

**BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

In re Groupon Marketing and Sales Practices Litigation

MDL No. 2238

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**RESPONSE OF DEFENDANTS GROUPON, INC.; NORDSTROM, INC.; FUN TIME, LLC *dba* WHEEL FUN RENTALS; WHIRLY WEST, INC. *dba* WHIRLYBALL; AND YMCA OF THE USA, TO MOTION OF PLAINTIFFS ANTHONY FERREIRA AND SARAH GOSLING FOR TRANSFER OF ACTIONS PURSUANT TO 28 U.S.C. § 1407**

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Pursuant to 28 U.S.C. § 1407 and Rule 6.1(c) of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, Defendants Groupon, Inc. (“Groupon”); Nordstrom, Inc (“Nordstrom”); Fun Time LLC *dba* Wheel Fun Rentals (“Fun Time”); Whirly West Inc. *dba* WhirlyBall (“Whirly West”); and YMCA of the USA (“YMCA”) (collectively, “Defendants”), respectfully submit this Response to the Motion of Plaintiffs Anthony Ferreira and Sarah Gosling to Transfer the Actions to the Northern District of California Pursuant to 28 U.S.C. § 1407 for Consolidated Pretrial Proceeding (“Plaintiffs’ Motion”). This Response is made solely for the purpose of determining whether transfer and coordination or consolidation should take place and nothing herein shall be construed as an acknowledgement that any of the putative classes alleged in the various complaints

should be certified under Federal Rule of Civil Procedure 23. In support of this Response, Defendants submit the accompanying Memorandum of Law, the Declaration of Shirli Fabbri Weiss and exhibits attached thereto.

As to the averments made in Plaintiffs Ferreira's and Gosling's Motion, Defendants state as follows:

1. Defendants admit that there are at least nine federal putative class actions for which Movants propose transfer and coordination or consolidation and that each action challenges the sale of Groupon vouchers ("Groupon Vouchers") allegedly containing expiration dates and allegedly deceptive terms. Defendants deny that any deceptive terms whatsoever were included in Groupon Vouchers.
2. Defendants admit that the actions for which Movants propose transfer and coordination or consolidation make allegations sufficiently similar to justify transfer and coordination or consolidation.
3. Defendants admit that the actions for which Movants propose transfer and coordination or consolidation will involve some evidence common to all the actions. Defendants deny that any evidence will show that they failed to comply with any laws.
4. Defendants admit that the actions for which Movants propose transfer and coordination or consolidation assert claims for violation of the federal Credit Card Accountability Responsibility and Disclosure Act ("CARD Act") and Electronic Funds Transfer Act ("EFTA"), as well as violations of state consumer protection laws.

5. Defendants admit that transfer of these actions to a single judicial district for coordinated or consolidated pretrial proceedings is necessary to eliminate duplicative discovery and conserve the resources of the parties, their counsel and the judiciary.
6. Defendants deny that the Northern District of California, Honorable Charles R. Breyer, is the most appropriate forum for transfer on the purported ground that Plaintiff Ferreira, who was plaintiff in the first-filed action and who initially selected the Southern District of California as the forum for his action, has changed his mind and now supports a different forum. As more fully explained in Defendants' supporting Memorandum of Law, Movants' requested venue, the Northern District of California, is home to the fifth and sixth-filed cases, and Movants' request merely reflects their attempt at forum shopping. Defendants urge instead that deference be accorded to the venue of the first-filed and most procedurally advanced case, *Ferreira v. Groupon, Inc.*, i.e., the Southern District of California, or in the alternative the centrally located venue where defendant Groupon, the only defendant named in all of the actions, is headquartered, i.e., the Northern District of Illinois.
7. Defendants admit that there are two cases pending in the Northern District of California, and that the three cases pending in the Southern District and Northern District of California combined constitute more cases than are pending in any other state. Defendants deny that transfer to the Northern District of California is appropriate because the Northern District of

California has considerably more pending cases than the Southern District of California and a median time to disposition of 9.8 months for civil cases, compared to 6.0 months in the Southern District of California. The Northern District of California also has twenty-four MDL proceedings with over 1100 cases pending and only fourteen judges to handle the case load, whereas the Southern District of California has four MDL proceedings with 155 cases pending and thirteen judges to distribute the caseload. Moreover, The Honorable Charles R. Breyer, whom Movants request preside over the actions, currently has more MDL proceedings assigned to him than any other judge in the United States with four pending MDL proceedings that include over 500 cases, whereas the Honorable Dana M. Sabraw in the Southern District of California has one MDL proceeding with five cases pending.

8. Defendants admit that Groupon does business in and derives revenue from California. Defendants deny that Groupon has headquarters in the Northern District of California. Groupon's headquarters are located in Chicago, Illinois. Defendants also deny that Groupon's physical presence in the Northern District of California will facilitate discovery. Groupon's office presence in Northern California is of no consequence to any convenience factors in this litigation and is not expected to facilitate either document or witness discovery.
9. Defendants admit that Groupon's counsel, DLA Piper LLP (US), has offices in both the Northern District of California and the Southern District of

California, as does Movants' counsel. Defendants aver that Defendants' lead counsel and Movants' lead counsel are based in San Diego, in the Southern District of California.

10. Defendants admit that the courts of the Northern District of California are accessible and located near multiple airports. Defendants aver that the courts of the Southern District of California are accessible to a major international airport in San Diego and that the airport in San Diego is a mere three miles from the courts of the Southern District of California.
11. Defendants admit that Judge Breyer has significant experience with complex litigation and MDL proceedings and is well-qualified to handle MDL proceedings. However, Defendants aver that Judge Breyer currently has more MDL proceedings assigned to him than any other judge in the United States with four pending MDL proceedings that include over 500 cases. By comparison, Judge Sabraw in the Southern District of California has one MDL proceeding with five cases pending. The Northern District of California also has considerably more pending cases than the Southern District of California and a median time to disposition of 9.8 months for civil cases, compared to 6.0 months in the Southern District of California. The Northern District of California has twenty-four MDL proceedings with over 1100 cases pending and only fourteen judgeships to handle the case load, whereas the Southern District of California has four MDL proceedings with 155 cases pending and thirteen judgeships to distribute the caseload.

In addition to these responses to Movants' averments, Defendants state as follows:

1. The Southern District of California is the most appropriate forum for transfer.
2. The first-filed and most advanced case was filed and is pending in the Southern District of California.
3. Judge Sabraw, who presides over the *Ferreira v. Groupon, Inc.* case in the Southern District of California, has considerable experience presiding over consumer protection class actions and has presided over MDL litigation.
4. The Southern District of California has among the lowest number of cases and median time interval to disposition of cases, and the fewest number of MDL proceedings of all of the jurisdictions in which cases against Defendants are currently pending.
5. Counsel for Defendants and counsel for plaintiffs in five of the nine pending cases are located in San Diego in close proximity to the courthouse for the Southern District of California.
6. San Diego is convenient and accessible, with a major international airport located only a few minutes by automobile from the Southern District of California courthouse — a courthouse closer to a major airport than is the case in any other venue in which these actions are pending.
7. In the alternative, Defendants submit that the Northern District of Illinois would serve as an appropriate transferee forum.

8. The Northern District of Illinois is centrally located to cases that span both coasts.
9. Defendant Groupon's headquarters, and most of the relevant documents and witnesses, are believed to be in the Northern District of Illinois.
10. The Northern District of Illinois has comparable docket statistics regarding time to disposition as other jurisdictions.
11. Transfer to the Northern District of Illinois would also allow for easier coordination with state court proceedings in which allegations similar to those made in the federal court cases have been made.

WHEREFORE, Defendants respectfully move the Panel to issue an Order (a) transferring to a single district—specifically, the Southern District of California or, in the alternative, the Northern District of Illinois—the nine known pending putative class actions as well as any cases that may be subsequently filed asserting similar or related claims and (b) coordinating or consolidating those actions for pretrial proceedings. Defendants respectfully request such Order from the Panel for the reasons stated herein and in the accompanying Memorandum of Law.

Dated: April 4, 2011

Respectfully submitted,

/s/ Shirli F. Weiss

Shirli F. Weiss  
shirli.weiss@dlapiper.com  
Christopher M. Young  
christopher.young@dlapiper.com  
Noah A. Katsell  
noah.katsell@dlapiper.com  
DLA Piper LLP (US)  
401 B Street, Suite 1700  
San Diego, CA 92128

Telephone: (619) 699-2700

Facsimile: (619) 699-2701

*Counsel for Defendants Groupon, Inc.,  
Nordstrom, Inc., Fun Time LLC dba Wheel  
Fun Rentals, Whirly West Inc. dba  
WhirlyBall, and YMCA of the USA*

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