

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

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DEBRA P. HACKETT, CLK  
U.S. DISTRICT COURT  
MIDDLE DISTRICT - ALA

**MICHAEL McPHERSON, on behalf of )  
himself and on behalf of a class of )  
persons and entities similarly situated in )  
the State of Alabama, )**

**Plaintiff,**

**v.**

**Case No. 2:11-cv-342**

**GROUPON, INC.,**

**Defendant.**

**CLASS ACTION COMPLAINT**

COMES NOW, Plaintiff Michael McPherson, on behalf of himself and on behalf of a class of persons and entities similarly situated in the State of Alabama, and hereby files this Class Action Complaint against Defendant Groupon, Inc. and states as follows:

**I. PARTIES, JURISDICTION AND VENUE**

1. Plaintiff Michael McPherson ("Plaintiff") is an adult resident citizen of the state of Alabama. During the relevant time period, Mr. McPherson received offers for discounted products and services from Defendant Groupon, Inc. and purchased a gift certificate based on representations and claims made by Defendant.

2. Defendant Groupon, Inc. ("Defendant" or "Groupon") is a privately-held company incorporated under the laws of the state of Delaware. Defendant's corporate headquarters is located in Chicago, Illinois. Defendant does business throughout the United States, including in Alabama. Defendant markets, sells, and issues its gift certificates to millions of consumers throughout the United States, including many thousands of consumers in Alabama.

3. The Court may exercise federal question jurisdiction over this action under 28 U.S.C. §1332 and the Class Action Fairness Act of 2005, 28 U.S.C. §1332(d)(2). The matter in controversy, exclusive of interest and costs, exceeds the sum or value of \$5,000,000 and is a class action in which members of the Class of plaintiffs are citizens of a state different from Defendant. In addition, this Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. §1367.

4. Venue in this case is proper in that Defendant conducts business in this district and a substantial part of the events giving rise to the action occurred in this district.

## **II. FACTUAL BACKGROUND**

5. Plaintiff brings this action on behalf of himself and other similarly situated consumers who purchased gift certificates from Defendant. The gift certificates (presented and promoted as "Groupons") are sold and distributed by Defendant with expiration dates that are misleading and illegal under both federal and the laws of the State of Alabama. Defendant collaborates with retailers to provide consumers with illegal gift certificates.

6. Defendant is an internet maintained company that invites consumers to purchase discounted offers through gift certificates to restaurants, bars, salons, spas, gyms, retail stores, and other businesses.

7. Defendant, by directly collaborating with retailers and local businesses, offers consumers discounted products and services listed on gift cards.

8. Defendant attempts to increase the sales volume of its retail partners by distributing "Daily Deal" emails emphasizing and promoting the products and services of its retail partners to its substantial subscription base comprised of millions of consumers nationwide.

9. Defendant and its retail collaborators share the revenue resulting from the sale of the gift certificates or "Groupons."

10. Plaintiff and countless other consumers are offered a “Daily Deal.” The “Daily Deal” is an offer for an item or service at a significantly reduced amount off of a featured retailer’s regularly priced rate. A certain amount of consumers must purchase the Daily Deal in order for the discount or gift certificate to become “live.” Once the discount or gift certificate has become “live,” Defendant charges the previous and subsequent purchasers the advertised rate and sends them a confirmatory email with a link for downloading and printing the gift certificate. The consumer can then redeem the gift certificate within the allotted amount of time.

11. Defendant collaborates with businesses in large and small cities throughout the nation, locally tailoring their “Daily Deal” to the consumers in that area. Consumers are pressured to purchase the gift certificates in a short amount of time, usually within a 24 hour period.

12. Plaintiff, like other consumers, feels severe pressure to buy the gift certificates for fear of “losing out” on the discounted rate. In doing so, they are misled and bullied into accepting burdensome sales conditions imposed by Defendant, including illegal and unconscionably short expiration dates of just a few months.

13. The Credit Card Accountability Responsibility and Disclosure Act (the “Card Act”) and the Electronic Funds Transfer Act (“EFTA”) 15 U.S.C. §§1693 *et seq.*, specifically prohibit the sale and issuance of gift certificates with expiration dates of less than five years after the date of issuance.

14. Defendant and the collaborating companies target consumers with their predatory practices and create pressurized situations that force the consumer to act hurriedly to purchase the gift certificate knowing that often times the consumer will not be able to redeem the discounted service or rate within the imposed unconscionably short period of time. Consequently, many consumers are cheated out of a service or product they have already paid for.

15. Defendant and its retail collaborators amass a monetary windfall from the sale of the gift certificates that are not redeemed before the imposed expiration date.

16. While Defendant and its retail collaborators states the expiration date of each gift card, they fail to give notice of the material fact that the gift certificates expiration date is actually illegal.

17. This material omission causes consumers such as Plaintiff and members of the proposed class to refrain from redeeming the expired gift certificates or taking action to enforce the agreement.

18. Plaintiff and many unsuspecting consumers have fallen victim to Defendant's predatory and unlawful conduct by purchasing a gift certificate stating an illegal expiration date and including terms that impose a waiver of class action suits. This is an attempt to insulate themselves from liability and to dissuade consumers from enforcing their rights.

19. Based on the foregoing, Plaintiff, on behalf of himself and the Class, brings this class action against Defendant for violations of the CARD Act and the EFTA, 15 U.S.C. §§ 1693 et seq and Alabama law.

20. Plaintiff seeks damages and equitable relief on behalf of himself and the Class, including but no limited to, compensatory and punitive damages, an order enjoining Defendant from selling and issuing gift certificates with expiration dates and other onerous terms, costs and expenses, Plaintiff's reasonable attorneys' fees and expert fees, and any additional relief that this Court determines to be necessary or appropriate to provide complete relief to Plaintiff and the Class.

### **III. CLASS ACTION ALLEGATIONS**

21. **Class Definition:** Plaintiff seeks certification pursuant to Fed.R.Civ.P. 23. Plaintiff is a member of the class he seeks to represent and brings this action individually and on behalf of

all similarly situated persons defined as follows:

All Alabama citizens and entities in the State of Alabama who have purchased or acquired gift certificates from Defendant and have had illegal expiration dates imposed on them.

Plaintiff expressly reserves his right to amend this Class definition if discovery and further investigation reveal that the Class should be expanded or otherwise modified.

22. Excluded from the proposed class are Defendant, any entity in which any Defendant has a controlling interest, and any agents, employees, officers, and/or directors of Defendant or any other such entities and their representatives, heirs, successors, and/or assigns.

23. **Existence and Predominance of Common Questions of Law and Fact.** There are common questions of law and fact common and of general interest to the class. These common questions of law and fact predominate over any questions effecting only individual members of the class. Said common questions include, but are not limited to, the following:

- a. Whether Defendant has sold and distributed gift certificates subject to improper expiration dates;
- b. Whether Defendant's imposition of expiration dates on gift certificates violates federal and/or Alabama state laws;
- c. Whether Defendant's conduct and practice as described herein is improper and violative trade practices related to the imposition of expiration dates on gift certificates and other terms;
- d. Whether Defendant has been unjustly enriched as a result of the improper business practices described herein;
- e. Whether Plaintiff is entitled to maintain its claims as a class action in accordance with Fed.R.Civ.P. 23;

- f. Whether Plaintiff and Class members are entitled to compensatory damages. Including actual and statutory damages; and
- g. Whether Plaintiff and Class members are entitled to declaratory, injunctive and/or equitable relief.

24. **Typicality.** The claims of the named Plaintiff are typical of the claims of the class.

25. **Adequate Representation.** The Plaintiff will fairly and adequately protect the interests of the members of the class and has no interest antagonistic to those of other class members. Plaintiff has retained class counsel competent to prosecute class actions, and is financially able to represent the class.

26. **Superiority.** The class action is superior to other available methods for the fair and efficient adjudication of this controversy since individual joinder of all members of the class is impracticable. The interest of judicial economy favor adjudicating the claims for the Plaintiff class rather than on an individual basis.

27. Class action treatment is proper and this action should be maintained as a class action pursuant to Fed.R.Civ.P. 23 because the prosecution of separate actions by individual members of the class would create a risk of (1) inconsistent or varying adjudication with respect to individual class members which would establish incompatible standards of conduct for the Defendant as the parties opposing the class; and/or (2) adjudications with respect to individual class members which would as a practical matter substantially impair or impede the ability of other members not parties to the adjudications to protect their interests.

28. Defendant, as the party opposing class, has acted or refused to act on grounds generally applicable to the class.

29. Questions of law and fact predominate over any questions affecting only individual

members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

**COUNT I**  
**Breach of Contract**

30. Plaintiff adopts and incorporates herein by reference all prior allegations of this Complaint.

31. Defendant has violated contracts with Plaintiff and class members by imposing deceptive and illegal expiration dates that are void as a matter of public policy and unenforceable.

32. Defendant has anticipatorily breached the contracts they entered into with Plaintiff and Class members by refusing to honor the contract after the stated date.

33. Defendant states on its website that “once a Groupon reaches its expiration date; it loses its promotional value.”

34. Defendant refused to honor their contract with Plaintiff after the purported “expiration date,” even though the provision containing said date is not a valid contractual provision.

35. Plaintiff and Class members have performed their obligations under the contracts, while Defendant breached its duty of good faith and fair dealing by intentionally imposing unconscionable and illegal expiration dates with knowledge of their illegality and violative nature.

**COUNT II**  
**Violations of the Credit Card Accountability Responsibility and Disclosure Act and  
Electronic Funds Transfer Act**

36. Plaintiff adopts and incorporates herein by reference all prior allegations of this Complaint.

37. The Card Act, which amends the EFTA, prohibits the sale or issuance of gift certificates that are subject to expiration dates.

38. Defendant sold and issued and/or agreed to sell and issue “Groupons,” which are specifically defined as “gift certificates” under 15 U.S.C. § 1693l-1(a)(2)(B).

39. 15 U.S.C. § 1693l-1(a)(2)(B) defines a gift certificate as:

- i. redeemable at a single merchant or an affiliated Groupon of merchants that share the same name, mark, or logo;
- ii. issued in a specified amount that may not be increased or reloaded;
- iii. purchased on a prepaid basis in exchange for payment; and
- iv. honored upon presentation by such single merchant or affiliated group of merchants for goods or services.

40. “Groupons” constitute promises that are: (a) redeemable at a single merchant or an affiliated group of merchants; (b) issued in a specified amount that may not be increased or reloaded; (c) purchased on a prepaid basis in exchange for payment; and (d) honored upon presentation by such single merchant or affiliated group of merchants for goods or services.

41. At all relevant times, Defendant’s gift certificates were sold and issued to consumers through electronic funds transfers systems established, facilitated, and monitored by Defendant.

42. Defendant’s gift certificates are not exclusively issued in paper form. Defendant provides an email link to consumers to download and print such gift certificates and consumers may download gift certificates to their mobile phones or other electronic devices through application made available by Defendant.

43. Defendant’s gift certificates are marketed and sold to the general public and are not issued as part of any loyal, award, or promotional program.

44. Defendant violated the CARD Act and EFTA by selling and issuing and/or agreeing to sell and issue gift certificates with expiration dates.

45. As a direct and proximate result of Defendant's unlawful acts and conduct, Plaintiff and Class members were deprived of the use of their money that was charged, collected and retained by Defendant through the sale of gift certificates with illegal expiration dates.

46. Pursuant to 15 U.S.C. § 1693, Plaintiff, on behalf of himself and the Class, seeks a Court order for injunctive relief, as well as reasonable attorneys' fees and the cost of this action.

**COUNT III**  
**Unjust Enrichment**

47. Plaintiff adopts and incorporates herein by reference all prior allegations of this Complaint.

48. As a result of the illegal and violative scheme described herein, the Defendant has been unjustly enriched at the expense of Plaintiff and other Class members. Under these circumstances, and pursuant to equitable principals recognized by Alabama law, the Defendant would not be allowed to retain their ill-gotten gain, which was obtained through their illegal conduct.

49. Therefore, the Plaintiff and Class members request that this Court exercise its equitable jurisdiction and award damages and restitution for the money that Defendant has unjustly received and retained in connection with the sale of gift certificates.

**PRAYER FOR RELIEF**

WHEREFORE, PREMISES CONSIDERED, Plaintiff Michael McPherson and Class members demand judgment against Defendant for compensatory damages and punitive damages in an amount to be determined at trial, plus such other, further, or additional relief as may be proper, including attorney's fees and costs.

Respectfully submitted this 2<sup>nd</sup> day of May, 2011.

**JURY DEMAND**

**PLAINTIFF HEREBY DEMANDS TRIAL BY JURY ON ALL ISSUES.**



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R. Brent Irby

**OF COUNSEL:**

McCallum, Hoaglund, Cook & Irby, LLP  
905 Montgomery Highway  
Suite 201  
Vestavia Hills, Alabama 35216  
Telephone: (205)824-7767  
Facsimile: (205)824-7768  
Email: [birby@mhcilaw.com](mailto:birby@mhcilaw.com)

**OF COUNSEL:**

James Terrell  
McCallum, Methvin & Terrell, P.C.  
The Highland Building  
2201 Arlington Avenue South  
Birmingham, Alabama 35205  
Telephone: (205)939-0199  
Facsimile: (205)939-0399  
Email: [jterrell@mmtlaw.net](mailto:jterrell@mmtlaw.net)

**PLEASE SERVE DEFENDANT VIA CERTIFIED MAIL/RETURN RECEIPT REQUESTED  
AS FOLLOWS:**

Groupon, Inc.  
c/o CT Corporation System  
208 South LaSalle Street  
Suite 814 Chicago, Illinois 60604-1101