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13 **UNITED STATES DISTRICT COURT**
 14 **NORTHERN DISTRICT OF CALIFORNIA**

15 AVI YARON, Individually and On Behalf
 16 of All Others Similarly Situated,

17 Plaintiff,

18 v.

19 INTERSECT ENT, INC., LISA D.
 20 EARNHARDT, and JERYL L.
 21 HILLEMANN,

22 Defendants.

23 Case No. 3:19-cv-02647

24 **CLASS ACTION COMPLAINT FOR**
 25 **VIOLATIONS OF THE FEDERAL**
 26 **SECURITIES LAWS**

27 **JURY TRIAL DEMANDED**

1 Plaintiff Avi Yaron (“Plaintiff”), individually and on behalf of all others similarly situated,
2 by and through his attorneys, alleges the following upon information and belief, except as to those
3 allegations concerning Plaintiff, which are alleged upon personal knowledge. Plaintiff’s
4 information and belief is based upon, among other things, his counsel’s investigation, which
5 includes without limitation: (a) review and analysis of regulatory filings made by Intersect ENT,
6 Inc. (“Intersect” or the “Company”) with the United States (“U.S.”) Securities and Exchange
7 Commission (“SEC”); (b) review and analysis of press releases and media reports issued by and
8 disseminated by Intersect; and (c) review of other publicly available information concerning
9 Intersect.

10 **NATURE OF THE ACTION AND OVERVIEW**

11 1. This is a class action on behalf of persons and entities that purchased or otherwise
12 acquired Intersect securities between August 1, 2018 and May 6, 2019, inclusive (the “Class
13 Period”), seeking to pursue remedies under the Securities Exchange Act of 1934 (the “Exchange
14 Act”).

15 2. Intersect is a commercial drug delivery company that purports to develop products
16 for patients with ear, nose, and throat conditions. The Company’s PROPEL family of products are
17 used in conjunction with sinus surgery, and the Company’s SINUVA sinus implant is used to treat
18 patients who have had surgery yet suffer from recurrent sinus obstruction due to polyps.

19 3. On August 1, 2018, before the market opened, the Company disclosed that it faced
20 certain challenges with the launch of SINUVA, which had negatively impacted the Company’s
21 second quarter 2018 financial results.

22 4. On this news, the Company’s share price fell \$6.30, nearly 20%, to close at \$26.05
23 per share on August 1, 2018, on unusually heavy trading volume.

24 5. On May 6, 2019, the Company disclosed a first quarter 2019 loss of \$10.8 million
25 and lowered guidance for the remainder of 2019. The Company also reported that Earnhardt, the
26 Company’s CEO of 11 years, resigned.

27 6. On this news, the Company’s share price fell \$8.05, or more than 25%, to close at
28 \$25.10 per share on May 7, 2019, on unusually heavy trading volume.

1 United States mail, interstate telephone communications, and the facilities of a national securities
2 exchange.

3 **PARTIES**

4 13. Plaintiff Avi Yaron, as set forth in the accompanying certification, incorporated by
5 reference herein, purchased Intersect securities during the Class Period, and suffered damages as a
6 result of the federal securities law violations and false and/or misleading statements and/or
7 material omissions alleged herein.

8 14. Defendant Intersect is incorporated under the laws of Delaware with its principal
9 executive offices located in Menlo Park, California. Intersect's common stock trades on the
10 NASDAQ exchange under the symbol "XENT."

11 15. Defendant Lisa D. Earnhardt ("Earnhardt") was the Chief Executive Officer of the
12 Company at all relevant times.

13 16. Defendant Jeryl L. Hilleman ("Hilleman") was the Chief Financial Officer of the
14 Company at all relevant times.

15 17. Defendants Earnhardt and Hilleman (collectively the "Individual Defendants"),
16 because of their positions with the Company, possessed the power and authority to control the
17 contents of the Company's reports to the SEC, press releases and presentations to securities
18 analysts, money and portfolio managers and institutional investors, *i.e.*, the market. The
19 Individual Defendants were provided with copies of the Company's reports and press releases
20 alleged herein to be misleading prior to, or shortly after, their issuance and had the ability and
21 opportunity to prevent their issuance or cause them to be corrected. Because of their positions and
22 access to material non-public information available to them, the Individual Defendants knew that
23 the adverse facts specified herein had not been disclosed to, and were being concealed from, the
24 public, and that the positive representations which were being made were then materially false
25 and/or misleading. The Individual Defendants are liable for the false statements pleaded herein.

1 **SUBSTANTIVE ALLEGATIONS**

2 **Background**

3 18. Intersect is a commercial drug delivery company that purports to develop products
4 for patients with ear, nose, and throat conditions. The Company’s PROPEL family of products are
5 used in conjunction with sinus surgery, and the Company’s SINUVA sinus implant is used to treat
6 patients who have had surgery yet suffer from recurrent sinus obstruction due to polyps.

7 **Materially False and Misleading**
8 **Statements Issued During the Class Period**

9 19. The Class Period begins on August 1, 2018. On that day, before the market opened,
10 the Company disclosed that it faced certain challenges with the launch of SINUVA, which had
11 negatively impacted the Company’s second quarter 2018 financial results, stating in relevant part:

12 On April 1, 2018, the company announced commencement of the commercial
13 launch of the SINUVA[®] (mometasone furoate) Sinus Implant, an in-office
14 treatment for nasal polyp disease in adult patients who have had previous sinus
15 surgery.

16 “We are gratified by the initial response of patients and physicians to SINUVA,
17 with over 325 patients treated through the second quarter. We are also pleased with
18 the rate of payor coverage and believe that these factors, combined with our strong
19 clinical evidence, reinforce the significant potential of SINUVA,” said Lisa
20 Earnhardt, president and CEO of Intersect ENT. “*We are meeting the challenges
21 of the launch by taking action including expanding and leveraging the
22 reimbursement hub and growing our sales and reimbursement teams.* We remain
23 convinced that SINUVA has a bright future and that, with these measures in place,
24 we will be in a position to expand our launch and continue to grow PROPEL.”

19 **Second Quarter Financial Results**

20 Total revenue grew to \$26.3 million for the second quarter 2018 compared
21 to \$24.0 million for the same period of 2017, an increase of 10%. This increase was
22 attributable to growth in the adoption of the PROPEL[®] family of steroid releasing
23 implants as well as to the commercialization of SINUVA, which contributed 2% of
24 revenue in the second quarter of 2018.

25 Gross profit for the second quarter 2018 was \$20.7 million and gross margin was
26 79%. These results compare with gross profit of \$20.3 million and gross margin of
27 85% in the second quarter 2017. The decrease in gross margin was attributable to
28 increased overhead and inefficiencies largely associated with the introduction of
SINUVA and to a benefit in the second quarter 2017 from the sale of
PROPEL[®] Contour product that was produced prior to FDA approval and therefore
expensed in the fourth quarter 2016.

Operating expenses for the second quarter 2018 were \$25.4 million compared
to \$22.9 million in the same period of 2017, an increase of 11%. R&D expenses
were relatively flat at \$4.4 million versus \$4.2 million in the second quarter 2017.

1 SG&A expenses increased to \$21.0 million from \$18.7 million, primarily driven by
2 an increase in headcount and related expenses.

3 The balance of cash, cash equivalents and short-term investments were \$104.9
4 million compared to \$102.3 million at the start of the year.

5 **Outlook**

6 The company expects to achieve third quarter revenue in the range of \$23.8 to
7 \$24.3 million, and updated full year revenue guidance to \$106 to \$109 million,
8 including an estimated 2% to 4% contribution from SINUVA product sales. The
9 company expects third quarter and full year gross margin of approximately 80%
10 and full year operating expenses, as previously guided, in the range of \$113 to \$115
11 million.

12 20. During the August 1, 2018 conference call discussing Intersect's quarterly results,
13 Defendant Earnhardt made the following statement:

14 [W]e are adapting and strengthening our reimbursement team. We have added to
15 our reimbursement leadership to give focus to payer outreach and field support. We
16 are also expanding the field reimbursement team to further help physician offices
17 navigate the buy-and-bill process.

18 21. On this news, the Company's share price fell \$6.30, nearly 20%, to close at \$26.05
19 per share on August 1, 2018, on unusually heavy trading volume.

20 22. On August 3, 2018, the Company filed its quarterly report on Form 10-Q with the
21 SEC for the period ended June 30, 2018, affirming the previously reported financial results.
22 Moreover, the report disclosed certain risks impacting revenue, stating in relevant part:

23 ***Our revenue is generated from our PROPEL[®] family of products and, to a lesser
24 extent, SINUVA[®]. Our revenue is completely dependent on the success of these
25 products, and if these products fail to grow or to continue experiencing expanded
26 adoption, our business will suffer.***

27 We started selling PROPEL[®] in August 2011, PROPEL[®] Mini in November 2012
28 and PROPEL[®] Contour in February 2017, collectively referred to as our PROPEL
family of products. We expect that sales of these products, together with SINUVA,
which we started selling in March 2018, will account for all of our revenue for the
foreseeable future. In addition, our ability to become profitable will depend upon
the commercial success of these products. We market our products primarily to ear,
nose and throat, or ENT, physicians who may be slow or fail to adopt our products
or who may use our products in only a small percentage of their eligible patients for
a variety of reasons, including, among others:

- lack of experience with our products;
- lack of adequate reimbursement or cost to the patient;
- lack of conviction regarding evidence supporting cost benefits or cost effectiveness of our products over existing alternatives;

- 1 ▪ lack of clinical data supporting longer-term patient benefits or, in the case of
- 2 SINUVA, repeated use; and
- 3 ▪ liability risks generally associated with the use of new products and procedures.

4 If we are unable to effectively demonstrate to ENT physicians and patients the

5 benefits of our products or our products fail to achieve growing market acceptance,

6 our future revenue will be adversely impacted.

7 Because of the numerous risks and uncertainties associated with our

8 commercialization efforts, we are unable to predict the extent to which we will

9 continue to generate revenue from our products or the timing for when or the extent

10 to which we will become profitable. Even if we do achieve profitability, we may

11 not be able to sustain or increase profitability on an ongoing basis.

12 23. On November 5, 2018, the Company announced its third quarter 2018 financial

13 results, stating in relevant part:

14 Total revenue grew to \$24.7 million for the third quarter 2018 compared to \$22.3

15 million for the same period of 2017, an increase of 11%. This increase was

16 attributable to growth in the adoption of the PROPEL[®] family of steroid releasing

17 implants as well as to commercialization of the SINUVA[®] (mometasone furoate)

18 Sinus Implant, which contributed over 3% of revenue, or \$0.8 million, in the third

19 quarter of 2018.

20 * * *

21 **Outlook**

22 Intersect ENT continues to forecast 2018 revenue in the range of \$106 to \$109

23 million and gross margin of approximately 80%. The outlook for operating

24 expenses is lowered to \$110 to \$111 million, from \$113 to \$115 million, reflecting

25 timing of hiring and other expenses. The fourth quarter revenue outlook is in the

26 range of \$30.3 to \$33.3 million, of which approximately 4% is expected from sales

27 of the SINUVA (mometasone furoate) Sinus Implant.

28 24. The same day, the Company filed its quarterly report on Form 10-Q with the SEC

29 for the period ended September 30, 2018, affirming the previously reported financial results.

30 25. During the November 5, 2018 conference call discussing Intersect's quarterly

31 results, Defendant Earnhardt made the following statement:

32 We have improved product access for SINUVA, including streamlining the prior

33 authorization process coupled with making huge strides on the national payer front.

34 We are brick-by-brick establishing the foundation for buy-and-bill.

35 And finally, we have significantly expanded our sales and reimbursement teams,

36 which will help support our growth in 2019.

37 The team has been executing at a high level, fueled by our collective belief in the

38 potential for localized drug delivery to become the standard-of-care for sinus

39 sufferers.

1 With regard to reimbursement, we are seeing several positive trends, including
2 higher-than-anticipated levels of payer coverage and significantly shortened time
frames for prior authorizations.

3 ***

4 We are also making progress with physicians engaging in buy-and-bill with 140
5 doctors having bought SINUVA under buy-and-bill as of year-end. Payment to the
6 physician has also continued to be positive with allowable product reimbursement
7 typically coming through as ASP plus an appropriate margin. We believe that buy-
and-bill will continue to be an important element of broad usage of the product and
observe that, excluding hospital clinic purchases, 1 in 3 units in the fourth quarter
were purchased directly by the physician.

8 29. On February 28, 2019, the Company filed its annual report on Form 10-K with the
9 SEC for the period ended December 31, 2018, affirming the previously reported financial results.

10 30. The above statements identified in ¶¶19-20, 22-29 were materially false and/or
11 misleading, and failed to disclose material adverse facts about the Company's business,
12 operations, and prospects. Specifically, Defendants failed to disclose to investors: (1) that the
13 Company lacked adequate reimbursement representatives to ensure physicians had access to
14 SINUVA; (2) that, as a result, the Company's sales force would focus on ensuring reimbursement;
15 (3) that, as a result, the Company's sales representatives were less focused on driving sales; (4)
16 that physicians were less likely to adopt the Company's SINUVA due to transaction costs
17 associated with seeking reimbursement; (5) that the Company would increase staffing to address
18 these issues; and (6) that, as a result of the foregoing, Defendants' positive statements about the
19 Company's business, operations, and prospects were materially misleading and/or lacked a
20 reasonable basis.

21 **Disclosures at the End of the Class Period**

22 31. On May 6, 2019, the Company disclosed a first quarter 2019 loss of \$10.8 million
23 and lowered guidance for the remainder of 2019. The Company also reported that Earnhardt, the
24 Company's CEO of 11 years, resigned. In a press release, the Company stated, in relevant part:

25 Total revenue was \$26.7 million for the first quarter of 2019 compared to \$24.7
26 million for the same period of 2018, an increase of 8%. This increase resulted
27 primarily from growth in adoption of the PROPEL[®] family of products and from
adoption of SINUVA[®], which contributed \$0.9 million, or 4% of first quarter 2019
revenue.

28 * * *

1 Operating expenses for the first quarter of 2019 were \$33.5 million, compared
2 to \$25.8 million in the same period of 2018, an increase of 30%. R&D expenses
3 increased to \$6.3 million from \$4.3 million, primarily due to an increase in
4 headcount and related expenses, and expenses related to our investigational
5 ASCEND drug-coated sinus balloon. SG&A expenses increased to \$27.2
6 million from \$21.5 million, primarily due to the expansion of SINUVA commercial
7 and market access activities including headcount, marketing and consulting
8 expenses.

9 The balance of cash, cash equivalents and short-term investments was \$97.6
10 million, compared to \$100.8 million at the start of the year.

11 **Outlook**

12 Intersect ENT is updating its outlook for revenue for the full year 2019 revenue
13 to \$113 to \$117 million compared to prior guidance of \$123 to \$127 million, and
14 for modest growth in the second quarter. The company's outlook for 2019 gross
15 margin remains in the range of 80% to 81%. In consideration of the change in
16 revenue outlook, the company is reducing its outlook for operating expenses
17 excluding stock-based expense, which are expected to be offset by incremental
18 stock-based expense associated with the leadership transition announced May 6,
19 2019. Thus the company is maintaining its outlook for 2019 operating expenses in
20 the range of \$135 to \$137 million.

21 32. On this news, the Company's share price fell \$8.05, or more than 25%, to close at
22 \$25.10 per share on May 7, 2019, on unusually heavy trading volume.

23 **CLASS ACTION ALLEGATIONS**

24 33. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil
25 Procedure 23(a) and (b)(3) on behalf of a class, consisting of all persons and entities that
26 purchased or otherwise acquired Intersect securities between August 1, 2018 and May 6, 2019,
27 inclusive, and who were damaged thereby (the "Class"). Excluded from the Class are Defendants,
28 the officers and directors of the Company, at all relevant times, members of their immediate
families and their legal representatives, heirs, successors, or assigns, and any entity in which
Defendants have or had a controlling interest.

34. The members of the Class are so numerous that joinder of all members is
impracticable. Throughout the Class Period, Intersect's common shares actively traded on the
NASDAQ. While the exact number of Class members is unknown to Plaintiff at this time and can
only be ascertained through appropriate discovery, Plaintiff believes that there are at least
hundreds or thousands of members in the proposed Class. Millions of shares of Intersect common
stock were traded publicly during the Class Period on the NASDAQ. Record owners and other

1 members of the Class may be identified from records maintained by Intersect or its transfer agent
2 and may be notified of the pendency of this action by mail, using the form of notice similar to that
3 customarily used in securities class actions.

4 35. Plaintiff's claims are typical of the claims of the members of the Class as all
5 members of the Class are similarly affected by Defendants' wrongful conduct in violation of
6 federal law that is complained of herein.

7 36. Plaintiff will fairly and adequately protect the interests of the members of the Class
8 and has retained counsel competent and experienced in class actions and securities litigation.

9 37. Common questions of law and fact exist as to all members of the Class and
10 predominate over any questions solely affecting individual members of the Class. Among the
11 questions of law and fact common to the Class are:

12 (a) whether the federal securities laws were violated by Defendants' acts as alleged
13 herein;

14 (b) whether statements made by Defendants to the investing public during the Class
15 Period omitted and/or misrepresented material facts about the business, operations, and prospects
16 of Intersect; and

17 (c) to what extent the members of the Class have sustained damages and the proper
18 measure of damages.

19 38. A class action is superior to all other available methods for the fair and efficient
20 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the
21 damages suffered by individual Class members may be relatively small, the expense and burden of
22 individual litigation makes it impossible for members of the Class to individually redress the
23 wrongs done to them. There will be no difficulty in the management of this action as a class
24 action.
25

26 **UNDISCLOSED ADVERSE FACTS**

27 39. The market for Intersect's securities was open, well-developed and efficient at all
28 relevant times. As a result of these materially false and/or misleading statements, and/or failures

1 to disclose, Intersect's securities traded at artificially inflated prices during the Class Period.
2 Plaintiff and other members of the Class purchased or otherwise acquired Intersect's securities
3 relying upon the integrity of the market price of the Company's securities and market information
4 relating to Intersect and have been damaged thereby.

5 40. During the Class Period, Defendants materially misled the investing public, thereby
6 inflating the price of Intersect's securities, by publicly issuing false and/or misleading statements
7 and/or omitting to disclose material facts necessary to make Defendants' statements, as set forth
8 herein, not false and/or misleading. The statements and omissions were materially false and/or
9 misleading because they failed to disclose material adverse information and/or misrepresented the
10 truth about Intersect's business, operations, and prospects as alleged herein.

11 41. At all relevant times, the material misrepresentations and omissions particularized
12 in this Complaint directly or proximately caused or were a substantial contributing cause of the
13 damages sustained by Plaintiff and other members of the Class. As described herein, during the
14 Class Period, Defendants made or caused to be made a series of materially false and/or misleading
15 statements about Intersect's financial well-being and prospects. These material misstatements
16 and/or omissions had the cause and effect of creating in the market an unrealistically positive
17 assessment of the Company and its financial well-being and prospects, thus causing the
18 Company's securities to be overvalued and artificially inflated at all relevant times. Defendants'
19 materially false and/or misleading statements during the Class Period resulted in Plaintiff and
20 other members of the Class purchasing the Company's securities at artificially inflated prices, thus
21 causing the damages complained of herein when the truth was revealed.

22 **LOSS CAUSATION**

23 42. Defendants' wrongful conduct, as alleged herein, directly and proximately caused
24 the economic loss suffered by Plaintiff and the Class.

25 43. During the Class Period, Plaintiff and the Class purchased Intersect's securities at
26 artificially inflated prices and were damaged thereby. The price of the Company's securities
27 significantly declined when the misrepresentations made to the market, and/or the information
28 alleged herein to have been concealed from the market, and/or the effects thereof, were revealed,

1 causing investors' losses.

2 **SCIENTER ALLEGATIONS**

3 44. As alleged herein, Defendants acted with scienter because Defendants knew the
4 public documents and statements issued or disseminated in the name of the Company were
5 materially false and/or misleading; knew such statements or documents would be issued or
6 disseminated to the investing public; and knowingly and substantially participated or acquiesced
7 in the issuance or dissemination of such statements or documents as primary violations of the
8 federal securities laws. As set forth elsewhere herein in detail, the Individual Defendants, by
9 virtue of their receipt of information reflecting the true facts regarding Intersect, their control over,
10 and/or receipt and/or modification of Intersect's allegedly materially misleading misstatements
11 and/or their associations with the Company which made them privy to confidential proprietary
12 information concerning Intersect, participated in the fraudulent scheme alleged herein.

13 **APPLICABILITY OF PRESUMPTION OF RELIANCE**
14 **(FRAUD-ON-THE-MARKET DOCTRINE)**

15 45. The market for Intersect's securities was open, well-developed and efficient at all
16 relevant times. As a result of the materially false and/or misleading statements and/or failures to
17 disclose, Intersect's securities traded at artificially inflated prices during the Class Period. On
18 February 27, 2019, the Company's share price closed at a Class Period high of \$35.35 per share.
19 Plaintiff and other members of the Class purchased or otherwise acquired the Company's
20 securities relying upon the integrity of the market price of Intersect's securities and market
21 information relating to Intersect and have been damaged thereby.

22 46. During the Class Period, the artificial inflation of Intersect's shares was caused by
23 the material misrepresentations and/or omissions particularized in this Complaint causing the
24 damages sustained by Plaintiff and other members of the Class. As described herein, during the
25 Class Period, Defendants made or caused to be made a series of materially false and/or misleading
26 statements about Intersect's business, prospects, and operations. These material misstatements
27 and/or omissions created an unrealistically positive assessment of Intersect and its business,
28 operations, and prospects, thus causing the price of the Company's securities to be artificially

1 inflated at all relevant times, and when disclosed, negatively affected the value of the Company
2 shares. Defendants' materially false and/or misleading statements during the Class Period resulted
3 in Plaintiff and other members of the Class purchasing the Company's securities at such
4 artificially inflated prices, and each of them has been damaged as a result.

5 47. At all relevant times, the market for Intersect's securities was an efficient market
6 for the following reasons, among others:

7 (a) Intersect shares met the requirements for listing, and were listed and actively traded
8 on the NASDAQ, a highly efficient and automated market;

9 (b) As a regulated issuer, Intersect filed periodic public reports with the SEC and/or the
10 NASDAQ;

11 (c) Intersect regularly communicated with public investors via established market
12 communication mechanisms, including through regular dissemination of press releases on the
13 national circuits of major newswire services and through other wide-ranging public disclosures,
14 such as communications with the financial press and other similar reporting services; and/or

15 (d) Intersect was followed by securities analysts employed by brokerage firms who
16 wrote reports about the Company, and these reports were distributed to the sales force and certain
17 customers of their respective brokerage firms. Each of these reports was publicly available and
18 entered the public marketplace.

19 48. As a result of the foregoing, the market for Intersect's securities promptly digested
20 current information regarding Intersect from all publicly available sources and reflected such
21 information in Intersect's share price. Under these circumstances, all purchasers of Intersect's
22 securities during the Class Period suffered similar injury through their purchase of Intersect's
23 securities at artificially inflated prices and a presumption of reliance applies.

24 49. A Class-wide presumption of reliance is also appropriate in this action under the
25 Supreme Court's holding in *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128 (1972),
26 because the Class's claims are, in large part, based on Defendants' material misstatements and/or
27 omissions. Because this action involves Defendants' failure to disclose material adverse
28 information regarding the Company's business operations and financial prospects—information

1 that Defendants were obligated to disclose—positive proof of reliance is not a prerequisite to
2 recovery. All that is necessary is that the facts withheld be material in the sense that a reasonable
3 investor might have considered them important in making investment decisions. Given the
4 importance of the Class Period material misstatements and omissions set forth above, that
5 requirement is satisfied here.

6 **NO SAFE HARBOR**

7 50. The statutory safe harbor provided for forward-looking statements under certain
8 circumstances does not apply to any of the allegedly false statements pleaded in this Complaint.
9 The statements alleged to be false and misleading herein all relate to then-existing facts and
10 conditions. In addition, to the extent certain of the statements alleged to be false may be
11 characterized as forward looking, they were not identified as “forward-looking statements” when
12 made and there were no meaningful cautionary statements identifying important factors that could
13 cause actual results to differ materially from those in the purportedly forward-looking statements.
14 In the alternative, to the extent that the statutory safe harbor is determined to apply to any forward-
15 looking statements pleaded herein, Defendants are liable for those false forward-looking
16 statements because at the time each of those forward-looking statements was made, the speaker
17 had actual knowledge that the forward-looking statement was materially false or misleading,
18 and/or the forward-looking statement was authorized or approved by an executive officer of
19 Intersect who knew that the statement was false when made.

20 **FIRST CLAIM**
21 **Violation of Section 10(b) of The Exchange Act and**
22 **Rule 10b-5 Promulgated Thereunder**
23 **Against All Defendants**

24 51. Plaintiff repeats and re-alleges each and every allegation contained above as if fully
25 set forth herein.

26 52. During the Class Period, Defendants carried out a plan, scheme and course of
27 conduct which was intended to and, throughout the Class Period, did: (i) deceive the investing
28 public, including Plaintiff and other Class members, as alleged herein; and (ii) cause Plaintiff and
other members of the Class to purchase Intersect’s securities at artificially inflated prices. In

1 furtherance of this unlawful scheme, plan and course of conduct, Defendants, and each defendant,
2 took the actions set forth herein.

3 53. Defendants (i) employed devices, schemes, and artifices to defraud; (ii) made
4 untrue statements of material fact and/or omitted to state material facts necessary to make the
5 statements not misleading; and (iii) engaged in acts, practices, and a course of business which
6 operated as a fraud and deceit upon the purchasers of the Company's securities in an effort to
7 maintain artificially high market prices for Intersect's securities in violation of Section 10(b) of the
8 Exchange Act and Rule 10b-5. All Defendants are sued either as primary participants in the
9 wrongful and illegal conduct charged herein or as controlling persons as alleged below.

10 54. Defendants, individually and in concert, directly and indirectly, by the use, means
11 or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a
12 continuous course of conduct to conceal adverse material information about Intersect's financial
13 well-being and prospects, as specified herein.

14 55. Defendants employed devices, schemes and artifices to defraud, while in
15 possession of material adverse non-public information and engaged in acts, practices, and a course
16 of conduct as alleged herein in an effort to assure investors of Intersect's value and performance
17 and continued substantial growth, which included the making of, or the participation in the making
18 of, untrue statements of material facts and/or omitting to state material facts necessary in order to
19 make the statements made about Intersect and its business operations and future prospects in light
20 of the circumstances under which they were made, not misleading, as set forth more particularly
21 herein, and engaged in transactions, practices and a course of business which operated as a fraud
22 and deceit upon the purchasers of the Company's securities during the Class Period.

23 56. Each of the Individual Defendants' primary liability and controlling person liability
24 arises from the following facts: (i) the Individual Defendants were high-level executives and/or
25 directors at the Company during the Class Period and members of the Company's management
26 team or had control thereof; (ii) each of these defendants, by virtue of their responsibilities and
27 activities as a senior officer and/or director of the Company, was privy to and participated in the
28 creation, development and reporting of the Company's internal budgets, plans, projections and/or

1 reports; (iii) each of these defendants enjoyed significant personal contact and familiarity with the
2 other defendants and was advised of, and had access to, other members of the Company's
3 management team, internal reports and other data and information about the Company's finances,
4 operations, and sales at all relevant times; and (iv) each of these defendants was aware of the
5 Company's dissemination of information to the investing public which they knew and/or
6 recklessly disregarded was materially false and misleading.

7 57. Defendants had actual knowledge of the misrepresentations and/or omissions of
8 material facts set forth herein, or acted with reckless disregard for the truth, in that they failed to
9 ascertain and to disclose such facts even though such facts were available to them. Such
10 defendants' material misrepresentations and/or omissions were done knowingly or recklessly and
11 for the purpose and effect of concealing Intersect's financial well-being and prospects from the
12 investing public and supporting the artificially inflated price of its securities. As demonstrated by
13 Defendants' overstatements and/or misstatements of the Company's business, operations, financial
14 well-being, and prospects throughout the Class Period, Defendants, if they did not have actual
15 knowledge of the misrepresentations and/or omissions alleged, were reckless in failing to obtain
16 such knowledge by deliberately refraining from taking those steps necessary to discover whether
17 those statements were false or misleading.

18 58. As a result of the dissemination of the materially false and/or misleading
19 information and/or failure to disclose material facts, as set forth above, the market price of
20 Intersect's securities was artificially inflated during the Class Period. In ignorance of the fact that
21 market prices of the Company's securities were artificially inflated, and relying directly or
22 indirectly on the false and misleading statements made by Defendants, or upon the integrity of the
23 market in which the securities trades, and/or in the absence of material adverse information that
24 was known to or recklessly disregarded by Defendants, but not disclosed in public statements by
25 Defendants during the Class Period, Plaintiff and the other members of the Class acquired
26 Intersect's securities during the Class Period at artificially high prices and were damaged thereby.

27 59. At the time of said misrepresentations and/or omissions, Plaintiff and other
28 members of the Class were ignorant of their falsity and believed them to be true. Had Plaintiff and

1 the other members of the Class and the marketplace known the truth regarding the problems that
2 Intersect was experiencing, which were not disclosed by Defendants, Plaintiff and other members
3 of the Class would not have purchased or otherwise acquired their Intersect securities, or, if they
4 had acquired such securities during the Class Period, they would not have done so at the
5 artificially inflated prices which they paid.

6 60. By virtue of the foregoing, Defendants violated Section 10(b) of the Exchange Act
7 and Rule 10b-5 promulgated thereunder.

8 61. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and the
9 other members of the Class suffered damages in connection with their respective purchases and
10 sales of the Company's securities during the Class Period.

11 **SECOND CLAIM**
12 **Violation of Section 20(a) of The Exchange Act**
13 **Against the Individual Defendants**

14 62. Plaintiff repeats and re-alleges each and every allegation contained above as if fully
15 set forth herein.

16 63. Individual Defendants acted as controlling persons of Intersect within the meaning
17 of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions and
18 their ownership and contractual rights, participation in, and/or awareness of the Company's
19 operations and intimate knowledge of the false financial statements filed by the Company with the
20 SEC and disseminated to the investing public, Individual Defendants had the power to influence
21 and control and did influence and control, directly or indirectly, the decision-making of the
22 Company, including the content and dissemination of the various statements which Plaintiff
23 contends are false and misleading. The Individual Defendants were provided with or had unlimited
24 access to copies of the Company's reports, press releases, public filings, and other statements
25 alleged by Plaintiff to be misleading prior to and/or shortly after these statements were issued and
26 had the ability to prevent the issuance of the statements or cause the statements to be corrected.

27 64. In particular, the Individual Defendants had direct and supervisory involvement in
28 the day-to-day operations of the Company and, therefore, had the power to control or influence the
particular transactions giving rise to the securities violations as alleged herein, and exercised the

1 same.

2 65. As set forth above, Intersect and the Individual Defendants each violated Section
3 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their
4 position as controlling persons, the Individual Defendants are liable pursuant to Section 20(a) of
5 the Exchange Act. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and
6 other members of the Class suffered damages in connection with their purchases of the
7 Company's securities during the Class Period.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff prays for relief and judgment, as follows:

10 (a) Determining that this action is a proper class action under Rule 23 of the Federal
11 Rules of Civil Procedure;

12 (b) Awarding compensatory damages in favor of Plaintiff and the other Class members
13 against all defendants, jointly and severally, for all damages sustained as a result of Defendants'
14 wrongdoing, in an amount to be proven at trial, including interest thereon;

15 (c) Awarding Plaintiff and the Class their reasonable costs and expenses incurred in
16 this action, including counsel fees and expert fees; and

17 (d) Such other and further relief as the Court may deem just and proper.

18 **JURY TRIAL DEMANDED**

19 Plaintiff hereby demands a trial by jury.

20 Dated: May 15, 2019

GLANCY PRONGAY & MURRAY LLP

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Attorneys for Plaintiff Avi Yaron

**CERTIFICATION OF NAMED PLAINTIFF
PURSUANT TO FEDERAL SECURITIES LAWS**

The undersigned declares, as to the claims asserted under the federal securities laws, that:

Plaintiff has reviewed the initial complaint filed in this action.

Plaintiff did not purchase and/or acquire the security that is the subject of this action at the direction of Plaintiff's counsel or in order to participate in any private action under the federal securities laws.

Plaintiff is willing to serve as a representative party on behalf of the class, including providing testimony at deposition and trial, if necessary. I understand that this is not a claim form, and that my ability to share in any recovery as a member of the class is not dependent upon execution of this Plaintiff Certification.

Plaintiff's transactions in the security that is the subject of this action during the Class Period are as follows:

Purchases:

<u>Name of Company</u>	<u>Date(s) Purchased</u>	<u># Shares Purchased</u>	<u>Cost/Share</u>
XENT	03/22/2019	81	\$31.6348

Sales:

<u>Name of Company</u>	<u>Date(s) Sold</u>	<u># Shares Sold</u>	<u>Proceeds/Share</u>
XENT	08/22/2018	50	\$26.7028

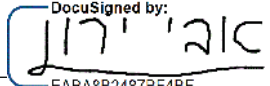
During the three (3) years prior to the date of this certification, Plaintiff has not sought to serve or served as a class representative in an action filed under the federal securities laws except for the following (if any):

None

Plaintiff will not accept any payment for serving as a representative party on behalf of the class beyond Plaintiff's pro rata share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the class as ordered or approved by the court.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 14 day of May, 2019 in Tel Aviv, Israel.
City State

(Signature) X  _____
(Print Name) Avi Yaron