 buying or receiving a Vanilla card, attempting to use it to pay, having the card declined for insufficient
15 funds, and then learning the funds were spent by someone else – without the consumer’s permission,
16 and before they ever had a chance to use the card. Vanilla cardholders have reported these
17 experiences to news media throughout the country and on numerous online review and consumer
18 complaint websites.

19 3. Incomm’s insufficient security is the direct cause of the theft of money from its
20 nonreloadable Vanilla debit cards, a practice known as “card draining.” Its lax security includes the
21 packaging that Vanilla cards are sold in, which allows easy access to the card inside, as well as the
22 lack of other protocols that prevent anyone but the rightful cardholder from making purchases with a
23 Vanilla card.

24 4. Despite Incomm having known for years that its nonreloadable Vanilla debit card’s lax
25 security features lead to numerous card-draining incidents, it has not sufficiently improved the cards’

26 _____
27 ¹ On information and belief, Incomm markets its nonreloadable prepaid Vanilla cards under
28 two brands, the “Vanilla Gift Card” and the “OneVanilla Card,” but these cards are functionally the
same. See Vanilla Gift, <<https://www.vanillagift.com/>> [last visited November 9, 2023]; OneVanilla,
<<https://www.onevanilla.com/>> [last visited November 9, 2023].

1 packaging or implemented other changes to prevent those losses. In contrast, many of Incomm’s
2 competitors have implemented enhanced security features that significantly deter and prevent card
3 draining. In fact, on information and belief, Incomm has implemented such improved security features
4 for its *reloadable* cards, and so it is inexcusable that Incomm has not improved the security and
5 packaging of its nonreloadable Vanilla cards. As the direct result of Incomm’s years-long negligence,
6 numerous consumers and gift recipients have been needlessly subjected to card draining.

7 5. Worse still, neither Incomm nor the Bank Defendants, which issue Vanilla cards, have
8 complied with their obligations under California law to reimburse Vanilla cardholders for
9 unauthorized transactions. Incomm, despite promising to resolve cardholders’ complaints of
10 unauthorized transactions within 90 days, simply never responds to many Vanilla cardholders who
11 wait for hours on hold, complete Incomm’s transaction dispute form, and supply all required
12 information and documents. For those who do hear back, Incomm denies refunds on unlawful and
13 implausible grounds, including that the cardholder waited too long to report the charge – even where
14 the charge was reported immediately after it was discovered – or that the card was present at the
15 unauthorized transaction – even where the card never left the cardholders possession and was used
16 hundreds or thousands of miles away.

17 6. In addition to failing to take reasonable steps to prevent card draining and unlawfully
18 holding consumers liable for unauthorized charges, Incomm has made numerous misleading
19 statements about the value and security of nonreloadable Vanilla debit cards and the ability to obtain
20 refunds for any unauthorized charges.

21 7. The People bring this suit to stop Defendants’ unlawful, fraudulent, deceptive, and
22 unfair conduct, impose civil penalties on Defendants, and recover funds for those victimized.

23 **PARTIES**

24 8. Plaintiff, the People of the State of California, acting by and through San Francisco
25 City Attorney David Chiu, prosecutes this action pursuant to Business and Professions Code section
26 17200 *et seq.*

27 9. Defendant Incomm Financial Services, Inc. is a South Dakota corporation
28 headquartered in Columbus, Georgia. Incomm has been in business since 1992 and sells prepaid gift

1 cards, reloadable debit cards, and provides other payment-related services to businesses and
2 consumers. Incomm sells Vanilla cards in San Francisco and throughout California and the United
3 States. Incomm also maintains www.vanillagift.com and www.onevanilla.com, websites available to
4 Californians.

5 10. Defendant TBBK Card Services, Inc. (“TBBK”) is a South Dakota corporation
6 headquartered in Sioux Falls, South Dakota. TBBK is a subsidiary of The Bancorp Bank, a Delaware
7 corporation headquartered in Wilmington, Delaware. TBBK issues Vanilla cards sold and serviced by
8 Incomm, including cards sold in San Francisco and throughout California.

9 11. Defendant Sutton Bank is an Ohio corporation headquartered in Attica, Ohio. Sutton
10 Bank issues Vanilla cards sold and serviced by Incomm, including cards sold in San Francisco and
11 throughout California.

12 12. Defendant Pathward N.A. is a Delaware corporation headquartered in Sioux Falls,
13 South Dakota. Pathward N.A. is a subsidiary of Pathward Financial, Inc., which is a Delaware
14 corporation headquartered in Sioux Falls, South Dakota. Prior to 2022, Pathward N.A. was known as
15 MetaBank and Pathward Financial, Inc. was known as Meta Financial Group, Inc. Pathward N.A.
16 issues Vanilla cards sold and serviced by Incomm, including cards sold in San Francisco and
17 throughout California.

18 13. The true names and capacities of Defendants sued herein under the fictitious names
19 Does 1 through 10, inclusive, are unknown to the People. The People will seek leave of court to
20 amend this Complaint to allege such names and capacities as soon as they are ascertained.

21 14. Whenever this complaint refers to any act of any corporate defendant, such allegation
22 shall be deemed to mean that such corporate defendant did the acts alleged in the complaint through its
23 officers, directors, agents, employees, and/or representatives while they were acting within the actual
24 or ostensible scope of their authority.

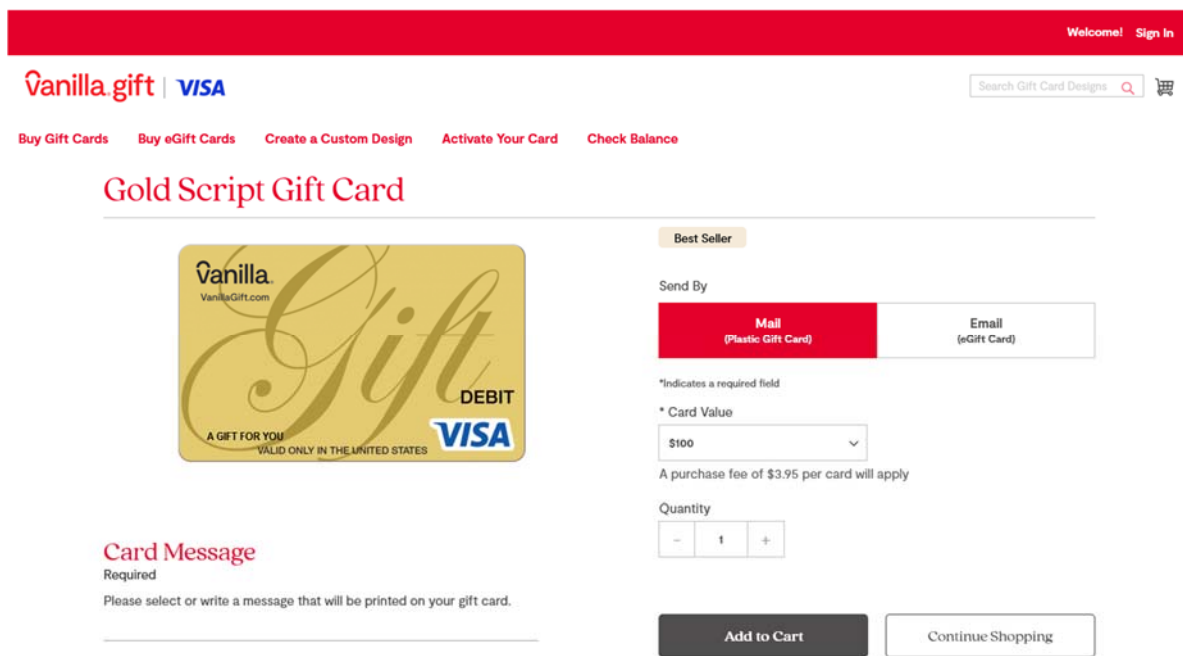
25 JURISDICTION AND VENUE

26 15. The San Francisco Superior Court has jurisdiction over this action. Defendants are
27 engaging in unlawful, unfair, and fraudulent business practices in San Francisco, and the San
28 Francisco City Attorney has statutory authority to prosecute this case on behalf of the People.

1 cards, can only be used at specific retailers associated with those cards.²

2 21. Among Incomm’s primary prepaid products are its Vanilla-branded open-loop cards,
3 including “Vanilla Gift Cards” and “OneVanilla Cards.” These cards are nonreloadable prepaid debit
4 cards sold in various denominations from \$10 to \$500.

5 22. Like a debit card associated with a traditional bank account, a nonreloadable Vanilla
6 debit card can be used to pay for goods and services. Like a traditional bank account-linked debit
7 card, the balance of such cards is drawn down in the amount of each purchase until the balance is
8 depleted and no money remains on the card. These Vanilla cards have the word “DEBIT” printed on
9 the front, as shown in this screenshot from Incomm’s Vanilla card website, www.vanillagift.com:



21 23. The bank that issues the Vanilla card acts as the custodian of the Vanilla cardholder’s
22 funds, which are placed in an account at that bank and drawn down as the card is used.

23 24. Incomm, in the Vanilla cardholder agreements, identifies itself as the “program
24 manager” that provides “services related to your [the cardholder’s] card on” the Bank Defendants’
25 behalf as their agent and explains that when the card is used, the holder “authorize[s] us [Incomm]” to
26

27 ² *Understanding Prepaid Cards* (Summer 2022) Consumer Financial Protection Bureau, at pp.
28 2-3 <[https://files.consumerfinance.gov/f/documents/cfpb_building_block_activities_understanding-
prepaid-cards_handout.pdf](https://files.consumerfinance.gov/f/documents/cfpb_building_block_activities_understanding-prepaid-cards_handout.pdf)> [last visited November 9, 2023].

1 debit the “stored value account” associated with the card.

2 25. Nonreloadable Vanilla debit cards are available as Mastercard or Visa cards and can
3 generally be used at merchants that accept Mastercard or Visa. Like other Mastercard and Visa cards,
4 nonreloadable Vanilla debit cards have a sixteen-digit number associated with the account.

5 26. Vanilla cards are sold to consumers for personal, family, or household purposes and are
6 not intended for business or commercial purposes. At least one version of Incomm’s cardholder
7 agreements provides that a Vanilla card “is not designed for business use, and we [Incomm] may close
8 it if we determine it is being used for business purposes.”

9 27. When purchasing a Vanilla card, a consumer pays a one-time “purchase” or
10 “activation” fee of \$2.95 to \$5.95 depending on the value of the card. Incomm also charges, for some
11 of its cards, an “inactivity fee” of \$3.95 per month beginning in the 13th month of inactivity.

12 28. Vanilla cards like the “Vanilla Gift Card” and “OneVanilla Card” are not reloadable by
13 the consumer or recipient. For these cards, once the funds are depleted, the card cannot be used for
14 further purchases and the cardholder cannot put additional funds on the card or in the account linked to
15 the card.

16 29. A Vanilla cardholder can check the balance of their card, as well as see past
17 transactions, on Vanilla’s website by entering the sixteen-digit number from their card, the expiration
18 date, and the three-digit CVV number (the three-digit card verification value on the back of the card).
19 Below is a screenshot of the www.vanillagift.com page on which a cardholder can check the balance
20 and transaction history of their Vanilla card:

21 ///

22 ///

23 ///

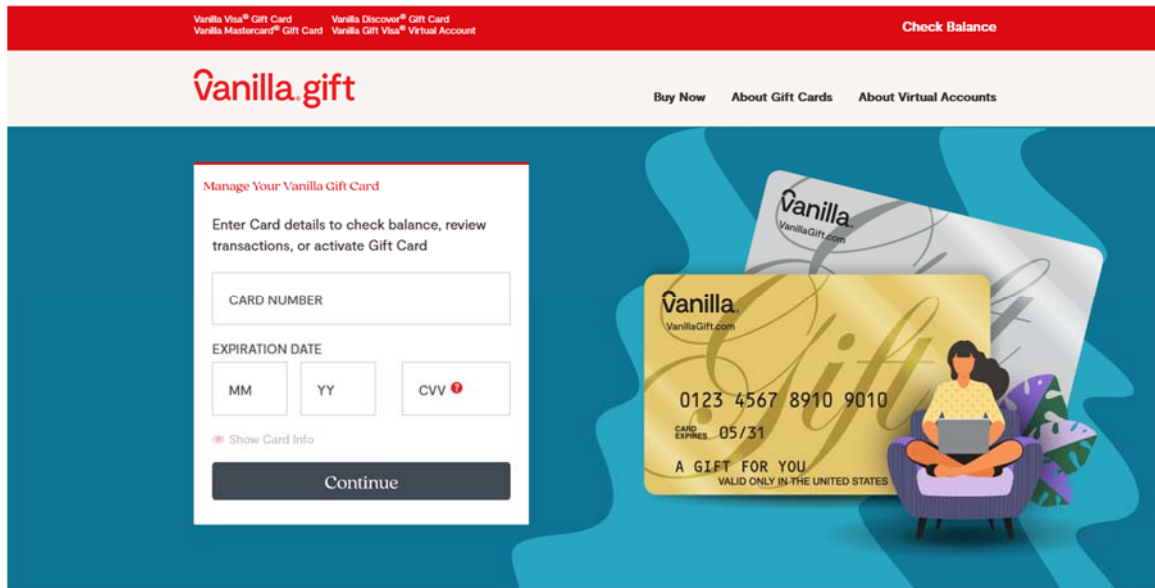
24 ///

25 ///

26 ///

27 ///

28 ///



30. Balance and transaction information can also be obtained by calling Incomm and providing the same information over the phone. Incomm does not transmit periodic statements showing transactions or balances to Vanilla cardholders.

31. Nonreloadable Vanilla debit cards are sold in many retailers in San Francisco and throughout California and the United States, including Walgreens, Target, Safeway, and CVS. The cards can also be bought from Incomm online at www.vanillagift.com.

32. Nonreloadable Vanilla debit cards are often displayed in retail stores on large racks among gift cards for particular stores or brands, for example, gift cards to the Apple Store or Starbucks. These displays are typically prominently located on the ends of aisles, and in larger stores they are often located in or at the end of multiple aisles. On information and belief, at retailers in San Francisco, nonreloadable Vanilla debit cards are often the only general-use prepaid card (*i.e.*, accepted by a variety of merchants) available for sale.

II. Nonreloadable Vanilla Debit Card Packaging and Security Features

33. Nonreloadable Vanilla debit cards are packaged in a cardboard sleeve that also serves as the hangtag to display the cards on the rack at the retailer. The packaging has a window on the back that displays the back of the card, which has a barcode printed on it.

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///

34. This is what the Vanilla card packaging looks like:



35. Because a nonreloadable Vanilla debit card is secured only by the cardboard sleeve, it is possible to open the sleeve to see the front of the card, including the full card number, before resealing the sleeve, so that it does not appear to have been tampered with.

36. When such a card is purchased, the cashier scans the barcode and the card is then activated and ready to use. No further registration is required. Once that card is activated, the full balance is accessible.

37. Nonreloadable Vanilla debit cards generally do not require a PIN to be entered to complete a purchase. If a card terminal or merchant does require a PIN to complete a transaction, a Vanilla cardholder may enter any four-digit number, which then becomes that card's PIN, unless and until it is changed.

38. Such debit cards are subject to an applicable cardholder agreement that sets out the terms and conditions of using the card. Incomm posts some card agreements on the Vanilla website and includes one in each card's packaging.

39. The exact terms of the cardholder agreement vary depending on which Bank Defendant

1 (Pathward, Sutton, or TBBK) is the issuing bank and whether the terms have been changed since the
2 card was purchased. Although they vary by issuing bank, each cardholder agreement available on
3 Incomm's Vanilla card website contains terms regarding unauthorized transactions. Regardless of the
4 minor variations, all of Incomm's cardholder agreements include misleading statements about, among
5 other topics, the security of funds on Vanilla cards and obtaining refunds for unauthorized
6 transactions.

7 40. Incomm's cardholder agreements are quintessential contracts of adhesion. The user of
8 the card "agrees" to be bound by the terms, but the terms are inside the card's packaging, and therefore
9 not accessible until after the card is purchased. Incomm's website provides a space to enter the last 4
10 digits of the card to retrieve its terms, but the card digits are also hidden inside the packaging and not
11 accessible to a purchaser before buying the card.

12 **III. The Long History of Vanilla Card Draining and Incomm's Knowledge of It**

13 41. For at least a decade, numerous Vanilla cardholders have suffered from a practice
14 known as "card draining." Card draining describes the practice in which a cardholder's Vanilla card is
15 used by someone else to make unauthorized transactions without the cardholder's permission, often
16 resulting in the total depletion of the card's balance before the rightful owner ever has a chance to use
17 the card.

18 42. Cardholders regularly discover that the balance of their Vanilla card has been stolen
19 when they attempt to use the card for the first time and, embarrassingly, it is declined by a merchant
20 for insufficient funds. The Vanilla cardholder then checks the balance of their card online only to
21 discover one or more transactions they did not authorize, often in locations far from where they are or
22 at online retailers they have never heard of, let alone transacted with.

23 43. Since at least 2013, media outlets have repeatedly reported on incidents of Vanilla
24 cards being drained of funds before their owners have had the chance to use them. The following are
25 just some of the many news stories reporting on Vanilla card draining:

26 a. In January 2013, Global News in Toronto, Canada reported that Bill Patterson
27 was given a \$250 Vanilla card as a retirement gift, but that before he had a chance to use, all but \$2.50
28 was spent by someone else while the card was in the original package at Patterson's house. Patterson

1 explained that he had called the number on the card numerous times and was told a replacement card
2 would be sent to him, but that it never was and each time he called Incomm had a different excuse for
3 the delay. He was clear that he would not buy a Vanilla card and warned others, “I’d stay away from
4 it because you don’t know what you’re getting.”³

5 b. In July 2019, WKRG News in Mobile, Alabama reported how Alex Brown
6 bought a \$250 Vanilla card, went home to check the balance, and discovered that the card had no
7 money on it. She soon discovered that inside the card’s packaging was a barcode printed out and
8 placed over the code on the Vanilla card. The \$250 she intended to put on the Vanilla card had instead
9 been credited to whatever card the second barcode was linked to. Ms. Brown went back to the
10 Walgreens where she bought the Vanilla card and discovered three other cards had been tampered with
11 just as hers had.⁴

12 c. In February 2022, WKBW TV in Buffalo, New York reported the story “Gift
13 card balance drained before used, how hackers do it,” which told how local nurse Pamela Woestendiek
14 discovered that the entire balance of a Vanilla card she received for her birthday had been stolen
15 before she even received the card. Shortly after the card was declined at a shoe store, she checked the
16 balance and saw that it had all been spent on Google Music by someone else.⁵

17 d. In September 2022, WCBV Channel 5 Boston aired a news story titled “Unused
18 prepaid gift cards suddenly have balance stolen,” which reported how Jason Meade received \$800 in
19 Vanilla cards from his co-workers following the death of his four-year-old son. Mr. Meade tried to
20 use the cards to purchase a gravestone for his son’s grave, but he discovered the balance had been
21 stolen, despite having the cards in the original packaging at his house. The station also reported that
22

23 ³ Staff, *Vanilla Visa Pre-Paid Card Customer Fumes Over Missing Balance* (January 29, 2013)
24 <[https://globalnews.ca/news/385741/vanilla-visa-pre-paid-card-customer-fumes-over-missing-
balance/](https://globalnews.ca/news/385741/vanilla-visa-pre-paid-card-customer-fumes-over-missing-balance/)> [last visited November 9, 2023]; Pre-Paid Vanilla Visa Card Troubles (January 29, 2013) <
25 <https://www.youtube.com/watch?v=xaDio0XdDXU>> [last visited November 9, 2023].

26 ⁴ Dana Winter, *Gift Card Scam* (July 24, 2019) < <https://www.wkrg.com/top-stories/107972/>>
27 [last visited November 9, 2023]; <<https://www.youtube.com/watch?v=ccjrK-DH-YU>> [last visited
28 November 9, 2023].

27 ⁵ Michael Schwartz, *Gift Card Balance Drained Before Used, How Hacker Do It* (February 08,
28 2022) <[https://www.wkbw.com/7problemsolvers/gift-card-balance-drained-before-used-how-hackers-
do-it](https://www.wkbw.com/7problemsolvers/gift-card-balance-drained-before-used-how-hackers-do-it/)> [last visited November 9, 2023].

1 Julie Mei, the director of a Boston-area nonprofit, had \$500 stolen from a Vanilla card her nonprofit
2 purchased for a family in need. The family tried to use the card one day after the nonprofit gave it to
3 them, but the entire balance was already drained. The story also reported Jean Manthorne’s
4 experience of giving her nephew an Incomm-issued gift card (not branded Vanilla) that had \$500
5 stolen off it while it was in his hands. Ms. Mei and Mr. Meade both reported the thefts to Incomm, but
6 neither received a response, despite waiting more than the 90 days Incomm said it would take to
7 investigate. Only after the station reached out to Incomm did it issue refunds. Regardless, all three
8 people said now that they knew how susceptible to theft the cards are, they would never buy one and
9 tell others not to as well.⁶

10 e. In November 2022, ABC7 in Irvine, California, broadcast the story “Irvine
11 woman warns of potential scam involving Visa Vanilla gift card,” which reported that Renee Venezia
12 was gifted a \$500 Vanilla card, but that when she went to use it for the first time to pay a hotel bill, the
13 card was declined and she discovered the entire balance had been drained. ABC reported that Ms.
14 Venezia was “[c]onfused, embarrassed and angry” and “reached out to InComm Financial Services”
15 only to be told in a letter from the company that “we have verified that your card was present during
16 the time of the purchase(s).” As Ms. Venezia told ABC, the card “wasn’t present, because I have it.”⁷

17 f. In December 2022, NBC Los Angeles aired the story “Why Your New Gift
18 Card Might Have a \$0 Balance,” and reported that Richard Zelinka bought 3 \$300 Vanilla cards for
19 his sister, but the entire balance was stolen from each before she could use them. As with Ms. Polich,
20 he received replacement cards only after NBC contacted Incomm.⁸

21 g. In January 2023, NBC Bay Area aired the story “How to Avoid Gift Card
22

23 ⁶ Ben Simmoneau, *Unused Prepaid Gift Cards Suddenly Have Balances Stolen* (September 12,
24 2022) <<https://www.wcvb.com/article/unused-prepaid-gift-cards-suddenly-have-balance-stolen/41176603>> [last visited November 9, 2023].

25 ⁷ David González, *Irvine Woman Warns of Potential Scam Involving Visa Vanilla Gift Card*
26 (November 26, 2022) <<https://abc7.com/visa-gift-card-scam-vanilla-fraud-money-scams/12494591/>>
[last visited November 9, 2023].

27 ⁸ Christina Roher, *Why Your New Gift Card Might Have a \$0 Balance* (December 21, 2022)
28 NBC Los Angeles <<https://www.nbclosangeles.com/investigations/why-gift-card-has-zero-balance-scam-holidays/3060087/>> [last visited November 9, 2023].

1 Fraud,” which featured the story of Sydney Polich, a college student who lives in Walnut Creek, and
2 was given a \$100 Vanilla card by her grandparents. She was the victim of an unauthorized transaction
3 that she discovered had wiped out the balance when the card was declined as she tried to make a
4 purchase in San Francisco. NBC Bay Area also reported that it heard from four other Bay Area
5 residents, and dozens across the United States, who also had funds stolen from their cards. Sydney
6 Polich tried to get a refund from Incomm, but received no response. Only after being contacted by
7 NBC did Incomm refund the unauthorized transaction.⁹

8 h. In January 2023, ABC News in Knoxville, Tennessee aired the story “Loudon
9 County man shares warning after gift card funds stolen,” that described how Brian Vaughn and his
10 fiancée went to purchase groceries with a \$400 Vanilla card given by his mother only to discover that
11 all but \$3 had been stolen in the middle of the night in two transactions on CashApp, a money transfer
12 smartphone application. Mr. Vaughn had used Vanilla cards in the past, but once he discovered that
13 the entire balance could be so easily stolen while the card was in his possession, he was clear that
14 “[u]ntil they fix this situation and address this issue, I would not use them or purchase them at all.”¹⁰

15 i. In June 2023, NBC Bay Area reported that a family in Saratoga, California
16 purchased a \$200 Vanilla gift card for a neighbor, but when the neighbor attempted to use it, the
17 balance was \$0. The amount lost was only recovered after the news organization stepped in.¹¹

18 44. Consumer review websites, such as the Better Business Bureau (“BBB”), also contain
19 hundreds of complaints about Vanilla cards being drained of their funds before the rightful owners
20 have a chance to use them. Like the news reports, these complaints have been ongoing for years.

21 45. The following are just some of the many examples of Vanilla cardholder’s reporting

22
23 ⁹ Chris Chumura, *How to Avoid Gift Card Fraud* (January 11, 2023) NBC Bay Area
24 <<https://www.nbcbayarea.com/investigations/consumer/how-to/how-to-avoid-gift-card-fraud/3126386/>> [last visited November 9, 2023].

25 ¹⁰ Don Dare, *Loudon County Man Shares Warning After Gift Card Funds Stolen* (January 16,
26 2023) WATE <<https://www.wate.com/investigations/loudon-county-man-shares-warning-after-gift-card-funds-stolen/>> [last visited November 9, 2023].

27 ¹¹ Chris Chumura, *South Bay family’s sour Vanilla gift card* (June 28, 2023) NBC Bay Area
28 Responds <<https://www.nbcbayarea.com/investigations/consumer/south-bay-familys-sour-vanilla-gift-card/3262099/>> [last visited November 9, 2023]. The “Responds Teams” are local news organizations that respond to consumer problems.

1 that funds were stolen from their cards:

2 a. On March 31, 2023, Bernadette B. wrote on the BBB's Incomm webpage that
3 the money on two Vanilla cards given to her daughter was stolen before they could be used:

4 "Fraudulent and tampered cards and they make it difficult to collect or refund
5 the amount. My daughter received TWO \$100 gift cards on Xmas 2022 and
6 when we tried to use them they were cleared out. I have called multiple times
7 and have gotten the run around submitting ALL of the required paperwork to
8 proved we have the cards and the receipt from when they were purchased. I've
9 called at least 10 times and when they finally said they'd refund and send us
10 new cards, I called to follow up on their promise. When I spoke to the operator
11 after being on hold for 40 min, they say it's still under investigation. They give
12 you the runaround and say they will email you an update, which they never do.
13 So after all that and them going back on their word I'm still waiting to hear
14 confirmation. I will never again get gift cards and will warn others from
15 purchasing them."¹²

16 b. On March 29, 2023, Leann Nielson Peterson wrote on Complaints Board
17 website for Vanilla cards that all of the money on a Vanilla card given to her by friends had been
18 stolen: "My Vanilla Visa Gift Card was used For PayPal. I received a gift card for 175.00 from my
19 girlfriends. It was purchased on 03/17/23. I went to use it on 03/21/23 and it was declined. I came
20 home and went online to see all of it was used on paypal."¹³

21 c. On November 30, 2022, Kevin in Pennsylvania wrote on Consumer Affairs
22 Vanilla cards website that the money on his Vanilla card was also stolen in unauthorized transactions:

23 Received a \$400 Vanilla gift card on 7-14-22 (purchased at CVS 7-13-22).
24 Checked the balance on 11-29-22 and it was zero. A series of fraudulent
25 transactions mostly to Public Storage were made from 10-12-22 through 10-20-
26 22. After finally getting through to customer service, they said I need to submit
27 a Dispute Form. To get the Dispute Form, they need to open a Case Number and
28 for this they need my Name, Address, Phone, Email, and DOB.¹⁴

d. On August 16, 2022, Christine Mcguirewolfe wrote on TrustPilot that, like so

¹² Bernadette B. (March 31, 2023) Better Business Bureau
<<https://www.bbb.org/us/ga/columbus/profile/credit-cards-and-plans/incomm-financial-services-inc-0743-4118/customer-reviews>> [last visited November 9, 2023].

¹³ Leann Nielson Peterson (March 29, 2023) Complaints Board
<<https://www.complaintsboard.com/vanilla-gift-cards-b133229/page/9>> [last visited November 9, 2023].

¹⁴ Kevin (November 30, 2022) Consumer Affairs
<https://www.consumeraffairs.com/credit_cards/vanilla-visa-gift-card.html?page=3#scroll_to_reviews=true> [last visited November 9, 2023].

1 many others, the money on her Vanilla card was stolen immediately upon receipt:

2 My gift card was skimmed immediately upon receipt. The customer service to
3 report it stolen was horrendous. They outright lied, refused to provide a contact
4 number for the dispute/fraud section, would not send a dispute form for 14 days,
5 and then required another 90 days to process the refund. Even though they
acknowledged receipt of the dispute form, they claimed it was lost. The actual
workers appear to be intentionally stalling, not providing information, or
providing false information.¹⁵

6 46. As of November 9, 2023, the BBB's webpage for Incomm Financial Services shows
7 over 340 reviews, with an average of 1.07 of 5 stars (1 star is the lowest rating), and over 2,300
8 complaints in the last 3 years (which is as far back as complaints are reported on BBB).¹⁶ BBB also
9 maintains a page for Incomm, which has more than 290 reviews with an average of 1.04 stars and over
10 1,600 complaints from the last three years.¹⁷ Many of the reviews and complaints report that the
11 consumer's money was stolen from their card and they were unable to get a refund from Incomm.

12 47. As of November 9, 2023, the Consumer Affairs webpage for Vanilla prepaid cards has
13 over 1,390 reviews, with an average "satisfaction rating" of 1.2 of 5 stars. The reviews span from
14 2007 through the present. Many of the reviews and complaints report that the consumer's money was
15 stolen from their card and they were unable to get a refund from Incomm.¹⁸

16 48. As of November 9, 2023, Complaints Board, a consumer advocacy website that
17 facilitates resolutions by allowing business to respond to complaints, shows more than 400 complaints
18 about Vanilla cards dating back to 2008. Many of the reviews and complaints report that the
19 consumer's money was stolen from their card and they were unable to get a refund from Incomm.¹⁹
20 Complaints Board rates Vanilla Gift Cards' customer support as "Very Poor," with approximately 6%

21
22 ¹⁵ Christine Mcguirewolfe (August 16, 2022) Trustpilot
<<https://www.trustpilot.com/reviews/62fb99227e1f0c3dc2e0bfc0>> [last visited November 9, 2023].

23 ¹⁶ Better Business Bureau <<https://www.bbb.org/us/ga/columbus/profile/credit-cards-and-plans/incomm-financial-services-inc-0743-4118>> [last visited November 9, 2023].

24 ¹⁷ Better Business Bureau <<https://www.bbb.org/us/ga/atlanta/profile/gift-cards/incomm-0443-9531>> [last visited November 9, 2023].

25 ¹⁸ Consumer Affairs <https://www.consumeraffairs.com/credit_cards/vanilla-visa-gift-card.html#scroll_to_reviews=true> [last visited November 9, 2023].

26 ¹⁹ Complaints Board <<https://www.complaintsboard.com/vanilla-gift-cards-b133229#complaints>> [last visited November 9, 2023].

1 of complaints resolved.

2 49. As of November 9, 2023, Trustpilot, a customer review website, showed over 50
3 reviews for Incomm, with an average rating of 1.4 of 5 stars.²⁰ Trustpilot has a separate page for
4 Vanilla Visa, which has over 370 reviews, 98% of which are 1-star, the lowest available.²¹ Many of
5 the reviews and complaints report that the consumer's money was stolen from their card and they were
6 unable to get a refund from Incomm.

7 50. Card draining, which can occur in multiple ways, is a relatively unsophisticated crime
8 made possible by Incomm's inadequate security.

9 51. One method of card draining involves opening the packaging and photographing the
10 card, including the full card number, before returning it to the packaging and resealing the cardboard
11 sleeve so it does not appear to have been tampered with. The card drainer can then access Vanilla's
12 website and enter the card number to determine if the card has been activated and see the card balance.
13 Some reports describe how simple computer programs can be used to monitor multiple Vanilla card
14 balances so that funds can be tracked and spent immediately after they the cards are activated.²² The
15 card drainer then spends the card balance online or in a store by using the card numbers they
16 photographed.

17 52. Another method of card draining involves replacing the barcode on the back of the
18 Vanilla card with a barcode linked to a reloadable card. To carry out this type of card draining, the
19 card drainer prints out a barcode associated with a reloadable card, sometimes on a sticker or label,
20 and puts that barcode on top of the nonreloadable Vanilla card's barcode. When the cashier scans the
21 barcode, the money intended for the purchaser's nonreloadable Vanilla card is instead loaded onto the
22 thief's reloadable card.

23
24 ²⁰ Trustpilot <<https://www.trustpilot.com/review/incomm.com>> [last visited November 9,
2023].

25 ²¹ Trustpilot <<https://www.trustpilot.com/review/vanillavisa.com>> [last visited November 9,
26 2023].

27 ²² Caitlin Burchill, *NBC CT Responds Investigates Gift Card Grievances* (December 22, 2022)
28 NBC Connecticut <<https://www.nbcconnecticut.com/investigations/nbc-ct-responds/nbc-ct-responds-investigates-gift-card-grievances/2941300/>; NBC Bay Are; NBC Los Angeles> [last visited November 9, 2023].

1 53. Incomm knows that its nonreloadable Vanilla debit cards are susceptible to card
2 draining. As discussed above (*see* ¶¶ 43–49, *supra*), news media and consumers have been reporting
3 about card draining, including directly to Incomm for at least a decade.

4 54. Incomm has also explicitly acknowledged that Vanilla card balances are drained
5 because of “package tampering.” In multiple responses to Better Business Bureau complaints that a
6 Vanilla card’s balance was depleted before the cardholder was able to use the card, Incomm has
7 responded that the cardholder “was a victim of a form of fraud known as package tampering. This
8 means that [the cardholder’s] card was fraudulently compromised prior to activation.”²³ Still, Incomm
9 has failed to take reasonable steps to rectify the problem.

10 55. Incomm is best suited to foreclose card draining. As mentioned above (*see* ¶ 29,
11 *supra*), a card drainer, after copying the sixteen-digit number of an unsold Vanilla card, can input that
12 number on Vanilla’s website both to monitor when the card has been activated and to view the card
13 balance. On information and belief, only someone who has recorded the sixteen-digit number of an
14 unsold Vanilla card would have any reason to conduct such checks *prior* to activation. Given this,
15 Incomm knows or should know that any unsold, inactive Vanilla card has been fraudulently
16 compromised when the card’s sixteen-digit number is repeatedly entered on Vanilla’s website.
17 Despite this, on information and belief, Incomm neither monitors Vanilla’s website to track this data,
18 nor uses this information to prevent compromised Vanilla cards from being sold to consumers.

19 **IV. Incomm’s Failure to Provide Sufficient Security for Vanilla Card Funds**

20 56. Funds are easily stolen from nonreloadable Vanilla debit cards as a result of Incomm’s
21 insufficient security and its knowing failure to improve it.

22 57. As shown above (*see* ¶ 34, *supra*), such Vanilla cards are packaged in a thin cardboard
23 sleeve that displays the card’s barcode through a window on the back of the packaging. These
24 cardboard sleeves can be easily opened to access the Vanilla card, its 16-digit number, expiration date,
25 and CVV number without displaying obvious signs of tampering.

26
27 ²³ E.g., Incomm (December 21, 2020) Better Business Bureau
28 <<https://www.bbb.org/us/ga/columbus/profile/credit-cards-and-plans/incomm-financial-services-inc-0743-4118/complaints?page=12>> [last visited November 9, 2023].

1 58. The barcode of a nonreloadable Vanilla debit card, which is displayed through a
2 window in the packaging, is also easily accessible to those seeking to cover it with a barcode linked to
3 the perpetrator's card. Like opening the card to access the card numbers, this can be accomplished
4 without leaving obvious signs of tampering.

5 59. In contrast to Incomm's lax security packaging practices, other sellers of prepaid debit
6 cards have taken several simple and inexpensive steps to increase the security of their cards. For
7 example, Incomm's competitor, Netspend, does not package its prepaid debit cards in a cardboard
8 sleeve. Instead, Netspend packages its cards in sealed plastic packs that are not easily opened without
9 obvious signs of tampering:



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22 60. Additionally, some other prepaid debit card companies conceal their cards' sixteen-
23 digit numbers, expiration dates, CVV numbers, PINs, and barcodes in places that would require
24 dismantling the entire package to access.

25 ///
26 ///
27 ///

1 61. Incomm is presumably familiar with such security features, because *Incomm itself* uses
2 this tamper-evident plastic packaging for its *reloadable* “MyVanilla” cards. Similar to the Netspend
3 packages, reloadable MyVanilla cards are packaged between a cardboard backing and clear pre-
4 formed plastic shell. The packaging blocks the sixteen-digit card number and CVV number from plain
5 view. The plastic shell is affixed to the cardboard backing using heat to activate an adhesive, snugly
6 enclosing in the card. In this way, the reloadable MyVanilla card packaging is not easily resealable,
7 unlike the thin cardboard sleeves Incomm uses for its nonreloadable Vanilla cards:²⁴



17 62. Another method of securing valuable card information from plain view is to employ
18 scratch-off or peel-off labels. For example, Incomm’s competitor, Green Dot MoneyPak, has used
19 scratch-off labels for its prepaid debit card products. Like Vanilla cards, Green Dot MoneyPak cards
20 are packaged in a cardboard sleeve. But unlike Vanilla cards, Green Dot MoneyPak cards are
21 packaged in a cardboard sleeve with a silver coating on the back that conceals the sixteen-digit card
22 number:²⁵

24 ²⁴ *My Vanilla Debit: Pros and Cons of Using MVD to Earn Miles* (June 11, 2023) TravelSort <
25 <https://travelsort.com/my-vanilla-debit-pros-and-cons-of-using-mvd-to-earn-miles/>> [last visited
26 November 9, 2023]; *How to Activate My Vanilla Prepaid Card* (Nov. 28, 2019) The Stuff I Use
27 Channel <<https://www.youtube.com/watch?app=desktop&v=6iR9fbkOE6o>> [last visited November 9,
28 2023].

27 ²⁵ Photos courtesy of Matthew Goldstein, N.Y. Times (July 31, 2014)
28 <[https://archive.nytimes.com/dealbook.nytimes.com/2014/07/31/popular-prepaid-money-card-opens-
path-to-fraud-schemes/](https://archive.nytimes.com/dealbook.nytimes.com/2014/07/31/popular-prepaid-money-card-opens-path-to-fraud-schemes/)> [last visited November 9, 2023].



63. This silver coating ensures that the sixteen-digit card number is visible only after the coating is scratched off the card. Thus, scratch marks on the coating would reasonably notify a consumer or cashier that the card has been tampered with. Indeed, a red warning box on the back of the cardboard sleeve surrounding the scratch-off label warns consumers: “DO NOT BUY IF THE SCRATCH OFF STRIP HAS BEEN TAMPERED WITH.”

64. Again, on information and belief, InComm has also used scratch-off labels in the packaging for its reloadable (but not nonreloadable) cards. For example, another version of the reloadable MyVanilla Card is packaged in a cardboard sleeve, like the Green Dot MoneyPak card, with a silver scratch-off coating that conceals the card’s PIN:²⁶

²⁶ *What is a Vanilla Reload Card and How to Load it to Your American Express Bluebird Account* (Oct. 31, 2012) Million Mile Secrets < <https://millionmilesecrets.com/guides/vanilla-reload-cards/> > [last visited November 9, 2023].



65. Another Incomm competitor, Blackhawk Network, employs a small tear-away cardboard strip on the back of its cardboard sleeve packaging to completely cover its prepaid debit card's sixteen-digit number and activation barcode:²⁷



66. Text printed on the tear-away strip instructs the cashier to remove the strip to reveal the activation barcode. The card number and activation barcode cannot be revealed without disturbing a

²⁷ Photos courtesy of Kathy Kass, *Visa Gift Cards Are Now Golden, Will Run for Miles* (July 14, 2022) <<https://willrunformiles.boardingarea.com/visa-gift-cards-are-now-golden/>> [last visited November 9, 2023].

1 holographic sticker placed over the tear-away strip. Above the holographic sticker is a large red stop
2 sign symbol followed by text that reads: “FOIL SHOULD READ ‘B H N’” and “DO NOT SELL IF
3 THE HOLOGRAM IS BROKEN.” This label clearly instructs the cashier to inspect the package for
4 tampering. Would-be card drainers are thus unable to access the card number without alerting a
5 cashier to their tampering.

6 67. Finally, other companies, such as Chase Bank and Mastercard, have already begun to
7 issue chip-enabled numberless cards.²⁸ These cards, which have become commonplace for credit
8 cards and bank-issued debit cards, do not have a sixteen-digit number or CVV number displayed on
9 their face. Instead, cardholders access these details and the card’s associated PIN after registering the
10 card on the card issuer’s e-wallet app or website. To register numberless cards, consumers first
11 provide cashiers with their or the card recipient’s personally identifiable information (*e.g.*, name and
12 telephone number). That identifying information is linked to the card at the time of purchase and
13 requested when the cardholder goes to activate the card. After activation, card information is only
14 accessible by entering the cardholder’s unique username and password on the e-wallet app or website.

15 68. The use of chip-enabled cards, which are more difficult to hack than magnetic strips,²⁹
16 coupled with the removal of any numerical data from the card, significantly reduces the risk of card
17 draining. Incomm, however, on information and belief, has not made any of its nonreloadable debit
18 cards chip-enabled.

21 ²⁸ *E.g.*, Rupert Jones, *Bank Cards: Where Have All the Numbers Gone?*, The Guardian (June
22 11, 2022) <<https://www.theguardian.com/money/2022/jun/11/bank-cards-numbers-numberless-fraud>>
23 [last visited November 9, 2023] (“the digital bank Chase has made a feature of the fully numberless
24 debit card that you get with its current account”); *Four Facts About the Numberless Physical Card*
25 *from Mastercard* (June 10, 2020) Mastercard <<https://www.mastercard.com/news/ap/en-hk/newsroom/press-releases/en-hk/2020/june/four-facts-about-the-numberless-physical-card-from-mastercard/>> [last visited November 9, 2023] (“The new numberless physical card contains only a chip, the cardholder’s name, and the logos of the issuing bank and credit card brand, making it seem like a personal name card.”).

26 ²⁹ Will Wade-Gery, *What’s That Chip Doing on My Credit Card?* (Sept. 29, 2015) Consumer
27 Financial Protection Bureau <<https://www.consumerfinance.gov/about-us/blog/whats-that-chip-doing-on-my-credit-card/>> [last visited November 9, 2023]; Rachel Abrams, *Chip Cards Will Require Users to Dip Rather Than Swipe* (Sept. 28, 2015) N.Y. Times
28 <<https://www.nytimes.com/2015/09/29/business/chip-cards-will-require-users-to-dip-rather-than-swipe.html>> [last visited November 9, 2023].

1 69. Incomm has not implemented any of these simple packaging design changes for its
2 nonreloadable Vanilla debit cards. These Vanilla cards can be used without registration or further
3 activation and without first setting a PIN or other code. The funds on a nonreloadable Vanilla debit
4 card are accessible – to the cardholder as well as a thief – as soon as the card is activated, which
5 occurs when the card is purchased.

6 70. If a merchant’s point of sale system requires a PIN to complete the transaction, then the
7 person attempting to pay with a nonreloadable Vanilla debit card can enter any four-digit number as
8 the PIN. That number will then be the PIN for that card until it is reset, which can be accomplished
9 with the information available on the card: the number, expiration date, and security code. Thus, even
10 if a person who accessed the card while it was in its packaging was prevented from completing a
11 transaction because they did not have the PIN, they could reset the PIN with the information they
12 obtained from the card.

13 71. The cardholder agreements also make clear that this kind of Vanilla card “is active
14 when it is received” and “may be used immediately upon its receipt” without any further activation.
15 This is different than a credit card or even some other prepaid cards, which require the cardholder to
16 contact the card issuer by phone or online and provide certain information to activate the card before it
17 can be used to complete any transactions – including some of Incomm’s other Vanilla cards. For
18 example, the MyVanilla reloadable cards require users to register their card online before using it.³⁰

19 72. Incomm also provides details of a card’s balance and transaction history to anyone who
20 has the card’s number, expiration, and security code. This is different than a traditional credit card and
21 other kinds of prepaid cards, which require information beyond what is on the face of the card, such as
22 a PIN or password, to access the balance and transaction history.

23 73. Despite knowing that nonreloadable Vanilla debit cards are susceptible to being drained
24 as a result of package tampering, Incomm, on information and belief, has not improved its packaging
25 to prevent unauthorized access to its nonreloadable cards – such as the aforementioned security
26 features already used by Incomm’s competitors (*see* ¶¶ 59–68, *supra*) and by Incomm itself for its

27
28 ³⁰ MyVanilla <<https://www.myvanillacard.com/>> (“Sign up now to set up your online account and activate your starter MyVanilla Card.”) [last visited November 9, 2023].

1 reloadable debit cards (*see* ¶¶ 61, 64, *supra*). Nor has it implemented other security measures to
2 ensure that funds are available only to the rightful cardholder.

3 **V. Incomm’s and its Partner Banks’ Failure to Refund Unauthorized Transactions**

4 74. As a result of Incomm’s insufficient security for Vanilla cards, cardholders are deprived
5 of money that is rightfully theirs by unauthorized transactions on their cards. Contrary to their legal
6 obligations, Defendants regularly fail to provide refunds for unauthorized transactions on Vanilla
7 cards.

8 75. Many of the news stories and consumer complaints describing unauthorized
9 transactions on Vanilla cards also report that Incomm refuses or fails to provide refunds.

10 76. Incomm’s unauthorized transaction dispute process begins with a call to the 800-
11 number listed in the cardholder agreements and on the Vanilla card website. As many consumers
12 report, this process is frustrating and unnecessarily time consuming, with many complaining that after
13 spending long periods on hold, they are told Incomm can do nothing for them or told Incomm will
14 send a transaction dispute form that must be completed to begin the process – a form that could easily
15 be provided on a website or via an online form, but is not. For example:

16 a. On March 26, 2023, Eileen MacPherson wrote on Complaints Board she called
17 Incomm to report that the entire \$200 balance of her Vanilla card was spent on Paypal without her
18 permission and was “on hold with vanilla for almost an hour,” only to be told by Incomm’s
19 representative “that their policy is that it is like cash and therefore has the same risk. However, how is
20 that possible when the card never left my possession? It has been sitting under my computer keyboard
21 and no one had access to it.”³¹

22 b. On March 6, 2023, Steven L. wrote on the BBB’s Incomm webpage that he had
23 spent hours on hold and submitted all forms Incomm asked for, but had still received no refund:

24 [B]ought \$100 Visa and when it was attempted to be used 3 weeks later, there
25 was no money on the card, seems someone from another state used these funds
weeks earlier. i have filed 2 dispute packages with this company and spent

26 ³¹ Eileen MacPherson (March 26, 2023) Complaints Board
27 <[https://www.complaintsboard.com/vanilla-gift-cards-fraudulent-usage-of-my-vanilla-visa-gift-card-
c1492432](https://www.complaintsboard.com/vanilla-gift-cards-fraudulent-usage-of-my-vanilla-visa-gift-card-c1492432)> [last visited November 9, 2023].

1 several hours on the phone trying to get my money back but to no avail. i was
2 sent a DocUsign which i completed and that led to nothing either. i will never
3 purchase a Visa card again...no way! this company is not doing right by the way
4 its giving me the run around, im doing everything im asked multiple times
5 which leads to nothing.³²

6 77. Incomm's dispute forms asks for the cardholder's name, home address, mailing
7 address, phone number, email address, card number, and details of the disputed transaction, including
8 the date, amount, merchant, and the merchant's phone number. Some cardholders also report being
9 asked for their date of birth and other personal information when reporting unauthorized transactions
10 to Incomm's employees on the phone.

11 78. After submitting the transaction dispute form to Incomm, cardholders typically receive
12 an email from Incomm stating that it will resolve the dispute within 45 to 90 days. But, as many
13 consumers report, after they send their dispute forms to Incomm, receive confirmation, and are told
14 resolution will come within 90 days, they never hear from Incomm about the transaction again, and
15 never receive a refund. For example:

16 a. On February 11, 2023, Juanita M. wrote on the BBB's Incomm webpage that
17 she has waited more than 2 years with no resolution:

18 This business is the worst company i have ever in my lifetime dealt with. Oct
19 2021 my credit card was compromised. I reported and disputed charges
20 immediately with merchant and card holder services. To this day Feb.2023 this
21 issue has not been resolved. Spoke with merchant and c[a]rd services have not
22 even contacted merchant to dispute these charges. I am being given the
23 runaround on this issue told 45 to 90 days for issue to be resolved. Its been
24 almost 2 **** years.³³

25 b. On December 15, 2022, Linda E. reported on the BBB's Incomm webpage that
26 she has not received resolution, despite waiting more than 90 days:

27 [A]fter finally speaking with a human from Vanilla's customer service, I was
28 given paperwork to fill out, a case number, and told that the issue would be
resolved for me within 90 days. Well, it has now been more than 90 days.
Whenever I try calling the customer service line now, I am left on hold, and no

32 Steven L (March 06, 2023) Better Business Bureau
<<https://www.bbb.org/us/ga/columbus/profile/credit-cards-and-plans/incomm-financial-services-inc-0743-4118/customer-reviews>> [last visited November 9, 2023].

33 Juanita M (February 11, 2023) Better Business Bureau
<<https://www.bbb.org/us/ga/columbus/profile/credit-cards-and-plans/incomm-financial-services-inc-0743-4118/customer-reviews>> [last visited November 9, 2023].

one ever picks up.³⁴

79. For those Vanilla cardholders who do hear back from Incomm, the company regularly refuses to refund unauthorized transactions, leaving the consumer to bear 100% of the loss, which comes in addition to the activation fee paid to Incomm.

80. Incomm regularly refuses to refund unauthorized transactions because the transaction occurred more than 60 days before it is reported to Incomm. Incomm denies refunds on this basis regardless of how promptly the cardholder reports the stolen funds after discovering them.

81. For example, on July 20, 2020, Incomm sent the following response to a July 15, 2020 BBB complaint reporting that a Vanilla card recipient's \$100 card had been used for online gambling months before the recipient had a chance to use the card:

We have investigated the issue with Mr. *****'s Vanilla Visa Gift Card.³⁵ Mr. ***** initially contacted our office on February 20, 2020 disputing an unauthorized transaction made on his card in the amount of \$100.00. In accordance with the Cardholder Agreement for this card in the section titled, "Your Right to Dispute Transactions," it states; "In the case of a discrepancy or questions about the Gift Card Account transaction(s), call 1-800-571-1376, write to Vanilla Visa Gift Card Customer Service, P.O. Box 826, Fortson, GA 31808 as soon as you can. You must contact us no later than sixty (60) calendar days after we posted the transaction(s) to the Gift Card Account." The transaction in question posted to the account on April 7, 2019; therefore, the dispute was denied due to being out of timeframe.³⁶

82. Incomm issued an almost identical response to another BBB complaint on February 18, 2021, attempting to justify its denial of a refund to a Vanilla card recipient who received a card in 2020, only to discover that the balance had been depleted months before the recipient tried to use the card for the first time in June 2020:

We have investigated the issue with *** ****'s Vanilla Visa Gift Card. *** **** initially contacted our office on June 30, 2020 disputing multiple

³⁴ Linda E (December 15, 2022) Better Business Bureau <<https://www.bbb.org/us/ga/columbus/profile/credit-cards-and-plans/incomm-financial-services-inc-0743-4118/customer-reviews>> [last visited November 9, 2023].

³⁵ Certain information, including some names and contact information, is redacted on the BBB's website. The redactions in this and other excerpts from the BBB's website are as they appear on those sites.

³⁶ Incomm (07/22/2020) Better Business Bureau <<https://www.bbb.org/us/ga/columbus/profile/credit-cards-and-plans/incomm-financial-services-inc-0743-4118/complaints?page=13>> [last visited June 13, 2023; an archived version is on file with counsel for the People of the State of California, acting by and through City Attorney David Chiu].

1 unauthorized transactions made on his card in the amount of \$200.00. In
2 accordance with the Cardholder Agreement for this card in the section titled,
3 “Information About Your Right to Dispute Transactions,” it states; “In the case
4 of a discrepancy or questions about the Gift Card Account transaction(s), call 1-
5 800-571-1376, write to Vanilla Visa Gift Card Customer Service, P.O. Box 826,
6 Fortson, GA 31808 as soon as you can. You must contact us no later than sixty
7 (60) calendar days after we posted the transaction(s) to the Gift Card Account.”
8 The transactions in question posted to the account in February 2020; therefore,
9 the dispute was denied due to being out of timeframe.³⁷

10 83. As NBC CT reported in December 2022, Incomm refused to issue a refund to Nancy
11 Deaso of Monroe, Connecticut after the \$350 Vanilla card she received as a gift was entirely depleted
12 by purchases she did not make, citing the same 60-day time limit. Despite reporting the unauthorized
13 charges immediately after her card was declined for insufficient funds, she was told that because the
14 charges were made months earlier, Incomm had denied her claim.³⁸

15 84. As cardholders report—especially recipients of cards given as gifts—they often do not
16 receive or use their cards for the first time for weeks or months after they are purchased. Because the
17 money is stolen immediately after the card is activated, however, they have no idea of the theft until it
18 is too late to obtain a refund.

19 85. For example, Deaso explained to NBC CT, “I didn’t know it was used until I went to go
20 use it, so how could I respond in 60 days?” NBC explained that “she hadn’t rushed to use it since the
21 expiration date was years away.”³⁹

22 86. Joseph H., in a November 19, 2022 BBB review, also reported that he did not rush to
23 use the card, but then discovered the card’s balance was stolen long before:

24 I received a \$200 gift card for a gift. We kept it away, since the expiration date
25 was marked 2029. We didn’t look up online reviews or checked the balance. I
26 went to add the card to my Amazon account, but wanted to check the balance.
27 LITTLE DID I know, the card was used by someone else literally a year ago,

28

³⁷ Incomm (February 18, 2021) Better Business Bureau
<<https://www.bbb.org/us/ga/columbus/profile/credit-cards-and-plans/incomm-financial-services-inc-0743-4118/complaints?page=11>> [last visited June 13, 2023; an archived version is on file with
counsel for the People of the State of California, acting by and through City Attorney David Chiu].

³⁸ Caitlin Burchill, *NBC CT Responds Investigates Gift Card Grievances* (December 22, 2022) NBC Connecticut <<https://www.nbcconnecticut.com/investigations/nbc-ct-responds/nbc-ct-responds-investigates-gift-card-grievances/2941300/>> [last visited November 9, 2023].

³⁹ *Id.*

1 from across the country. Like how! I called customer service, and filed
2 complaint. Don't buy these cards. I doubt they will honor this stole funds.⁴⁰

3 87. Incomm also regularly refuses to refund unauthorized transactions based on its
4 determination that the card was present at the time of the transaction. Incomm's denials on this basis
5 do not explain how Incomm makes such determinations, or what evidence it relied on to make it. As
6 many Vanilla card draining victims report, Incomm could not have reasonably come to such
7 conclusions, because the cards never left their possession, yet were used to make purchases in places
8 they have never been, often in other cities or states.

9 88. For example, ABC7 in Irvine, California, reported that Incomm denied Renee
10 Venezia's refund request for \$500 stolen from her Vanilla card while it was in her possession because,
11 according to the denial letter, Incomm "verified that [her] card was present during the time of the
12 purchase(s)." As Ms. Venezia told ABC, the card "wasn't present, because I have it."⁴¹

13 89. On March 7, 2023, a BBB complainant reported a similar experience, stating that they
14 bought a \$500 card on December 3, 2022, only to have most of the money stolen in two transactions
15 on December 4, 2022. The person reported the unauthorized transactions to Incomm the same day,
16 December 4, but "received the final decision of my dispute that my card was present during the time of
17 the purchases, and I do not have recovery rights for this claim. I still possess this **** gift card, it
18 won't be possible that the card was present during the time of the purchase. I disagreed with this final
19 investigation." In its response, Incomm confirmed that it had denied a refund "due to the transaction
20 being card present."⁴²

21 90. On February 13, 2023, C. O'Keefe wrote on Complaints Board that he bought a \$500
22 Vanilla card for his spouse on December 24, only to discover that \$498.95 was spent in an
23 unauthorized transaction at the Dollar Store just two days later on December 26. He reported the

24 ⁴⁰ Joseph H (November 19, 2022) Better Business Bureau
25 <<https://www.bbb.org/us/ga/columbus/profile/credit-cards-and-plans/incomm-financial-services-inc-0743-4118/customer-reviews>> [last visited November 9, 2023].

26 ⁴¹ David González, *Irvine Woman Warns of Potential Scam Involving Visa Vanilla Gift Card*
27 (November 26, 2022) ABC 7 Eyewitness News <<https://abc7.com/visa-gift-card-scam-vanilla-fraud-money-scams/12494591/>> [last visited November 9, 2023].

28 ⁴² Better Business Bureau (March 03, 2023) <<https://www.bbb.org/us/ga/atlanta/profile/gift-cards/incomm-0443-9531/complaints?page=52>> [last visited November 9, 2023].

1 unauthorized transaction to Incomm, but he “received a response from the gift dispute team informing
2 me that they have completed their investigation regarding the referenced ticket and that they
3 determined that the card was present during the time of the purchase at the Dollar Store.” He then
4 “informed [Incomm] that I couldn’t have used the card as it was missing the PIN and would not scan
5 due to a damaged magnetic strip. The person who I talked to was dismissive and told me that there is
6 nothing that they can do.” Like the BBB complaint, Incomm confirmed that this was its finding in a
7 response on Complaints Board.⁴³

8 91. As in each of these examples, Incomm, on information and belief, provides no
9 explanation of how it determines a card was present when the cardholder claims it was not or why that
10 is a sufficient basis to refuse a refund.

11 92. In the examples above, Incomm quickly backed off its “card present” findings when
12 publicly pressed. ABC 7 reported that after they reached out to Incomm, the company refunded Ms.
13 Venezia. And following the BBB and Complaints Board complaints, Incomm responded that “Upon
14 reinvestigation we found this dispute should have been approved.” For those who do not have the
15 media to advocate for them or file a public complaint, Incomm, on information and belief, does not
16 overturn its prior “card present” denials.

17 93. Incomm also tells some cardholders who report unauthorized transactions that it will
18 issue new cards refunding the transactions, but never actually sends the card and continues to mislead
19 the consumer that a card has been, or will soon be, sent. For example:

20 a. On April 6, 2023, Robert W. wrote on the BBB’s Incomm webpage that he was
21 still waiting on a replacement card after more than three months:

22 These guys are absolute crooks I cant believe they haven’t been shut down I
23 received a \$250 gift card and when I went to use it I was told the card was not
24 valid. I contacted them after being on hold for 45 minutes and was given a claim
number ***** and they were going to send a replacement card. that was 3
months ago.⁴⁴

25
26 ⁴³ C. O’Keefe, *Purchased a Vanilla Gift Card (\$500.00) on December 24* (February 13, 2023)
<<https://www.complaintsboard.com/incomm-b133612/page/2>> [last visited November 9, 2023].

27 ⁴⁴ Robert W (April 06, 2023) Better Business Bureau
28 <<https://www.bbb.org/us/ga/columbus/profile/credit-cards-and-plans/incomm-financial-services-inc-0743-4118/customer-reviews>> [last visited November 9, 2023].

1 b. On March 31, 2023, Bernadette B. wrote on the BBB's Incomm webpage that
2 she too was promised replacement cards only to told the matter was still under investigation when she
3 called to see where the replacements were:

4 My daughter received TWO \$100 gift cards on Xmas 2022 and when we tried
5 to use them they were cleared out. I have called multiple times and have gotten
6 the run around submitting ALL of the required paperwork to proved we have
7 the cards and the receipt from when they were purchased. I've called at least 10
8 times and when they finally said they'd refund and send us new cards, I called
9 to follow up on their promise. When I spoke to the operator after being on hold
10 for 40 min, they say it's still under investigation. They give you the runaround
11 and say they will email you an update, which they never do. So after all that and
12 them going back on their word I'm still waiting to hear confirmation. I will
13 never again get gift cards and will warn others from purchasing them.⁴⁵

14 c. On October 6, 2022, Anettemahood4 in Martinez, California wrote on
15 Complaints Board's Vanilla cards webpage that Incomm also never sent her the replacement card it
16 promised:

17 On 3/15/22 I filed a complaint that someone from Target ran a charge of \$28.90
18 and one minute later ran a charge of \$281.04. We weren't even in Target on the
19 charge. I got a dispute #. When I followed up after 60 days, they said it could
20 take up to 90 days. I keep emailing asking for a status. Every once in a while I
21 would get a response. Finally they said my replacement card was mailed 8/1/22.
22 They said to give it 14 days to get to me. 28 days later no card. I kept emailing
23 every day asking for the money. They finally asked me to send proof my my
24 address. I did so. 2 days later they asked the same question. This was 9/1. Now
25 we are on 10/6/22 and no response or money has come my way. I am so
26 frustrated and don't know where to turn. Any suggestions would be greatly
27 appreciated.⁴⁶

28 VI. Consumers Are Likely to be Misled About the Security of Vanilla Cards and Incomm's Refund Process

29 94. Consumers taking a Vanilla card from the rack to buy for themselves or as a gift for
30 another are likely to be misled by Vanilla's concealment of the insufficient security exposing the
31 cards, and the consumers' hard-earned money, to thieves.

32 95. Each nonreloadable Vanilla debit card package prominently displays the dollar value
33 available on the card – e.g., \$100, \$250 – and that there are “NO FEES AFTER PURCHASE.” (E.g.,

34 ⁴⁵ Bernadette B (March 31, 2023) Better Business Bureau
35 <<https://www.bbb.org/us/ga/columbus/profile/credit-cards-and-plans/incomm-financial-services-inc-0743-4118/customer-reviews>> [last visited November 9, 2023].

36 ⁴⁶ Anettemahood4, *Money Was Taken Out of My Gift Card* (October 06, 2022)
37 <<https://www.complaintsboard.com/vanilla-gift-cards-b133229>> [last visited November 9, 2023].

1 *supra* ¶ 34.) But, as many consumers have discovered after buying a Vanilla card, the value on the
2 card they have purchased is actually \$0 or significantly less than the amount advertised, due to the lack
3 of reasonable security measures to prevent card draining. Incomm, despite being aware of rampant
4 card draining as a result of its insufficient security, does not inform potential consumers of or disclose
5 on the packaging material information, including that: funds may be drained from the card without the
6 purchaser’s notification or consent; the actual value may therefore be significantly less than the
7 amount disclosed on the face of the card; its security practices are inadequate to safeguard
8 cardholders’ funds on Vanilla cards; it does not take reasonable steps to prevent card draining, in
9 contrast to some of its other prepaid debit cards; and its policy and practice is to not refund most
10 unauthorized transactions, including as a result of card draining.

11 96. Cardholders, whether Vanilla card purchasers or gift recipients, are also likely to be
12 misled by Incomm’s terms of service. Incomm’s terms include several statements that imply the
13 Company takes active measures to safeguard cardholders’ funds from fraud and theft, including: “For
14 security reasons, we may limit the amount or number of transactions you can make”; “if the change [to
15 the cardholder agreement] is made for security purposes, we can implement such change without prior
16 notice”; “Never share your PIN with anyone and do not enter your PIN into any terminal that appears
17 to be modified or suspicious.” These representations suggest Incomm’s Vanilla cards are adequately
18 secure to ensure against card draining, but Incomm’s terms of service fail to disclose that the Vanilla
19 card’s security features are not adequate to safeguard cardholders’ funds on Vanilla cards; that
20 Incomm does not take reasonable steps to prevent card draining; and that its policy and practice is to
21 not refund most unauthorized transactions, including as a result of card draining.

22 97. Incomm’s terms of service also misleadingly imply that Incomm refunds unauthorized
23 transactions, including those reported more than 60 days after they are made, when, in reality, Incomm
24 consistently refuses to provide refunds, including for unlawful reasons.

25 98. Each of the cardholder agreements available on Incomm’s Vanilla cards website
26 includes a provision on unauthorized transactions. The cardholder agreement for cards issued by
27 TBBK provides (emphasis in original):
28

1 Contact us immediately if you believe your Card has been lost or stolen, or an
2 unauthorized transaction has been made without your permission using the
3 information from your Card. We will ask for the Card number and other
4 identifying details. **We may not be able to assist you if you do not have or
5 provide the Card number or other information we request.** We may not be
6 able to assist you if you do not contact us within sixty (60) days of the
7 unauthorized transaction.

8
9
10
11 99. The agreements for Pathward-issued cards contain a similar provision (emphasis in
12 original):

13 If you believe your Card has been lost or stolen or an unauthorized transaction
14 has been made using the information from your Card without your permission,
15 contact Customer Service IMMEDIATELY. We will ask for the Card number
16 and other identifying details. **We may not be able to assist you if you do not
17 have the Card number.** We may not be able to assist you if you do not contact
18 us within 60 days of the unauthorized transaction. A reissued Card may take up
19 to 30 days to process.

20
21
22 100. The cardholder agreement for cards issued by Sutton Bank includes the following
23 provision:

24 If you believe your Card/Virtual Account has been lost or stolen or an
25 unauthorized transaction has been made using the information from your
26 Card/Virtual Account without your permission, call 1-833-322-6760 or write
27 Vanilla Visa Gift Card/ Virtual Account Customer Service, P.O. Box 826,
28 Fortson, GA 31808. Telephoning Customer Service is the best way of keeping
your possible losses down. We may ask for the Card/Virtual Account number
and other identifying details. We cannot assist you if you do not have the
Card/Virtual Account number. You must contact us within sixty (60) days after
the earlier of the date you electronically access your account in which the
transaction was reflected, or the date we sent the FIRST written history on
which the unauthorized transfer appeared.

We reserve the right to investigate any claim you may make with respect to a
lost or stolen Card/Virtual Account or unauthorized transaction, and you agree
to cooperate with such investigation. We may ask you for a written statement,
affidavit or other information in support of the claim. In the event of actual or
suspected unauthorized use, we will cancel your Card/Virtual Account, and
issue a replacement Card/Virtual Account if available funds remain on the
Card/Virtual Account.

101. These provisions state or imply that, if the cardholder reporting an unauthorized
transaction provides the information Incomm requests, Incomm will assist cardholders reporting
unauthorized transactions, provide refunds for unauthorized transactions, issue replacement cards in
under 30 days, and may be able to assist even if the transaction is reported more than 60 days after
being made or (in the case of the Sutton Bank agreement) will assist in providing refunds for
transactions reported 60 days after accessing the online transaction record.

1 102. Incomm’s cardholder agreements are false and misleading because, among other
2 reasons, Incomm fails to provide refunds for unauthorized transactions reported by consumers and
3 holds consumers liable for the entire transaction amount, does not issue replacement cards within 30
4 days, fails to respond or issue determinations following notification of unauthorized transactions,
5 denies refunds for transactions that occurred more than 60 days before being reported (regardless of
6 when they were discovered or first seen online), and denies refunds when Incomm determines (without
7 explanation) the card was present for the transaction.

8 103. Reasonable Vanilla card consumers would have deemed the information about
9 Incomm’s inadequate security and actual refund practices important in determining whether to
10 purchase Vanilla cards. As many consumers have reported, now that they know how vulnerable
11 Vanilla cards are to theft and how Incomm will not provide refunds, they will not buy the cards.

12 **VII. Defendants’ Conduct Harms Consumers**

13 104. Defendants’ misconduct, as described above, harms consumers in multiple ways in
14 addition to the money they lose as a result of Incomm’s insufficient security.

15 105. Many Vanilla cardholders reporting and seeking refunds for unauthorized transactions
16 spend substantial amounts of time – sometimes hours – on the phone with Incomm, more time filling
17 out the detailed transaction form and providing requested documentation, and even more following up
18 with Incomm by phone or email, only to be ignored or have more time wasted seeking a response that
19 never comes. For those who file reports with the BBB, Consumer Financial Protection Bureau, or
20 other entities that can assist in holding Incomm accountable, they spend additional time as a result of
21 Incomm’s insufficient security and Defendants’ refusal to provide timely refunds.

22 106. Having a card declined, especially in public – *e.g.*, the grocery store checkout with
23 many people in line, a restaurant with a date or co-workers – is also embarrassing. Many Vanilla
24 cardholders find out that the balance on their card has been drained when they go to use the card in a
25 store, restaurant, or other public setting and the card is declined. They are then left scrambling for
26 another way to pay, while suffering the embarrassment of appearing as though they cannot afford their
27 purchase, or were foolish enough to think their card with insufficient funds would not be declined. For
28 example:

1 a. Brian Vaughn described to ABC News his and his fiancée’s embarrassment at
2 having their \$400 Vanilla card declined at the grocery store after nearly all the money on the card was
3 stolen: “We loaded up our buggy full of groceries. We went to check out and the embarrassment
4 started when they said we had insufficient funds on the prepaid card. It said \$3.”⁴⁷

5 b. Cheyenne Reynolds explained to her local news station in Hampton, Virginia,
6 her embarrassment when the \$200 Vanilla card she received from her husband was declined: “It was
7 actually really embarrassing because I bet they thought I didn’t have the money, but it just wasn’t
8 working.”⁴⁸

9 c. ABC News in Irvine, California, reported that local resident Renee Venezia,
10 like other Vanilla cardholders whose money was stolen, was “[c]onfused, embarrassed and angry”
11 when the \$500 Vanilla card she was given was rejected at a hotel for having insufficient funds.⁴⁹

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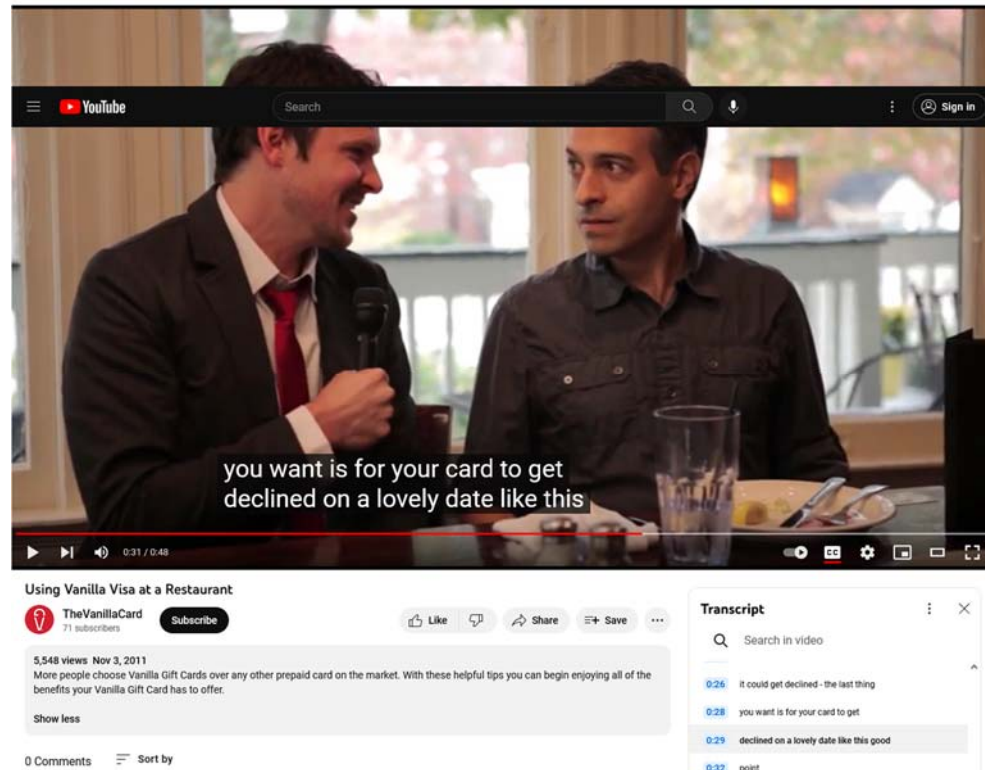
22 ///

23 ⁴⁷ Don Dare, *Loudun County Man Shares Warning After Gift Card Funds Stolen* (January 16,
24 2023) WATE <<https://www.wate.com/investigations/loudon-county-man-shares-warning-after-gift-card-funds-stolen/>> [last visited November 9, 2023].

25 ⁴⁸ Ellen Ice, *Hampton Woman Loses \$200 After Buying Already-activated Gift Card*
26 (December 28, 2021) WTKR <<https://www.wtkr.com/news/hampton-woman-loses-200-after-buying-already-activated-gift-card>> [last visited November 9, 2023].

27 ⁴⁹ David González, *Irvine Women Warns of Potential Scam Involving Visa Vanilla Gift Card*
28 (November 26, 2022) ABC7 Eyewitness News <<https://abc7.com/visa-gift-card-scam-vanilla-fraud-money-scams/12494591/>> [last visited November 9, 2023].

1 107. Incomm recognizes the embarrassment that comes from having a card declined in
2 public settings. In a video posted on the Vanilla Card YouTube channel, a man interrupts a Vanilla
3 cardholder who is about to pay the bill at a restaurant and warns him to check his balance before
4 paying because restaurants sometimes put a hold on funds to cover the tip. He then says, “the last
5 thing you want is for your card to get declined on a lovely date like this”⁵⁰.



19 108. Nor are the recipients of Vanilla cards the only ones to experience undue
20 embarrassment. Vanilla card *buyers* who give a Vanilla prepaid card as a gift and then learn that the
21 card is worthless because the money was stolen also report being very embarrassed, having effectively
22 given friends and loved one’s defective gift cards. For example:

27 ⁵⁰ Using Vanilla Visa at a Restaurant (November 3, 2011) TheVanillaCard YouTube
28 <<https://www.youtube.com/watch?v=PBsm3EdG1kk>> [last visited November 9, 2023].

1 a. Gladys in Las Vegas, Nevada, wrote on Consumer Affairs website on January
2 21, 2022 that she experienced an “embarrassing situation” when she gave her friend a Vanilla card for
3 Christmas, but someone had “stole[n] the money already and she couldn’t use[] it.”⁵¹

4 b. Chad in Akota, Tennessee, described a similar reaction on Consumer Affairs
5 website on July 24, 2020: “I bought one of these online to send to someone else. I was embarrassed
6 when they called to say it didn’t work.”⁵²

7 109. For some, a Vanilla card drained as a result of Incomm’s insufficient security and made
8 worthless by Defendants’ refusal to provide refunds is more than embarrassing – it results in unpaid
9 bills or late payments, which can have severe downstream financial and other consequences. Some
10 Vanilla cardholders without credit cards or traditional bank accounts purchase Vanilla cards to pay
11 bills that are difficult or impossible to pay with cash, including utility bills, online rent payments, and
12 phone or internet service.

13 110. As these Vanilla cardholders report, when money is stolen from their cards, the
14 consequences can be dire. For example, on April 22, 2022, John B. wrote on BBB’s Incomm webpage
15 that he purchased a Vanilla card to pay his power bill, but that the money on the card was stolen, a fact
16 he discovered “when [he] went to check [his] balance last night after [his] power was turned off.”
17 John described how he called Incomm only to be told the company would take 90 days to review the
18 dispute packet it would send, but that this did nothing to improve his current hardship: “I now have no
19 power or way of paying my bill. I’m at a loss as to how this company can let things like this happen. . .
20 . It shouldn't take 90 DAYS to get your money back when it’s obvious these charges were made
21 somewhere different and one place is a KNOWN scam.”⁵³

22 _____
23 ⁵¹ Gladys of Las Vegas, NV (January 21, 2022) Consumer Affairs
<[https://www.consumeraffairs.com/credit_cards/vanilla-visa-gift-
card.html?page=4#scroll_to_reviews=true](https://www.consumeraffairs.com/credit_cards/vanilla-visa-gift-card.html?page=4#scroll_to_reviews=true)> [last visited November 9, 2023].

24 ⁵² Chad of Atoka, TN (July 24, 2023) Consumer Affairs
25 <[https://www.consumeraffairs.com/credit_cards/vanilla-visa-gift-
card.html?page=4#scroll_to_reviews=true](https://www.consumeraffairs.com/credit_cards/vanilla-visa-gift-card.html?page=4#scroll_to_reviews=true)> [last visited June 22, 2023; an archived version is on file
26 with counsel for the People of the State of California, acting by and through City Attorney David
Chiu].

27 ⁵³ John B. (April 22, 2022) Better Business Bureau
28 <[https://www.bbb.org/us/ga/columbus/profile/credit-cards-and-plans/incomm-financial-services-inc-
0743-4118/customer-reviews](https://www.bbb.org/us/ga/columbus/profile/credit-cards-and-plans/incomm-financial-services-inc-0743-4118/customer-reviews)> [last visited November 9, 2023].

1 111. A Vanilla card that is drained as a result of Defendants’ misconduct is worse than
2 worthless. Incomm charges activation fees on every card, with higher fees for cards with a higher
3 nominal value, so for every card that has its balance stolen, the cardholder has lost the card’s nominal
4 value, and the person who paid the activation fee – whether the cardholder or the person who
5 purchased the card as a gift – has lost the value of that fee. Incomm benefits from the activation fee
6 regardless of whether a card’s balance is stolen or spent by the rightful cardholder.

7 **VIII. California Law Limits Consumers’ Liability for Unauthorized Transactions on Vanilla**
8 **Cards**

9 112. Civil Code section 1748.31 limits a debit cardholder’s liability for unauthorized
10 charges.

11 113. The consumer liability limits established by section 1748.31 cannot be waived. Civ.
12 Code § 1748.32.

13 114. A debit cardholder cannot be held responsible for an unauthorized charge unless all of
14 the following conditions are met under Civil Code section 1748.31(a):

- 15 (1) the card is “an accepted debit card”;
- 16 (2) the “issuer has given adequate notice to the debit cardholder of the potential
17 liability”;
- 18 (3) the issuer has provided “a description of the means by which the debit card
19 issuer may be notified of loss or theft of the card”;
- 20 (4) the “unauthorized use occurs before the debit card issuer has been notified
21 by the debit cardholder that an unauthorized use of the debit card has occurred
22 or may occur as a result of loss, theft, or otherwise”; and
- 23 (5) the “issuer has provided a means to identify the debit cardholder to whom
24 the debit card was issued.”

25 115. Even if these conditions are satisfied, the cardholder is only responsible for up to \$50 of
26 an unauthorized transaction. Civ. Code § 1748.31(a)(2).

27 116. Assuming the five conditions described above are satisfied, if (1) a cardholder “fails to
28 report an unauthorized use that appears on a periodic statement within 60 days of the debit card
issuer’s transmittal of the statement,” and (2) “the issuer establishes that an unauthorized use would
not have occurred had the debit cardholder notified the issuer within the 60-day period,” then (3) the
cardholder can be held liable for transactions that occur “after the close of the 60 days and before
notice to the issuer.” Civ. Code § 1748.31(b).

1 117. Incomm, which does not provide periodic statements to cardholders, does not comply
2 with its obligations under Civil Code section 1748.31.

3 **FIRST CAUSE OF ACTION**
4 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**
5 **AGAINST INCOMM**
6 **(Unfair Competition)**

7 118. The People incorporate by reference the allegations contained in each paragraph above,
8 as if those allegations were fully set forth in this cause of action.

9 119. California Business and Professions Code section 17200 prohibits any “unlawful, unfair
10 or fraudulent business act or practices.”

11 120. Incomm has engaged in and continues to engage in unlawful, unfair, and fraudulent
12 business acts and practices in violation of section 17200. Such acts and practices include, but are not
13 limited to, the following:

14 a. Incomm has violated, and continues to violate, California Civil Code section
15 1714 and common law negligence. Incomm owes a duty to provide security adequate to prevent
16 foreseeable harm to Vanilla cardholders. Card draining is a foreseeable result of inadequate security.
17 Incomm is aware of card draining affecting nonreloadable Vanilla debit cards and the reasons the
18 cards are susceptible to card draining. Incomm has breached its duty to provide security adequate to
19 prevent foreseeable harm to Vanilla cardholders by failing to provide such security. Vanilla
20 cardholders and purchasers are injured as a result of Incomm’s breach.

21 b. Incomm has violated, and continues to violate, California Civil Code section
22 1748.31 by:

23 i. Imposing liability on Vanilla cardholders for unauthorized transactions
24 without giving adequate notice to Vanilla cardholders of the potential liability;

25 ii. Imposing liability on Vanilla cardholders for unauthorized transactions
26 without providing a means to identify the debit cardholder to whom the debit card is issued;

27 iii. Imposing liability of greater than \$50 on Vanilla cardholders without
28 transmitting the statement identified in Civil Code section 1748.31(b);

iv. Imposing liability of greater than \$50 on Vanilla cardholders where

1 cardholders have timely reported unauthorized charges; and

2 v. Imposing liability of greater than \$50 without establishing that an
3 unauthorized use would not have occurred had the cardholder timely notified Incomm.

4 c. Incomm has violated, and continues to violate, the Consumer Legal Remedies
5 Act, codified at Civil Code section 1750, *et seq.* by engaging in the following practices prohibited by
6 the Civil Code section 1770(a) in transactions which were intended to result in, and did result in, the
7 sale of nonreloadable Vanilla debit cards:

8 i. Representing that Vanilla cards have characteristics uses, or benefits that
9 they do not have, in violation of Civil Code section 1770(a)(5);

10 ii. Representing that Vanilla cards are of a particular standard, quality, or
11 grade when they are of another, in violation of Civil Code section 1770(a)(7); and

12 iii. Representing that a transaction confers or involves rights, remedies, or
13 obligations that it does not have or involve, in violation of Civil Code section 1770(a)(14).

14 d. Incomm's has engaged in, and continue to engage in, fraudulent business
15 practices and in unfair, deceptive, untrue, or misleading advertising, by making deceptive, untrue, and
16 misleading statements and omitting material information in connection with the sale of their products
17 and services, including Vanilla cards. Incomm's deceptive, untrue, and misleading statements include,
18 but are not limited to, the following:

19 i. Incomm states the dollar value on each nonreloadable Vanilla debit
20 card's packaging (*e.g.*, \$50, \$100, \$500), but because of Incomm's insufficient security, and
21 notwithstanding the aforementioned representations concerning the safeguarding of Vanilla cards'
22 security, that amount is not available to all Vanilla card purchasers and recipients;

23 ii. Incomm, through statements such as "For security reasons, we may limit
24 the amount or number of transactions you can make"; "if the change [to the cardholder agreement] is
25 made for security purposes, we can implement such change without prior notice"; and "Never share
26 your PIN with anyone and do not enter your PIN into any terminal that appears to be modified or
27 suspicious," states and implies that it takes active measures to ensure the security of funds on Vanilla
28 cards and that cardholders can protect their funds by taking measures to protect the PIN, but Incomm

1 but are not limited to, the following:

2 a. The Bank Defendants have violated, and continue to violate, California Civil
3 Code section 1748.31 by:

4 i. Imposing liability on Vanilla cardholders for unauthorized transactions
5 without giving adequate notice to Vanilla cardholders of the potential liability;

6 ii. Imposing liability on Vanilla cardholders for unauthorized transactions
7 without providing a means to identify the debit cardholder to whom the debit card is issued;

8 iii. Imposing liability of greater than \$50 on Vanilla cardholders without
9 transmitting the statement identified in Civil Code section 1748.31(b);

10 iv. Imposing liability of greater than \$50 on Vanilla cardholders where
11 cardholders have timely reported unauthorized charges; and

12 v. Imposing liability of greater than \$50 without establishing that an
13 unauthorized use would not have occurred had the cardholder timely notified the Bank Defendants or
14 their agent, Incomm.

15 124. The Bank Defendants' acts and practices are unfair business practices because they
16 offend established public policy, the harm they cause to consumers greatly outweighs any benefits
17 associated with those practices, and they are immoral, unethical, oppressive, unscrupulous and/or
18 substantially injurious to consumers.

19 **PRAYER FOR RELIEF**

20 The People respectfully request that the Court enter judgment in favor of the People and
21 against Defendants, jointly and severally, and grant the following relief:

22 1. Enjoin Defendants, their successors, agents, representatives, employees, and any and all
23 other persons who act in concert or participation with Defendants by permanently restraining them
24 from performing or proposing to perform any acts in violation of Business and Professions Code
25 section 17200, including, but not limited to, the acts and practices alleged in this Complaint;

26 2. Order Defendants to pay in restitution to California consumers all funds, with interest,
27 unlawfully received or acquired by Defendants by means of any practice that constitutes unfair
28 competition, under the authority of Business and Professions Code sections 17203;

1 3. Order each Defendant to pay a civil penalty of \$2,500 for each violation of Business
2 and Professions Code section 17200, under the authority of Business and Professions Code section
3 17206;

4 4. Order Defendants to pay the costs of suit; and

5 5. Provide such further and additional relief as the Court deems just, proper, and
6 equitable.

7 Dated: November 9, 2023

8 DAVID CHIU
9 City Attorney
10 YVONNE R. MERÉ
11 Chief Deputy City Attorney
12 SARA J. EISENBERG
13 Chief of Complex and Affirmative Litigation
14 JOHN H. GEORGE
15 DAVID S. LOUK
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By: 
JOHN H. GEORGE

Attorneys for Plaintiff
PEOPLE OF THE STATE OF CALIFORNIA, acting by
and through San Francisco City Attorney DAVID CHIU