

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CARLOS VAZQUEZ, on behalf of
himself and others similarly situated,

Plaintiff,

v.

GROUPON, INC., YMCA of the USA
and DOES 1 through 100,

Defendants.

Civil No. 11-cv-00495 EGS

**PLAINTIFF'S MOTION FOR
APPOINTMENT OF INTERIM CLASS
COUNSEL**

NOW COMES Plaintiff Carlos Vazquez who, by and through his undersigned counsel,
pursuant to Fed. R. Civ. P. 23(g)(3), moves the Court for an Order:

1. appointing the following lawyers and firms as Interim Class Counsel:
 - a. Charles LaDuca of Cuneo, Gilbert & LaDuca, LLP;
 - b. Clayton Halunen of Halunen & Associates;
 - c. Charles Schaffer of Levin, Fishbein, Sedran & Berman; and
 - d. Michael McShane of Audet & Partners, LLP;
2. appointing Charles J. LaDuca of Cuneo Gilbert & LaDuca as Interim Lead
Counsel.

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Dated: April 7, 2011

Respectfully submitted,

/s Charles J. LaDuca
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***ATTORNEYS FOR PLAINTIFF CARLOS VAZQUEZ
AND THE PUTATIVE CLASS***

**UNITED STATES DISTRICT COURT
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himself and others similarly situated,

Plaintiff,

v.

GROUPON, INC., YMCA of the USA
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**MEMORANDUM OF LAW IN SUPPORT
OF PLAINTIFF’S MOTION FOR
APPOINTMENT OF INTERIM CLASS
COUNSEL**

Plaintiff Carlos Vazquez (“Plaintiff”) seeks the appointment of his choice of counsel, Cuneo Gilbert & LaDuca, LLP, as Interim Lead Counsel in this action and the law firms of Halunen & Associates; Levin, Fishbein, Sedran, & Berman; and Audet & Partners, LLP as Interim Class Counsel. Rule 23(g)(3) provides authority for this Court to “designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action.” The *Manual for Complex Litigation (Fourth)* recognizes that the appointment of counsel to serve as class counsel early in litigation may help to avoid wasting time and money, confusing and misdirecting the litigation, and burdening the court unnecessarily. *Manual for Complex Litigation (Fourth)* §10.22 (2004).

The primary duty of class or lead counsel is to fairly and adequately represent the interests of the class. *See* Fed. R. Civ. P. 23(g)(4). The need for early representation and direction is supported by the fact that there are currently at least ten lawsuits similar to this one pending throughout the United States. Of the ten cases on file, six are under the direction and control of the law firm of Robbins, Geller, Rudman & Dowd, LLP (“Robbins Geller”). The remaining four cases are led by undersigned counsel. The

Robbins Geller plaintiffs filed a motion with the Judicial Panel on Multidistrict Litigation (the “Panel”) to transfer and consolidate the cases in the Northern District of California. Declaration of Charles J. LaDuca (“Decl. LaDuca”), Ex. A. The remaining plaintiffs, including Plaintiff in this case, opposed transfer and consolidation but argued that if the Panel was inclined to grant the motion that the cases should be consolidated in the Northern District of Illinois, which is the home of Defendant Groupon and the center of gravity for this litigation. Decl. LaDuca at Ex. B. All Defendants supported consolidation but favored the Northern District of Illinois or the Southern District of California as the transferee district. Decl. LaDuca at Ex. C.

This case necessitates the immediate appointment of interim class counsel because undersigned counsel has learned that Defendant Groupon would like to expeditiously settle all claims on a nationwide basis. More importantly, Defendant Groupon has advised the undersigned counsel that they will not be included in settlement discussions, even though the claims of the class members before this Court would be released by a settlement.

Plaintiff’s counsel are also informed that Defendant Groupon may be attempting to reverse auction settlement, as evidenced by an e-mail sent by Groupon’s lawyer, Samuel Isaacson, to Plaintiff Vazquez’s lawyer, Clayton Halunen.¹ In the e-mail Groupon’s lawyer stated, “[h]opefully, Robbins Geller will not over-reach and the negotiations will result in a settlement satisfactory to everyone. If negotiations take a different course, you will be among the first to know.” Decl. LaDuca at Ex. D. Even if

¹ A reverse auction is a practice “whereby the defendant in a series of class actions picks the most ineffectual class lawyers to negotiate a settlement with in the hope that the district court will approve a weak settlement that will preclude other claims against the defendant.” *Reynolds v. Beneficial National Bank*, 288 F.3d 277, 282 (7th Cir. 2002).

Defendant Groupon is not attempting to engage in an exact reverse auction, it is nonetheless trying to settle Plaintiff's claims with one group of lawyers without the input and advice of the named Plaintiff in this action and his counsel. Defendant Groupon went so far as to say, if the company cannot settle with one group of lawyers, they will turn to the other group. Defendant Groupon's posture will likely have a severe negative effect on Plaintiff and the putative class as it allows Defendants to play plaintiffs off against one another with the goal of negotiating the most favorable terms to Defendants.

The appointment of interim lead counsel and interim class counsel in this case will provide the putative class effective counsel to advocate on behalf of absent class members to ensure that their rights are fairly and adequately represented. The undersigned counsel believe that the efficient resolution of this case—and all of the cases against Groupon—requires that each of the plaintiffs in the filed cases are represented during settlement discussions. Having counsel present during the mediation and negotiation process aids the courts' and the parties' goal of reaching a fair and efficient resolution. By contrast, the process in which Defendant Groupon is engaged, which likely means the Plaintiff before this Court will receive the settlement as a *fait accompli*, almost guarantees a process with unnecessary conflict and continued court proceedings which, as noted, would likely be entirely avoided if all counsel for all of the plaintiffs are present during the settlement negotiations.

When appointing interim class counsel, "courts generally look to the same factors used in determining the adequacy of class counsel under Rule 23(g)(1)(A)." *In re Municipal Der. Antitrust Litig.*, 252 F.R.D. 184, 186 (S.D.N.Y. 2008). As evidenced by each of the firm resumes, Plaintiff's choice of counsel has the skill and knowledge that

will enable them to prosecute this action effectively and expeditiously. Decl. LaDuca at Exs. E-H. The firms have spent several months investigating the claims in this litigation. Decl. LaDuca at ¶ 3. All firms have substantial experience in litigating complex class actions, and have great understanding of the applicable law. *Id.* at ¶¶ 4, 7–10. Finally, all firms have substantial resources to dedicate to the prosecution of this case. *Id.* at ¶ 5. The Court may be assured that by designating Plaintiff’s choice of counsel as Interim Lead Counsel and Interim Class Counsel for the action, the class will receive high-caliber legal representation.

For all of the forgoing reasons, Plaintiff Carlos Vazquez, respectfully requests that the Court appoint Cuneo Gilbert & LaDuca, Interim Lead Counsel and the law firms of Halunen & Associates, Levin, Fishbein, Sedran, & Berman, and Audet & Partners, LLP Interim Class Counsel pursuant to Fed. R. Civ. P. 23(g).

Dated: April 7, 2011

Respectfully submitted,

/s Charles J. LaDuca

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AND THE PUTATIVE CLASS***

Certificate of Service

I hereby certify that I served a copy of Plaintiff's Motion for Appointment of Interim Class Counsel and all accompanying documents through the Court's CM/ECF system upon all counsel registered with that system.

/s/ Charles J. LaDuca

Charles J. LaDuca