

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

HITENDRA PATEL

Plaintiff

- and -

GROUPON INC.

Defendant

Proceeding under the *Class Proceedings Act, 1992*

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$25,000 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed

AMENDED THIS
MODIFIÉ CE
RULE/LA RÉGLE 28.02
THE ORDER OF
L'ORDONNANCE DU
DATED / FAIT LE
REGISTRAR
SUPERIOR COURT OF JUSTICE
Feb 26, 2013
PURSUANT TO
CONFORMÉMENT A.
b
(M. Benton)

by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400.00 for costs and have the costs assessed by the court.

Date ^{June 15, 2011} June 15, 2011
~~February, 2013~~

Issued by M. Brenton
Local registrar

Address of court office 393 University Avenue
10th Floor
Toronto, ON M5G 1E6

TO: GROUPON INC.
600 W Chicago Avenue, Suite 620
Chicago, IL
60654

CLAIM

1. The plaintiff claims:

- a) an order certifying this action as a class proceeding and appointing the plaintiff as the representative of a class to be certified by the court;
- b) general damages in the sum of \$100,000,000;
- c) an order, pursuant to s. 24 of the *Class Proceedings Act, 1992*, directing an aggregate assessment of damages;
- d) an order, pursuant to s. 23 of the *Class Proceedings Act, 1992*, admitting into evidence statistical information;
- e) an order that the damages be paid by the defendant Groupon Inc. ("Groupon") into a common fund and distributed to the Class Members in an appropriate manner as directed by the Court;
- f) a declaration that Groupon has engaged in unfair practices under the *Consumer Protection Act, 2002*, S.O. 2002, c. 30 ("*CPA*") and has violated other consumer protection legislation across Canada in respect of:
 - i. the expiry date provisions in its contracts with consumers;
 - ii. the partial redemption provisions in its contracts with consumers;
 - iii. Groupon's representations to consumers about the expiry date provisions in its contracts;

- iv. Groupon's representations to consumers about the partial redemption provisions in its contracts;
 - v. Groupon's ambiguous, misleading, deceptive and unclear contractual terms; and
 - vi. Groupon's inequitable and unconscionable contractual terms.
- g) a mandatory injunction restraining Groupon from enforcing or relying on its illegal contractual terms and representations, and a mandatory injunction restraining Groupon from carrying on such unfair practices in the future;
- h) a declaration that Groupon charged or received illegal fees or payments contrary to the *CPA and other consumer protection legislation across Canada* as a result of:
- i. the expiry date provisions in its contracts with consumers; and
 - ii. the partial redemption provisions in its contracts with consumers;
- i) a mandatory injunction restraining Groupon from charging or receiving its illegal fees or payments in the future;
- j) a declaration waiving the notice provisions of the *CPA and other consumer protection legislation across Canada*;
- k) punitive damages in the sum of \$10,000,000;
- l) pre-judgment and post-judgment interest;

- m) the costs of this action on a substantial indemnity basis;
- n) the costs of administering the plan of distribution of the recovery in this action;
and
- o) such further and other relief as may be required and as this Honourable Court deems to be just.

THE PARTIES

- 2. The plaintiff Hitendra Patel lives in Toronto, Ontario.
- 3. The defendant, Groupon is incorporated pursuant to the laws of Illinois and has its head office in Chicago, Illinois. Groupon operates in nine cities in Ontario, including Barrie, Kingston, Kitchener-Waterloo, London, Ottawa, St. Catherine's, Sudbury, Toronto, and Windsor. Groupon also operates across Canada including in Calgary, Alberta; Edmonton, Alberta; Abbotsford, British Columbia; Kelowna, British Columbia; Vancouver, British Columbia; Victoria, British Columbia; Winnipeg, Manitoba; St. John's, Newfoundland; Cape Breton, Nova Scotia; Halifax, Nova Scotia; Drummondville, Québec; Gatineau, Québec; Granby-Bromont, Québec; Laurentides, Québec; Laval, Québec; Levis, Québec; Montreal, Québec; Québec, Québec; Rive-Nord Montreal, Québec; Rive-Sud Montreal, Québec; Saguenay, Québec; Saint-Jean-Sur-Richelieu, Québec; Saint-Jerome, Québec; Sherbrooke, Québec; Terrebonne, Québec; Trois-Riveres, Québec; Regina, Saskatchewan; Saskatoon, Saskatchewan.

THE CLASS

- 4. The plaintiff brings this action on his own behalf and on behalf of all consumers in ~~Ontario~~Canada who purchased or acquired a ~~gift card~~daily deals voucher from Groupon, also known as a "groupon," for services and products, ~~prior to the date that notice of certification in~~

this action is given prior to or on the date that the Court approves notice of the certification and settlement approval hearing in the proposed class proceeding (the "class" or "class members").

THE PLAINTIFF'S CIRCUMSTANCES

5. Sometime in or around the fall of 2010, the plaintiff purchased agroupon through the Groupon website. Thegroupon was redeemable at the Gap, a major clothing retailer with locations across ~~Ontario~~Canada. The plaintiff paid \$25 for thegroupon, which had a face value of \$50. Thegroupon expired on November 19, 2010.

6. The plaintiff attempted to use thegroupon while shopping with his spouse at a Gap location in Toronto in or about late November 2010, shortly after the expiry date of thegroupon. However, he was unable to redeem hisgroupon for either the face value or the purchase price.

GROUPON BUSINESS MODEL

7. Groupon is a web-based deal-of-the-day company, which sells vouchers (“groupons”) that can be used towards the purchase of goods or services at participating local or national merchants. In exchange for paying the purchase price, the consumer obtains agroupon that can be redeemed for a greater value of goods and services from the merchant (the face value), thereby achieving a “deal.”

8. Groupon’s “daily deals” are offered for a limited period of time, usually only for approximately one day. The webpage displaying the daily deal has a clock counting down the time left to acquire the deal, and an image of an hourglass.

9. Consumers purchase the groupons directly through Groupon’s website, or through a Groupon mobile phone application downloaded from Groupon’s website. Once Groupon sells a

certain volume of vouchers, the deal is “on” and the consumers are charged for the purchase. If enough people do not sign up, no one gets the deal. Groupon sends “successful” purchasers an email with a link to its website through which purchasers may download and print their groupons. Consumers can redeem their groupon by presenting the printed groupon or the image of their voucher on their mobile phone to the merchant.

10. When consumers fail to redeem their vouchers with the participating merchant, Groupon receives a windfall.

VARIOUS SOURCES OF GROUPON TERMS AND CONDITIONS

11. The daily deal is presented on a webpage (the “deal webpage”) which includes a brief description of the terms of the deal, including the purchase price and face value of the groupon, along with the expiry date of the groupon. Other than stating the expiry date, no further information about the expiry date is provided, and the page provides no information about partial redemptions.

12. The deal webpage includes a link “See the rules that apply to all deals,” that takes the consumer to a webpage entitled “Universal Fine Print and Deal FAQ” (the “Fine Print webpage”). The Fine Print webpage provides very limited information about groupons, as set out below.

13. The deal webpage also includes, at the very bottom of the page, a link to the Groupon “Terms of Service.” The Terms of Service include information about the expiry and partial redemption provisions, as set out below.

14. The deal webpage also includes, at the very bottom of the page, a link to “FAQ,” which

provides questions and answers about groupons, including information about the expiry and partial redemption provisions, as set out below.

15. The groupon itself contains some information under the heading "Legal stuff we're required to say," in practically illegible tiny font at the bottom of the groupon, including information about the expiry and partial redemption provisions, as set out below. The section "Legal stuff we're required to say" is available only after the consumer has purchased the groupon and downloaded the groupon for printing. Furthermore, the use of the flippant phrase "Legal stuff we're required to say" suggests to consumers that it is not important to take the time to actually read the section, and is intended to mislead consumers by dissuading them from reading information concerning their rights.

16. Taken together, the deal webpage, the Fine Print webpage, the Terms of Service, the FAQ, and the groupon itself constitute the agreement between the consumer and Groupon (the "Groupon Terms and Conditions").

AMBIGUOUS, MISLEADING, AND UNCLEAR GROUPON TERMS

17. The combined effect of the Groupon Terms and Conditions is to confuse and mislead consumers as to the material facts and terms in respect of groupons, specifically the expiry date and partial redemption provisions, as set out further below. The Groupon Terms and Conditions are misleading, deceptive, ambiguous, contradictory and confusing to the point of providing no useful information whatsoever, as set out further below. As a result of Groupon's use of ambiguous, misleading, and unclear Terms and Conditions, consumers are not informed of, and cannot exercise, their rights.

GROUPON EXPIRY DATES

18. Groupon promotes and sells groupons with relatively short expiration dates knowing that many consumers will likely not use the groupons prior to the expiration dates.

19. The deal webpage displays an expiry date of the groupon which communicates to consumers the message that it is not possible to redeem the groupon after the expiry date.

20. The Fine Print webpage provides no information about the expiry date whatsoever.

21. The FAQ states that, following the expiry date, the groupon loses its “promotional value,” and can only be redeemed for the purchase price, and only for “the length of time stated by gift certificate laws in your state.” No mention of Provincial law is made.

22. The Terms of Service state that the merchant “may” be responsible for allowing the consumer to redeem the groupon “for a period of time that extends beyond the expiration date” but only for the purchase price of the groupon, not the face value of the groupon. The Terms of Service further state that Groupon has “instructed the Merchant” to allow redemption for the purchase price if the law requires it to do so. Groupon indicates that it will reimburse the consumer for the purchase price if the merchant refuses to do so “if applicable law entitles you to such redemption.”

23. The section “Legal Stuff We’re Required to Say” at the bottom of the groupon specifies that if the “promotional offer” has expired, the merchant “may,” depending on “applicable law,” allow the consumer to redeem the purchase price of the groupon. If the merchant has refused, Groupon will compensate the consumer for the purchase price of the groupon “if applicable law entitles you to such redemption.”

24. The section “Legal Stuff We’re Required to Say” on the groupon itself further specifies that, beyond the expiry date, the groupon will have redemption value equal to the purchase price “for the period specified by applicable law.”

25. Groupon does not advise consumers that there is applicable law in ~~Ontario~~Canada or the terms of the “applicable law” in ~~Ontario~~Canada. Nor does it advise ~~Ontario~~Canada consumers whether and to what extent they can redeem groupons following their expiry, or otherwise obtain compensation directly from Groupon.

26. Nothing in the Groupon Terms and Conditions appears to allow the consumer to redeem the face value of the groupon following the expiry date or obtain compensation directly from Groupon for the face value of the groupon following the expiry date.

27. After a purchased groupon has passed the expiry date, consumers can still view the expired groupon in their Groupon account, where their groupons are organized in the following folders, which are labelled: available, used, and expired. The presentation of the folders suggests to the consumer that her “expired” groupons cannot be used at all.

28. As a result of the form and substance of Groupon’s Terms and Conditions, many consumers believe that they cannot redeem their expired groupon, and do not attempt to redeem their expired groupon. Furthermore, when consumers do attempt to redeem their expired groupons, they are often unable to redeem the face value of the groupon. When this occurs, many consumers do not seek further redress from the merchant or Groupon because they have been led to believe, as a result of the form and substance of Groupon’s Terms and Conditions, that they cannot obtain any redemption or compensation with respect to an expired groupon.

29. When consumers do not use their expiredgroupon, Groupon receives a windfall.

GROUPON PARTIAL REDEMPTION POLICY

30. Groupon only allows consumers to redeem the entire face value of thegroupon in one transaction, and requires consumers to forego the leftover portion of the face value of thegroupon.

31. The deal webpage provides consumers with no information whatsoever about Groupon's partial redemption policy.

32. The Fine Print webpage states, "Not valid for cash back (unless required by law)" and "Must use in one visit." The Fine Print webpage implies that the consumer loses the value of any portion of thegroupon not used on the first redemption.

33. The FAQ states that "unless otherwise stated" if a consumer does not use the full value of the Groupon in one visit, the consumer cannot use the remaininggroupon value in a subsequent transaction, or receive store credit or cash back.

34. With respect to the partial redemption policy, the Terms of Service are exceptionally unclear:

If you redeem the Voucher for less than its face value, you will only be entitled to a credit or cash equal to the difference between the face value and the amount you redeemed from the Merchant if required by law. You will only be entitled to a continuing redemption value as noted above if the amount that you paid for the Voucher exceeds the amount you redeemed. For example, if you paid \$20 for a Voucher which entitles you to purchase \$50 of product by February 1, 2010 and you make a purchase for \$40 on January 30, 2010, you will only be entitled to a credit or cash equal to the difference between the \$50 face value and the amount you redeemed from the Merchant (i.e., \$10) if required by applicable law. You will

not have any redemption value either because the amount you redeemed is more than what you paid for the Voucher.

35. The Terms of Service are incomprehensible. They state that if a consumer redeems thegroupon for less than the purchase price, “where required by law,” the consumer may obtain “credit or cash” equal to the difference between the face value and the amount the consumer redeemed. The Terms of Service next introduce a new phrase, “continuing redemption value,” which is stated to be “noted above,” although that phrase appears nowhere else in the Terms of Service, and the Terms of Service add that the consumer will only be entitled to this “continuing redemption value” where the consumer redeemed thegroupon for less than the purchase price. The Terms of Service employ an example in which a consumer pays \$20 for agroupon with a face value of \$50 and makes a \$40 purchase. In such a situation, the Terms of Service provide that the consumer will only be entitled to “a cash or credit” of the difference between the amount redeemed and the face value (\$10) “if required by applicable law.” Most confusingly, the Terms of Service go on to state that “you will not have any redemption value either” – which seems to imply that cash or credit is something different from a “redemption value.”

36. The section “Legal Stuff We’re Required to Say” at the bottom of thegroupon states that the consumer will only be entitled to a credit or cash equal to the difference between the face value and the amount redeemed “if applicable law requires it.” The section “Legal Stuff We’re Required to Say” also explains that if the consumer partially redeems thegroupon, the consumer will only be entitled to a redemption value equal to the difference between the partial redemption and the purchase price rather than the difference between the partial redemption and the face value.

37. The form and substance of Groupon's Terms and Conditions lead many consumers believe that they cannot redeem the remainder of their partially-redeemed groupons. As a result, many consumers do not attempt to do so. Furthermore, when some consumers do attempt to redeem their partially-redeemed groupons, they are often unable to redeem the remaining face value of the groupon. When this occurs, many consumers do not seek further redress from the merchant or Groupon because, as a result of the form and substance of Groupon's Terms and Conditions, they do not believe they can obtain any further redemption or compensation with respect to a partially-redeemed groupon, or are confused about their rights.

APPLICATION OF CONSUMER PROTECTION ACT, 2002 AND OTHER CONSUMER PROTECTION LEGISLATION ACROSS CANADA

38. Groupon has violated various legislation in force across Canada, in relation to Groupon's representations, statements, and terms and conditions in selling and providing Groupon vouchers, including as set out below.

39. ~~38.~~—The plaintiff is a “consumer” within the meaning of the *Consumer Protection Act, 2002*, SO 2002, c. 30, Sch A (“CPA”).

40. ~~39.~~—The agreement between class members and Groupon, which is comprised of Groupon Terms and Conditions (as defined above), is a “consumer agreement” within the meaning of the CPA.

41. ~~40.~~—Groupon is a “supplier” within the meaning of the CPA.

42. ~~41.~~—Individual groupons are “future performance agreements” within the meaning of the CPA.

43. 42.—To the extent that the Groupon Terms of Service purport to require consumers to arbitrate their disputes, and purport to override the applicability of Ontario and Canadian law, and purport to restrict the ability of consumers to bring or participate in a civil action or a class proceeding, those Terms of Service are illegal and unenforceable. The plaintiff pleads and relies on sections 2, 7 and 8 of the *CPA*.

44. 43.—A groupon is a “gift card” within the meaning of *O. Reg. 17/05*.

45. 44.—The agreement between class members and Groupon, which is comprised of the Groupon Terms and Conditions (as defined above), is a “gift card agreement” within the meaning of *O. Reg. 17/05*.

46. 45.—Groupon has conceded that groupons are gift cards within the meaning of the *CPA*. In particular, the FAQ webpage states that “you can still redeem it [the groupon] at the price you paid for length of time stated by gift certificate laws in your state” (emphasis added).

47. 46.—The expiry of the face value of the groupon (in whole or in part) is illegal and contrary to section 25.3(1) of *O. Reg. 17/05*, and constitutes an “unfair practice” within the meaning of the *CPA*.

48. 47.—Groupon creates confusion and ambiguity, and misleads and deceives consumers in relation to the existence or effect of groupon expiry dates, as set out above, which is an “unfair practice” within the meaning of the *CPA*.

49. 48.—Groupon creates confusion and ambiguity, and misleads and deceives consumers in relation to the existence or effect of the Groupon partial redemption policy, as set out above, which is an “unfair practice” within the meaning of the *CPA*.

50. ~~49.~~—The gift card agreement between Groupon and class members is confusing, ambiguous as to material facts, and misleads and deceives consumers as to material facts, as set out above, and accordingly, violates section 25.5 of *O. Reg. 17/05*, and constitutes an “unfair practice” within the meaning of the *CPA*.

51. ~~50.~~—The terms of the gift card agreement between Groupon and class members are adverse to the consumer and inequitable. Accordingly, the gift card agreement is an “unconscionable representation” and an “unfair practice” within the meaning of the *CPA*.

52. ~~51.~~—The plaintiff pleads that expired or partially redeemed groupons result in Groupon charging fees or receiving payments from consumers which are illegal and contrary to section 25.4(1)(b) of *O. Reg. 17/05*, and 98 of the *CPA*, and constitute an “unfair practice” within the meaning of the *CPA*.

53. ~~52.~~—The plaintiff pleads and relies on: (a) sections 1, 11, 14, 15, 17, 18, 22, 98, 100 and 101 of the *CPA*, and (b) all other applicable legislation throughout Canada.

54. ~~53.~~—The plaintiff pleads and relies on sections 23, 25.1, 25.3, 25.4, and 25.5 of *O. Reg. 17/05*. ~~section 56.2~~

55. Alberta class members are “consumers” within the meaning of the *Fair Trading Act*, RSA 2000, C. F-2 (“*FTA*”). Groupon is a “supplier” within the meaning of the *FTA*. A groupon is a “prepaid purchase card” within the meaning of *Reg. 146/2008*. The expiry of groupons is contrary to sections 2 and 4 of *Reg. 146/2008*, and is an “unfair practice” within the meaning of section 6 of the *FTA*. Groupon misleads consumers and creates confusion and ambiguity in relation to the existence or effect of the expiry date and partial redemption policies, contrary to

section 6 of the FTA and section 5 of Reg. 146/2008. The expiry date and partial redemption policies result in Groupon charging or receiving fees or payments contrary to sections 3 and 4 of Reg. 146/2008, and is also an “unfair practice” within the meaning of section 6 of the FTA.

56. British Columbia class members are “consumers” within the meaning of the Business Practices and Consumer Protection Act, SBC 2004, c 2, Part 4.1 (“BPCPA”). Groupon is a “supplier” within the meaning of the BPCPA. A groupon is a “prepaid purchase card” within the meaning of section 56.1 of the BPCPA. The expiry of groupons is contrary to section 56.2 of the BPCPA and section 2 of Reg 292/2008, and is an “unfair practice” within the meaning of sections 4, 5, and 8 of the BPCPA. Groupon misleads consumers and creates confusion and ambiguity in relation to the existence or effect of the expiry date and partial redemption policies, contrary to sections 4-9 and 56.4 of the BPCPA and section 4 of Reg. 292/2008. The expiry date and partial redemption policies result in Groupon charging or receiving fees or payments contrary to section 56.3 of the BPCPA and section 3 of Reg. 292/2008, and is also an “unfair practice” within the meaning of sections 4, 5, and 8 .

57. Saskatchewan class members are “consumers” within the meaning of The Consumer Protection Act, SS 1996, c C-30.1 (“Saskatchewan CPA”). Groupon is a “supplier” within the meaning of the Saskatchewan CPA. A groupon is a “prepaid purchase card” within the meaning of section 11 of the Consumer Protection Regulations, 2007, RRS c C-30.1 Reg 2. The expiry of groupons is contrary to section 77.13 of the Saskatchewan CPA, and sections 40.1 and 40.2 of the Consumer Protection Regulations, 2007, RRS c C-30.1 Reg 2, and is an “unfair practice” within the meaning of sections 5-8 of the Saskatchewan CPA. The partial redemption policy is contrary to section 40.2 of the Consumer Protection Regulations, 2007, RRS c C-30.1 Reg 2. Groupon misleads consumers and creates confusion and ambiguity in relation to the existence or

effect of the expiry date and partial redemption policies, contrary to section 40.4 of the Consumer Protection Regulations, 2007, RRS c C-30.1 Reg 2. The expiry date and partial redemption policies result in Groupon charging or receiving fees or payments contrary to section 77.15 of the Saskatchewan CPA and section 40.2 of the Consumer Protection Regulations, 2007, RRS c C-30.1 Reg 2, and is also an “unfair practice” within the meaning of sections 5-8 of the Saskatchewan CPA.

58. Manitoba class members are “consumers” within the meaning of the Consumer Protection Act, CCSM c C200 (the “Manitoba CPA”). Groupon is a “supplier” within the meaning of the Manitoba CPA. A groupon is a “prepaid purchase card” within the meaning of section 170 of the Manitoba CPA. The expiry of groupons is contrary to section 171 of the Manitoba CPA and section 4 of Reg 98/2007. The partial redemption policy is contrary to section 171 of the Manitoba CPA. Groupon misleads consumers and creates confusion and ambiguity in relation to the existence or effect of the expiry date and partial redemption policies, contrary to section 3 of Reg 98/2007. The expiry date and partial redemption policies result in Groupon charging or receiving fees or payments contrary to section 2 of Reg 98/2007.

59. Québec class members are “consumers” within the meaning of the Consumer Protection Act, RSQ, c P-40.1 (the “Québec CPA”). Groupon is a “merchant” within the meaning of the Québec CPA. A groupon is a “prepaid card” within the meaning of section 187.1 of the Québec CPA. The expiry of groupons is contrary to section 187.3 of the Québec CPA. The partial redemption policy is contrary to sections 187.3 and 187.5 of the Québec CPA. Groupon misleads consumers and creates confusion and ambiguity in relation to the existence or effect of the expiry date and partial redemption policies, contrary to section 187.2 and section 228 of the Québec

CPA. The expiry date and partial redemption policies result in Groupon charging or receiving fees or payments contrary to section 187.4 of the Québec CPA.

60. Newfoundland class members are “consumers” within the meaning of the Consumer Protection and Business Practices Act, SNL 2009, c C-31.1 (“CPBPA”). Groupon is a “supplier” within the meaning of the CPBPA and NLR 14/11. A groupon is a “gift card” within the meaning of section 2 of the NLR 14/11. The expiry of groupons is contrary to section 3 of NLR 14/11. Groupon misleads consumers and creates confusion and ambiguity in relation to the existence or effect of the expiry date and partial redemption policies, contrary to section 7 of the NLR 14/11. The expiry date and partial redemption policies result in Groupon charging or receiving fees or payments contrary to section 5 of NLR 14/11, and are unfair practices within the meaning of sections 7-8 of the CPBPA.

61. Nova Scotia class members are “consumers” within the meaning of the Consumer Protection Act, RSNS 1989, c 92 (“Nova Scotia CPA”). Groupon is a “supplier” within the meaning of the Nova Scotia CPA and section 2 of Reg 325/2009. A groupon is a “gift card” within the meaning of section 2 of Reg 325/2009. The expiry of groupons is contrary to sections 3-4 of Reg 325/2009. Groupon misleads consumers and creates confusion and ambiguity in relation to the existence or effect of the expiry date and partial redemption policies, contrary to section 7 of Reg 325/2009. The expiry date and partial redemption policies result in Groupon charging or receiving fees or payments contrary to section 5.

BREACH OF CONTRACT

62. ~~54.~~ When a consumer purchases agroupon, there is a contract between Groupon and the consumer, the terms of which are set out in the Terms and Conditions (as defined above).

63. ~~55. As set out above, the~~The expiry dates of the groupons are illegal. The groupons are therefore effective as if they had no expiry date pursuant to s. 25.3(2) of O. Reg. 17/05.

64. ~~56. As set out above, the~~The Groupon partial redemption policy is illegal. The groupons are effective as if they had no partial redemption policy.

65. ~~57.~~ By systemically failing to honour the full face value of expired or partially-redeemed groupons, Groupon has breached the lawful terms of the contract and is liable to class members for their expectation damages, measured by the difference between the face value of the groupons, and the amount previously redeemed, if any.

UNJUST ENRICHMENT

66. ~~58.~~ Where a consumer is unable to redeem an expiredgroupon, Groupon is unjustly enriched by the amount of the purchase price of thegroupon, and consumers suffer a corresponding deprivation.

67. ~~59.~~ Where a consumer partially redeems agroupon and is unable to redeem the remaining portion of thegroupon, Groupon is unjustly enriched by the amount of the purchase price of thegroupon that consumers are unable to redeem on a subsequent use of thegroupon, and class members suffer a corresponding deprivation.

68. ~~60.~~ There is no juristic reason justifying the defendant retaining the amounts in question. The terms of the Groupon contract with respect to expiry dates and partial redemptions are illegal and do not provide a juristic reason.

NEGLIGENT MISREPRESENTATION

69. ~~61.~~ Groupon made representations concerning the groupons through its Terms and Conditions, as defined above.

70. ~~62.~~ Groupon owed a duty of care to the plaintiff and class members.

71. ~~63.~~ It knew or reasonably ought to have known that class members would rely on its representations concerning the groupons.

72. ~~64.~~ As set out above, Groupon made representations that were inaccurate or misleading, which were made negligently. Consumers reasonably relied on Groupon's representations to their detriment, including by failing to redeem expired or partially-redeemed groupons.

PUNITIVE DAMAGES

73. ~~65.~~ Class members are entitled to punitive damages as a result of the callous, highhanded, and arbitrary actions of Groupon as set out above.

EFFECT OF THE DEFENDANT'S ACTIONS

74. ~~66.~~ As a result of Groupon's breaches of contract and tortious and unlawful conduct as set out above, the class members have and will continue to sustain damages.

A CLASS PROCEEDING IS APPROPRIATE

75. ~~67.~~ The class members as individuals cannot match the resources of Groupon. The

individual claims of each class member would not be economical to pursue individually. The class members would be denied access to justice in the absence of a class proceeding.

76. ~~68.~~ It is unlikely that an individual could or would seek prospective relief to deter future misconduct by Groupon. Moreover, Groupon is sufficiently large and well-resourced that an individual lawsuit would be unlikely to have any significant impact on its behaviour. This class proceeding will either produce a voluntary change in the behaviour of Groupon or result in a court order which will compel a change in its behaviour.

77. ~~69.~~ The plaintiff proposes that this action be tried in Toronto.

78. ~~70.~~ The plaintiff pleads and relies on the *Consumer Protection Act, 2002*, SO 2002, c 30, Sch A; *Class Proceedings Act, 1992*, SO 1992, c 6, and the *Courts of Justice Act*, RSO 1990, c C-43. The plaintiff further pleads and relies on the applicable legislation in Canada, including the *FTA*, the *BCCPA*, the *Saskatchewan CPA*, the *Manitoba CPA*, the *Quebec CPA*, the *CPBPA* and the *Nova Scotia CPA*.

79. ~~71.~~ The Applicant pleads and relies on Rule 17.02(f), (g), (h) and (i) of the *Rules of Civil Procedure* in support of serving Groupon without leave of the court. This action is: in respect of a contract which was made in Ontario and breached in Ontario; in respect of a tort committed in Ontario; in respect of damages sustained in Ontario; and is for an injunction in Ontario.

~~June 15, 2011 February 22, 2013~~ WJ

June 15, 2011

Sack Goldblatt Mitchell LLP
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20 Dundas St. West, Suite 1100
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Lawyers for the Plaintiff

BUTTON: Pour lire cet avis dans le cliquez ici français

GROUPON INC. CLASS ACTION

NOTICE OF HEARING FOR APPROVAL OF PROPOSED SETTLEMENT AND CERTIFICATION OF CLASS ACTION

**PLEASE READ THIS NOTICE CAREFULLY
AS IT MAY AFFECT YOUR LEGAL RIGHTS**

TO CLASS MEMBERS: If you are a Canadian resident, and you purchased or acquired a Daily Deal voucher from Groupon (sometimes called a "groupon"), you are a proposed class member.

1. Purpose of this Notice

The purpose of this notice is to inform you of your rights in regards to a proposed settlement of class action lawsuits commenced in Ontario and Alberta alleging that the Defendant Groupon Inc. ("Groupon") sold vouchers with illegal expiry dates. The Ontario lawsuit has been amended to include Groupon consumers across Canada. The Alberta lawsuit will be discontinued. The plaintiffs and Groupon have agreed to settle the lawsuits. The settlement must be approved by the Court before it is finalized. As a class member, you have a right to take part in the approval hearing if you wish. The process for taking part in the approval hearing is set out below.

2. Your right to redeem "expired" Daily Deal vouchers

Customers with unredeemed and unrefunded Daily Deal vouchers can redeem them up to the amount of the "purchase price" with the merchant notwithstanding any stated expiry date on the face of the voucher, following their expiry date, if permitted by the terms of that voucher.¹ For instance, if you paid \$25 for a \$40 Daily Deal voucher, then you are still entitled to redeem it after the stated expiry date for the \$25 purchase price but not the \$15 "promotional value."

3. The Settlement Fund

Groupon has agreed to pay up to \$535,000 (CDN) to settle the claims of the Class Members (the "settlement fund") where it is not possible for them to redeem their expired Daily Deal vouchers, or who only redeemed part of the purchase price of the Daily Deal vouchers ("partial redemption") and are not able to redeem their Daily Deal vouchers for the difference between the amount redeemed and the purchase price.

¹ For clarity, this does not include vouchers for Groupon Now!, Groupon Stores, Groupon Goods, Groupon Getaways and Groupon Live, and does not include vouchers in respect of events occurring on specific dates or during a specific time period.

The settlement fund will also be used to pay legal fees and the costs of a class action administrator.

The process for making a claim to the settlement fund is set out below.

If there is not enough money in the settlement fund to pay all of the amounts claimed and the other costs, including the costs of the Claims Administrator, the payments to the Class Members will be made proportionately (prorated). If there is leftover money in the settlement fund after the payments to the Class Members and the costs, the leftover money will be returned to Groupon.

You can also opt-out of the proposed settlement, as described below.

If you would like a copy of the Settlement Agreement, it is available online at <http://www.grouponclassaction.ca/>. You can also obtain a hard copy by contacting Tricia Brioux of Sack Goldblatt Mitchell LLP at 416-979-4233 or 1-800-387-5422.

4. Legal Fees

Pursuant to the Settlement Agreement, Groupon will pay Class Counsel (the lawyers for the class members) legal fees and expenses totalling \$235,000, including applicable taxes. These legal fees and expenses will be paid out of the settlement fund. Class Counsel will seek court approval for legal fees to be paid from the settlement fund. Class Counsel will not seek additional payment for their future time spent or expenses incurred in the proceeding against Groupon.

5. Court Approval Required

For the Settlement Agreement to be effective, the Ontario Superior Court must certify the action as a class proceeding and approve the Settlement Agreement.

The Court will hold a settlement approval hearing on May 10, 2013 at the courthouse of the Ontario Superior Court of Justice at 130 Queen Street West, Toronto. At this hearing, the Court will determine whether the Settlement Agreement is fair, reasonable and in the best interests of the Class Members.

If you wish to comment on, or make an objection to, the Settlement Agreement, you must deliver a written submission to Class Counsel at the address listed below, no later than April 29, 2013. Class Counsel will forward all such submissions to the Court. All written submissions from Class Members that are received on time will be considered by the Court. If you do not deliver a written submission to Class Counsel by the deadline, you will not be entitled to participate in the hearing and you will not be able to appeal if the Settlement Agreement is approved.

If the Settlement Agreement is approved, the Court will certify the action against Groupon as a class proceeding and will determine the fee requests of Class Counsel. If the Settlement Agreement receives approval from the Court, further Notices will be published online, and as directed by the Court.

6. Claims Process

If the Settlement Agreement receives Court approval, the settlement payments will be made in accordance with the process to be approved by the Court.

Claims to the Settlement Fund: To make a claim in respect of an unredeemed Daily Deal voucher you will have to certify that you have an unredeemed and unrefunded Daily Deal voucher that expired prior to • [DATE OF COURT OF APPROVAL OF THIS NOTICE]. You must also certify that you either attempted to redeem your voucher at the merchant, or that it is not possible for you to attempt to do so.

To make a claim in respect of a partially redeemed and unrefunded Daily Deal voucher, you will have to certify that you redeemed a Daily Deal voucher for less than the purchase price of that voucher.

7. Release of Claims and the Effect on Other Proceedings

If the Settlement Agreement receives Court approval, you will be bound by the terms of the Settlement Agreement unless you opt out by delivering written notice of your intention to opt out to class counsel. This means that, unless you opt out, you will not be able to start or continue with any other claim or legal proceeding against Groupon in relation to the matters alleged in the class action lawsuit.

If the Court approves the Settlement Agreement, you will receive information about how you can choose to opt out. This information will be available online and will be included in a further notice.

8. Class Counsel

The law firm of Sack Goldblatt Mitchell LLP represents class members in all provinces except Alberta. Class Members may contact Tricia Brioux of Sack Goldblatt Mitchell LLP at 416-979-4233 or 1-800-387-5422 for more information.

The law firm of Jensen Shawa Solomon Duguid Hawkes LLP represents Alberta class members. Alberta class members may contact Gavin Price at 403-571-1520 for more information.

9. Interpretation

If there is a conflict between the provisions of this Notice and the Settlement Agreement, the terms of the Settlement Agreement will prevail.

PUBLICATION OF THIS NOTICE HAS BEEN AUTHORIZED BY THE ONTARIO SUPERIOR COURT OF JUSTICE

PATEL and GROUPON
plaintiff and defendant

Court File No: CV-11-428749-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

AMENDED STATEMENT OF CLAIM

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