

**BEFORE THE JUDICIAL PANEL ON  
MULTIDISTRICT LITIGATION**

IN RE: GROUPON INC., MARKETING AND ) MDL No. 2238  
AND SALES PRACTICES LITIGATION )  
\_\_\_\_\_ )

**PLAINTIFFS JOHNSON, VAZQUEZ, CHRISTENSEN AND BATES'  
MEMORANDUM OF LAW IN OPPOSITION TO CONSOLIDATION UNDER  
28 U.S.C. § 1407, OR IN THE ALTERNATIVE FOR TRANSFER TO THE  
NORTHERN DISTRICT OF ILLINOIS**

**I. INTRODUCTION**

Plaintiffs Eli Johnson, Carlos Vazquez, Ashley Christensen and Jennifer Bates (collectively, "Plaintiffs")<sup>1</sup> hereby jointly submit this memorandum of law in opposition to the Motion of Plaintiffs Anthony Ferreira and Sarah Gosling<sup>2</sup> to Transfer Actions to the Northern District of California Pursuant to 28 U.S.C. § 1407 for Consolidated Pretrial Proceedings (MDL 2238, Doc. #1, 3/11/2011).

First, although there are ten (10) similar actions against defendant, Groupon, Inc. ("Groupon"), these actions are filed by just four (4) groups of plaintiffs' counsel, thereby obviating the necessity of consolidation and coordination pursuant to 28 U.S.C. § 1407.

<sup>1</sup> *Johnson v. Groupon, Inc.*, No. 11-cv-01426 (N.D. Ill. filed Mar. 1, 2011); *Vazquez v. Groupon, Inc.*, No. 11-cv-00495 (D.D.C. filed Mar. 8, 2011); *Christensen v. Groupon, Inc.*, No. 11-cv-00501 (D. Minn. filed Feb. 28, 2011); and *Bates v. Groupon, Inc.*, No. 11-cv-10556 (D. Mass. filed April 1, 2011).

<sup>2</sup> Plaintiffs Ferreira and Gosling are referred to hereinafter as "Moving Plaintiffs."

The limited number of truly independent attorney groups prosecuting these cases on behalf of their clients ensures that they will be able to work together effectively and efficiently to: 1) eliminate duplicative discovery; 2) conserve judicial resources; 3) eliminate the risk of competing classes or conflicting rulings; and 4) conserve the resources of the parties and their counsel.

Second, in the alternative, if the Judicial Panel on Multidistrict Litigation (the “Panel”) determines that coordination is appropriate, the Northern District of Illinois, Eastern Division (Chicago), is the most logical choice for consolidation because it is the center of gravity for the litigation. Defendant Groupon is headquartered in Chicago and, as a result, the majority of the relevant documents and witnesses are also in Chicago. Defendant’s pervasive use of an Illinois choice-of-law provision suggests Groupon also believes Chicago is a convenient forum. Likewise, the largest office of the firm apparently hired to represent Groupon, DLA Piper, is in Chicago. Chicago is a geographically centralized location for all counsel and plaintiffs.

Finally, although the Moving Plaintiffs want the Panel to give great weight to the fact that the first of these cases was filed at the end of January of 2011, the reality is that most of these cases were filed over the course of a five week period, with nine out of the ten being filed on or before March 9, 2011, and the final action on April 1, 2011. Unsurprisingly, and as the Moving Plaintiffs concede, not a single one of these cases can make a claim to any significant procedural development. In these circumstances, the authority cited by the Moving Plaintiffs to support the “first filed” argument hardly mandates that a MDL proceeding should be initiated in the Northern District of

California. More importantly, the District advocated by the Moving Plaintiffs is not even the first filed forum—the *Ferreira* action was filed first, in the Southern District of California.

## II. BACKGROUND

The central and overlapping allegation in the lawsuits identified in the Schedule of Actions is that Groupon issued, and continues to issue, gift certificates called “Groupons,” which contain expiration dates that are prohibited under both state and federal law. The Actions allege that Groupon systematically employed a practice of creating artificially abbreviated deadlines for redemption to reap significant financial benefits. The plaintiffs seek to certify classes of similarly situated individuals who have incurred damages as a result of purchasing Groupons with illegal expiration dates.

Each of the Actions allege substantially similar legal theories based on violations of 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.*, state consumer protection acts and the common law.

## III. ARGUMENT

### A. Consolidation And Coordination Pursuant To 28 U.S.C. § 1407 Is Unnecessary Because The Limited Number Of Counsel Can Adequately Coordinate The Relatively Few Pending Actions Independently

This is not a situation in which thousands of cases are being prosecuted by hundreds or even thousands of lawyers. *See, e.g., In re Diet Drugs*, 282 F.3d 220, 236 (3d Cir. 2002) (noting that parallel litigation poses a threat to the jurisdiction of a federal

court where thousands of cases are pending). In contrast, the cases currently pending are being prosecuted by no more than four groups of lawyers—most with multiple cases on file. This relatively small group of counsel and relatively few cases does not warrant consolidation and transfer pursuant to 28 U.S.C. § 1407.

This Panel has repeatedly pointed out that it is not necessary to order consolidation of litigation under 28 U.S.C. § 1407 for the parties to, “avail themselves of alternatives to Section 1407 transfer to minimize whatever possibilities there might be of duplicative discovery and/or pretrial rulings.” *See, e.g., In re Ambulatory Pain Pump-Chondrolysis Products Liability Litigation*, 709 F.Supp.2d 1375, 1377 (J.P.M.L. 2010). *See also In re Eli Lilly & Co. (Cephalexin Monohydrate) Patent Litigation*, 446 F.Supp. 242, 244 (J.P.M.L. 1978) (“notices for a particular deposition could be filed in all actions, thereby making the deposition applicable in each action; the parties could seek to agree upon a stipulation that any discovery relevant to more than one action may be used in all those actions; and any party could seek orders from the three courts directing the parties to coordinate their pretrial efforts.”) (citing *In re Commercial Lighting Products, Inc. Contract Litigation*, 415 F.Supp. 392, 393 (J.P.M.L. 1976).

Here, the very manageable number of lawyers and cases militates against coordination and transfer. Counsel can independently negotiate and agree upon a method for coordinating the Actions. The issues raised by the Actions are fairly straightforward and will not require a substantial amount of discovery, making coordination without transfer pursuant to § 1407 all the more viable.

**B. In The Alternative, If The Panel Determines That Consolidation And Coordination Pursuant To 28 U.S.C. § 1407 Is Appropriate, The Northern District Of Illinois Is The Most Appropriate District**

**1. Evidence, Counsel, Parties And Witnesses Are Located In The Northern District Of Illinois**

The transferee court's proximity to the evidence, parties, and witnesses is an important factor in selecting a transferee court. *See, e.g., In re Dow Chemical Co. Sarabond Products Liability Litigation*, 650 F. Supp. 187, 189 (J.P.M.L. 1986); *In re Upjohn Co. Antibiotic "Cleocin" Products Liability Litigation*, 450 F. Supp. 1168, 1170-1171 (J.P.M.L. 1978).

According to Groupon's website, the company was launched in November 2008 in Chicago, IL. The website also indicates that the Chicago headquarters of Groupon has nearly 1,500 employees.<sup>3</sup> In contrast, press reports indicate that Groupon's Palo Alto, CA office—a central focus of Moving Plaintiffs' motion—had only 25 employees as of December 2010.<sup>4</sup> The witnesses and evidence relevant to the claims in the Actions have a much stronger nexus to Chicago than to any other city in the United States. In addition, Plaintiff Johnson is located in Chicago, IL. And Groupon's counsel, DLA Piper, maintains its largest office in the United States in Chicago, IL.

**2. The Northern District Of Illinois Is Convenient And Accessible**

There are currently actions pending in California, Florida, Chicago, Minnesota, Massachusetts, Ohio and the District of Columbia. Chicago is a far more centralized geographically for coordination of these proceedings than the Northern District of

<sup>3</sup> Available at: <http://www.groupon.com/about> (last accessed April 4, 2011).

<sup>4</sup> *Groupon opens Palo Alto office, acquires Ludic*, Daily Herald, December 1, 2010, at <http://www.dailyherald.com/article/20101201/business/712029967/> (last accessed April 4, 2011).

California. In addition, like the San Francisco Bay Area, for some years now people travelling to and from Chicago have enjoyed access to nearby major airports. The Panel has recognized that the Northern District of Illinois, Eastern Division, is located in an easily accessible metropolitan area. *See In re Crash Over Makassar Strait, Sulawesi, Indonesia, on Jan. 1, 2007*, MDL No. 2037, 2009 WL 1740571, at \*1 (J.P.M.L. June 17, 2009); *In re Multidist. Litig. Involving Butterfield Patent Infringement*, 328 F.Supp. 513, 515 (J.P.M.L. 1970).

**3. Judge Shadur In the Northern District of Illinois Is Better Situated At This Time To Handle The Demands Of A Consolidated Proceeding**

A forum with fewer pending MDL proceedings is generally a more efficient forum than one with a large number of multidistrict cases. *In re Corn Derivatives Antitrust Litig.*, 486 F. Supp. 929, 932 (J.P.M.L. 1980). Judge Milton I. Shadur has served with distinction as a Judge on the United States District Court for the Northern District of Illinois for over 30 years and currently does not have any MDL cases pending before him. On the other hand, Judge Charles R. Breyer, of the United States District Court for the Northern District of California is currently overseeing four MDL proceedings. While Plaintiffs do not question the ability of Judge Breyer to handle a fifth MDL matter, Plaintiffs simply believe that Judge Shadur, at present, is better situated to handle these Actions.

Additionally, the Northern District of Illinois has the resources to manage complex litigation, and the capacity to absorb all of the pending tag-along actions. The average

time from filing to disposition for a civil case in the Northern District of Illinois is 6.2 months, but the Northern District of California takes 9.8 months to dispose of a civil case.

#### IV. CONCLUSION

For the foregoing reasons Plaintiffs respectfully request that the Panel deny the pending motion. In the alternative, Plaintiffs respectfully request that the Panel transfer the Actions to the Northern District of Illinois pursuant to 28 U.S.C § 1407, and that all related individual or class actions be transferred thereto as tag-along actions.

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Respectfully submitted,

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