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E-filing

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

LB

SAN FRANCISCO COMPREHENSIVE
 TOURS, LLC dba SAN FRANCISCO
 SHUTTLE TOURS, LLC and WINE
 COUNTRY TOUR SHUTTLE,

Plaintiff,

v.

GROUPON, INCORPORATED AND
 DOES 1-20, INCLUSIVE,

Defendants.

CASE NO.

CV11

1300

**COMPLAINT FOR INJUNCTIVE
 RELIEF AND DAMAGES**

[JURY TRIAL DEMANDED]

Plaintiff SAN FRANCISCO COMPREHENSIVE TOURS, LLC dba SAN FRANCISCO
 SHUTTLE TOURS and WINE COUNTRY TOUR SHUTTLE ("San Francisco Comprehensive
 Tours" or "Plaintiff") asserts the following claims:

1. This is an action in which Plaintiff San Francisco Comprehensive Tours seeks
 injunctive (and other) relief to stop and to prevent false and misleading business and advertising acts
 and practices, essentially "bait and switch" advertising, employed on Google.com by defendant
GROUPON, INCORPORATED ("Groupon" or "Defendant").

JURIDICITION AND VENUE

2. Plaintiff SAN FRANCISCO COMPREHENSIVE TOURS, LLC, dba San Francisco
 Shuttle Tours and dba Wine Country Tour Shuttle, is a California limited liability company. San
 Francisco Comprehensive Tours' principal place of business is in San Francisco, California.

3. Plaintiff is informed and believes and on that basis alleges and avers that defendant Groupon is incorporated in the State of Delaware, and has its principal place of business in Chicago, Illinois.

4. This Court has subject matter jurisdiction over this action based on federal question jurisdiction, without regard to the amount in controversy, pursuant to 28 U.S.C. § 1331 in that Plaintiff San Francisco Comprehensive Tours asserts a claim for false advertising by defendant Groupon under the Lanham Act, 15 U.S.C. Section 1125(a)(1)(B). This Court also has subject matter jurisdiction over this action pursuant to 28 U.S.C. Section 1332, in that Plaintiff San Francisco Comprehensive Tours is deemed to be a citizen of the State of California because it is incorporated in and has its principal place of business in the State of California, and defendant Groupon is deemed to be a citizen of its State of incorporation (which is a State other than California) and a citizen of the State of Illinois, where it has its principal place of business. The amount in controversy in this action, exclusive in interest and costs, exceeds \$75,000.00.

5. Venue of this action is proper in this Court in that the injury to Plaintiff's business caused by Defendant's wrongful conduct occurred and continues to occur in this judicial district, and is also proper in this Court because Defendant's liability to Plaintiff San Francisco Comprehensive Tours arose and continues to arise in this judicial district.

THE PARTIES

6. Plaintiff San Francisco Comprehensive Tours has been offering tours of San Francisco, John Muir Woods, and the Northern California Wine Country since its inception in 2005. To the best of its knowledge, it is the only San Francisco city tour service combining a bus tour, short guided walking tours, and a Ferry/Bay cruise to Sausalito. Unlike other tour companies, San Francisco Comprehensive Tours' marketing strategy is almost entirely dependent on the internet, and the ability of potential customers (usually, tourists from outside the San Francisco Bay Area) to locate it via internet searches on popular search engines such as Google.com ("Google").

7. Plaintiff San Francisco Comprehensive Tours is informed and believes and on that basis alleges and avers that defendant Groupon is a deal-of-the-day website that is localized to major geographic markets worldwide. As a “deal-of-the-day” website, Groupon prominently features a

1 new coupon from a different advertiser each day (along with a few other less-prominent discount
2 offers, which also change on a daily basis). Launched in November 2008, the first market for
3 Groupon was Chicago, followed soon thereafter by other cities, including but not limited to San
4 Francisco. Plaintiff is informed and believes that Groupon currently serves more than 150 markets
5 in North America and 100 markets in Europe, Asia and South America and has amassed 35 million
6 registered users. In December 2010 it publicly turned down an offer from California-based Google
7 to acquire Groupon for a sum in excess of \$5 billion.

8 **HOW GOOGLE'S ADWORDS PROGRAM WORKS**

9 8. A user of a search engine such as Google receives two kinds of "results" from a
10 Google search. The first kind of result from a Google search is an informational display of links
11 ranked by the search engine in terms of how closely it appears to correspond with the user's search
12 terms. The user can click through the displayed links, and the operator of the website associated
13 with the displayed link is not charged by the search engine. The second kind of result from a
14 Google search is purchased placement of an advertiser's link. These purchased placements usually
15 appear above the informational search results on the first page of the search results, and alongside
16 the informational display of links on the first page of the search results.

17 9. Most searches on search engines such as Google produce many, many pages of
18 informational search results. However, users will not typically view every page of a 20-page search
19 result before selecting particular websites to visit that appear to correspond to their search. Internet
20 advertisers and marketers accordingly strive to appear on the first page of a user's search relevant to
21 their businesses, because users are believed to be more likely to click through to a user's landing
22 page (a "landing page" is the first page a user is taken after clicking through a link) if the
23 advertiser's link appears on that first page.

24 10. To address this need, Google operates an advertising auction service program known
25 as AdWords. Participants in this program, usually online marketers and advertisers such as
26 Plaintiff, draft short advertisements known as "AdWords" which include a "headline" and an ad
27 excerpt (see Exhibit A for a sample), and purchase the right to use keywords that will respond to a
28 user's search for such terms. When a user's Google search matches the selected keywords, Google

1 displays some of the AdWords advertisements (those ranked by Google as matching the search
2 request most closely) at the top of the list of search results, and others (ranked by Google lower in
3 terms of a match, but still a match) alongside the search results.

4 11. AdWords is an advertising auction service. Advertisers bid for favorable ad position
5 by "setting" the maximum they are willing to pay per ad click-through from their "AdWords" link.
6 The amount actually paid is set by Google pursuant to a constantly updated "auction" process in
7 which advertisers, such as Plaintiff and defendant Groupon, compete with each other for premium
8 ad placement by "bidding" on the maximum price they are willing to pay to Google for each click-
9 through by a user whose search includes the "keywords" purchased from Google by the advertiser
10 as part of the click-through price.

11 12. The highest bidder, however, is not necessarily the advertiser who will be ranked
12 most highly on a given user's search results. Instead, Google advises advertisers that it ranks
13 responsive advertisers using a combination of: (a) the amount of the dollar bid; (b) the "relevance"
14 of the responsive advertiser's ad words to the user's search (e.g., if a user searched Google for "left-
15 handed monkey wrenches," a link stating that the advertiser sells "left-handed monkey wrenches"
16 would be ranked more highly, all other things being equal, than a link stating only that the advertiser
17 sells "monkey wrenches of all kinds"); (c) the popularity of the website measured in the number of
18 click-throughs it receives from users who search for that advertiser's keywords, versus the number of
19 click-throughs received by other advertisers using the same keywords; and (d) how closely the
20 advertiser's "landing page" (i.e., the first page on which a user who clicks the advertiser's link lands
21 after clicking through) matches the user's search. Google advises that factor (b) is given more
22 weight than factor (c), which in turn is given more weight than factor (d). For an online explanation
23 of this process, go to <http://www.youtube.com/watch?v=K7l0a2PVhPQ>.

24 13. The net result is that an advertiser whose ad is more closely aligned with a particular
25 user's search terms, and which has demonstrated popularity with users of those same search terms,
26 will be able to bid less for a favored ad placement than an advertiser whose ad is less-closely
27 aligned and who historically has not been as popular with users of the same search terms.

28 14. Since approximately August of 2005, plaintiff San Francisco Comprehensive Tours

1 has participated in Google's "AdWords" program. From the beginning of its participation until
2 approximately the Fall of 2010 (when Plaintiff first noticed that defendant Groupon was promoting
3 San Francisco Bay Area businesses), Plaintiff's participation in the Google program was satisfactory
4 and profitable. Plaintiff's link was consistently displayed in one of the top 3-4 spots in the
5 purchased placement area where users searched for "San Francisco Tours," "Alcatraz Tours," and
6 "Napa Wine Tours." Users who clicked through Plaintiff's AdWords link were taken directly to
7 Plaintiff's "landing page" which was its website where users could review and reserve Plaintiff's
8 tours of San Francisco, including Alcatraz Tour, or the Bay Area Wine Country.

9 **GROUPON'S UNLAWFUL MANIPULATION OF THE SYSTEM**

10 15. However, beginning in about September of 2010, Plaintiff observed that the cost of
11 its click-throughs began to skyrocket, and its ranking in the purchased placement area for searches
12 including the terms "San Francisco Tours," "Alcatraz Tours," and "Napa Wine Tours" began to
13 decline. At the same time, defendant Groupon's AdWords link began to appear at or near the top of
14 the purchased placement search results for Google searches including the terms "San Francisco
15 Tours," "Alcatraz Tours," and "Napa Wine Tours."

16 16. Defendant Groupon, however, only offers discount coupons, typically, a different
17 major discount to a single different business in the San Francisco Bay Area each day (along with
18 some less-prominent other offers). On most if not all days of the year, although defendant Groupon
19 uses the keywords "San Francisco Tours," "Alcatraz Tours," "Alcatraz Tickets," and "Napa Wine
20 Tours" it did not offer any such tours (after Plaintiff wrote to Groupon raising the issues addressed
21 in this Complaint, Groupon offered a one-day coupon on a "Duck Tour" in San Francisco – to the
22 best of Plaintiff's knowledge, this is the only coupon that is arguably a "San Francisco Tour" that
23 has been offered by or through Groupon since it began misusing its AdWords participation;
24 defendant Groupon also offered on one day one Berringer Wine coupon that could arguably be
25 called a "Napa Wine Tour," again after Plaintiff had written to Groupon raising the issues in this
26 complaint; defendant has never, to Plaintiff's knowledge, offered an Alcatraz Tour or Alcatraz
27 Tickets, much less at 50-90% off). Similarly, although defendant Groupon's Ad Word headlines
28 read "San Francisco Tours," "Alcatraz Tours," or "Napa Wine Tours," and its Groupon ad excerpt

1 read "It's like San Francisco at 90% off" and "Do Napa at 50-90% off", defendant Groupon (except
2 for one or two occasions over the past 6 months did not offer any such tours at the time of the
3 search, and nothing in the ad reflected a 90% discount on anything at the time of the search.

4 17. During the week of March 14, 2011, defendant Groupon apparently began using the
5 keywords "Alcatraz Tickets", advising consumers in its headline that it was selling "Alcatraz
6 Tickets - 1 ridiculously huge coupon a day" and informing consumers in its ad excerpt that they
7 could "[d]o Alcatraz CA at 50—90% off!" [emphasis in original]. See Exhibit B. On the day in
8 question (March 15, 2011) when defendant Groupon was advising consumers that it had Alcatraz
9 tickets at 50-90% off, it was in fact featuring a coupon for discounted acting lessons. That same
10 day, a search for Napa Tour deals found defendant Groupon offering "Napa Tour Deals" when in
11 fact it was offering the same discounted acting class coupon. See Exhibit C.

12 18. Here are some other examples, retrieved from Google searches conducted on
13 Thursday, February 24th, 2011:

14 **Keywords:** "San Francisco Tours"

15 **Groupon Headline:** San Francisco Tours

16 **Groupon Ad Excerpt:** It's like San Francisco at 90% off

17 **Result after clicking through:** No San Francisco Tour offered on associated landing pages

18 ****

19 **Keywords:** "Napa Wine Tours"

20 **Headline:** Napa Wine Tours

21 **Ad Excerpt:** Do Napa at 50-90% off

22 **Result after clicking through:** No Napa Wine Tour offered on associated landing pages

23 ****

24 **Keywords:** "Alcatraz Tours"

25 **Headline:** Alcatraz Tours

26 **Ad Excerpt:** "Do Alcatraz CA at 50-90% off"

27 **Result after clicking through:** No Alcatraz Tour offered on associated landing pages.

1 19. Even the urls appearing in defendant Groupon's ad excerpts are inaccurate, and
2 appear to be designed to enhance the "relevance" of Groupon's ad by falsely representing that
3 Groupon has a web page addressing the search term in question. For example, on March 16, 2011,
4 defendant Groupon's ad excerpt below the headline "Napa Tours" advised the reader that its url was
5 www.groupon.com/Napa. Below defendant Groupon's headline "Alcatraz Tours – 1 ridiculously
6 huge coupon a day" the ad excerpt touts a url at www.groupon.com/Alcatraz. See Exhibit D. But
7 when each of these urls are accessed, the user lands on a page on Groupon's website that states
8 "Oops! That page doesn't exist." The reader is invited to click through to a particular city, where
9 they will be taken to Groupon's real coupon of the day which – except in an extraordinary
10 circumstances (like the sudden appearance of the one day coupon for one "duck boat" tour about a
11 week after Plaintiff wrote to Groupon raising these issues) – will not be what the user was searching
12 for, or even close. See Exhibit E.

13 20. Defendant Groupon, by falsely representing to users and consumers in its headlines
14 and in its ad excerpts that it provides access to San Francisco Tours, Napa Wine Tours, Alcatraz
15 Tours, and the like, has been able to enhance artificially its ad ranking on the paid placement
16 portion of Google search results for such tour terms.

17 21. Defendant Groupon, by falsely suggesting that users who click-through to its ad may
18 receive a San Francisco Tour at "90% off" or Alcatraz Tours "at 50-90% off" also artificially
19 inflates its popularity score: consumers naturally will click on a seemingly relevant ad offering
20 them 90% off what they are searching for – who wouldn't? By lying to consumers in its headlines
21 and in its ad excerpts, Groupon winds up paying less per click-through than it would normally have
22 to pay to get the desired ad placement. Defendant Groupon's conduct has also resulted in drops in
23 plaintiff San Francisco Comprehensive Tours' ranking, and Plaintiff has been forced to pay an
24 artificially higher price per click-through on the keywords in question. By using false terms in its
25 headline and by falsely confirming in its ad excerpts that it offers the services suggested by the
26 keywords (e.g., Napa Wine Tours; Alcatraz Tours), defendant Groupon's "relevance" score remains
27 high because the ranking system accepts defendant Groupon at its word, and assumes that it is
28 offering what it says it is offering. But defendant Groupon's manipulation goes farther than that.

1 22. By falsely representing to users and consumers interested in "San Francisco Tours"
2 and "Napa Wine Tours" (and others, such as "Alcatraz Tours" and "Alcatraz Tickets") that it
3 provides access to such services, defendant Groupon induces users and consumers to click through
4 to its landing page. This, in turn, artificially raises defendant Groupon's objective popularity score,
5 further cementing its placement at or near the top of the paid placement ads.

6 23. At the time of the display of the ads set forth in paragraph 18 of this Complaint, the
7 associated Groupon 'landing pages', and all other reviewable areas of defendant Groupon's website,
8 offered no tours matching the keywords/headlines it displayed in response to Google searches.
9 Additionally, no active promotions, on tours or other goods or services, offered the claimed "90%
10 off".

11 24. Instead, the "landing page" to which a consumer or user is directed after clicking on
12 defendant Groupon's AdWords link for the first time requires the user/consumer to (a) confirm the
13 city or region the consumer is searching, and (b) to give defendant Groupon the user's/consumer's
14 email address. Then, and only then, does defendant Groupon reveal to the user/consumer that it is
15 offering a coupon, in almost all of the occasions a coupon for goods or services totally unrelated to
16 the keywords the user/consumer used to search Google (e.g., a coupon for discounted play at a
17 billiards parlor is offered in response to a search for "San Francisco Tours"). See Exhibit F.

18 25. As a result of its false and misleading advertising, in addition to diverting potential
19 customers from Plaintiff and other legitimate tour sites, defendant Groupon acquires valuable
20 information about users' and consumers' email addresses, interests, and geographic location, all of
21 which is valuable information that can be used as part of a database for later commercial use or sale.

22 26. A further result of defendant Groupon's false and misleading advertising is that
23 defendant Groupon has diverted customers or potential customers from Plaintiff and its website by
24 means of the same false and misleading factual representations.

25 27. Plaintiff has been injured in fact by defendant Groupon's false and misleading
26 advertising, suffering the loss of customers and potential customers who, once diverted, either give
27 up their search in frustration, or pursue other avenues of advertising or information to locate tours in
28 the San Francisco area. Plaintiff has been further injured in fact because defendant Groupon's false

1 statements in its headlines, its ad excerpts, and even its urls operate to make the amount Groupon
2 has to bid to secure an advantageous ad position artificially low and make the price the Plaintiff has
3 to bid to secure an advantageous ad position artificially high.

4 28. Plaintiff and its business face irreparable harm that cannot be remedied by money
5 damages as a result of defendant Groupon's unlawful conduct. The diversion of Plaintiff's
6 customers and the increased costs imposed on Plaintiff by defendant Groupon's conduct will force
7 Plaintiff to close its business unless the Court enters injunctive relief requiring Groupon and those
8 acting on its behalf or in concert with it to cease and desist from employing ad headlines, ad
9 excerpts, and phony urls representing or implying that a product or service is currently being offered
10 by Groupon or its advertisers when, in fact, such products or services are not currently being offered
11 by Groupon or its advertiser.

12 **FIRST CAUSE OF ACTION**
13 **VIOLATION OF THE LANHAM ACT**

14 29. Plaintiff refers to and incorporates herein by reference as though set forth fully herein
15 the allegations contained in Paragraphs 1-28 inclusive of this Complaint.

16 30. 15 U.S.C. § 1125(a)(1)(B) provides that "[a]ny person who, on or in connection with
17 any goods or services, * * * uses in commerce any * * * false or misleading description of fact, or
18 false and misleading representation of fact, which * * * in commercial advertising or promotion,
19 misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another
20 person's goods, services, or commercial activities, shall be liable in a civil action by any person who
21 believes that he or she is or is likely to be damaged by such act."

22 31. Defendant Groupon's participation in Google's AdWords program constitutes
23 commercial advertising or promotion of its advertisers' goods and services.

24 32. As alleged above, defendant Groupon's business practice of using keywords
25 connoting goods or services which it and its coupon advertisers do not offer, and its use of AdWords
26 and ad excerpts stating or suggesting that it is offering coupons for goods or services which it is not
27 currently offering, constitute false and misleading descriptions of fact and false and misleading
28 representations of fact. Plaintiff is further informed and believes that defendant Groupon's use of

1 the terms "90% off" or "50-90% off" to describe the level of discounts its coupons offer (for
2 services it and its advertisers do not offer) is also frequently if not always false and misleading.

3 33. As alleged above, defendant Groupon's business practice of using keywords
4 constituting goods or services which it does not offer, and its use of AdWords and ad excerpts
5 stating or suggesting that it is offering coupons for goods or services which it is not currently
6 offering, constitute misrepresentations of the nature, characteristics, and qualities of its services and
7 the commercial activities of its coupon advertisers.

8 34. Plaintiff San Francisco Comprehensive Tours has been injured and believes that it
9 will likely continue to be injured in the future by defendant Groupon's false and misleading business
10 practices, in that defendant Groupon has diverted potential customers from Plaintiff by falsely
11 implying that it is offering the same services as Plaintiff. Plaintiff has further been injured and
12 believes that it will likely continue to be damaged in that defendant Groupon's business practices
13 have caused Plaintiff to be ranked lower and thus less desirably on purchased placement displays for
14 searches such as "San Francisco Tours", "Napa Wine Tours," and "Alcatraz Tours."

15 35. Consumers are also injured and are likely to continue to be injured by defendant
16 Groupon's false and misleading statements and representations of fact. Users who search Google
17 for "San Francisco Tours", "Napa Wine Tours," and "Alcatraz Tours" expecting a responsive
18 landing page from defendant Groupon instead find themselves hijacked to a "landing page" that first
19 demands their geographic location, and then an email address, only to learn (after they have
20 conveyed this valuable information about themselves) that defendant Groupon is offering no such
21 services. Plaintiff is informed and believes and consumer injury ranges from annoyance and
22 frustration at the waste of time to which Groupon has put them, up to a complete abandonment of
23 the Google search.

24 36. Plaintiff has no plain, speedy or adequate remedy in money damages for the
25 irreparable injuries cause to it by defendant's conduct. Plaintiff accordingly requests the entry of
26 injunctive relief compelling defendant Groupon and those acting on behalf of or in concert with it to
27 cease and desist from continuing to use keywords, ad words, and ad excerpts in response to Google
28 searches that do not reflect the actual products and services being offered to the consumer at the

1 time of the user's search, and which do not accurately represent the discounts being offered at the
2 time of the user's search.

3 37. Plaintiff further requests that the Court exercise its discretion to award attorneys' fees
4 to Plaintiff.

5 Wherefore, Plaintiff prays for injunctive relief and such money damages as it is able to prove
6 as set forth in the prayer of this Complaint.

7 SECOND CAUSE OF ACTION

8 VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17500

9 38. Plaintiff refers to and incorporates herein by reference as though set forth fully herein
10 the allegations contained in Paragraphs 1-37 inclusive of this Complaint.

11 39. California Business and Professions Code Section 17500 makes it unlawful for any
12 business offering services or other things of value to the public "to make or disseminate or cause to
13 be made or disseminated before the public in this state, * * * in any newspaper or other publication,
14 or any advertising device, * * * or in any other manner or means whatever, including over the
15 Internet, any statement, concerning * * * those services, professional or otherwise, or concerning
16 any circumstance or matter of fact connected with the proposed performance * * * which is untrue
17 or misleading, and which is known, or which by the exercise of reasonable care should be known, to
18 be untrue or misleading * * *."

19 40. California Business and Professions Code Section 17500 further makes it unlawful to
20 advertise a product or service "as part of a plan or scheme with the intent not to sell the property or
21 services, professional or otherwise, at the price stated therein or as so advertised."

22 41. The conduct of defendant Groupon as alleged in this Complaint violates California's
23 Business and Professions Code Section 17500, in that defendant has, in its advertising on
24 Google.com, made at least the following untrue and misleading statements of fact: (a) that it is
25 offering San Francisco Tours; (b) that it is offering Napa Wine Tours; (c) that it is offering Alcatraz
26 Tours and/or "Alcatraz Tickets"; and (d) that it was offering the foregoing tours at 50%-90% off.

27 42. The foregoing untrue and misleading statements of fact were known by defendant to
28 be untrue and misleading at the time they were (and continue to be) displayed on the internet on

1 Google.com, or with the exercise of reasonable care should have been known to defendant to be
2 untrue or misleading.

3 43. The foregoing untrue and misleading statements of fact establish a plan or scheme on
4 the part of defendant Groupon to advertise services, such as "San Francisco Tours," "Napa Wine
5 Tours," and "John Muir Woods Tours," with the intent not to sell the services as so advertised.

6 44. The foregoing conduct on the part of defendant Groupon has caused plaintiff San
7 Francisco Comprehensive Tours injury in fact, in the form of diversion of customers and potential
8 customers from its website to the website of defendant Groupon.

9 45. The foregoing conduct on the part of defendant Groupon is also causing injury and
10 damage to consumers and users, who are being tricked by defendant Groupon into providing it with
11 their valuable personal information based on untrue and misleading statements, and whose
12 legitimate searches for information on the internet are being hijacked by defendant.

13 46. The conduct of defendant Groupon will, if permitted to continue, cause irreparable
14 harm to plaintiff San Francisco Comprehensive Tours, in that its money damages from defendant's
15 false and misleading advertising may in many instances be unknown or unprovable. Plaintiff's only
16 effective remedy is injunctive relief precluding and enjoining defendant Groupon and those acting
17 for, on behalf, or in concert with it from using AdWords headlines and keywords and ad excerpts
18 that represent a good or a service that Groupon is not in fact offering to users and consumers on the
19 day in question, at discounts that Groupon is not in fact offering to users and consumers on the day
20 in question.

21 Wherefore, Plaintiff prays for injunctive relief as set forth in the prayer of this Complaint.

22 **THIRD CAUSE OF ACTION**

23 **VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE SECTION 17200**

24 47. Plaintiff refers to and incorporates herein by reference as though set forth fully herein
25 the allegations contained in Paragraphs 1-46 inclusive of this Complaint.

26 48. California's false advertising law prohibits not only advertising which is false, but
27 also advertising which, although true, is either actually misleading or has capacity, likelihood or
28 tendency to deceive or confuse public. California Business and Professions Code Section 17200

1 Google.com, or with the exercise of reasonable care should have been known to defendant to be
2 untrue or misleading.

3 43. The foregoing untrue and misleading statements of fact establish a plan or scheme on
4 the part of defendant Groupon to advertise services, such as "San Francisco Tours," "Napa Wine
5 Tours," and "Alcatraz Tours" with the intent not to sell the services as so advertised.

6 44. The foregoing conduct on the part of defendant Groupon has caused plaintiff San
7 Francisco Comprehensive Tours injury in fact, in the form of diversion of customers and potential
8 customers from its website to the website of defendant Groupon.

9 45. The foregoing conduct on the part of defendant Groupon is also causing injury and
10 damage to consumers and users, who are being tricked by defendant Groupon into providing it with
11 their valuable personal information based on untrue and misleading statements, and whose
12 legitimate searches for information on the internet are being hijacked by defendant.

13 46. The conduct of defendant Groupon will, if permitted to continue, cause irreparable
14 harm to plaintiff San Francisco Comprehensive Tours, in that its money damages from defendant's
15 false and misleading advertising may in many instances be unknown or unprovable. Plaintiff's only
16 effective remedy is injunctive relief precluding and enjoining defendant Groupon and those acting
17 for, on behalf, or in concert with it from using AdWords headlines and keywords and urls and ad
18 excerpts that represent a good or a service that Groupon is not in fact offering to users and
19 consumers at the time of the search, at discounts that Groupon is not in fact offering to users and
20 consumers at the time of the search.

21 Wherefore, Plaintiff prays for injunctive relief as set forth in the prayer of this Complaint.

22 **THIRD CAUSE OF ACTION**

23 **VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE SECTION 17200**

24 47. Plaintiff refers to and incorporates herein by reference as though set forth fully herein
25 the allegations contained in Paragraphs 1-46 inclusive of this Complaint.

26 48. California's false advertising law prohibits not only advertising which is false, but
27 also advertising which, although true, is either actually misleading or has capacity, likelihood or
28 tendency to deceive or confuse public. California Business and Professions Code Section 17200

1 precludes unfair competition, which means and includes "any unlawful, unfair or fraudulent
2 business act or practice and unfair, deceptive, untrue or misleading advertising * * * *."

3 49. The conduct of defendant Group as alleged in this Complaint violates California's
4 Business and Professions Code Section 17200, in that defendant has, in its advertising on
5 Google.com, made at least the following untrue and misleading statements of fact: (a) that it is
6 offering San Francisco Tours; (b) that it is offering Napa Wine Tours; (c) that it is offering Alcatraz
7 Tours and Tickets; and (d) that it was offering the foregoing tours at 50%-90% off.

8 50. The foregoing untrue and misleading statements of fact were known by defendant to
9 be untrue and misleading at the time they were (and continue to be) displayed on the internet on
10 Google.com, or with the exercise of reasonable care should have been known to defendant to be
11 untrue or misleading.

12 51. Defendant's conduct constitutes advertising and business practices that are unlawful
13 in that they violate the federal Lanham Act (15 U.S.C. § 1125(a)(1)(B)), California Business and
14 Professions Code § 17500 [false advertising], and the California Consumers Legal Remedies Act,
15 California Civil Code § 1770(a)(9) ["Advertising goods or services with intent not to sell them as
16 advertised" is unlawful], among others.

17 52. Defendant's conduct also constitutes an unfair business practice within the meaning
18 of California Business and Professions Code Section 17200, in that defendant Groupon's false
19 advertising permits it to receive a higher ad placement at an artificially lower auction bid price per
20 click-through on the keywords it purchases, because its relevance and popularity scores are
21 enhanced by its false statements, and causes competitors to pay artificially higher auction prices.

22 53. The foregoing conduct on the part of defendant Groupon has caused plaintiff San
23 Francisco Comprehensive Tours injury in fact and loss of money, in the form of diversion of
24 customers and potential customers from its website to the website of defendant Groupon and in the
25 form of higher costs for its continued participation in AdWords.

26 54. The foregoing conduct on the part of defendant Groupon is also causing injury and
27 damage to consumers and users, who are being tricked by defendant Groupon into providing it with
28 their valuable personal information based on untrue and misleading statements, and whose

1 legitimate searches for information on the internet are being hijacked by defendant.

2 55. The conduct of defendant Groupon will, if permitted to continue, cause irreparable
3 harm to plaintiff San Francisco Comprehensive Tours, in that its money damages from defendant's
4 false and misleading advertising may in many instances be unknown or unprovable. Plaintiff's only
5 effective remedy is injunctive relief precluding and enjoining defendant Groupon and those acting
6 for, on behalf, or in concert with it from using AdWords headlines and keywords that represent a
7 good or a service that Groupon is not in fact offering to users and consumers on the day in question.

8 56. Plaintiff further seeks to have defendant Groupon disgorge any and all profits it has
9 made as a result of its unlawful, unfair, and fraudulent advertising and business practices.

10 Wherefore, Plaintiff prays for injunctive relief as set forth in the prayer of this Complaint.

11 **FOURTH CAUSE OF ACTION**

12 **INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE**

13 57. Plaintiff refers to and incorporates herein by reference as though set forth fully herein
14 the allegations contained in Paragraphs 1-56 inclusive of this Complaint.

15 58. Plaintiff San Francisco Comprehensive Tours has enjoyed a longstanding and
16 successful relationship with users of Google searches, has an established track record of converting
17 into customers many of those users who search Google using terms such as "San Francisco Tours"
18 and "Napa Wine Tours," and a high probability of continuing to convert similar Google users in the
19 future.

20 59. Defendant Groupon knew that Plaintiff and business entities similar to Plaintiff's
21 business were using Google AdWords to market their tours and were competing with Defendant
22 Groupon for the most coveted placement of their links through the AdWords auction process.

23 60. The conduct of defendant Groupon as alleged herein was substantially certain to
24 undermine and interfere with Plaintiff's prospective business relationships with Google users by
25 artificially driving Plaintiff's ad placement farther down the list and thus prevent Plaintiff from
26 marketing to these users as effectively and with as much success as it would absent defendant's
27 wrongful conduct.

28 61. The conduct of defendant Groupon, as alleged in this Complaint, was independently

1 unlawful.

2 62. Defendant Groupon's conduct was a substantial factor in disrupting Plaintiff's
3 prospective economic relationship with Google users, causing Plaintiff to suffer actual injury.

4 Wherefore, Plaintiff prays for injunctive relief and such money damages as it is able to prove
5 as set forth in the prayer of this Complaint.

6 A. For the entry of a temporary restraining order enjoining defendant Groupon
7 and those acting for, on behalf of, or in concert with defendant Groupon from using headlines,
8 keywords, ad excerpts, or urls in response to Google searches that represent or imply a good or a
9 service that Groupon and its advertisers are not in fact offering to users and consumers at the time of
10 the search, at discounts that Groupon and its advertisers are not in fact offering to users and
11 consumers at the time of the search, including but limited to the terms "San Francisco Tours,"
12 "Napa Wine Tours," "Alcatraz Tours," and "Alcatraz Tickets." Plaintiff further requests the
13 issuance of an order to show cause why the Court should not enter a preliminary injunction
14 providing the same relief during the pendency of this action;

15 B. For the issuance of preliminary and permanent injunctive relief enjoining
16 defendant Groupon and those acting for, on behalf of, or in concert with defendant Groupon from
17 using AdWords, headlines and keywords and ad excerpts in response to Google searches that
18 represent a good or a service that Groupon and its advertisers are not in fact offering to users and
19 consumers at the time of the search, including but limited to the terms "San Francisco Tours,"
20 "Napa Wine Tours," "Alcatraz Tours," and "Alcatraz Tickets," at discounts that Groupon and its
21 advertisers are not in fact offering to users and consumers at the time of the search;

22 C. For an award of damages according to proof on Plaintiff's claim for
23 interference with prospective business relations for disgorgement of any profits Groupon has made
24 as a result of its unlawful conduct;

25 D. For an award of Plaintiff's attorneys' fees based on its claims under the
26 Lanham Act and on its other claim pursuant to California Code of Civil Procedure Section 1021.5;

27 and

28 //

1 E. For such other and further relief as the Court deems proper.
2

3 Dated: March 17, 2011.

DILLINGHAM & MURPHY, LLP
WILLIAM F. MURPHY
ANGEL R. SEVILLA

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8 By: 

Attorneys for Plaintiff
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DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands a jury trial on all issues permitted to be tried to a jury.

Dated: March 17, 2011.

DILLINGHAM & MURPHY, LLP
WILLIAM F. MURPHY
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