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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11 SAN FRANCISCO DIVISION

CV11

1038

12 SARAH GOSLING, on Behalf of Herself)
and All Others Similarly Situated and the)
13 General Public,)

14 Plaintiff,)

15 vs.)

16 GROUPON, INC., and)
DOES 1 through 100, inclusive,)

18 Defendants.)

No.

CLASS ACTION

COMPLAINT FOR:

- (1) VIOLATIONS OF THE CREDIT CARD ACCOUNTABILITY RESPONSIBILITY AND DISCLOSURE ACT AND THE ELECTRONIC FUNDS TRANSFER ACT, 15 U.S.C. §1693 *et seq.*;
- (2) VIOLATION OF THE UNFAIR COMPETITION LAW, CALIFORNIA BUSINESS AND PROFESSIONS CODE §17200 *et seq.*;
- (3) VIOLATIONS OF THE FALSE ADVERTISING LAW, CALIFORNIA BUSINESS AND PROFESSIONS CODE §17500 *et seq.*;
- (4) VIOLATIONS OF THE CONSUMER LEGAL REMEDIES ACT, CALIFORNIA CIVIL CODE §1750 *et seq.*; AND
- (5) UNJUST ENRICHMENT

DEMAND FOR JURY TRIAL

1 Plaintiff Sarah Gosling, by and through her attorneys, brings this action on behalf of herself
2 and all others similarly situated against Defendant Groupon, Inc., for compensatory damages and
3 equitable, injunctive, and declaratory relief. Plaintiff hereby alleges, on information and belief,
4 except for information based on personal knowledge, which allegations are likely to have evidentiary
5 support after further investigation and discovery, as follows:

6 NATURE OF THE ACTION

7 1. Plaintiff brings this action on behalf of herself and other similarly-situated consumers
8 nationwide who purchased gift certificates for products and services from Groupon, Inc.
9 (“Groupon”). These gift certificates, referred to and marketed as “groupons,” are sold and issued
10 with expiration dates that are deceptive and illegal under both federal and state laws.

11 2. Groupon is a web-based company that purports to offer discounted deals on a wide
12 variety of products and services, including restaurants and bars, salons and spas, clothing and other
13 retail items, and dance classes and other instructional lessons, among other things.

14 3. Groupon’s business model is based on offering discounts to consumers en masse by
15 directly partnering with retail businesses that provide the products or services. Groupon promises to
16 increase the sales volume of its retail partners by sending out “Daily Deal” e-mails to its massive
17 subscription base (comprised of tens of millions of consumers nationwide), highlighting and
18 promoting the products and services of its retail partners.

19 4. Once consumers agree to purchase a minimum, specified number of “groupon” gift
20 certificates for a particular “Daily Deal,” the “Deal” is officially triggered, and Groupon charges
21 each consumer the advertised purchase amount. Groupon then sends a confirmatory e-mail to each
22 purchasing consumer with a link to its website for downloading and printing the “groupon” gift
23 certificate, which then may be redeemed with the retail business offering the product or service,
24 within a limited period of time.

25 5. Groupon partners with hundreds, if not thousands, of retail businesses around the
26 country, including large, nationwide companies. Groupon and its retail partners share in the
27 revenues from the sale of “groupon” gift certificates.

28

1 6. The problem with Groupon’s business model is that Groupon and its retail partners
2 sell and issue “groupon” gift certificates with relatively short expiration dates, knowing that many
3 consumers will not use the gift certificates prior to the expiration date. However, the Credit Card
4 Accountability Responsibility and Disclosure Act (“CARD Act”) and the Electronic Funds Transfer
5 Act (“EFTA”), 15 U.S.C. §1693 *et seq.*, specifically prohibit the sale and issuance of gift certificates,
6 such as “groupons,” with expiration dates. Similarly, California Civil Code §1749.5 prohibits the
7 sale and issuance of gift certificates with expiration dates.

8 7. Groupon’s systematic placement of expiration dates on its gift certificates is deceptive
9 and harmful to consumers. Groupon effectively creates a sense of urgency among consumers to
10 quickly purchase “groupon” gift certificates by offering “Daily Deals” for a short amount of time,
11 usually a 24-hour period. Consumers therefore are rushed into buying the gift certificates and
12 unwittingly become subject to the onerous sales conditions imposed by Groupon, including illegal
13 expiration terms, which are relatively short, often just a few months.

14 8. Groupon and its retail partners bank on the fact that consumers often will not manage
15 to redeem “groupon” gift certificates before the limited expiration period – therefore, many
16 consumers are left with nothing, despite already having paid for the particular service or product.
17 Accordingly, Groupon and its retail partners reap a substantial windfall from the sale of gift
18 certificates that are not redeemed before expiration, which is precisely the type of harmful business
19 conduct that both Congress and the California State Legislature intended to prohibit.

20 9. Plaintiff, like many unsuspecting consumers nationwide, fell victim to Groupon’s and
21 its retail partners’ deceptive and unlawful illegal conduct and purchased “groupon” gift certificates
22 bearing an illegal expiration dates.

23 10. Plaintiff, on behalf of herself and the Class, therefore brings this class action against
24 Groupon, and Does 1 through 100, inclusive (collectively “Defendants”) for equitable (injunctive
25 and/or declaratory) relief based on the violations of the CARD Act and the EFTA, 15 U.S.C. §1693
26 *et seq.*; California’s Unfair Competition Law, Cal. Bus. & Prof. Code §17200 *et seq.* (“UCL” or
27 “17200”); the False Advertising Law, Cal. Bus & Prof. Code §17500 *et seq.* (“FAL” or “17500”);
28 Consumer Legal Remedies Act, Cal. Civ. Code §1750 *et seq.* (“CLRA”); and unjust enrichment.

1 Plaintiff seeks damages and equitable relief on behalf of herself and the Class, which relief includes,
2 but is not limited to, full refunds for Plaintiff and Class members, compensatory and punitive
3 damages, an order enjoining Groupon from selling and issuing “groupon” gift certificates with
4 expiration dates and other onerous terms, costs and expenses, as well as Plaintiff’s reasonable
5 attorneys’ fees and expert fees, and any additional relief that this Court determines to be necessary or
6 appropriate to provide complete relief to Plaintiff and the Class.

7 **INTRADISTRICT ASSIGNMENT**

8 11. A substantial part of the events or omissions which give rise to the claims in this
9 action occurred in the county of San Francisco, and as such this action is properly assigned to the
10 San Francisco division of this Court.

11 **JURISDICTION AND VENUE**

12 12. This Court has original jurisdiction pursuant to 28 U.S.C. §1332 and the Class Action
13 Fairness Act of 2005, 28 U.S.C. §1332(d)(2). The matter in controversy, exclusive of interest and
14 costs, exceeds the sum or value of \$5,000,000 and is a class action in which members of the Class of
15 plaintiffs are citizens of a state different from Groupon. In addition, pursuant to 28 U.S.C. §1367,
16 this Court has supplemental jurisdiction over Plaintiff’s state law claims.

17 13. This Court has personal jurisdiction over Groupon because it is authorized to do
18 business and has conducted business in California, Groupon has specifically marketed, sold and
19 issued “groupon” gift certificates in California, Groupon has sufficient minimum contacts with
20 California, and/or sufficiently avails itself to the markets of this State through its promotion, sales,
21 and marketing within this State to render the exercise of jurisdiction by this Court permissible.

22 14. Venue is proper in this Court pursuant to 28 U.S.C. §§1391(a) and (b) because a
23 substantial part of the events or omissions giving rise to Plaintiff’s claims occurred in this judicial
24 district. Venue is also proper under 18 U.S.C. §1965(a) because Defendant transacts substantial
25 business in this District.

26 **PARTIES**

27 15. At all times relevant to this matter, Plaintiff Sarah Gosling, resided and continues to
28 reside in San Francisco, California. During the relevant time period, Ms. Gosling received offers for

1 discounted products and services from Groupon and purchased “groupon” gift certificates based on
2 representations and claims made by Groupon. The “groupon” gift certificates purchased by Ms.
3 Gosling contained illegal expiration dates.

4 16. Defendant, Groupon, Inc., is a privately-held company incorporated under the laws of
5 the state of Delaware. Groupon’s corporate headquarters is located in Chicago, Illinois. Groupon
6 also maintains an office in Palo Alto, California. Groupon is registered to do business in the state of
7 California and does business in the state of California. Groupon markets, sells and issues its
8 “groupon” gift certificates to millions of consumers throughout the United States, including
9 hundreds of thousands of consumers in California and in San Francisco County.

10 17. The true names and capacities of Defendants sued herein as Does 1 through 100,
11 inclusive, are presently unknown to Plaintiff who therefore sues these Defendants by fictitious
12 names. Plaintiff will amend this Complaint to show their true names and capacities when they have
13 been ascertained. Each of the Doe Defendants is responsible in some manner for the conduct alleged
14 herein.

15 **FACTUAL ALLEGATIONS**

16 **Groupon’s Scheme to Sell and Issue Gift Certificates with Illegal**
17 **Expiration Dates**

18 18. Launched in November 2008, Groupon is a “social promotions” website that
19 promises consumers discounted deals on various products and services, purportedly through the
20 power of “collective buying.” To take advantage of the deals offered by Groupon, consumers must
21 sign up and provide their e-mail address and other information to Groupon. Over 50 million people
22 worldwide reportedly have signed up to receive offers from Groupon.

23 19. Every weekday, Groupon sends subscribers in each of the cities it operates a “Daily
24 Deal” e-mail, promoting the particular products or services of the retail businesses with which it has
25 partnered. To trigger the “Daily Deal,” consumers must purchase a specified number of “groupon”
26 gift certificates for the particular product or service offered that day. Groupon sends targeted “Daily
27 Deal” e-mails to close to 90 cities throughout the United States.

28

1 20. To arouse consumer interest and create the urgency to buy “groupon” gift certificates,
2 Groupon offers the “Daily Deal” for a limited amount of time, usually a 24-hour period. This creates
3 a “shopping frenzy” among consumers who feel pressured to purchase “groupon” gift certificates as
4 quickly as possible. Consumers purchase “groupon” gift certificates directly through Groupon’s
5 website, using their credit or debit cards.

6 21. Groupon also uses various forms of electronic social media, such as Facebook and
7 Twitter, to promote and stoke demand for its “Daily Deals,” creating additional pressure among
8 consumers to buy “groupon” gift certificates before time runs out.

9 22. Once Groupon sells the specified number of “groupon” gift certificates for a
10 particular “Daily Deal,” the “Deal” is officially on, and consumers are charged for the purchase.
11 Groupon subsequently sends a confirmatory e-mail to purchasers with a link to its website, through
12 which purchasers may download and print their “groupon” gift certificates. Consumers may also
13 purchase and download “groupon” gift certificates directly to their mobile phones using an
14 application available on Groupon’s website. “Groupon” gift certificates thereafter may be directly
15 redeemed with the retail businesses offering the products and services.

16 23. Groupon admits on its website that the “groupo”ns” it sells and issues to consumers are
17 in fact gift certificates.

18 24. Groupon imposes illegal expiration dates, among other onerous conditions, on each
19 “groupon” gift certificate it sells and issues, to the detriment of consumers. The expiration periods
20 on “groupon” gift certificates are frequently just a few months from the date of purchase. Ironically,
21 Groupon knows that after it has driven consumers to purchase “groupon” gift certificates as quickly
22 as possible, many consumers ultimately will be unable to redeem the gift certificates before the
23 expiration period.

24 25. Accordingly, consumers often cannot take advantage and use the product or service
25 for which they paid before the expiration period imposed by Groupon – leaving a substantial
26 windfall for Groupon and its retail partners.

27 26. In addition to imposing illegal expiration periods, Groupon foists other deceptive and
28 unfair conditions on consumers. Groupon requires consumers to redeem “groupon” gift certificates

1 in the course of a single transaction. Consumers therefore are forced to redeem their gift certificates
2 all at once and cannot use their gift certificates for multiple transactions or on multiple occasions.
3 Likewise, consumers cannot redeem any unused portion of “groupon” gift certificates for the
4 remaining cash amount. Moreover, Groupon does not provide cash refunds to consumers when the
5 retail business offering the services or products refuses to honor the “groupon” gift certificate, or
6 goes out of business. Groupon essentially places handcuffs on the manner in which consumers can
7 redeem their gift certificates for the products and services offered, even though consumers have
8 already paid in full for such products and services.

9 27. Moreover, certain of the “Daily Deals” promoted by Groupon and its retail partners
10 are not in fact deals at all, insofar as they fail to provide any real discount to consumers. For
11 example, Groupon partnered with the nationwide floral retailer FTD Group, Inc., (“FTD”) and
12 offered a FTD “Daily Deal” in early February to take advantage of Valentine’s Day holiday
13 shopping. Through this “Daily Deal,” Groupon claimed that consumers could purchase \$40 worth of
14 flowers and gifts from FTD for \$20. It was later revealed, however, that consumers could purchase
15 the same flowers and gifts directly through FTD’s own website at a significantly lower price than the
16 \$20 price offered through Groupon. This “Daily Deal” was a total sham.

17 **Groupon’s Retail Business Partners Agree to Sell Gift Certificates with**
18 **Illegal Expiration Dates**

19 28. Groupon focuses on two markets – the consumers who wish to obtain the advertised
20 products or services by purchasing “groupon” gift certificates, and the retail businesses who partner
21 with Groupon to promote their products and services. These retail businesses are willing to partner
22 with Groupon and offer their products and services at a discount because Groupon promises to
23 promote their products and services to its huge subscription base and guarantees them a specified
24 volume of business. In fact, Groupon promises its retail partners that its “Daily Deal” promotion
25 will bring them new customers “overnight.”

26 29. Groupon’s business model, particularly its ability to establish partnerships with retail
27 businesses nationwide, depends in large part on its systematic use of illegal expiration dates.
28 Groupon knows that its retail partners are not willing to offer their products and services at a

1 discount to consumers through the sale of “groupon” gift certificates, without an agreement to limit
2 the time period for which consumers can redeem the gift certificates. Accordingly, Groupon and its
3 retail partners continue to flaunt the law by imposing illegal expiration dates on the “groupon” gift
4 certificates sold to consumers.

5 30. Groupon attempts to circumvent federal and state gift certificate laws by inserting a
6 disclaimer, titled “Legal Stuff We Have To Say,” which is buried at the bottom of “groupon” gift
7 certificates in tiny, barely legible font that is readily overlooked by consumers.

8 31. Importantly, the disclaimer is found only on the “groupon” gift certificate itself,
9 which must be downloaded and printed by the consumer. Thus, consumers who do not download
10 and print their “groupon” gift certificates will never have access to, nor knowledge of, the
11 disclaimer.

12 32. Moreover, the disclaimer does not excuse nor justify Groupon’s use of illegal
13 expiration periods. As set forth below, Groupon’s imposition of expiration dates on “groupon” gift
14 certificates constitutes per se violations of federal and state laws, for which there is no applicable
15 exception.

16 33. In any event, once “groupon” gift certificates reach their illegal expiration periods,
17 Groupon refuses to honor the bargain originally struck between the parties.

18 34. Groupon reaps massive profits from this business model. Groupon typically takes for
19 itself half (50%) on the sale of each “groupon” gift certificate. Groupon reportedly made over half a
20 billion dollars from “groupon” sales in 2010 alone. Groupon’s retail partners also profit from the
21 influx of new customers and bolstered sales that result from the sale of “groupon” gift certificates.
22 But again, Groupon and its retail partners’ undue profits are based in large part on their use of illegal
23 expiration periods on the gift certificates sold to consumers.

24 **Plaintiff Gosling’s Purchase of That Takes the Cake Groupon with an Illegal**
25 **Expiration Date**

26 35. On or about February 23, 2010, Plaintiff Gosling received a “Daily Deal” e-mail offer
27 from Groupon for “groupon” gift certificates redeemable at That Takes the Cake bakery in San
28 Francisco.

1 36. Under the terms of the “Daily Deal” offer, as set forth on Groupon’s website, Ms.
2 Gosling was required to pay \$15 to Groupon in exchange for a “groupon” gift certificate redeemable
3 for a dozen cupcakes valued at \$33 at That Takes the Cake.

4 37. “The Fine Print” section of the “Daily Deal” offer stated that the That Takes the Cake
5 “groupon” gift certificate “Expires Aug 24, 2010.” “The Fine Print” section also imposed the
6 following conditions: “Limit 1 per visit. No cash back or credit. May upgrade to filled cupcakes for a
7 fee.”

8 38. Ms. Gosling purchased a single “groupon” gift certificate for That Takes the Cake
9 and made payment of \$15 to Groupon through Groupon’s website.

10 39. Ms. Gosling subsequently received an e-mail from Groupon confirming her purchase
11 of a That Takes the Cake “groupon” gift certificate. The e-mail contained a link to Groupon’s
12 website from which Ms. Gosling could download and print the “groupon” gift certificate.

13 40. Ms. Gosling attempted to redeem her “groupon” gift certificate before the August 24,
14 2010 expiration period imposed by Groupon but was told by That Takes the Cake that it would not
15 honor her “groupon” gift certificate.

16 41. It was later reported that That Takes the Cake could not keep up with customer
17 demand generated from its “groupon” offering. That Takes the Cake reportedly gave preference to
18 customers who did not have “groupon” gift certificates and were thus paying a premium for That
19 Takes the Cake cupcakes.

20 42. Ms. Gosling was therefore left with a “groupon” gift certificate that is no longer valid
21 and cannot be redeemed.

22 **Plaintiff Gosling’s Purchase of a San Francisco Soup Company Groupon**
23 **with an Illegal Expiration Date**

24 43. On or about April 6, 2010, Plaintiff Gosling received a “Daily Deal” e-mail offer
25 from Groupon for “groupon” gift certificates redeemable at San Francisco Soup Company in San
26 Francisco.
27
28

1 51. **Numerosity.** The Plaintiff Class comprises millions of consumers throughout
2 California and the United States. The Class is so numerous that joinder of all members of the
3 Classes is impracticable.

4 52. **Existence and Predominance of Common Questions of Law and Fact.** Common
5 questions of law and fact exist as to all members of the Class and predominate over any questions
6 affecting only individual Class members. These common legal and factual questions include, but are
7 not limited to, the following:

- 8 (a) Whether Groupon sold and issued “groupon” gift certificates subject to
9 expiration dates;
- 10 (b) Whether Groupon’s imposition of expiration dates on “groupon” gift
11 certificates violates federal and/or California state laws;
- 12 (c) Whether Groupon engaged in deceptive and unfair business and trade
13 practices related to the imposition of expiration dates on “groupon” gift
14 certificates and other onerous terms and conditions;
- 15 (d) Whether Plaintiff and Class members are entitled to declaratory, injunctive
16 and/or equitable relief; and
- 17 (e) Whether Plaintiff and Class members are entitled to compensatory damages,
18 including actual, statutory and punitive damages plus interest thereon, and if
19 so, what is the nature of such relief?

20 53. **Typicality.** Plaintiff’s claims are typical of the claims of the members of the Class
21 because she purchased the “groupon” gift certificate from Groupon in a typical retail consumer
22 process and the “groupon” gift certificate had an expiration date. Thus, Plaintiff and Class members
23 sustained the same damages arising out of Groupon’s common course of conduct in violation of law
24 as complained of herein. The damages of each Class member was caused directly by Groupon’s
25 wrongful conduct in violation of law as alleged herein.

26 54. **Adequacy of Representation.** Plaintiff will fairly and adequately protect the interests
27 of the members of the Class because it is in her best interest to prosecute the claims alleged herein to
28 obtain full compensation due to her for the unfair and illegal conduct of which she complains.

1 Plaintiff has retained highly competent counsel and experienced class action attorneys to represent
2 her interests and that of the Class. Plaintiff and her counsel have the necessary financial resources to
3 adequately and vigorously litigate this class action. Plaintiff has no adverse or antagonistic interests
4 to those of the Class. Plaintiff is willing and prepared to serve the Court and the Class members in a
5 representative capacity with all of the obligations and duties material thereto and is determined to
6 diligently discharge those duties by vigorously seeking the maximum possible recovery for Class
7 members.

8 55. *Superiority.* A class action is superior to other available means for the fair and
9 efficient adjudication of this controversy since individual joinder of all Class members is
10 impracticable. Class action treatment will permit a large number of similarly situated persons to
11 prosecute their common claims in a single forum simultaneously, efficiently and without the
12 unnecessary duplication of effort and expense that numerous actions would engender. Furthermore,
13 the expenses and burden of individual litigants and the lack of knowledge of Class members
14 regarding Groupon's activities, would make it difficult or impossible for individual Class members
15 to redress the wrongs done to them, while an important public interest will be served by addressing
16 the matter as a class action. The cost to the court system of adjudication of such individualized
17 litigation would be substantial. The trial and litigation of Plaintiffs' claims will be manageable.

18 56. Adequate notice can be given to Class members directly using information
19 maintained in Groupon's records or through notice by publication.

20 57. Plaintiff is unaware of any difficulties that are likely to be encountered in the
21 management of this Class Action Complaint that would preclude its maintenance as a class action.

22 58. Plaintiff seeks actual and punitive damages, to the extent available. Damages may be
23 calculated from the sales records maintained by and in the possession of Groupon, so that the cost of
24 administering a recovery for the Class can be minimized. Importantly, the precise amount of
25 damages available to Plaintiff and other members of the Class is not a barrier to class certification.

26 59. Plaintiff also seeks equitable and injunctive relief on behalf of all Class members on
27 grounds generally applicable to the entire Class. Unless a class is certified, Groupon will retain
28 monies received as a result of their conduct that were taken from Plaintiff and proposed Class

1 members. Unless a class-wide injunction is issued, Groupon will continue to commit the violations
2 alleged herein, and the members of the Class will continue to be misled and denied their rights.

3 **COUNT I**

4 **Violations of the Credit Card Accountability Responsibility and Disclosure**
5 **Act and Electronic Funds Transfer Act, 15 U.S.C. §1693 *et seq.*, on**
6 **Behalf of Plaintiff and All Class Members**

7 60. Plaintiff repeats and re-alleges each and every allegation contained above as if set
8 forth herein.

9 61. The CARD Act, which amends the EFTA, prohibits the sale or issuance of gift
10 certificates that feature and are subject to expiration dates.

11 62. Groupon sold and issued and/or agreed to sell and issue “groupons,” which are “gift
12 certificates” as defined under 15 U.S.C. §1693l-1(a)(2)(B). “Groupons” constitute promises that are:
13 (a) redeemable at a single merchant or an affiliated group of merchants; (b) issued in a specified
14 amount that may not be increased or reloaded; (c) purchased on a prepaid basis in exchange for
15 payment; and (d) honored upon presentation by such single merchant or affiliated group of
16 merchants for goods or services.

17 63. Indeed, Groupon admits on its website that the “groupons” it sells and issues to
18 consumers are gift certificates.

19 64. At all relevant times, “groupon” gift certificates were sold and issued to consumers
20 through electronic fund transfer systems established, facilitated and monitored by Groupon.

21 65. “Groupon” gift certificates are not exclusively issued in paper form, as Groupon
22 provides an e-mail link to consumers to download and print such gift certificates. Moreover,
23 consumers may download “groupon” gift certificates to their mobile phones through an application
24 available on Groupon’s website.

25 66. “Groupon” gift certificates are marketed and sold to the general public and are not
26 issued as part of any loyalty, award, or promotional program.

1 75. Further, based on information and belief, Groupon’s conduct violates California’s gift
2 certificate laws because Groupon refuses to allow “groupon” gift certificates with cash value of less
3 than \$10 (ten dollars) to be redeemed for cash, contrary to Cal. Civ. Code §1749.5(b)(2).

4 76. Groupon’s sale and issuance of “groupon” gift certificates also violates the FAL,
5 California Business & Professions Code §17500, and the CLRA, California Civil Code §1750 *et*
6 *seq.*, as discussed below. Plaintiff and Class members reserve their right to allege other violations of
7 law which constitute other unlawful business acts or practices, as further investigation and discovery
8 warrants. Such conduct is ongoing and continues to this date.

9 77. Section 17200 also prohibits any “*unfair* . . . business act or practice.” As described
10 in the preceding paragraphs, Groupon engaged in the unfair business practice of selling and issuing
11 “groupon” gift certificates with illegal and deceptive expiration dates.

12 78. Groupon imposed other unfair conditions on its “groupon” gift certificates, including
13 forcing consumers to redeem the gift certificates in the course of a single transaction and not
14 providing for the exchange of any unused portion of the gift certificates for their cash value.
15 Groupon also unfairly limited consumers from using more than one “groupon” gift certificate during
16 each visit to the retail business offering the particular product or service.

17 79. Groupon’s business practices, as detailed above, are unethical, oppressive and
18 unscrupulous, and they violate fundamental policies of this State. Further, any justifications for
19 Groupon’s wrongful conduct are outweighed by the adverse effects of such conduct. Thus, Groupon
20 engaged in unfair business practices prohibited by California Business & Professions Code §17200
21 *et seq.*

22 80. Section 17200 also prohibits any “*fraudulent business act or practice.*” Groupon
23 violated this prong of the UCL by disseminating and/or agreeing to disseminate, through Groupon’s
24 website and other promotional channels, misleading and partial statements about “groupon” gift
25 certificates that have a tendency to mislead the public. Further, Groupon violated this prong of the
26 UCL by omitting material information about “groupon” gift certificates. For instance, Groupon
27 misrepresented to consumers that the expiration dates placed on “groupon” gift certificates were in
28 fact illegal under both federal and state law and contrary to public policy. Groupon’s claims,

1 nondisclosures and misleading statements concerning “groupon” gift certificates, as more fully set
2 forth above, were false, misleading and/or likely to deceive the consuming public within the
3 meaning of California Business and Professions Code §17200.

4 81. Section 17200 also prohibits any “unfair, deceptive, untrue or misleading
5 advertising.” For the reasons set forth above, Groupon engaged in unfair, deceptive, untrue and
6 misleading advertising in violation of California Business & Professions Code §17200.

7 82. Groupon’s conduct caused and continues to cause substantial injury to Plaintiff and
8 other Class members. Plaintiff has suffered injury in fact and lost money as a result of Groupon’s
9 unfair conduct.

10 83. Additionally, pursuant to California Business & Professions Code §17203, Plaintiff
11 seeks an order requiring Groupon to immediately cease such acts of unlawful, unfair and fraudulent
12 business practices and requiring Groupon to return the full amount of money improperly collected to
13 all those who have paid them.

14 **COUNT III**

15 **False and Misleading Advertising in Violation of California**
16 **Business & Professions Code §17500 *et seq.*, on Behalf of Plaintiff**
17 **and Class Members Who Reside in California**

18 84. Plaintiff repeats and re-alleges each and every allegation contained above as if set
19 forth herein.

20 85. California Business & Professions Code §17500 *et seq.* prohibits various deceptive
21 practices in connection with the dissemination in any manner of representations which are likely to
22 deceive members of the public to purchase products and services such as the “groupon” gift
23 certificates offered by Groupon.

24 86. Groupon’s acts and practices as described herein have deceived and/or are likely to
25 deceive Plaintiff and Class members. Groupon uses Groupon’s website and targeted “Daily Deal”
26 promotions, along with other forms of social media, such as Facebook and Twitter, to extensively
27 market and advertise the gift certificates with misleading and illegal expiration dates and other
28 deceptive terms to consumers.

1 87. By their actions, Groupon has been and is disseminating uniform advertising
2 concerning “groupon” gift certificates, which by its nature is unfair, deceptive, untrue, or misleading
3 within the meaning of California Business & Professions Code §17500 *et seq.* Such advertisements
4 are likely to deceive, and continue to deceive, the consuming public for the reasons detailed above.

5 88. Groupon intended Plaintiff and Class members to rely upon the advertisements and
6 numerous material misrepresentations as set forth more fully elsewhere in the Complaint. In fact,
7 Plaintiff and Class members relied upon the advertisements and misrepresentations to their
8 detriment.

9 89. The above-described false, misleading, deceptive advertising Groupon disseminated
10 continues to have a likelihood to deceive in that Groupon has failed to disclose the true and actual
11 limitations of their gift certificates. Groupon has failed to instigate a public information campaign to
12 alert consumers of these limitations, which continues to create a misleading perception of the
13 efficacy of their gift certificates.

14 **COUNT IV**

15 **Violations of the Consumer Legal Remedies Act, California Civil**
16 **Code §1750 *et seq.*, on Behalf of Plaintiff and Class**
17 **Members Who Reside in California**

18 90. Plaintiff repeats and re-alleges each and every allegation contained above as if set
19 forth herein.

20 91. The California Consumers Legal Remedies Act, Cal. Civ. Code §1750 *et seq.*
21 provides protection for California consumers against unfair, deceptive and unlawful practices, and
22 unconscionable commercial practices in connection with the sale of any goods or services.

23 92. Plaintiff and the Class are “consumers” as defined by Cal. Civ. Code §1761(d). The
24 “groupon” gift certificates sold and issued by Groupon constitute “goods” and “services” as defined
25 by Cal. Civ. Code §1761(a) and (b).

26 93. Groupon’s ongoing placement of illegal expiration dates and imposition of other
27 deceptive sales terms on “groupon” gift certificates violate the following subsections of Cal. Civ.
28 Code §1770(a) in these respects:

- 1 (5) Groupon's acts and practices constitute misrepresentations that "groupon"
2 gift certificates have characteristics, benefits or uses which they do not have;
3 (7) Groupon misrepresented that "groupon" gift certificates are of a particular
4 standard, quality and/or grade, when they are of another;
5 (9) Groupon's acts and practices constitute the advertisement of goods, without
6 the intent to sell them as advertised;
7 (14) Groupon's acts and practices fail to represent that the transaction involving
8 "groupon" gift certificates confers or involves obligations that are prohibited
9 by law, particularly the imposition of illegal expiration dates and other
10 onerous sales terms;
11 (16) Groupon's acts and practices constitute representations that "groupon" gift
12 certificates have been supplied in accordance with previous representations
13 when they have not; and
14 (19) Groupon inserted unconscionable provisions in the contract for the purchase
15 of gift certificates, specifically illegal expiration dates and other onerous,
16 one-sided restrictions as to the gift certificates' use and redemption.

17 94. By reason of the foregoing, Plaintiff and the Class haven been irreparably harmed,
18 entitling them to injunctive relief, disgorgement and restitution.

19 95. Pursuant to §1782 of the CLRA, Plaintiff notified Groupon in writing of the particular
20 violations of §1770 of the CLRA and demanded Groupon rectify the actions described above by
21 providing complete monetary relief, agreeing to be bound by their legal obligations and to give
22 notice to all affected customers of their intent to do so. Plaintiff sent this notice by certified mail,
23 return receipt requested, to Groupon's principal place of business.

24 96. If Groupon fails to adequately respond to Plaintiff's demand within 30 days of the
25 letter pursuant to §1782 of the CLRA, Plaintiff will amend this claim to add additional claims for
26 relief, including claims for compensatory and exemplary damages. Plaintiff is already entitled to the
27 relief set forth above, along with costs, attorneys' fees and any other relief which the Court deems
28 proper.

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COUNT V

Unjust Enrichment on Behalf of Plaintiff and All Class Members

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97. Plaintiff repeats and re-alleges each and every allegation contained above as if set forth herein.

98. Groupon has received, and continues to receive, a benefit at the expense of Plaintiff and the Class members.

99. Groupon knowingly and/or recklessly sold and issued or agreed to sell and issue “groupon” gift certificates with illegal expiration dates, as well with other deceptive terms and conditions.

100. As a direct and proximate result of Groupon’s unlawful acts and conduct, Plaintiff and Class members were deprived of the use of their money that was unlawfully charged and collected by Groupon, and are therefore entitled to reimbursement of any money unjustly paid to Groupon in connection with the sale of “groupon” gift certificates.

PRAYER FOR RELIEF

Plaintiff, individually, and on behalf of the Class, prays for judgment and relief against Groupon as follows:

A. For an order declaring the above-mentioned case as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of the proposed classes described herein and appointing Plaintiff to serve as class representative and Plaintiff’s counsel as Lead Counsel for the Class;

B. For an order enjoining Groupon from continuing to sell and issue “groupon” gift certificates and pursue the above policies, acts and practices related to the sale and issuance of such gift certificates;

C. For an order requiring Groupon to fund a corrective advertising campaign in order to remedy their wrongful and illegal conduct;

D. For an order awarding restitution of the monies Groupon wrongfully acquired by their wrongful and illegal conduct;

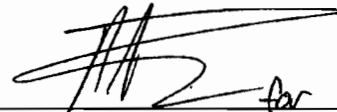
- 1 E. For an order requiring disgorgement of monies wrongfully obtained as a result of
2 Groupon's wrongful and illegal conduct;
- 3 F. For compensatory and punitive damages, including actual and statutory damages,
4 arising from Groupon's wrongful and illegal conduct;
- 5 G. For an award of reasonable attorneys' fees and all costs and expenses incurred in the
6 course of prosecuting this action;
- 7 H. For pre-judgment and post-judgment interest at the legal rate; and
- 8 I. For such other and further relief as the Court deems just and proper.

9 **JURY DEMAND**

10 Plaintiff demands a trial by jury on all issues so triable.

11 DATED: March 4, 2011

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RACHEL L. JENSEN
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