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Interim Class Counsel

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

In re GROUPON MARKETING AND SALES)
PRACTICES LITIGATION)
_____)

No. 3:11-md-02238-DMS-RBB

**NOTICE OF MOTION AND JOINT
MOTION FOR PRELIMINARY
APPROVAL OF SETTLEMENT**

Judge: Hon. Dana M. Sabraw

1 Defendant Groupon, Inc., on behalf of itself, its subsidiaries and affiliates, all other
2 Defendants, and all Released Parties (collectively, “Defendants”), and Plaintiffs Barrie Arliss,
3 Nevin Booth, Julie Buckley, Ashley Christensen, Jason Cohen, Adam Dremak, William
4 Eidenmuller, Anthony Ferreira, Sarah Gosling, Eli R. Johnson, Heather Kimel, Jeff Lawrie,
5 Michael McPherson, Sarah Mehel, Eric Terrell, Carlos Vazquez, and Brian Zard (collectively,
6 “Plaintiffs”) on behalf of themselves and on behalf of each of the Settlement Class Members do
7 hereby jointly move for an order:

- 8 1. Granting preliminary approval of the Settlement Agreement reached by the parties;
- 9 2. Approving the parties’ proposed form and method of notice to Settlement Class
10 Members;
- 11 3. Establishing a schedule for dissemination of the notice of settlement to Settlement
12 Class Members, as well as the deadlines for Settlement Class Members to submit claims, object
13 to, or request exclusion from the settlement;
- 14 4. Approving and appointing Rust Consulting as the Settlement Administrator;
- 15 5. Setting a hearing for final approval of the settlement and awarding Plaintiffs’
16 counsel’s application for an award of fees and costs; and
- 17 6. Approving the proposed order preliminarily approving settlement, submitted
18 herewith.

19 This motion is brought pursuant to Fed. R. Civ. P. 23(e) and is based on this Notice of
20 Motion and Motion; the Memorandum of Points and Authorities, submitted herewith; the

21 /////

22 /////

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1 Declaration of Shirli F. Weiss; the complete file and record in this action; the argument of
2 counsel; and such other and further evidence and argument as the Court may choose to entertain.

3 DATED: March 29, 2012

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ECF CERTIFICATION

22 The filing attorney attests that he has obtained concurrence regarding the filing of this
23 document from the signatories to this document.

25 Dated: March 29, 2012

By: s/ John J. Stoia, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that on March 29, 2012, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on March 29, 2012.

s/ John J. Stoia, Jr.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

In re GROUPON MARKETING AND SALES)
PRACTICES LITIGATION)
_____)

No. 3:11-md-02238-DMS-RBB

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF JOINT
MOTION FOR PRELIMINARY
APPROVAL OF SETTLEMENT**

Judge: Hon. Dana M. Sabraw

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Newberg on Class Actions, § 11.26 (4th ed 2004)	12
Newberg on Class Actions, § 11:50 (4th ed. 2004)	15

1 **I. INTRODUCTION**

2 Plaintiffs have filed lawsuits against Defendant Groupon, Inc. (“Groupon”) and several of
3 its merchant partners (“Defendants”)¹, alleging violations of the Electronic Funds Transfer Act
4 (“EFTA”) as amended by the Credit Card Accountability Responsibility and Disclosure Act
5 (“CARD Act”), 15 U.S.C. 1693 *et seq.*, and various states’ consumer protection statutes and other
6 state laws applicable to gift certificates. Plaintiffs allege that Defendants marketed and sold
7 Groupon Vouchers with illegal expiration dates. Plaintiffs further challenge a number of other
8 terms and conditions pertaining to the sale of Groupon Vouchers and allege that Defendants
9 failed to adequately disclose the applicable terms of sale to consumers. Seventeen lawsuits were
10 coordinated before this Court in the above-captioned proceeding. The parties have now reached a
11 settlement of all lawsuits encompassed by the above-captioned proceeding and seek the Court’s
12 preliminary approval of the settlement, reflected in the parties’ Stipulation of Class Action
13 Settlement and Exhibits thereto (“Settlement Agreement”).

14 Plaintiffs have separately filed a motion seeking conditional approval of a Settlement
15 Class, appointment of the named Plaintiffs as Class Representatives, and appointment of Robbins
16 Geller Rudman and Dowd, LLP to serve as Class Counsel, which Defendants do not oppose for
17 purposes of settlement only. The proposed Settlement Class is defined as all Persons who
18 purchased or received one or more Groupon Vouchers for redemption at a Merchant Partner in
19 the United States from November 2008 until December 1, 2011 (“Settlement Class”). Excluded
20 from the proposed Settlement Class are Defendants, Merchant Partners (as defined in the
21 Settlement Agreement), their parent companies, subsidiaries, affiliates, officers and directors, any
22 entity in which Defendants have a controlling interest, Groupon employees, and all judges
23 assigned to hear any aspect of this litigation, as well as immediate family members of any of the
24 preceding referenced individuals.

25 The parties and their counsel respectfully request that this Court find that the Settlement
26 Agreement is within the range of what might be found to be fair, reasonable, adequate, and in the

27 _____
28 ¹ “Defendants” includes the entities named as defendants in the sixteen cases currently coordinated before
this Court.

1 best interest of the Class such that notice of the Settlement should be provided to Class Members,
2 and a hearing scheduled to consider final approval of the Settlement Agreement. Several factors
3 weigh heavily in favor of granting preliminary approval to the Settlement Agreement, including:
4 (1) a review of the strengths and weaknesses of Plaintiffs' case and the defenses thereto; (2) the
5 risk inherent in continued litigation and efforts to secure class certification; (3) the complexity,
6 expense, and duration of the litigation; (4) the substantial relief and benefits provided to the class
7 by the Settlement Agreement; and (5) the fact that the Settlement Agreement is the product of a
8 lengthy process of arm's-length settlement negotiations and numerous mediations before the
9 Honorable Daniel Weinstein (Ret.).

10 The agreed-upon Class Notice Program set forth in the Settlement Agreement provides for
11 more than adequate notice to the Settlement Class. Groupon communicates with its customers
12 almost exclusively by means of the internet and by e-mail, and Groupon does not have physical
13 mailing addresses for the majority of Settlement Class Members. The parties have agreed to
14 provide individual notice via e-mail to each Class Member at the e-mail address that the Class
15 Member provided to Groupon in order to purchase Groupon Vouchers. E-mail notice to
16 Settlement Class Members will be sent from a domain name that includes the word "Groupon,"
17 so that the e-mails are not excluded from Settlement Class Members' e-mail inboxes as "junk
18 mail" or mail from an unknown sender. The parties have also agreed that notice will be published
19 via a website specifically designed for this Settlement. The designated website will include all
20 documents relevant to this Settlement and provide additional information regarding the
21 Settlement, including how Settlement Class Members may participate therein, object, or opt out.
22 This form of notice, as well as the opportunity to object to or request exclusion from the
23 Settlement Class, is the best practicable notice for this case, and satisfies the requirements of due
24 process.

25 On these grounds, as set forth more fully below, the parties respectfully request that the
26 Court enter an order granting preliminary approval of the Settlement Agreement, approving the
27 proposed Notice Program and Class Notices, and designating Rust Consulting, Inc. as the Claims
28 Administrator.

1 **II. FACTUAL AND PROCEDURAL BACKGROUND**

2 **A. Groupon's Services and Marketing**

3 Formed in November 2008, Groupon is an e-commerce marketplace that connects
4 consumers to merchants by offering collective buying deals on a wide variety of products and
5 services. (Declaration of Shirli F. Weiss, ¶3 (“Weiss Decl.”).) Each day, Groupon provides
6 consumers with a selection of “Daily Deal” promotional offers from merchants across the United
7 States and abroad. (Weiss Decl., ¶4.) Consumers purchase Groupon Vouchers directly from
8 Groupon’s website, and the Groupon Vouchers can then be redeemed for the specified goods or
9 services at the offering merchant. (*Id.*) A typical Daily Deal might allow a consumer to pay \$20
10 to purchase a Groupon Voucher, which the consumer could then redeem for \$40 value in goods or
11 services at the specified merchant as specified in the terms of the offer. (*Id.*)

12 Consumers may sign-up online to receive daily e-mails from Groupon regarding the
13 promotional offers available each day in targeted geographical location(s) and categories selected
14 by the consumer based on personal preference. (*Id.* at ¶5.) Consumers may also access
15 Groupon’s promotional offers directly through Groupon’s website and mobile applications. (*Id.*
16 at ¶6.) In order to purchase any Groupon Voucher or subscribe to receive daily e-mails, a
17 consumer must create a Groupon account by providing a valid e-mail address. (*Id.* at ¶7.)

18 Groupon’s business model has proved highly successful. Groupon has sold over 70
19 million Groupon Vouchers throughout the U.S. and overseas since its inception in November
20 2008. (*Id.* at ¶11.)

21 **B. The Litigation**

22 **1. Consolidated Proceedings and Illinois State Court Action**

23 The consolidated proceedings *In re Groupon Marketing and Sales Practices Litigation*
24 include sixteen cases, fourteen of which are putative class actions²: *Arliss v. Groupon, Inc.*, No.
25 3:11-cv-01374-DMS-RBB; *Booth v. Groupon, Inc.*, No. 3:11-cv-01320-DMS-RBB; *Christensen*
26 *v. Groupon, Inc.*, No. 3:11-cv-01233-DMS-RBB; *Cohen v. Groupon, Inc.*, No. 3:11-cv-01245-

27 _____
28 ² Jennifer Bates voluntarily withdrew and dismissed her action entitled *Bates v. Groupon, Inc., et al.*, No. 1:11-cv-10556-DJC (D. Mass.), pursuant to Fed. R. Civ. P. 41(a)(1)A(i), on March 21, 2012.

1 DMS-RBB; *Eidenmuller v. Groupon, Inc.*, No. 3:11-cv-01244-DMS-RBB; *Ferreira v. Groupon,*
2 *Inc.*, No. 3:11-cv-00132-DMS-RBB; *Gosling v. Groupon, Inc.*, No. 3:11-cv-01231-DMS-RBB;
3 *Hinton v. Groupon, Inc.*, No. 3:11-cv-02674-DMS-RBB; *Johnson v. Groupon, Inc.*, No. 3:11-cv-
4 02835-DMS-RBB; *Johnson v. Groupon, Inc.*, No. 3:11-cv-01279-DMS-RBB; *Kimel v. Groupon,*
5 *Inc.*, No. 3:11-cv-01225-DMS-RBB; *McPherson v. Groupon, Inc.*, No. 3:11-cv-01551-DMS-
6 RBB; *Mehel v. Groupon, Inc.*, No. 3:11-cv-01349-DMS-RBB; *Terrell v. Groupon, Inc.*, No. 3:11-
7 cv-01595-DMS-RBB; *Vazquez v. Groupon, Inc.*, No. 3:11-cv-01253-DMS-RBB; *Zard v.*
8 *Groupon, Inc.*, No. 3:11-cv-01232-DMS-RBB. In addition to the aforementioned federal actions,
9 a putative class action is pending in Illinois state court: *Dremak v. Groupon, Inc.*, No. 11-CH-
10 8076 (Kane Cnty. IL). (See Weiss Decl., ¶2.)

11 Plaintiffs assert claims based on federal and state law arising out of Defendants’
12 marketing and sale of Groupon Vouchers, alleging, inter alia, that expiration dates stated on
13 Groupon Vouchers violate EFTA as amended by the CARD Act, 15 U.S.C. §1693, *et seq.*, and
14 various state laws. See e.g. First Amended Complaint, *Ferreira v. Groupon, Inc., et al.*, No. 3:11-
15 cv-00132-DMS-POR, ¶10 (“Ferreira Complaint”). Specifically, Plaintiffs allege that the CARD
16 Act is applicable to Groupon Vouchers and that it prohibits the sale of gift certificates with
17 expiration periods of less than five years. See Ferreira Complaint, ¶50; 15 U.S.C. §1693 *et seq.*
18 Plaintiffs contend that the inclusion of expiration dates on Groupon Vouchers also violates a
19 number of state laws that apply to expiration dates of gift cards and gift certificates. Ferreira
20 Complaint, at ¶¶61-64. Plaintiffs further contend that Groupon imposes other restrictions such as
21 “Not valid for cash (unless required by law),” and “Must use gift certificate in one visit,” on its
22 Vouchers. *Id.* at ¶27. Plaintiffs contend that the above and other activities are illegal or not
23 sufficiently disclosed and that Groupon’s Terms and Conditions and website are in various ways
24 misleading or deceptive to consumers. *Id.* at ¶34. Plaintiffs seek damages, restitution, injunctive
25 relief, and other remedies in the Actions. *Id.* at ¶10.

26 Defendants deny Plaintiffs allegations and that they are liable under any of the legal
27 theories asserted by Plaintiffs. Defendants dispute that the CARD Act and various state statutes
28 under which Plaintiffs sue were intended to prohibit the expiration of Groupon Vouchers’

1 Promotional Value. Defendants contend that the Groupon Vouchers are encompassed within an
2 exception for promotional gift certificates in the EFTA, that expiration of the Promotional Value
3 of Groupon Vouchers is permitted under state law, and that expiration of the Customer Purchase
4 Price value, as disclosed to consumers in Groupon's Terms and Conditions, expires in accordance
5 with applicable state laws of the jurisdiction in which the Groupon was sold. Defendants further
6 contend that all restrictions applicable to Groupon Vouchers were adequately disclosed to
7 consumers in Groupon's Terms and Conditions, promotional offer relating to the Groupon
8 Voucher, and/or on the face of the Groupon Voucher, and that such terms were not misleading or
9 deceptive. In addition, Defendants contend that all of Plaintiffs' claims are subject to mandatory
10 arbitration and that Plaintiffs have waived the right to bring a class action under Groupon's Terms
11 and Conditions. *See CompuCredit Corp. v. Greenwood*, __ U.S. __, 132 S. Ct. 665, 668-69
12 (2012) (citing *AT&T Mobility LLC v. Concepcion*, __ U.S. __, 131 S. Ct. 1740 (2011) (upholding
13 waiver of right to bring class action in arbitration agreement)). Defendants also assert that any
14 purported damages for all class actions under EFTA are capped at \$500,000. *See* 15 U.S.C.
15 §1693m(a)(2)(B).

16 2. Discovery and Pending Motions

17 a. Discovery

18 Pursuant to the discovery scheduling order issued by this Court, the parties exchanged
19 written discovery relating to the arbitration clause contained in Groupon's Terms and Conditions
20 on July 11, 2011, and served responses to that discovery on August 1, 2011. Both parties
21 produced documents on August 8, 2011 and have engaged in several lengthy meet and confer
22 efforts with regard to discovery.

23 b. Pending Motions

24 A motion seeking remand of the *Arliss* case to state court was filed and set for hearing by
25 this Court on September 9, 2011. (Dkt. No. 20.) In light of the fact that the parties had arrived at
26 a settlement in principle, the Court's August 29, 2011 Order stayed all proceedings in the federal

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1 litigation. (Dkt. No. 24.) The stay was subsequently extended, most recently to March 29, 2012.
2 (Dkt. No. 38.)

3 In *Dremak*, the Illinois state court case, Plaintiffs' counsel filed a motion seeking a
4 preliminary injunction and a motion seeking class certification. Groupon filed a motion to
5 transfer venue in that case from Kane County, Illinois to Cook County, Illinois, and in the
6 alternative to compel arbitration. On September 16, 2011, the Illinois Court stayed the hearing of
7 all pending motions in that action, and has continued that stay through the present day, pending
8 the outcome of the settlement of this proceeding.

9 3. Settlement Discussions

10 The Parties have engaged in extensive, arms-length settlement negotiations and have
11 mediated under the supervision and participation of the Honorable Daniel Weinstein (Ret.) of
12 JAMS, which efforts led to the subject Settlement Agreement. (*See* Weiss Decl., ¶14.) The
13 proposed Settlement Agreement reflects careful consideration by the parties of the benefits,
14 burdens, and risks associated with continued litigation of this case.

15 III. THE TERMS OF THE PROPOSED SETTLEMENT

16 The complete terms of the settlement are set forth in the Settlement Agreement, submitted
17 herewith, (*See* Weiss Decl., ¶14, Ex. A.), and are summarized below.

18 A. The Settlement Class

19 The Settlement Agreement defines a national settlement class under Rule 23(b)(3)
20 composed of all Persons who purchased or received one or more Groupon Vouchers for
21 redemption at a Merchant Partner in the United States, from November 2008 until December 1,
22 2011. (*Id.*, §A.50.) Excluded from the Settlement Class are Defendants, Merchant Partners, their
23 parent companies, subsidiaries, affiliates, officers and directors, any entity in which Defendants
24 have a controlling interest, Groupon employees, and all judges assigned to hear any aspect of this
25 litigation, as well as immediate family members of any of the preceding referenced individuals.
26 (*Id.*)

27 In consideration for the Settlement Class's release of claims (*id.*, §H.2), the Settlement
28 Agreement provides for monetary and injunctive relief to the Class. (*Id.* §§D.1 and D.2.)

1 **B. Monetary Relief to Settlement Class Members**

2 **1. Creation and Funding of the Settlement Fund and the Second**
3 **Settlement Fund**

4 A principal contention of Plaintiffs in the Actions is that many putative Settlement Class
5 Members believed that their entire Groupon Voucher expired on the expiration date shown on the
6 Voucher, and therefore never redeemed their Vouchers after the stated expiration date. Plaintiffs
7 also contend that Settlement Class Members are entitled to redeem Groupon Vouchers purchased
8 prior to December 1, 2011 regardless of the expiration date stated on the Vouchers.

9 Defendants dispute Plaintiffs' contentions but have entered into a compromise and
10 settlement intended to allow Settlement Class Members who purchased Groupon Vouchers after
11 the enactment of amendments to the CARD Act, and Class Members who purchased their
12 Groupon Vouchers in, or for redemption at, Merchant Partners in certain states (which states
13 where agreed upon with Plaintiffs for settlement purposes) to redeem Groupon Vouchers
14 purchased prior to December 1, 2011 that are past their stated expiration date, and if they are
15 unable to do so, obtain a refund from a Settlement Fund funded by Groupon. If a Merchant
16 Partner refuses to redeem a Settlement Voucher, the Class Member will be entitled to received a
17 refund of his or her Customer Purchase Price plus 20% of the Promotional Value of the Groupon
18 Voucher on which the Claim is based. The Settlement Fund, provided by Groupon, is eight
19 million five hundred thousand dollars (\$8,500,000), less \$75,000 held back for payment into a *Cy*
20 *Pres* fund as described below.

21 No later than twenty (20) calendar days after Preliminary Approval of the Settlement
22 Agreement is granted, Groupon shall deposit the sum of Eight Million and Five Hundred
23 Thousand Dollars (\$8,500,000) into an escrow account to fund the Settlement Fund. (*Id.*, §D.2.)
24 The Settlement Fund shall also be used for the payment of Attorneys' Fees and Expenses, Claims
25 Administration Expenses, and any Incentive Awards and Expenses. (*Id.*) The remaining amounts
26 after deducting those payments shall be used to pay refunds resulting from Claims of Settlement
27 Class Members relating to purchases of Groupon Vouchers prior to December 1, 2011 and
28 meeting the criteria set forth in the Settlement Agreement ("Settlement Fund Claims"). (*Id.*)

1 If funds remain after such payments, the Settlement Fund shall be designated the “Second
2 Settlement Fund” and will then be used to pay Claims submitted to the Claims Administrator for
3 refunds of the Customer Purchase Price based on purchases of Groupon Vouchers after
4 December 1, 2011 that meet the criteria for such Claims as set forth in the Settlement Agreement,
5 as well as fund the *Cy Pres* Fund as provided in the Settlement Agreement. (*Id.*)

6 **2. Cy Pres Fund**

7 Two years after the Second Settlement Fund Claims Notice is disseminated, any
8 remaining balance in the Second Settlement Fund will be donated as follows: 50% to the
9 Electronic Frontier Foundation, and 50% to the Center for Democracy and Technology. An
10 amount of \$75,000 shall be set aside from the Settlement Fund and Second Settlement Fund so
11 that the amount of the total donation shall be at least \$75,000. (*Id.*, §D.3.)

12 **C. Injunctive Relief: Vouchers Issued After Effective Date**

13 **1. Expiration Date of Customer Purchase Price**

14 For a period of three (3) years following the Effective Date, Groupon shall not offer to sell
15 more than 10% of the number annually of its Daily Deals with an expiration date of less than 30
16 calendar days from the Groupon Voucher’s date of issuance, applying to the Groupon Vouchers’
17 Promotional Value, or any expiration date applying to the Customer Purchase Price, except for:
18 (i) Groupon Now! Vouchers, (ii) Groupon Vouchers sold for travel related offers; (iii) Groupon
19 Vouchers sold for admission to ticketed events; or (iv) Groupon Vouchers that offer goods,
20 services or events which are inherently limited by time or availability. (*Id.*, §D.1.(a).) Plaintiffs
21 agree on behalf of the Settlement Class that Groupon shall be permitted to sell Groupon Vouchers
22 with expiration dates applying to their Promotional Value so long as they comply with the above
23 limitations.

24 **2. Disclosures to Consumers**

25 On and after the Effective Date, where there is a difference between the date of expiration
26 of the Promotional Value and the date of expiration of the Customer Purchase Price, Groupon
27 Vouchers shall contain clear and conspicuous disclosures explaining the difference between such
28 expiration dates. (*Id.*, §D.1(c)(i).) Where applicable, the Groupon Voucher shall clearly and

1 conspicuously state that the Customer Purchase Price does not expire unless and until the
2 Groupon Voucher is redeemed or refunded. (*Id.*) All Groupon Vouchers shall clearly state the
3 date of the expiration of the Promotional Value, which shall constitute the date after which the
4 purchaser shall not be entitled to redeem the portion of the Groupon Voucher that is the
5 Promotional Value only. (*Id.*)

6 Terms and conditions of the Groupon Voucher expiration periods shall be shown on the
7 “Daily Deal” promotion displayed to the consumer prior to purchase. (*Id.*, §D.7.(c)(2).) In
8 addition, such terms and conditions will be easily available for display to the purchaser prior to
9 purchase to consumers on mobile devices and applications that are used to download Groupon
10 Vouchers. (*Id.*) With respect to offers made on Groupon Now! Vouchers, where the Customer
11 Purchase Price of a Groupon Now! Voucher is paid for but such Voucher is not printed or
12 viewed, the purchase shall be cancelled and a refund of the Customer Purchase Price shall be
13 applied in the form of the original purchase (e.g., if the purchase was made by credit card, the
14 refund shall be made to the credit card). (*Id.*) If the Groupon Now! Voucher is paid for and
15 printed or viewed on a mobile device but is not redeemed, the purchaser shall receive a refund of
16 the Customer Purchase Price in the original form of payment to Groupon upon request. (*Id.*)

17 **D. Incentive Award and Attorney’s Fees**

18 Class Counsel may petition the Court for an award of Attorneys’ Fees and Expenses not to
19 exceed 25% of the total Settlement Fund. (*Id.*, §I.1.) If awarded by the Court, such Attorneys’
20 Fees and Expenses will be paid to Class Counsel from the Settlement Fund within five (5)
21 business days after the Entry of the Final Judgment and Order Approving Settlement. (*Id.*) Each
22 Class Representative may be awarded an Incentive Award of no more than \$500. (*Id.*, §I.3.) If
23 awarded by the Court, such Incentive Awards will be paid to Class Counsel on behalf of the Class
24 Representatives within thirty (30) days after the Effective Date out of the Settlement Fund. (*Id.*)

25 **E. Release**

26 Upon this Court’s entry of the Final Judgment and Order Approving Settlement, each
27 Releasing Party (the Settlement Class and related persons) shall be deemed to have released and
28 forever discharged each Released Party (Defendants, all Merchant Partners and related persons),

1 of and from liability for any and all individual, class, representative, group or collective claim,
2 liability, right, demand, suit, matter, obligation, damage, loss, action or cause of action, of every
3 kind and description that a Releasing Party has or may have, including assigned claims, whether
4 known or unknown, asserted or unasserted, that is, has been, or could reasonably have been
5 asserted by the Releasing Party either in the Court or any other court or forum, regardless of legal
6 theory or relief claimed, and regardless of the type of relief or amount of damages claimed,
7 against any of the Released Parties arising from, or in any way relating to, any of the allegations
8 regarding the advertising, marketing, redemption or sale of Groupon Vouchers alleged in the
9 Actions, including but not limited to allegations regarding any use of expiration dates on Groupon
10 Vouchers, and regarding any other practice, conduct, or presentation of “Daily Deals,” “Fine
11 Print,” “Legal Stuff We Have To Say,” “Not Valid For Cash Back,” other terms of use or terms of
12 sale, disclaimers, arbitration provisions, allegations of improper time pressure placed on
13 customers or requirements to use Groupon Vouchers in one visit, failures of disclosure, or any of
14 the other allegations or claim raised in any of the Actions, or that could have been alleged based
15 on the allegations raised in any of the Actions. (*Id.*, §H.1.)

16 The Released Parties release Plaintiffs and related persons for any claims arising out of
17 the filing and settlement of the Actions.

18 **F. Notice and Right to Opt Out**

19 Rust Consulting, Inc. will administer the Class Notice and claims filing, with costs being
20 paid out of the Settlement Fund. (*Id.*, §§D.2 and E.5.) Potential Settlement Class Members will
21 receive direct notice of the Settlement via e-mail from a domain name that includes the word
22 “Groupon” to the address provided to Groupon at the time of Groupon account creation so that
23 the e-mail is recognized by the Settlement Class Members’ servers and not sent to their “junk
24 mail” folder. (*Id.*, §E.6.) For the vast majority of Groupon subscribers, an e-mail address is the
25 only contact information Groupon possesses. Accordingly, e-mail is the best practicable means
26 by which Groupon can provide direct, uniform notice to the Settlement Class. The content of the
27 e-mail notice will be that approved by the Court. (*Id.*, §F.1.)

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1 All Settlement Class Members will also receive publication notice through a
2 comprehensive, dedicated website. (*Id.*, §E.9.) The Claims Administrator shall cause a website
3 to be created containing relevant documents, including, but not limited to: all applicable
4 deadlines; the Class Notices (including the Class Settlement Notice; the Settlement Fund Claims
5 Notice and Second Settlement Fund Claims Notice); instructions on how to submit Claims and
6 requests for refunds online or by e-mail, mail or facsimile; FAQs and answers; orders of the Court
7 pertaining to the Settlement; the Settlement Agreement and all supporting exhibits; and a toll-free
8 telephone number and addresses to contact the Claims Administrator by e-mail and mail. (*Id.*,
9 §E.9.) The website address will be provided in the e-mail Settlement Class Notice sent to
10 potential Settlement Class Members. Consumers may also discover and access the website via an
11 internet search. (*Id.*, §E.6.)

12 Upon Preliminary Approval of the Settlement, as the Court may direct, the Claims
13 Administrator shall cause the Class Settlement Notice to be disseminated to potential Settlement
14 Class Members. (*Id.*, §F.1.) Prior to the Final Approval Hearing, the Claims Administrator shall
15 provide to the Court documentation that the Settlement Class Notice was provided in accordance
16 with the Notice Program. (*Id.*, §F.4.) Within fourteen (14) days of the Effective Date, the Claims
17 Administrator shall cause the Settlement Fund Claims Notice to be disseminated to Settlement
18 Class Members, advising of their ability to submit Settlement Fund Claims within 60 days
19 thereafter. (*Id.*, §§C.1(n)(ii), (iv).) Within fourteen (14) days of the Claims Administrator's
20 designation of the Second Settlement Fund, the Claims Administrator shall cause the Second
21 Settlement Fund Claims Notice to be disseminated to Settlement Class Members. (*Id.*,
22 §C.1(n)(ii).)

23 Any Settlement Class Member who intends to object or opt out must do so at least
24 fourteen (14) days before the Final Approval Hearing. (*Id.*, §C.1(n)(iii).)

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1 **IV. THE COURT SHOULD GRANT PRELIMINARY APPROVAL OF THE**
2 **SETTLEMENT**

3 **A. Applicable Legal Standard**

4 A class action may not be dismissed, compromised or settled without court approval. Fed.
5 R. Civ. P. 23(a). Judicial proceedings under the Federal Rules of Civil Procedure have led to a
6 defined procedure and specific criteria for settlement approval in class actions. *See* Manual for
7 Complex Litig. (4th ed.), § 21.62 (2004). Rule 23(e) sets forth a “two-step process in which the
8 court first determines whether a proposed class action settlement deserves preliminary approval
9 and then, after notice is given to class members, whether final approval is warranted.” *Nat’l*
10 *Rural Telecomms. Coop v. DIRECTV, Inc.*, 221 F.R.D. 523, 525 (C.D. Cal. 2004).

11 On preliminary approval, the court does not make a full and final determination regarding
12 fairness. “Because class members will subsequently receive notice and have an opportunity to be
13 heard,” the court “need not review the settlement in detail at this juncture.” *In re M.L. Stern*
14 *Overtime Litig.*, No. 07-CV-0118-BTM (JMa), WL 995864, at *3 (S.D. Cal. Apr. 13, 2009).
15 “[I]nstead, preliminary approval is appropriate so long as the proposed settlement falls ‘within the
16 range of possible judicial approval.’” *Id.* (quoting Newberg on Class Actions, §11.25 (4th ed.
17 2002)); *see also* Manual for Complex Litigation (4th ed. 2009) §21.632. Accordingly, the issue
18 presently before this Court is “whether the settlement is within the range of possible approval,
19 such that there ‘is [a] reason to notify the class members of the proposed settlement and to
20 proceed with a fairness hearing.’” *M.L. Stern*, 2009 WL 995864, at *3 (quoting *Armstrong v. Bd.*
21 *of Sch. Dirs.*, 616 F.3d 305, 314 (7th Cir. 1980) and citing *Torrise v. Tucson Elec. Power Co.*, 8
22 F.3d 1370, 1377 (9th Cir. 1993) (noting and implicitly approving the district court’s preliminary
23 approval process)); Newberg on Class Actions (4th ed. 2002) §11.25-26. The decision to approve
24 or reject a proposed settlement is committed to the Court’s sound discretion. Accordingly, a
25 court’s decision to approve a class action settlement may be reversed only upon a strong showing
26 of “clear abuse of discretion.” *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir.
27 1992).

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1 The Ninth Circuit has articulated six factors relevant in evaluating the fairness of a class
 2 action settlement at the preliminary approval stage: (1) the strength of plaintiff’s case; (2) the
 3 risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining
 4 class action status throughout the trial; (4) the consideration offered in settlement; (5) the extent
 5 of discovery completed, and the stage of the proceedings; and (6) the experience and views of
 6 counsel. *Jack v. Hartford Fire Ins. Co.*, No. 3:09-cv-1683 MMA(JMA), 2011 WL 4899942, at *4
 7 (S.D. Cal. Oct. 13, 2011) citing *Molski v. Gleich*, 318 F.3d 937, 954 (9th Cir. 2003) (*overruled in*
 8 *part on other grounds*); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026-27 (9th Cir. 1998) (the
 9 court’s task is to “balance a number of factors,” including “the risk, expense, complexity, and
 10 likely duration of further litigation,” the extent of discovery completed and the stage of the
 11 proceedings,” and “the amount offered in settlement”).

12 In applying these factors, this Court should be guided foremost by the general principle
 13 that settlements of class actions are favored. *Class Plaintiffs*, 955 F.2d at 1276 (noting “strong
 14 judicial policy that favors settlements, particularly where complex class action litigation is
 15 concerned”). By their very nature, because of the uncertainties of outcome, difficulties of proof,
 16 and lengthy duration, class actions readily lend themselves to compromise. *Van Bronkhorst v.*
 17 *Safeco Corp.*, 529 F.2d 943, 949 (9th Cir. 1976) (public interest in settling litigation is
 18 “particularly true in class action suits...which frequently present serious problems of management
 19 and expense”). Moreover, the Court should give a presumption of fairness to arm’s-length
 20 settlements reached by experienced counsel. *Rodriguez v. West Publ’g Corp.*, 563 F.3d 948, 965
 21 (9th Cir. 2009) (“We put a good deal of stock in the product of an arms-length, non-collusive,
 22 negotiated resolution.”).

23 Here, all relevant factors favor a preliminary finding of fairness, reasonableness, and
 24 adequacy.

25 **B. The Strengths of Plaintiffs’ Case and Risks Inherent in Continued Litigation**
 26 **and in Securing Certification Favor Preliminary Approval**

27 Every class action – indeed, every case – involves some level of uncertainty on the merits.
 28 Settlements resolve that inherent uncertainty, and are therefore strongly favored by the courts,

1 particularly in class actions. *See Van Bronkhorst*, 529 F.2d at 950; *United States v. McInnes*, 556
2 F.2d 436, 441 (9th Cir. 1977). This action is not unique in this regard – the parties disagree about
3 the merits, and there is substantial uncertainty about the ultimate outcome of this litigation.

4 As a preliminary matter, Groupon contends that all of Plaintiffs’ claims are subject to a
5 mandatory individual arbitration provision and that Plaintiffs have waived the right to bring a
6 class action. Under federal law, courts are required to “rigorously enforce agreements to
7 arbitrate,” *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 221 (1985) and “any doubts
8 concerning the scope of arbitrable issues should be resolved in favor of arbitration.” *Moses H.*
9 *Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-25 (1983). The Supreme Court has
10 upheld the enforceability of a class action waiver in an arbitration agreement. *See CompuCredit*
11 *Corp.*, 132 S. Ct. at 668-69 (citing *AT&T Mobility*, 131 S. Ct. at 1753). Plaintiffs dispute the
12 applicability and enforceability of Groupon’s arbitration provisions.

13 Assuming that litigation was to proceed, the hurdles that Plaintiffs face prior to
14 certification and trial are substantial. Plaintiffs challenge millions of different Groupon deals,
15 each of which involved different Merchant Partners, different Customer Purchase Prices and
16 Promotional Values, different expiration dates, and different deal-specific terms. If these Actions
17 were to be tried, varying state laws would apply to different Groupon Vouchers depending on the
18 state in which the Vouchers were purchased and Vouchers may be treated differently depending
19 on the applicable state law. In addition, circumstances surrounding each Plaintiff’s purchase of
20 Groupon Vouchers may present affirmative defenses that preclude Plaintiffs’ success at trial.
21 Given these considerations, preliminary approval of the Settlement Agreement is appropriate to
22 avoid the uncertainties of continued litigation.

23 **C. The Risk, Complexity, Expense, and Duration of the Litigation Favor**
24 **Preliminary Approval**

25 In addition to the substantial risks and uncertainty inherent in continued litigation, the
26 parties face the *certainty* that further litigation would be expensive, complex, and time
27 consuming. The Court would be required to resolve difficult and complicated issues of statutory
28 interpretation and state law.

1 As other courts have acknowledged, ““unless the settlement is clearly inadequate, its
2 acceptance and approval are preferable to lengthy and expensive litigation with uncertain
3 results.”” *Nat’l Rural Telecomms. Coop*, 221 F.R.D. at 526 (quoting Newberg on Class Actions
4 (4th ed. 2004) §11:50 at 155). Settlement is encouraged in class actions where possible: “It
5 hardly seems necessary to point out that there is an overriding public interest in settling and
6 quieting litigation. This is particularly true in class action suits which are now an ever increasing
7 burden to so many federal courts and which frequently present serious problems of management
8 and expense.” *Van Bronkhorst*, 529 F.2d at 950; *accord Molski*, 318 F.3d at 953.

9 Here, the parties anticipate the need for complicated litigation on a number of issues,
10 including whether the claims can be litigated or are subject to an arbitration clause. Assuming the
11 Court determined that Plaintiffs’ claims are not subject to arbitration, extensive discovery on class
12 certification and the merits of Plaintiffs’ claims and Groupon’s defenses would be required.
13 Continued litigation would be expensive, complex, and time consuming. For those reasons,
14 preliminary approval of the Settlement Agreement is appropriate.

15 **D. The Substantial Relief Provided by the Settlement Agreement Favors**
16 **Preliminary Approval**

17 In evaluating the fairness of the consideration offered in settlement, it is not the role of the
18 court to second-guess the negotiated resolution of the parties. “[T]he court’s intrusion upon what
19 is otherwise a private, consensual agreement negotiated between the parties to a lawsuit must be
20 limited to the extent necessary to reach a reasoned judgment that the agreement is not the product
21 of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement,
22 taken as a whole, is fair, reasonable and adequate to all concerned.” *Hanlon*, 150 F.3d at 1027
23 (quoting *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 626 (9th Cir. 1982)); *accord*
24 *Rodriguez*, 563 F.3d at 965. The issue is not whether the settlement could have been better in
25 some fashion, but whether it is fair: “Settlement is the offspring of compromise; the question we
26 address is not whether the final product could be prettier, smarter or snazzier, but whether it is
27 fair, adequate and free from collusion.” *Hanlon*, 150 F.3d at 1027.

1 Here, the Settlement Agreement provides for monetary and injunctive relief to the Class.
2 Settlement Class Members who have unredeemed Vouchers for which the stated expiration date
3 has passed may submit Claims to receive a Settlement Voucher entitling them to redeem their
4 Vouchers for the Customer Purchase Price. Settlement Class Members who are unable to redeem
5 Settlement Vouchers because Merchants have gone out of business may request a refund. If a
6 Merchant Partner refuses to redeem a Settlement Voucher, the Class Member will be entitled to
7 receive his or her Customer Purchase Price plus 20% of the Promotional Value of the Groupon
8 Voucher on which the claim is based. Going forward, the Settlement Agreement provides
9 valuable injunctive relief in required changes to the appearance and content of Groupon Vouchers
10 to avoid any potential misunderstanding by consumers in the future.

11 **E. The Stage of the Proceedings Favors Preliminary Approval; Experience and**
12 **Views of Counsel**

13 This litigation has been pending for over a year. The parties have engaged in formal and
14 informal discovery necessary to facilitate settlement. Accordingly, the parties were able to assess
15 the relative strengths and weaknesses of their respective positions, and to compare the benefits of
16 the proposed Settlement Agreement to further litigation. Counsel, who have substantial
17 experience in litigating class actions, and the Court are therefore adequately informed to evaluate
18 the fairness of the proposed Settlement Agreement.

19 **F. The Settlement Was Reached After Months of Negotiations and Mediation**

20 The parties' extensive arm's-length settlement negotiations and participation in mediation
21 further demonstrate the fairness of the Settlement Agreement that was reached, and that the
22 settlement is not a product of collusion. Counsel for Defendants and Plaintiffs each zealously
23 negotiated on behalf of their clients' best interests and a settlement was reached only after
24 multiple settlement proposals had been exchanged and rejected and numerous mediation sessions
25 with Judge Weinstein. (Weiss Decl., ¶¶13-14.)

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1 **V. THE COURT SHOULD APPROVE THE PROPOSED NOTICE PLAN**

2 **A. The Notice Plan Meets the Requirements of Due Process and Rule 23**

3 Under Rule 23(e), the Court must “direct notice in a reasonable manner to all class
4 members who would be bound” by the proposed settlement. Fed. R. Civ. P. 23(e)(1). Notice of a
5 proposed settlement to class members must be the “best notice practicable.” *See* Fed. R. Civ. P.
6 23(c)(2)(B). “[B]est notice practicable” means “individual notice to all members who can be
7 identified through reasonable effort.” *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174-75
8 (1974). If class members can be identified and are given individual notice, there is no
9 requirement for notice by publication or other means. “[N]otice by publication is only used when
10 the identity and location of class members cannot be determined through reasonable efforts....”
11 *In re Wal-Mart Stores, Inc. Wage and Hour Litig.*, No. 06-02069 SBA, 2008 WL 1990806, at *3
12 (N.D. Cal. May 5, 2008); *accord Pigford v. Veneman*, 355 F. Supp. 2d 148, 162 (D.D.C. 2005)
13 (“If all (or most) class members can be individually identified and located, courts will require that
14 individual notice be sent via mail or other direct means.”). The notice must describe “the terms of
15 the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come
16 forward and be heard.” *Rodriguez*, 563 F.3d at 962 (“Notice is satisfactory if it “generally
17 describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to
18 investigate and to come forward and be heard.””) (quoting *Churchill Vill., LLC v. Gen. Elec.*,
19 361 F.3d 566, 575 (9th Cir. 2004)).

20 Here, the parties have agreed to a Notice Program to be administered by Rust Consulting,
21 Inc.. Upon Preliminary Approval of the Settlement, the Claims Administrator shall cause the
22 Class Settlement Notice to be disseminated to potential Settlement Class Members. (*See* Weiss
23 Decl., Ex. A at §§E.5 and F.1.) Potential Settlement Class Members will receive direct notice of
24 the Settlement via e-mail from a domain name that includes the word “Groupon” to the address
25 provided to Groupon at the time of subscription. The content of the e-mail notice will be that
26 which is before the Court for approval. (*Id.*, §E.6.) Publication notice will also be directed to all
27 potential Settlement Class Members through a comprehensive, dedicated settlement website. (*Id.*,
28 §E.9.) The website shall contain copies of all relevant documents and information, including but

1 not limited to, all applicable deadlines; the Class Notices; instructions on how to submit Claims
2 and requests for refunds online or by e-mail, mail or facsimile; FAQs and answers; orders of the
3 Court pertaining to the Settlement; the Agreement and all supporting exhibits; and a toll-free
4 telephone number and addresses to contact the Claims Administrator by e-mail and mail. (*Id.*)
5 The website address will be provided in the e-mail notice sent to potential Settlement Class
6 Members. Consumers may also discover and access the website via an Internet search. Prior to
7 the Final Approval Hearing, the Claims Administrator shall provide to the Court documentation
8 that the Settlement Class Notice was provided in accordance with the Notice Program and the
9 Court-approved notices.

10 Within fourteen (14) days of the Effective Date, the Claims Administrator shall cause the
11 Settlement Fund Claims Notice to be disseminated to Settlement Class Members, advising of
12 their ability to submit Settlement Fund Claims within sixty (60) days thereafter. (*Id.*, §§C.1(n).)
13 Within fourteen (14) days of the Claims Administrator's designation of the Settlement Fund as
14 the Second Settlement Fund, the Claims Administrator shall cause the Second Settlement Fund
15 Claims Notice to be disseminated to Settlement Class Members. (*Id.*)

16 Finally, Groupon will send notice of the Settlement by overnight mail to appropriate
17 federal and state officials as required by the Class Action Fairness Act, 28 U.S.C. § 1715(b), not
18 later than ten days after this filing.

19 This Notice Program complies with Rule 23 and due process because, among other things,
20 it informs Settlement Class Members of: (1) the nature of the action; (2) the essential terms of the
21 settlement, including the definition of the Settlement Class and claims asserted; (3) the binding
22 effect of a judgment if the Settlement Class Member does not request exclusion; (4) the process
23 for objection and/or exclusion, including the time and method for objecting or requesting
24 exclusion and that Settlement Class Members may make an appearance through counsel; (5)
25 information regarding the named plaintiffs' request for an incentive award and reimbursement of
26 their attorneys' fees and costs; (6) the procedure for submitting Claims to receive settlement
27 benefits; and (7) how to contact Class Counsel to make inquiries. Fed. R. Civ. P. 23(c)(2)(B);
28 Manual for Complex Litigation (4th ed. 2004) § 21.312; *see also Skilstaf, Inc. v. CVS Caremark*

1 Corp., No. 10-15338, 2012 WL 400369 (9th Cir. Feb. 9, 2012) (enforcing judgment and
2 settlement agreement in prior related action against plaintiff did not violate plaintiff's due process
3 rights where plaintiff who was a party to the prior suit and was provided full notice of the release
4 and covenant not to sue provisions of the settlement agreement and rejected opt out opportunity).

5 This Notice Program ensures that Settlement Class Members' due process rights are
6 amply protected, and is the best notice practicable. *See* Fed. R. Civ. P. 23(c)(2)(A). The same
7 type of notice has been approved by courts as the best notice practicable under similar
8 circumstances. *See Browning v. Yahoo! Inc.*, No. C04-01463 HRL, 2006 WL 3826714, at *8-*9
9 (N.D. Cal. Dec. 27, 2006) (finding notice by e-mail directing class members to official settlement
10 website particularly appropriate where class members' "allegations arise from their visits to
11 Defendants' Internet websites, demonstrating that the Settlement Class Members are familiar with
12 and comfortable with email and the Internet"); *Wal-Mart Stores, Inc.*, 2008 WL 1990806, at *3
13 (identity and location of class members determined through defendant's electronic records); *In re*
14 *Diet Drugs Prods. Liab. Litig.*, 226 F.R.D. 498, 520 (E.D. Pa. 2005) (holding individualized
15 notice plus Internet publication fulfilled the "best notice practicable" requirement of Rule
16 23(c)(2)"); *In re Lupron Mktg. & Sales Prac. Litig.*, 228 F.R.D. 75, 85 (D. Mass. 2005) (noting
17 effectiveness of settlement website as means of publication).

18 VI. SCHEDULING A FINAL APPROVAL HEARING IS APPROPRIATE

19 The last step in the settlement approval process is a Final Approval Hearing at which the
20 Court may hear all evidence and argument necessary to make its settlement evaluation. Fed. R.
21 Civ. P. 23(e)(2); *UAW v. Gen. Motors Corp.*, 235 F.R.D. 383, 387 (E.D. Mich. 2006).
22 Proponents of the settlement may demonstrate the class notice provided and offer argument in
23 support of final approval. In addition, Settlement Class Members who have properly objected to
24 the settlement may be heard at this hearing. The Court will determine after the Final Approval
25 Hearing whether the Settlement Agreement should be approved, and whether to enter a judgment
26 and order of dismissal under Rule 23(e). The parties request that the Court set a date for a
27 hearing on final approval at the Court's convenience, no less than ninety (90) days after the
28 Court's preliminary approval of the Settlement Agreement.

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VII. CONCLUSION

On the grounds set forth more fully above, the parties respectfully request that the Court enter the Order granting preliminary approval of class action settlement, submitted herewith.

DATED: March 29, 2012

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ECF CERTIFICATION

The filing attorney attests that he has obtained concurrence regarding the filing of this document from the signatories to this document.

Dated: March 29, 2012

By: s/ John J. Stoia, Jr.
JOHN J. STOIA, JR.

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CERTIFICATE OF SERVICE

I hereby certify that on March 29, 2012, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on March 29, 2012.

s/ John J. Stoia, Jr.
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Attorneys for Defendants

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

In re GROUPON MARKETING AND SALES)
PRACTICES LITIGATION)
_____)

No. 3:11-md-02238-DMS-RBB

**DECLARATION OF SHIRLI FABBRI
WEISS IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF
SETTLEMENT**

Judge: Hon. Dana M. Sabraw

1 I, Shirli Fabbri Weiss, declare:

2 1. I am an attorney licensed to practice law in California and admitted to practice
3 before this honorable court, and am a partner in the law firm of DLA Piper LLP (US), attorneys
4 of record for defendant Groupon, Inc. (“Groupon, Inc.”) in the above-captioned action. I have
5 personal knowledge of the matters set forth in this Declaration, or, to the extent the statements
6 describe Groupon’s business, the matters are based on the disclosed statements of Groupon.

7 2. In addition to the sixteen cases relating to Groupon’s marketing and sales practices
8 pending before this Court, a putative class action is pending in Illinois state court: *Dremak v.*
9 *Groupon, Inc.*, case no. 11-CH-8076 (Kane County, IL).

10 3. Formed in November 2008, Groupon is an e-commerce marketplace that connects
11 consumers to merchants by offering collective buying deals on a wide variety of products and
12 services.

13 4. Groupon provides consumers with a selection of “Daily Deal” promotional offers
14 from merchants across the United States and abroad. Consumers purchase Groupon Vouchers
15 directly from Groupon’s website, which can then be redeemed for the specified goods or services
16 at the offering merchant. A typical Daily Deal might allow a consumer to pay \$20 to purchase a
17 Groupon Voucher, which the consumer could then redeem for \$40 value in goods or services at
18 the specified merchant as specified in the terms of the offer.

19 5. Consumers may sign-up online to receive a daily e-mails from Groupon regarding
20 the promotional offers available each day in targeted geographical location(s) and categories
21 selected by the consumer based on personal preference. To subscribe, consumers must provide
22 Groupon with a valid e-mail address and agree to Groupon’s Terms and Conditions.

23 6. Consumers may also access Groupon’s promotional offers directly through
24 Groupon’s website and mobile applications.

25 7. In order to purchase any Groupon Voucher or subscribe to receive daily e-mails, a
26 consumer must create a Groupon account by providing a valid e-mail address and agreeing to
27 Groupon’s Terms and Conditions.

28 ////

1 8. A Groupon Voucher consists of two separate values: a Customer Purchase Price
2 value equal to the amount paid by the consumer to purchase the Voucher, and a free add-on
3 Promotional Value for which the consumer does not pay.

4 9. An expiration date is stated on the face of every Groupon Voucher and disclosed
5 to the consumer prior to the consumer's purchase of the Voucher.

6 10. Groupon Vouchers provide that they may be exchanged at the merchant identified
7 on the Voucher for full Face Value (the Customer Purchase Price plus the Promotional Value)
8 until the expiration of the stated expiration date.

9 11. Groupon has sold over 70 million Groupon Vouchers throughout the U.S. and
10 overseas since its inception in November 2008.

11 12. Groupon believes that it has valid defenses in law and fact to Plaintiffs' legal
12 allegations and request for class certification. For example, Groupon believes that Plaintiffs'
13 claims are subject to an arbitration clause and that Plaintiffs have waived their right to pursue
14 class action. Groupon further believes that Plaintiffs lack standing to pursue their claims under
15 various state statutes because they have not suffered injury.

16 13. The proposed Settlement Agreement is the product of extensive arm's-length
17 negotiations between counsel. I participated in all of these settlement communications from the
18 commencement of this action. Beginning shortly after the first lawsuit was filed in the District
19 Court of Southern California, I had an initial settlement discussion with the plaintiff's counsel,
20 John Stoia, who was subsequently appointed interim class counsel. Following that conversation,
21 the parties continued to engage in discussions regarding potential settlement.

22 14. The parties attended an in-person, all-day mediation on May 17, 2011 before the
23 Hon. Daniel Weinstein (Ret.). Subsequent to this mediation, and with the assistance of Judge
24 Weinstein, counsel for the parties have devoted numerous hours toward diligently working
25 through the myriad of issues attendant to a class action settlement of this nature and scope.

26 ////

27 ////

28 ////

1 Ultimately, counsel negotiated the terms of a formal settlement document, the final version of
2 which is the Settlement Agreement (Exhibit A).

3 I declare under penalty of perjury that the foregoing is true and correct. Executed this
4 29th day of March, 2012, in San Diego, California.

5 s/ Shirli Fabbri Weiss
6 SHIRLI FABBRI WEISS

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CERTIFICATE OF SERVICE

I hereby certify that on March 29, 2012, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on March 29, 2012.

s/ John J. Stoia, Jr.

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 11 SOUTHERN DISTRICT OF CALIFORNIA

13 In re GROUPON MARKETING AND SALES)
 PRACTICES LITIGATION)

No. 3:11-md-02238-DMS-RBB

14)
 STIPULATION OF CLASS ACTION
 SETTLEMENT

Judge: Hon. Dana M. Sabraw

1 Subject to the approval of the Court and pursuant to Rule 23 of the Federal Rules of Civil
2 Procedure, this Stipulation of Class Action Settlement, including the attached Exhibits (“Settlement
3 Agreement”), is entered into between (a) Plaintiffs Barrie Arliss, Nevin Booth, Julie Buckley,
4 Ashley Christensen, Jason Cohen, Adam Dremak, William Eidenmuller, Anthony Ferreira, Sarah
5 Gosling, Eli R. Johnson, Heather Kimel, Jeff Lawrie, Michael McPherson, Sarah Mehel, Eric
6 Terrell, Carlos Vazquez, and Brian Zard on behalf of themselves and on behalf of each of the
7 Settlement Class Members; and (b) Groupon, Inc. (“Groupon”) and the Merchant Partner
8 Defendants, on behalf of themselves and on behalf of the Released Parties, including all Merchant
9 Partners. Capitalized terms used herein are defined in Section A herein or indicated in parentheses
10 elsewhere in the Settlement Agreement. Subject to Court approval and as provided herein, the
11 Parties hereby stipulate and agree that, in consideration of the promises and covenants set forth in the
12 Settlement Agreement and upon the entry by the Court of a Final Judgment and Order Approving
13 Settlement and the occurrence of the Effective Date, all Actions shall be settled and compromised
14 upon the terms and conditions set forth herein.

15 This Settlement Agreement is intended by the Parties to fully and finally compromise,
16 resolve, discharge, release and settle the Released Claims, as defined herein, and to dismiss these
17 Actions with prejudice, subject to the terms and conditions set forth below and without any
18 admission or concession as to the merits of any claim or defense by any of the Parties.

19 WHEREAS, beginning in 2008, Groupon has marketed and sold internet-based Groupon
20 Vouchers which can be redeemed for goods and services at Merchant Partners;

21 WHEREAS, Plaintiffs filed a number of putative class actions in several federal and state
22 courts against Groupon and the other Defendants asserting claims based on federal and state law
23 arising out of Defendants’ marketing and sale of Groupon Vouchers, and alleging, inter alia, (a) that
24 expiration dates stated on Groupon Vouchers violate the Electronic Funds Transfer Act, 15 U.S.C.
25 §1693, *et seq.* (“EFTA”), and various state consumer statutes applying to gift certificates; (b) that
26 Groupon imposes allegedly illegal and undisclosed restrictions such as “Not valid for cash back
27 (unless required by law),” “Must use gift certificate in one visit,” and other restrictions; and (c) that
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1 Groupon's Terms of Use and website are in various ways misleading or deceptive or unenforceable.
2 Plaintiffs seek damages, restitution, injunctive relief and other remedies in the Actions;

3 WHEREAS, sixteen (16) cases that were filed in or removed to federal courts around the
4 country were transferred to the Southern District of California pursuant to the provisions of 28
5 U.S.C. §1407 and, together with the first-filed case pending in this District, are coordinated in these
6 multi-district litigation ("MDL") proceedings, styled as *In re: Groupon, Inc., Marketing and Sales*
7 *Practices Litigation*, Case No. 3:11-md-2238 DMS-RBB (S.D. Cal.);

8 WHEREAS, in addition to the aforementioned Actions, a putative class action case was filed
9 and is currently pending in Illinois state court, styled as *Dremak v. Groupon*, No. 11 CH 876 (Kane
10 County Circuit Court);

11 WHEREAS, Plaintiffs are members of the proposed classes alleged in the complaints filed in
12 the Actions and include the proposed Class Representatives of the Settlement Class;

13 WHEREAS, Defendants deny Plaintiffs' allegations and claims in the Actions, and have
14 denied any wrongdoing or liability to Plaintiffs and have asserted that the Plaintiffs' claims are
15 subject to an arbitration agreement and a waiver of the right to bring a class action;

16 WHEREAS, on June 24, 2011, the Court appointed John J. Stoia, Jr. and the firm of Robbins
17 Geller Rudman & Dowd LLP as Interim Class Counsel for the Plaintiffs in those Actions pending in
18 the MDL proceedings;

19 WHEREAS, Interim Class Counsel have conducted an examination and investigation of the
20 facts and law relating to the matters set forth in the complaints;

21 WHEREAS, in reaching the Settlement Agreement, the Parties have engaged in extensive,
22 arms-length settlement negotiations and have mediated under the supervision and with the
23 participation of the Honorable Daniel Weinstein (Ret.) of JAMS;

24 WHEREAS, Plaintiffs believe that the claims asserted in the Actions have substantial merit;
25 however, taking into account the extensive burdens and expense of litigation, including the risks and
26 uncertainties associated with possible arbitration, protracted trials and appeals, as well as the fair,
27 cost-effective and assured method of resolving the claims of the Settlement Class through settlement,
28 Plaintiffs' Counsel have concluded that the Settlement Agreement provides substantial benefits to

1 the Settlement Class, and is fair, reasonable, adequate, and in the best interests of Plaintiffs and the
2 Settlement Class;

3 WHEREAS, Groupon and the Merchant Partner Defendants deny Plaintiffs' allegations in
4 the Actions, and deny any wrongdoing of any kind; further, Groupon and the Merchant Partner
5 Defendants assert that Plaintiffs' claims are all subject to mandatory arbitration and that Plaintiffs
6 have waived any alleged right to bring a class action. Further, Defendants have taken into account
7 the uncertainty, risk, and delay inherent in litigation and arbitration and have agreed to enter into the
8 Settlement Agreement to avoid further litigation expense and inconvenience, and to remove the
9 distraction of burdensome and protracted litigation;

10 WHEREAS, it is the intention and desire of Plaintiffs and Defendants to compromise,
11 resolve, dismiss and release all allegations and claims for damages or other relief against Groupon
12 and its Merchant Partners, including but not limited to the Merchant Partner Defendants, relating to
13 Groupon Vouchers that are or could have been set forth in the complaints filed in the Actions and in
14 any action filed, litigation pending or claim pursued by any Person or entity who is a member of the
15 Settlement Class; and

16 WHEREAS, the Parties have agreed that an appropriate resolution of this controversy is
17 accomplished through the benefits and releases set forth in the Agreement, and intend that the
18 Settlement resolve all claims and disputes arising out of, or relating to, the Groupon Vouchers,
19 including those between Plaintiffs, Settlement Class Members, and all Defendants as well as the
20 Merchant Partners not named as Defendants in the Actions, on the terms set forth in the Settlement
21 Agreement.

22 NOW, THEREFORE, the Agreement is entered into by and among the Parties, by and
23 through their respective counsel and representatives, and the Parties agree that: (a) upon approval of
24 the Court, the Actions shall be settled and compromised as between Plaintiffs and the Settlement
25 Class, and all Defendants and the Released Parties; and (b) upon Court approval of the Agreement,
26 the [Proposed] Final Judgment and [Proposed] Order Approving Settlement shall be entered
27 dismissing the Actions with prejudice and releasing all Released Claims, as defined herein, against
28 all Defendants and all Released Parties, all on the following terms and conditions:

1 **A. DEFINITIONS**

2 As used in the Settlement Agreement and the Exhibits attached hereto, in addition to any
3 definitions elsewhere in the Settlement Agreement, the following terms shall have the meanings set
4 forth herein:

5 1. ”Action” or “Actions” means: (a) the related or associated actions currently
6 comprising these multi-district litigation (“MDL”) proceedings, styled as *In re: Groupon, Inc.,*
7 *Marketing and Sales Practices Litigation*, No. 3:11-md-02238 DMS-RBB (S.D. Cal.), including
8 those cases that were coordinated and consolidated before the Court by the Judicial Panel on
9 Multidistrict Litigation (“JPML”), all of which are listed on Exhibit 1; and (b) any tag-along actions
10 subsequently filed or transferred to this Court as part of the MDL proceedings; and (c) related state
11 court putative class action cases - including the pending Illinois state court action, styled as *Dremak*
12 *v. Groupon*, No. 11 CH 876 (Kane County Cir. Ct.).

13 2. “Attorneys’ Fees and Expenses” means such funds as may be awarded by the Court
14 to Class Counsel to compensate them and other Plaintiffs’ Counsel in the Actions for their fees and
15 expenses in connection therewith, as described more particularly in Section I of this Settlement
16 Agreement.

17 3. “Claim” means a request for relief pursuant to Section E of this Settlement
18 Agreement submitted by a Settlement Class Member in accordance with the terms of the Settlement
19 Agreement.

20 4. “Claims Administration Expenses” means the expenses incurred by the Claims
21 Administrator in administering the Notice Program and processing and resolving all Claims by
22 Settlement Class Members.

23 5. “Claims Administrator” means Rust Consulting, Inc., or such other entity that the
24 Court shall appoint or approve to administer the Notice Program, to respond to inquiries from
25 Settlement Class Members, and to oversee the processing and payment or other resolution of Claims
26 as set forth in the Settlement Agreement.

27 6. “Claims Deadline” means the date by which Claims under this Settlement Agreement
28 must be received to be considered timely. The Claims Deadline for Claims made against the

1 Settlement Fund and Claims made against the Second Settlement Fund shall be clearly set forth in
2 the Class Notices, the form of which shall be approved in the Court Orders granting Preliminary and
3 Final approval of the Settlement and shall be shown on the settlement website.

4 7. “Class Counsel” means the Counsel appointed by the Court pursuant to Fed. R. Civ.
5 P. 23(g) pursuant to the Preliminary Approval Order and Section C.1.d.

6 8. “Class Notices” means the Class Settlement Notice, Settlement Fund Claims Notice,
7 and Second Settlement Fund Claims Notice, collectively.

8 9. “Class Settlement Notice” means the form of notice to be disseminated to Settlement
9 Class Members informing them about the terms of the Settlement and their rights to participate in the
10 Settlement, to Opt Out, or to Object to same and to appear at the Final Approval Hearing. Copies of
11 the proposed Class Settlement Notices are attached respectively in the form of Exhibits 2 and 3.

12 10. “Class Settlement Notice Date” means the date upon which the Settlement Notice is
13 disseminated to the Settlement Class.

14 11. “Class Representatives” means the named Plaintiffs who have diligently participated
15 in the proceedings to date and are listed on Exhibit 1.

16 12. “Court” means the United States District Court for the Southern District of California,
17 the Honorable Dana M. Sabraw presiding.

18 13. “Customer Purchase Price” means the amount that a Person paid for a Groupon
19 Voucher.

20 14. “Defendants” means the Persons named as defendants in the Actions, all of which are
21 listed on Exhibit 1.

22 15. “Defendants’ Counsel” means the law firm of DLA Piper US LLP.

23 16. “Effective Date” of the Settlement shall be the date on which all the following
24 conditions of Settlement shall have occurred:

25 a) Groupon has deposited the Settlement Amount into the Escrow Account in
26 accordance with Section D.2;

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1 b) the Court has granted final approval of the Settlement, following Class
2 Settlement Notice and a hearing, as prescribed by Rule 23 of the Federal Rules of Civil
3 Procedure;

4 c) the Court has entered Final Judgment in a form that is the same in all material
5 respects as that set forth in Section J of this Agreement; and

6 d) the Final Judgment has become Non-Appealable.

7 17. “Escrow Account” means the interest bearing account to be established by the Parties
8 consistent with the terms and conditions described in Section D.2 of this Agreement. The Escrow
9 Account shall be held in an interest-bearing account at Torrey Pines Bank, 750 B Street, Suite 100,
10 San Diego, California, 92101. All interest earned on the Settlement Fund and the Second Settlement
11 Fund, deposited in the Escrow Account shall be used to pay Claims and refunds for the benefit of the
12 Settlement Class except as provided herein.

13 18. “Face Value” means the value stated on the Groupon Voucher that is equal to the
14 Customer Purchase Price plus the Promotional Value.

15 19. “Final Approval Hearing” means the hearing to be conducted by the Court in
16 connection with its determination of the fairness, adequacy and reasonableness of the Settlement in
17 accordance with applicable jurisprudence.

18 20. “Final Judgment and Order Approving Settlement” means the Final Judgment and
19 Order Approving Settlement to be entered by the Court, substantially conforming to Section J of this
20 Agreement, approving the Settlement without material alteration, as fair, adequate and reasonable,
21 confirming the certification of the Settlement Class for purposes of the Settlement only, and issuing
22 such other findings and determinations as the Court and/or the Parties deem necessary and
23 appropriate to implement the Settlement.

24 21. “Groupon” means Groupon, Inc. and all of its United States subsidiaries,
25 predecessors, successors, parents, affiliates and assigns.

26 22. “Groupon Voucher” means all internet-based vouchers marketed or sold by Groupon
27 including but not limited to vouchers accessed through mobile devices, for redemption for goods and
28 services that are offered by Merchant Partners.

1 23. “Groupon Now! Voucher” means any Groupon Voucher so named on its face, created
2 by Groupon and marketed beginning in 2011 and as to which the Customer Purchase Price, if paid,
3 will be refunded in the original form of purchase without further action by the purchaser if the
4 Groupon Now! Voucher is not printed or viewed on a mobile device and which, if printed or viewed
5 but not redeemed, will be refunded to the purchaser in the original form of payment upon request to
6 Groupon.

7 24. “Incentive Award” means the payment approved by the Court and paid from the
8 Settlement Fund to compensate the Class Representatives for efforts undertaken by them on behalf
9 of the Settlement Class Members.

10 25. “Interim Class Counsel” means the law firm of Robbins Geller Rudman & Dowd
11 LLP.

12 26. “Mediator” means the Honorable Daniel Weinstein (Ret.) of JAMS.

13 27. “Merchant Partners” means all merchants, including retailers with whom Groupon
14 has agreed to make promotional offers for goods and services through Groupon Vouchers and
15 includes the Merchant Partner Defendants.

16 28. “Merchant Partner Defendants” means the Persons named as Defendants in any of the
17 Actions, except for Groupon.

18 29. “Non-Appealable” with respect to any Court order, including but not limited to the
19 Final Judgment, means the latest to occur of the following: (a) the date as of which the time to seek
20 review, alteration or appeal of the Court’s order has expired without any review, alteration,
21 amendment or appeal having been sought or taken, i.e., thirty (30) days after entry of the order; or
22 (b) if an appeal, petition, motion or other application for review, alteration or amendment is filed,
23 sought or taken, the date as of which such appeal, petition, motion or other application shall have
24 been finally determined in such a manner as to affirm the Court’s original order in its entirety and
25 the time, if any, for seeking further review has expired. Notwithstanding the foregoing, any
26 proceeding or order, or any appeal or petition for a writ of certiorari or other form of review
27 pertaining solely to any application for Attorneys’ Fees and Expenses or Incentive Awards shall not
28 in any way delay or preclude the Final Judgment from becoming Non-Appealable under this

1 Settlement Agreement. Further, the Parties may agree in writing to implement the Settlement even
2 in the event of any type of appeal, petition, motion or other application for review or modification of
3 the Final Judgment and Order Approving Settlement by any Person or in the event of a modification
4 to the Final Judgment and Order Approving Settlement by any appellate court.

5 30. “Notice Expenses” means the reasonable costs and expenses incurred in connection
6 with disseminating the Class Settlement Notice, Settlement Fund Claims Notice and Second
7 Settlement Fund Claims Notice and all other aspects of administering the Notice Program.

8 31. “Notice Program” means the plan approved by the Court for disseminating the Class
9 Settlement Notice, the Settlement Fund Claims Notice and the Second Settlement Fund Claims
10 Notice to Settlement Class Members and paid for from the Settlement Fund.

11 32. “Opt Out and Objection Date” means the date, to be set by the Court, by which a
12 Request for Exclusion must be filed with the Claims Administrator in order for a Settlement Class
13 Member to be excluded from the Settlement Class, and the date by which Settlement Class Members
14 must submit objections to the Claims Administrator and the Parties, if any, to the Settlement in
15 accordance with Section F of this Agreement.

16 33. “Party or Parties” means the parties to this Settlement Agreement, including
17 Plaintiffs, Groupon, and all Merchant Partner Defendants in the Actions.

18 34. “Person” means any adult individual, any corporation, trust, partnership, limited
19 liability company or other legal entity, and their respective successors or assigns.

20 35. “Plaintiffs” means the Class Representatives and all other named Plaintiffs in the
21 Actions listed on Exhibit 1.

22 36. “Plaintiffs’ Counsel” means all attorneys representing Plaintiffs in the Actions.

23 37. “Preliminary Approval Order” means the Order to be entered by the Court,
24 conforming to Section C.1 of this Agreement, conditionally certifying the Settlement Class;
25 preliminarily approving the Settlement; setting the date of the Final Approval Hearing; appointing
26 Interim Class Counsel as Class Counsel for the Settlement Class; approving the Notice Program, and
27 the form of Class Notices; and setting dates for the Claims Deadline, Opt Out and Objection Date,
28 and Notice Dates.

1 38. “Promotional Value” is the monetary amount stated on a Groupon Voucher in excess
2 of the Customer Purchase Price.

3 39. “Released Claim” is defined in Section H.1.a of this Agreement.

4 40. “Released Party” is defined in Section H.1.b of this Agreement.

5 41. “Releasing Party” is defined in Section H.1.c of this Agreement.

6 42. “Request For Exclusion” means the written communication that must be filed with
7 the Claims Administrator and received or postmarked on or before the Opt Out and Objection Date
8 by a Settlement Class Member who wishes to be excluded from the Settlement Class.

9 43. “Second Settlement Fund” means the settlement fund so designated by the Claims
10 Administrator pursuant to Section E.4.a.

11 44. “Second Settlement Fund Claims” means Claims for payment from the Second
12 Settlement Fund for refunds of the Customer Purchase Price of Groupon Vouchers purchased after
13 December 1, 2011.

14 45. “Second Settlement Fund Claims Notice” means the notice disseminated to Class
15 members containing information for the submission of Second Settlement Fund Proofs of Claim. A
16 copy of the proposed Second Settlement Fund Claims Notice is attached as Exhibit 8.

17 46. “Second Settlement Fund Claims Notice Date” means the date on which the Notice is
18 disseminated to the Settlement Class Members, advising them of the deadline of two years from the
19 Notice to submit their Second Settlement Fund Claim based on the purchase of any Groupon
20 Vouchers after December 1, 2011, that meet the criteria of Section E.4.b.

21 47. “Second Settlement Fund Proof of Claim” is the form submitted by a Settlement
22 Class Member who wishes to make a Claim on the Second Settlement Fund, as is described in
23 Section E.4.c of this Settlement Agreement. A copy of the proposed Second Settlement Fund Proof
24 of Claim form is attached as Exhibit 9.

25 48. “Settlement Agreement” means this Stipulation of Class Action Settlement (including
26 all Exhibits attached hereto).

27 49. “Settlement” means the terms and conditions of the Settlement Agreement.
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1 50. “Settlement Class and Settlement Class Member(s)” mean(s) all Persons who
2 purchased or received one or more Groupon Vouchers for redemption at a Merchant Partner in the
3 United States, from November 2008 until December 1, 2011. Excluded from the Settlement Class
4 are Defendants, Merchant Partners, their parent companies, subsidiaries, affiliates, officers and
5 directors, any entity in which Defendants have a controlling interest, Groupon employees, and all
6 judges assigned to hear any aspect of this litigation, as well as immediate family members of any of
7 the preceding referenced individuals.

8 51. “Settlement Amount” means Eight Million Five Hundred Thousand Dollars
9 (\$8,500,000).

10 52. “Settlement Consideration” means the total consideration exchanged by and between
11 Groupon and the Settlement Class, as set forth in the Settlement Agreement.

12 53. “Settlement Fund Claim” means a Claim submitted by a Class Member for a
13 Settlement Voucher or refund or other payment pursuant to the terms of Section E of this Settlement
14 Agreement.

15 54. “Settlement Fund Claims Notice” means the notice disseminated to Class Members
16 containing information for the submission of Claims for Settlement Vouchers and refunds of
17 Customer Purchase Price from the Settlement Fund which meet the criteria of the Settlement Fund
18 Proof of Claim as set forth in Section E.1.a of the Settlement Agreement. A copy of the proposed
19 Settlement Fund Claims Notice is attached in the form of Exhibit 4.

20 55. “Settlement Fund Claims Notice Date” means the date on which the Settlement Funds
21 Claims Notice is disseminated to the Settlement Class Members, advising them of the deadline to
22 submit Settlement Fund Claims.

23 56. “Settlement Fund Proof of Claim” is the form submitted by a Settlement Class
24 Member who wishes to make a Claim on the Settlement Fund, as is described in Section E.1.b of this
25 Settlement Agreement. A copy of the proposed Settlement Fund Proof of Claim is attached in the
26 form of Exhibit 5.

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1 57. “Settlement Fund Refund Claim Form” means a Claim submitted by a Class Member
2 for a cash refund when a Settlement Voucher is not honored as set forth in Section E.3.a. A copy of
3 the proposed Settlement Fund Refund Claim Form is attached in the form of Exhibit 7.

4 58. “Settlement Voucher” means the document in the form and content reflected in
5 Exhibit 6, that Settlement Class Members will receive for relief under Section E.1.f of this
6 Settlement Agreement after submitting an approved Settlement Fund Claim, and that entitles the
7 Person presenting such Settlement Voucher to the Merchant Partner to redeem, for a period of 130
8 days from its issue date, goods and/or services in the amount of the Customer Purchase Price of the
9 Groupon Voucher that is the basis of the Class Member’s Claim on the Settlement Fund, at the
10 Merchant Partner identified on the Groupon Voucher.

11 59. “Unknown Claims” shall have the meaning ascribed to that term in California Civil
12 Code Section 1542.

13 **B. SETTLEMENT AGREEMENT FOR SETTLEMENT PURPOSES**
14 **ONLY**

15 1. This Settlement Agreement exists and is entered for settlement purposes only, and
16 neither the fact of, nor any provision contained in, this Settlement Agreement or its Exhibits, nor
17 any action taken hereunder shall constitute, be construed as, or be admissible in evidence as an
18 admission of: (a) the validity of any claim or allegation by Plaintiffs, or of any defense asserted by
19 Defendants, in any Action, or any other action or proceeding; (b) any wrongdoing, fault, violation of
20 law, or liability of any kind on the part of any Party, Defendant, Released Party, Settlement Class
21 Member, or their respective counsel and their agents; (c) the certifiability of these Actions outside of
22 settlement; or (d) any issue regarding arbitrability of the Actions including any claim of or defense to
23 waiver of any putative Class Member’s right, if any, to bring a class action. Each of the Parties
24 represents and warrants that he/she/it will not take any contrary position.

25 2. The Settlement Agreement is without prejudice to the rights of each Releasing Party
26 and each Released Party to: (a) seek or oppose class certification in the Actions should the
27 Settlement Agreement not be finally approved or implemented for any reason, which shall be
28 without reference to certification of the Settlement Class for Settlement purposes; (b) seek or oppose

1 class certification in any other action; or (c) use the certification of the Settlement Class to seek or
2 oppose certification of any other proposed or existing class asserting any of the claims asserted in
3 any future action. The Class Representatives agree that they shall not make reference to certification
4 of the Settlement Class in any subsequent litigation against any Defendants.

5 **C. REQUIRED EVENTS AND COOPERATION BY THE PARTIES**

6 1. Preliminary Approval

7 As soon as reasonably practicable after execution of the Settlement Agreement, the Parties
8 shall submit the Settlement Agreement, including all Exhibits, to the Court for its Preliminary
9 Approval and shall jointly move the Court for entry of an order, which by its terms shall:

10 (a) Determine preliminarily that this Settlement Agreement and the Settlement set
11 forth herein fall within the range of reasonableness meriting possible final approval and
12 dissemination of Class Settlement Notice to the Settlement Class;

13 (b) Determine preliminarily that the Class Representatives are members of the
14 Settlement Class and that, for purposes of the Settlement, they satisfy the requirements of Rule 23
15 and that they adequately represent the interests of the Settlement Class Members, and appoint them
16 as the representatives of the Settlement Class;

17 (c) Conditionally certify the Settlement Class for purposes of the Settlement
18 Agreement under Rule 23(b)(3) for settlement purposes only;

19 (d) Appoint Interim Class Counsel as Class Counsel pursuant to Rule 23(g);

20 (e) Schedule the Final Approval Hearing to: (i) determine finally whether the
21 Settlement Class satisfies the applicable requirements of Rule 23 and should be finally certified for
22 settlement purposes only; (ii) review objections, if any, regarding the Settlement Agreement;
23 (iii) consider the fairness, reasonableness and adequacy of the Settlement; (iv) consider Class
24 Counsel's application for an award of Attorneys' Fees and Expenses; (v) determine the validity of
25 Requests for Exclusion and exclude from the Settlement Class those Persons who validly and timely
26 opt out; and (vi) consider whether the Court shall issue the Final Judgment and Order Approving
27 Settlement approving the Settlement and dismissing the Actions with prejudice;

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- (f) Set a briefing schedule for the Final Approval Hearing;
- (g) Approve the proposed Class Notices and Notice Program;
- (h) Approve the designation of Rust Consulting, Inc. as the Claims Administrator;
- (i) Direct the Claims Administrator to cause the Class Notices to be disseminated in the manner set forth in the Notice Program on or before the Notice Dates;
- (j) Determine that the Class Notices and the Notice Program: (i) meet the requirements of Rule 23(c)(3) and due process; (ii) are the best practicable notice under the circumstances; (iii) are reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action, their right to object to the proposed Settlement, opt out of the Settlement Class, or participate within the timeframe provided herein; and (iv) are reasonable and constitute due, adequate and sufficient notice to all those entitled to receive notice;
- (k) Require each Settlement Class Member who wishes to opt out of the Settlement Class to submit a timely written Request for Exclusion, on or before the Opt Out and Objection Date, to the Claims Administrator, to Class Counsel, and to Defendants' Counsel, as specified in Section F.5 of this Settlement Agreement;
- (l) Rule that any Settlement Class Member who does not submit a timely written Request for Exclusion will be bound by all proceedings, orders and judgments in the Action;
- (m) Require any Settlement Class Member who wishes to object to the fairness, reasonableness or adequacy of the Settlement Agreement, to the award of Attorneys' Fees and Expenses, or to the Incentive Awards, to submit to the Claims Administrator and deliver to Class Counsel and Defendants' Counsel, by the Opt Out and Objection Date, a statement of his or her objection, as well as the specific reason for each objection, including any legal support the Settlement Class Member wishes to bring to the Court's attention and any evidence the Settlement Class Member wishes to introduce in support of his or her objection, and to state whether the Settlement Class Member and/or his or her counsel wishes to make an appearance at the Final Approval Hearing, or be forever barred from separately objecting; and

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(n) Establish the following:

(i) The date and time of the Final Approval Hearing.

(ii) The Notice Dates: The Parties propose that the Class Settlement Notice Date be fifty (55) days before the Final Approval Hearing, and the Settlement Fund Claims Notice Date be no more than fourteen (14) days after the Effective Date, and that the Second Settlement Fund Claims Notice Date be no more than fourteen (14) days after the Claims Administrator has paid all approved Settlement Fund Proofs of Claim.

(iii) The Opt Out and Objection Date: The Parties propose that the Opt Out and Objection Date be the date that is fourteen (14) days prior to the Final Approval Hearing.

(iv) Claims Deadlines: The Parties propose that the Claims Deadline for submission of Claims for Settlement Vouchers, and refunds or other payments from the Settlement Fund be sixty (60) days after the date that the Settlement Fund Notice Date is disseminated to the Settlement Class. The Parties propose that the Claims Deadline for Claims for refunds paid from the Second Settlement Fund be two years after the date that the Second Settlement Fund Claims Notice is disseminated.

2. Cooperation

The Parties represent and acknowledge that each intends to implement the Settlement. The Parties shall, in good faith, cooperate and assist with and undertake all reasonable actions and steps in order to accomplish all required events on the schedule set by the Court, and shall use their best efforts to implement all terms and conditions of the Settlement Agreement.

3. Certification of Settlement Class

The Parties stipulate to the certification of the Settlement Class for purposes of the Settlement Agreement and settlement purposes only.

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D. SETTLEMENT CONSIDERATION

1. Injunctive Relief Applicable to Purchase Value of Certain Groupon Vouchers Issued Within Three (3) Years After the Effective Date; Permitted Expiration of Promotional Value; Arbitration of Certain Disputes; Conditions for Seeking Amendment to Injunctive Relief

(a) No Expiration Date on Customer Purchase Price for Certain Groupon Vouchers Issued Within 3 Years After Effective Date; Permitted Expiration of Promotional Value

Plaintiffs agree on behalf of the Settlement Class that Groupon shall be permitted to sell Groupon Vouchers with expiration dates applying to their Promotional Values without challenge from the Settlement Class. However, for a period of three (3) years following the Effective Date, Groupon shall not offer to sell more than 10% of the number annually of its Daily Deals with an expiration date of less than thirty (30) calendar days from the Groupon Voucher’s date of issuance, applying to the Groupon Vouchers’ Promotional Value, or any expiration date applying to the Customer Purchase Price, except for: (i) Groupon Now! Vouchers, (ii) Groupon Vouchers sold for travel related offers; (iii) Groupon Vouchers sold for admission to ticketed events; or (iv) Groupon Vouchers that offer goods, services or events which are inherently limited by time or availability.

(b) Mandatory Arbitration of Disputes Involving Promotional Value of Groupon Vouchers

In the event that following the Effective Date of settlement, a dispute arises between any Class Member and Groupon concerning the Promotional Value of a Groupon Voucher purchased by the Class Member after the Effective Date, which is not resolved by contacting Groupon, such Class Member shall be required to submit such dispute exclusively to final and binding arbitration before the Honorable Daniel Weinstein at JAMS or another arbitrator designated by JAMS in the event that Judge Weinstein is unavailable. Groupon will pay the cost of such arbitration; however, if the arbitrator determines that the arbitration has been brought in bad faith, the arbitrator may divide the cost of the arbitration or require the class member to pay the cost of the arbitration. This provision supersedes any other applicable arbitration provision that

1 exists between Class Members and Groupon solely pertaining to arbitration of individual
2 disputes regarding Promotional Value of Groupon Vouchers.

3 (c) Required Disclosures to Consumers

4 (i) On and after the Effective Date, where there is a difference between
5 the date of expiration of the Promotional Value and the date of expiration of the Customer Purchase
6 Price, Groupon Vouchers shall contain clear and conspicuous disclosures explaining the difference
7 between such expiration dates. Where applicable under Section D.1.a above, the Groupon Voucher
8 shall clearly and conspicuously state that the Customer Purchase Price does not expire unless the
9 Groupon Voucher is redeemed or refunded. All Groupon Vouchers shall clearly state the date of the
10 expiration of the Promotional Value which shall constitute the date after which the purchaser shall
11 not be entitled to redeem the portion of the Groupon Voucher that is the Promotional Value.

12 (ii) Terms and conditions of the Groupon Voucher expiration periods shall
13 be shown on the “Daily Deal” promotion displayed to the consumer prior to purchase. In addition,
14 such terms and conditions will be easily available for display to the purchaser prior to purchase to
15 consumers on mobile devices and applications that are used to download Groupon Vouchers. With
16 respect to offers made on Groupon Now! Vouchers, the Customer Purchase Price of such Vouchers
17 that are paid for but where such Voucher is not printed or viewed shall be cancelled and a refund of
18 the Customer Purchase Price shall be applied in the form of the original purchase (e.g., if the
19 purchase was made by credit card, the refund shall be made to the credit card). If the Groupon Now!
20 Voucher is paid for and printed or viewed on a mobile device but is not redeemed, the purchaser
21 shall receive a refund of the Customer Purchase Price in the original form of payment to Groupon
22 upon request.

23 (d) Transferability

24 Groupon Vouchers shall be transferrable, except for Groupon Vouchers that, by their nature
25 must be associated with, a specific, named individual, promise a good or service customized for, or
26 addressed to a specific individual, and any voucher which by law may not be transferred.

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1 (e) Application to Amend Injunctive Relief

2 Following the Effective Date, Groupon shall retain the right to apply to the Court, or if the
3 Court is not available, any court having jurisdiction over the matter, seeking to amend the injunctive
4 relief agreed to in the Settlement in the event that the law applicable to Groupon Vouchers materially
5 changes. Prior to filing any application for relief under this paragraph, Groupon shall meet and
6 confer with Class Counsel concerning same, and if the Parties are unable to agree, then they shall
7 attempt to mediate their dispute before the Mediator. If they are unable to resolve their dispute
8 before the Mediator, then the Parties reserve all their rights to file an application for amendment to
9 this Settlement Agreement and to oppose same.

10 If Groupon seeks to amend the injunctive relief agreed to in this Settlement Agreement in the
11 event that the law applicable to Groupon Vouchers materially changes or modifies Groupon voucher
12 disclosures such that they are materially inconsistent with the disclosures required herein, then
13 Plaintiffs shall also have the right to seek amendment of the injunctive relief in this Settlement
14 Agreement and the Parties shall proceed to attempt to resolve the dispute pursuant to the meet and
15 confer and mediation protocols set forth herein. If the Parties are unable to resolve their dispute as
16 described in this subparagraph (e), then the Parties reserve all their rights to file an application for
17 amendment to this Settlement Agreement with the Court and to oppose same.

18 2. Monetary Relief to Settlement Class Members; Creation and Funding of Settlement
19 Fund

20 No later than twenty (20) calendar days after Preliminary Approval is granted, Groupon shall
21 deposit the sum of Eight Million and Five Hundred Thousand Dollars (\$8,500,000) into the Escrow
22 Account to fund the Settlement Fund. The Settlement Fund shall be used for the payment of
23 Attorneys' Fees and Expenses, Claims Administration Expenses, any Incentive Awards and
24 Expenses. The remaining amounts after deducting those payments shall be used to pay refunds
25 resulting from Claims of Settlement Class Members meeting the criteria of this Settlement based on
26 purchases of certain Groupon Vouchers ("Settlement Fund Claims") as described in this Settlement
27 Agreement, and if funds remain after such payments, the Settlement Fund shall be designated the
28 Second Settlement Fund and will then be used to pay Claims submitted to the Claims Administrator

1 for refunds of the Customer Purchase Price based on purchases of Groupons after December 1, 2011.
2 (“Second Settlement Fund Claims”) that meet the criteria for such Claims set forth in this Settlement
3 Agreement and to reimburse Groupon for paying Claims that meet the criteria of the Second
4 Settlement Claims as provided herein, as well as fund the *Cy Pres* Fund as provided in this
5 Settlement Agreement.

6 3. *Cy Pres* Fund

7 Two years after the Second Settlement Fund Claims Notice is disseminated, any remaining
8 balance in the Second Settlement Fund will be donated as follows: 50% to the Electronic Frontier
9 Foundation, and 50% to the Center for Democracy and Technology and an amount of \$75,000 shall
10 be set aside from the Second Settlement Fund so that the amount of the total donation shall be at
11 least \$75,000.

12 **E. CLAIMS SUBMISSION PROCESS, DEADLINES AND**
13 **ADMINISTRATION**

14 1. Submission of Claims for Payment from Settlement Fund; Criteria for Issuance of
15 Settlement Vouchers and Refunds

16 (a) Eligibility

17 Each Settlement Class Member who wishes to participate in the Settlement Fund and who
18 purchased or received Groupon Voucher(s) before the December 1, 2011, which meet the following
19 criteria: (i) the Groupon Vouchers were never redeemed or refunded; and (ii) they were issued after
20 August 22, 2010 or were issued before August 22, 2010 to residents of, or for redemption at
21 Merchant Partners locations in those states identified on Exhibit 11, must return, within sixty (60)
22 days of the Settlement Fund Claims Notice, either via electronic submission or postmarked by the
23 Claims Deadline, a Settlement Fund Proof of Claim, substantially in the form of Exhibit 5, supported
24 by such statements or documents as are designated in the Settlement Fund Proof of Claim.

25 (b) Content of Settlement Fund Proof of Claim

26 Each Settlement Fund Proof of Claim submitted under this paragraph must contain or attach
27 the following information: (i) the Class Member’s name; (ii) the Class Member’s e-mail address;
28 (iii) the Voucher number; (iv) the expiration date shown on the Groupon Voucher that is the basis of

1 the Claim; (v) the identity of the Merchant and its location referenced on the Groupon Voucher; (vi)
2 proof of, and date of, purchase consisting of either a copy of the Groupon Voucher or a copy of the
3 credit card billing for the purchase; (vii) the Customer Purchase Price paid for the Groupon Voucher
4 and Promotional Value; (viii) a statement that no part of the Groupon Voucher has been redeemed or
5 refunded; and (ix) an indication of whether the Class Member wishes to receive the Settlement
6 Voucher electronically or via U.S. Mail. The Settlement Fund Proof of Claim under this section
7 must be sworn to under oath or made subject to the penalties of perjury pursuant to 28 U.S.C. §1746.

8 (c) Submission of More than One Claim in Settlement Fund Proof of Claim

9 Settlement Class Members may, but are not required to, submit a single Proof of Claim form
10 for more than one Settlement Fund Claim but all required information as to the Claim must be
11 provided in the Settlement Fund Proof of Claim, which must be submitted prior to the deadline for
12 submission of Settlement Fund Proofs of Claim.

13 (d) Manner of Submission of Settlement Fund Proof of Claim; Confidentiality

14 All Settlement Fund Proofs of Claim for Settlement Vouchers must be electronically
15 submitted to the Claims Administrator or postmarked by the Settlement Fund Claims Deadline.
16 Those Settlement Class Members submitting Settlement Fund Proofs of Claim for Settlement
17 Vouchers may submit such Claims to the Claims Administrator, at their election, online or as an
18 attachment to an e-mail, or by mail or facsimile. Groupon and the Claims Administrator agree and
19 the Settlement Fund Claim Notice shall contain, a statement indicating that, information provided by
20 Settlement Class Members shall be kept confidential, shall be used only for purposes of
21 administering the Settlement, and shall not be used for marketing or any other commercial purposes.

22 (e) Deadline for Settlement Fund Claim Submissions

23 All Settlement Fund Proofs of Claim for Settlement Vouchers must be either electronically
24 submitted to the Claims Administrator by or postmarked by, no later than 60 (sixty) days after the
25 date the Settlement Fund Claims Notice is disseminated. The Settlement Fund Claims Deadline shall
26 be clearly set forth in the Settlement Fund Claims Notice and the settlement website, and the website
27 of Class Counsel.

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1 (f). Issuance of Settlement Vouchers
2 Settlement Class Members whose Claims meet the criteria of Section E.1.a under this
3 Settlement shall receive a Settlement Voucher, substantially in the form of Exhibit 6, from the
4 Claims Administrator, valid for a period of 130 days from its issue date, to redeem the expired
5 Groupon Voucher(s) that are the basis of the Claim, for goods and services at the Merchant Partner
6 identified therein for the amount of the Customer Purchase Price, regardless of the expiration date
7 stated on the Groupon Voucher on which the Claim is based; *provided however*, that if at the time of
8 submission of the Settlement Fund Proof of Claim the Merchant is out of business, then the
9 Settlement Class Member shall so state on the Settlement Fund Proof of Claim and the Settlement
10 Class Member shall receive a refund of the Customer Purchase Price from the Claims Administrator.

11 2. Cooperation by Merchant Partners
12 Within seven (7) days of the Effective Date, Groupon will notify all past and current
13 Merchant Partners through means and content reflected in Exhibit 10 that they may be presented
14 with Settlement Vouchers and requesting that they redeem all Settlement Vouchers presented by
15 Settlement Class Members presented within 130 days of the Settlement Voucher's Issue Date.

16 3. Cash Refunds Where Settlement Voucher Not Honored; Pro Rata Payment

17 (a) Refund Requests

18 In the event that a Merchant Partner has gone out of business after the date the Settlement
19 Fund Proof of Claim is submitted and is thereby not available to permit redemption of goods or
20 services by honoring a Settlement Voucher, the Class Member shall submit, either electronically or
21 by mail, e-mail or facsimile, a Settlement Fund Refund Claim Form in the form of Exhibit 7 so
22 stating to the Claims Administrator and upon its approval shall receive by U.S. mail, a check in the
23 amount of the Customer Purchase Price of the Groupon Voucher that is the basis of the Claim
24 payable to the Class Member. If the Merchant is not out of business but is unable or unwilling for
25 any reason to redeem a Settlement Voucher, then the Settlement Class member will be entitled to
26 receive by U.S. Mail, a check in the amount of the Customer Purchase Price plus 20% of the
27 Promotional Value of the Groupon Voucher which was the basis of the Claim payable to the Class
28 Member. In such case, the Class Member shall submit, either electronically or by mail e-mail or

1 facsimile, a Settlement Fund Refund Claim Form in the form of Exhibit 7 to the Claims
2 Administrator within 185 days of issuance of the Settlement Voucher. All such payments shall be
3 made from the Settlement Fund.

4 (b) Pro Rata Payments

5 In the event that Settlement Class Members file valid Settlement Fund Claims seeking relief
6 in an amount exceeding the funds available in the Settlement Fund, the Face Value of all Settlement
7 Vouchers issued to Settlement Class Members shall be reduced pro rata and no Second Settlement
8 Fund shall be designated.

9 4. Submission of Post-Effective Date Based Claims (Second Settlement Fund
10 Claims)

11 (a) Creation of Post-Effective Date Settlement Fund (Second Settlement
12 Fund)

13 Thirty (30) days after all Settlement Fund Claims have been processed by the Claims
14 Administrator as provided above, and all Notice Expenses, Claims Administration Expenses,
15 Incentive Awards and Expenses, and Plaintiffs' Attorneys' Fees and Expenses are paid as provided
16 herein, in the event that there remains more than \$75,000 in the Settlement Fund, the Settlement
17 Fund shall be designated the "Second Settlement Fund" and the Claims Administrator shall issue the
18 Second Settlement Fund Claims Notice to the Settlement Class substantially in the form of Exhibit
19 8. If there is not more than \$75,000 in the Settlement Fund, the balance in the Settlement Fund shall
20 be donated to a charity agreed to by the Parties and the Claims Administrator shall not designate a
21 Second Settlement Fund.

22 (b) Use of Second Settlement Fund; Claims Eligibility

23 The amounts in the Second Settlement Fund, if any, less \$75,000 will be used to provide
24 refunds of Customer Purchase Price to Settlement Class Members, who submit Second Settlement
25 Fund Proofs of Claim following dissemination of the Second Settlement Fund Claims Notice, that
26 are approved by the Claims Administrator, until all funds in the Second Settlement Fund are paid,
27 less \$75,000 reserved to fund the *Cy Pres* Fund.

28 (c) Content of Second Settlement Fund Proof of Claim

1 Class Members who wish to request a refund of the Customer Purchase Price that was paid
2 by the Class Member for a Groupon Voucher after December 1, 2011 must submit a Second
3 Settlement Fund Proof of Claim in the form of Exhibit 9 to the Claims Administrator stating: (i) the
4 Class Member's name; (ii) the Class Member's e-mail address and mailing address; (iii) the identity
5 of the Merchant and its location referenced on the Groupon Voucher; (iv) proof of, and date of,
6 purchase consisting of either a copy of the Groupon Voucher or a copy of the credit card billing for
7 the purchase; and (v) the reason for the request for a refund.

8 (d) Payment of Second Settlement Fund Proofs of Claim

9 Second Settlement Fund Proofs of Claim for refunds based on purchases after December 1,
10 2011 may be paid for any legitimate reason as determined by the Claims Administrator subject to
11 Section E.4.b. As an alternative to submitting Second Settlement Fund Proofs of Claim to the
12 Claims Administrator, Class Members may seek a refund from Groupon of the Customer Purchase
13 Price of any Groupon Voucher purchased after December 1, 2011 by providing to Groupon the same
14 information as is required in the Second Settlement Fund Proof of Claim. In the event that Groupon
15 provides a refund to any such Class member based on a purchase of a Groupon Voucher made after
16 December 1, 2011, Groupon may submit a request for reimbursement from the Second Settlement
17 Fund to the Claims Administrator. Second Settlement Fund Proofs of Claim submitted by Class
18 Members and paid by the Claims Administrator during the first ninety (90) days after dissemination
19 of the Second Settlement Fund Claims Notice ("90 Day Priority Claims") shall have priority of
20 payment from the Second Settlement Fund over claims by Groupon for reimbursement of its
21 payment to Class Member Claims pursuant to this paragraph. After the 90 Day Priority Claims have
22 been paid, Groupon reimbursement claims submitted to the Claims Administrator within ten (10)
23 days thereafter shall next be paid to the extent of funds remaining in the Second Settlement Fund.
24 Thereafter, Claims submitted to the Claims Administrator and reimbursement claims submitted by
25 Groupon to the Claims Administrator shall be paid on a "first come, first served" basis, with equal
26 priority until the Second Settlement Fund is depleted, less \$75,000 or until two years after the
27 designation of the Second Settlement Fund, whichever comes first. Any funds remaining in the

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1 Second Settlement Fund thereafter shall become part of the *Cy Pres* Fund and shall be handled in
2 accordance with Section D.3 above.

3 5. Claims Administrator

4 The Parties agree that the Claims Administrator shall be Rust Consulting, Inc. The Claims
5 Administrator will be approved by the Court and will be subject to the Court's supervision and
6 direction as circumstances may require. The Claims Administrator will administer the Notice
7 Program and Claims process, and oversee the distribution of Incentive Awards, cash refunds and
8 other payments to Settlement Class Members in accordance with the terms of the Settlement and
9 orders of the Court.

10 6. Notices; Assistance from Groupon

11 The Claims Administrator shall administer the monetary relief for Settlement Class Members
12 provided by the Settlement Agreement by resolving Claims, requests for refunds and other payments
13 in a cost effective and timely manner. The Claims Administrator may request assistance from
14 Groupon to identify Class Members; to facilitate providing Class Notices as necessary and
15 appropriate to satisfy Rule 23 and constitutional due process; to facilitate sending Notice e-mails
16 from a domain name that includes the word "Groupon" so that, to the extent possible, they are not
17 excluded from Settlement Class Members' e-mail inboxes as an unknown sender or junk mail; to
18 link to the Groupon website for accessibility to the Settlement Class Members' Groupon accounts;
19 to assist with establishing the settlement website; and to accomplish such other purposes as may be
20 approved by Groupon and Class Counsel; provided, however, that the determination of the validity
21 of Claims and requests for refunds shall be made by the Claims Administrator subject to Section E.7,
22 below.

23 7. Process for Review of Claims

24 The Claims Administrator will review and validate all Claim and requests for refunds
25 submitted by Settlement Class Members as to the Settlement Fund and the Second Settlement Fund.
26 Issues regarding the validity of Claims, requests for refunds or other payments that are raised by the
27 Claims Administrator shall be submitted to Defendants' Counsel and Class Counsel for resolution
28 and, if no resolution is reached, to the Mediator for a binding determination. Following one week

1 after the date of dissemination of the Settlement Fund Claim Notice the Claims Administrator shall
2 provide weekly reports to Defendants' and to Plaintiff's Counsel concerning the Claims and requests
3 for refunds submitted during the prior week. Plaintiffs and Groupon shall have two (2) business
4 days to contest a Claim including any request for refund or payment, and the opposing Party will
5 have an opportunity to review any challenges and object. Should Plaintiffs and Groupon be unable
6 to reach resolution as to a particular Claim or request for refund, such Claims will be submitted to
7 the Mediator for binding resolution.

8 8. Maintenance of Records

9 The Claims Administrator shall maintain records of all Claims and requests for refunds
10 submitted until ninety (90) days after all Claims and requests for refunds have been finally resolved,
11 and such records will be made available upon request to Class Counsel and Groupon's Counsel. The
12 Claims Administrator also shall provide such reports and such other information to the Court as it
13 may require.

14 9. Settlement Website

15 The Claims Administrator shall cause a website to be created containing relevant documents,
16 including but not limited to, all applicable deadlines; the Class Notices (the Class Settlement Notice
17 and the Settlement Fund Claim Notices); instructions on how to submit Claims and requests for
18 refunds online or by e-mail, mail or facsimile; FAQs and answers; orders of the Court pertaining to
19 the Settlement; this Agreement and all supporting exhibits; a toll-free telephone number and
20 addresses to contact the Claims Administrator by e-mail and mail. The cost of creating and
21 maintaining this website shall be paid from the Settlement Fund. The Parties shall agree on all
22 information and documents to be posted on this website.

23 **F. NOTICE TO THE SETTLEMENT CLASS, OBJECTION, AND OPT
24 OUT RIGHTS**

25 1. Upon Preliminary Approval of the Settlement, as the Court may direct, the Claims
26 Administrator shall cause the Class Settlement Notice substantially in the form of Exhibits 2 - 3 to
27 be disseminated to potential Settlement Class Members as provided herein. Notices shall be
28 disseminated pursuant to the Notice Program on or before the Notice Dates in a manner that

1 comports with constitutional due process and Rule 23. Within fourteen (14) days of the Effective
2 Date, the Claims Administrator shall cause the Settlement Fund Claims Notice substantially in the
3 form of Exhibit 4 to be disseminated to Settlement Class Members, advising of their ability to
4 submit Settlement Fund Claims within sixty (60) days thereafter. Within fourteen (14) days of the
5 Claims Administrator's designation of the Settlement Fund as the Second Settlement Fund, the
6 Claims Administrator shall cause the Second Settlement Fund Claims Notice substantially in the
7 form of Exhibit 8 to be disseminated to Settlement Class Members.

8 2. The Class Settlement Notice shall:

9 (a) contain a short, plain statement of the background of the Action and the
10 proposed Settlement;

11 (b) describe the proposed Settlement relief as set forth in this Agreement,
12 including the reserves of Class Counsel for Attorneys Fees and Expenses and Incentive Awards as
13 described in this Agreement;

14 (c) inform Settlement Class Members that, if they do not exclude themselves
15 from the Settlement Class, they may be eligible to receive relief;

16 (d) describe the procedures for participating in the Settlement and advise
17 Settlement Class Members of their rights, including their right to file a Claim, request for refund or
18 other payment under the Settlement, to opt out of, or object to the Settlement;

19 (e) explain the scope of the Release, and the impact of the proposed Settlement on
20 any existing litigation, arbitration or other proceeding;

21 (f) state that any relief to Settlement Class Members under the Settlement is
22 contingent on the Court's final approval of the proposed Settlement;

23 (g) explain that neither Counsel for the Parties, nor the Claims Administrator may
24 advise on the tax consequences of participating or not participating in the Settlement;

25 (h) explain the procedures for opting out of the Settlement and specifying that so-
26 called "mass" or "class" opt outs shall not be allowed;

27 (i) invite Settlement Class Members to provide their contact information by way
28 of an online process (or by e-mail, mail or facsimile) to include them in the direct dissemination of

1 the Settlement Fund Claim Notice which will advise when the Settlement has become effective and
2 the deadline for Claims has begun to run; and

3 (j) provide that any objection to the Settlement and any papers submitted in
4 support of said objection will be considered only if the Settlement Class Member making an
5 objection has submitted timely notice of his or her intention to do so, with the grounds for the
6 objection, and has submitted copies of such papers he or she proposes to submit at the Final
7 Approval Hearing to the Claims Administrator and served copies of such papers on Class Counsel
8 and Groupon's Counsel on or before the Opt Out and Objection Date, as approved by the Court and
9 specified in the Class Settlement Notice.

10 3. Any Settlement Class Member who intends to object must do so on or before the Opt
11 Out and Objection Date. In order to object, the Settlement Class Member must include in the
12 objection submitted to the Claims Administrator and served on Class Counsel and Defendants'
13 Counsel: (a) the name, address, telephone number, and e-mail address of the Person objecting and, if
14 represented by counsel, of his/her counsel; and (b) Proof of Purchase or acquisition of a Groupon
15 Voucher. An objecting Settlement Class Member must state, specifically and in writing, all
16 objections and the basis for any such objections, and provide a statement of whether he/she intends
17 to appear at the Final Approval Hearing, either with or without counsel. Any Settlement Class
18 Member who fails to submit and serve timely a written objection and notice of his or her intent to
19 appear at the Final Approval Hearing pursuant to this Section, as detailed in the Notice, shall not be
20 permitted to object to the approval of the Settlement at the Final Approval Hearing and shall be
21 foreclosed from seeking any review of the Settlement or the terms of the Agreement by appeal or
22 other means. The Claims Administrator shall provide copies of all objections to counsel for the
23 Parties, who shall file them with the Court.

24 4. Prior to the Final Approval Hearing, the Claims Administrator shall provide to the
25 Court documentation that the Settlement Class Notice was provided in accordance with the Notice
26 Program.

27 5. A Settlement Class Member who wishes to opt out of the Settlement Class must do so
28 on or before the Opt Out and Objection Date. In order to opt out, a Settlement Class Member must

1 complete and send to the Claims Administrator a Request For Exclusion that is received or
2 post-marked no later than the Opt Out and Objection Date. The Request for Exclusion must be
3 personally signed by the Settlement Class Member requesting exclusion and contain a statement that
4 indicates a desire to be excluded from the Settlement Class. So-called “mass” or “class” opt-outs
5 purporting to be made on behalf of multiple Persons or classes of Persons shall not be allowed.

6 6. Except for those Settlement Class Members who timely and properly file a Request
7 for Exclusion, all other Settlement Class Members will be deemed to be Settlement Class Members
8 for all purposes under the Agreement, and upon the Effective Date, will be bound by its terms,
9 regardless of whether they file a Claim, a request for a refund, or receive any other monetary relief.

10 7. Any Settlement Class Member who properly opts out of the Settlement Class shall
11 not: (a) be bound by any orders or judgments entered in the Action relating to the Settlement; (b) be
12 entitled to relief under, or be affected by, the Settlement Agreement; (c) gain any rights by virtue of
13 the Settlement Agreement; or (d) be entitled to object to any aspect of the Settlement.

14 8. The Claims Administrator shall provide Class Counsel and Groupon’s Counsel with a
15 list of all timely Requests for Exclusion within five (5) business days after the Opt Out and
16 Objection Date.

17 **G. EXCLUSIVE REMEDY; RELEASES; JURISDICTION OF COURT**

18 The Settlement Agreement shall be the sole and exclusive remedy for any and all Released
19 Claims of all Releasing Parties against all Released Parties. No Released Party shall be subject to
20 liability or expense of any kind to any Releasing Party with respect to any Released Claim. Upon
21 entry of the Final Judgment and Order Approving Settlement, each and every Releasing Party shall
22 be permanently barred and enjoined from initiating, asserting and/or prosecuting any Released Claim
23 against any Released Party in any court or any forum.

24 **H. RELEASES**

25 1. The following terms have the meanings set forth herein:

26 (a) “Released Claim” means any individual, class, representative, group or
27 collective claim, liability, right, demand, suit, matter, obligation, damage, loss, action or cause of
28 action, of every kind and description that a Releasing Party has or may have, including assigned

1 claims, whether known or unknown, asserted or unasserted, that is, has been, or could reasonably
2 have been asserted by the Releasing Party either in the Court or any other court or forum, regardless
3 of legal theory or relief claimed, and regardless of the type of relief or amount of damages claimed,
4 against any of the Released Parties arising from, or in any way relating to, any of the allegations
5 regarding the advertising, marketing, redemption or sale of Groupon Vouchers alleged in the
6 Actions, including but not limited to allegations regarding any use of expiration dates on Groupon
7 Vouchers, and regarding any other practice, conduct, or presentation of “Daily Deals,” “Fine Print,”
8 “Legal Stuff We Have To Say,” “Not Valid For Cash Back,” other terms of use or terms of sale,
9 disclaimers, arbitration provisions, allegations of improper time pressure placed on customers or
10 requirements to use Groupon Vouchers in one visit, failures of disclosure, or any of the other
11 allegations or claim raised in any of the Actions, or that could have been alleged based on the
12 allegations raised in any of the Actions.

13 (b) “Released Parties” means all Defendants and all of Groupon’s Merchant
14 Partners who were not named as Defendants, and including all of their respective predecessors,
15 successors, assigns, parents, subsidiaries, divisions, departments, and affiliates, and any and all of
16 their past, present and future officers, directors, employees, stockholders, partners, agents, servants,
17 successors, attorneys, insurers, representatives, licensees, licensors, customers, subrogees and
18 assigns.

19 (c) “Releasing Parties” means Plaintiffs and each Settlement Class Member and
20 any Person claiming by or through him/her/it, including any Person who purchased or otherwise
21 received any Groupon Voucher from a Settlement Class Member, and all of their respective
22 predecessors, successors, assigns, parents, subsidiaries, divisions, departments, and affiliates.

23 2. Release of Released Parties

24 Upon entry of the Final Judgment and Order Approving Settlement each Releasing
25 Party shall be deemed to have released and forever discharged each Released Party of and from
26 liability for any and all Released Claims.

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3. Waiver of Unknown Claims

With respect to any and all Released Claims, and upon entry of the Final Judgment and Order Approving Settlement without further action, for good and valuable consideration, Plaintiffs, on behalf of themselves and the Settlement Class and as the representatives of the Settlement Class, shall expressly, and Releasing Parties shall be deemed to have, and by operation of the Final Judgment and Order Approving Settlement shall, to the fullest extent permitted by law, fully, finally, and forever expressly waived and relinquished with respect to the Released Claims, any and all provisions, rights, and benefits of Section 1542 of the California Civil Code and any and all similar provisions, rights, and benefits conferred by any law of any state or territory of the United States or principle of common law that is similar, comparable, or equivalent to Section 1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

4. Additional Releases

Upon entry of the Final Judgment and Order Approving Settlement , each of the Defendants, Released Parties, and any Person claiming through them shall be deemed to have fully, finally, and forever released, relinquished and discharged each and all of Plaintiffs , and their respective present and former parents, subsidiaries, divisions, and affiliates, the present and former partners, employees, officers and directors of each of them, the present and former attorneys, accountants, experts, consultants, insurers, and agents of each of them, each of the foregoing solely in their capacity as such, and the predecessors, successors, heirs, and assigns of each, from all claims of every nature and description, known and unknown, relating to the initiation, assertion, prosecution, non-prosecution, settlement, and/or resolution of the Actions or the Released Claims.

5. The Parties agree that the Court shall retain exclusive and continuing jurisdiction over the Parties, Settlement Class Members, and the Claims Administrator to interpret and enforce the terms, conditions, and obligations under the Agreement.

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I. PLAINTIFFS' COUNSEL FEES AND COSTS

1. Class Counsel agrees to make, and Groupon agrees not to oppose, an application for the award of Attorneys' Fees and Expenses in this Action not to exceed 25% of the total Settlement Fund. If awarded by the Court, such Attorneys' Fees and Expenses will be paid to Class Counsel from the Settlement Fund within five (5) business days after the Entry of the Final Judgment and Order Approving Settlement. If the Final Judgment and Order Approving Settlement is reversed, vacated, modified, and/or remanded for further proceedings or otherwise disposed of in any manner other than one resulting in affirmance of the Final Judgment and Order Approving Settlement as to any matter other than a reduction of Attorneys' Fees and Expenses, then, unless the Parties to this Settlement Agreement agree otherwise in writing, Class Counsel shall within five (5) business days return to the Settlement Fund the amount of Attorneys' Fees and Expenses paid from the Settlement Fund. If the award of Attorneys' Fees and Expenses is reduced after entry of the Final Judgment and Order Approving Settlement, then Class Counsel shall within five (5) business days return to the Settlement Fund the amount by which the Attorneys' Fees and Expenses have been reduced.

2. Class Counsel, in its sole discretion, shall allocate and distribute this award of Attorneys' Fees and Expenses among Plaintiffs' Counsel.

3. Groupon agrees that each Class Representative shall be paid the amount of such Incentive Award, if any, as may be approved by the Court from the Settlement Fund. Groupon agrees that it will not object to, or otherwise challenge, the Class Representatives' applications for Incentive Awards, so long as the Class Representatives do not seek awards in excess of \$500 for each. If awarded by the Court, such Incentive Awards will be paid to Class Counsel on behalf of the Class Representatives within thirty (30) days after the Effective Date out of the Settlement Fund.

J. THE FINAL JUDGMENT AND ORDER APPROVING SETTLEMENT

1. This Settlement Agreement is subject to and conditioned upon the issuance by the Court of the Final Judgment and Order Approving Settlement that finally certifies the Settlement Class for the purposes of settlement only, and grants final approval of the Settlement, and provides the relief specified herein, which relief shall be subject to the terms and conditions of the Settlement

1 Agreement and the Parties' performance of their continuing rights and obligations hereunder. Such
2 Final Judgment and Order Approving Settlement shall:

3 (a) Confirm the final certification, for settlement purposes only, of the Settlement
4 Class;

5 (b) Confirm the compliance of the Settlement Class with all requirements of Rule
6 23, including confirmation of the adequacy of the representation of the Class Representatives as
7 representatives of the Settlement Class;

8 (c) Confirm that the Notice Program complied in all respects with the
9 requirements of due process and Rule 23 by providing due, adequate, and sufficient notice to the
10 Settlement Class;

11 (d) Determine that the Settlement Agreement is entered into in good faith, is
12 reasonable, fair and adequate, and is in the best interest of the Settlement Class;

13 (e) Dismiss all complaints in the Actions with prejudice as to the Released Parties
14 and without costs;

15 (f) Release each Released Party from the Released Claims that any Releasing
16 Party has, had, or may have in the future, against each Released Party;

17 (g) Bar and enjoin all Releasing Parties from asserting against any Released
18 Party any Released Claim and bar and enjoin all Settlement Class Members from initiating or
19 pursuing any claim or action relating to this Settlement;

20 (h) Release each Plaintiff and their present and former attorneys, accountants,
21 experts, consultants and insurers, and agents of each of them, each of the foregoing solely in their
22 capacity as such, and the predecessors, successors, heirs and assigns of each of them, from all claims
23 of every nature and description, known and unknown, that any Released Party has had, or may in the
24 future have relating to the initiation, assertion, prosecution, non-prosecution, settlement and/or
25 resolution of the Actions or the Released Claims, and bar and enjoin all Released Parties from
26 asserting the same;

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- 1 (i) Release each Released Party from the Released Claims; and
2 (j) Retain the Court's continuing and exclusive jurisdiction over the Parties to the
3 Agreement, including all Settlement Class Members, to construe and enforce the Agreement in
4 accordance with its terms for the mutual benefit of the Parties.

5 **K. REPRESENTATIONS AND WARRANTIES**

6 1. Groupon represents and warrants: (a) that it has the requisite corporate power and
7 authority to execute, deliver and perform the Agreement and to consummate the transactions
8 contemplated hereby; (b) that the execution, delivery and performance of the Agreement and the
9 consummation by it of the actions contemplated herein have been duly authorized by necessary
10 corporate action on the part of Groupon; and (c) that the Settlement Agreement has been duly and
11 validly executed and delivered by Groupon and constitutes its legal, valid and binding obligation.
12 Groupon's Counsel represents and warrants that they are fully authorized to execute this Agreement
13 on behalf of Groupon and thereby to bind Groupon to the Agreement.

14 2. Plaintiffs represent and warrant that they are entering into the Settlement Agreement
15 on behalf of themselves individually and as representatives of the Settlement Class Members and the
16 Releasing Parties, of their own free wills and without the receipt of any consideration other than
17 what is provided in the Settlement Agreement or disclosed to, and authorized by, the Court. Each
18 Plaintiff represents and warrants that he or she has reviewed the terms of the Settlement, believes
19 them to be fair and reasonable, and each covenants that he or she will not file a Request for
20 Exclusion from the Settlement Class or object to the Settlement. Interim Class Counsel represents
21 and warrants that they are fully authorized to execute the Agreement on behalf of the Class
22 Representatives, individually and as representatives of the Settlement Class Members and Releasing
23 Parties.

24 3. The Parties warrant and represent that no promise, inducement or consideration for
25 the Settlement has been made, except those set forth herein. No consideration, amount or sum paid,
26 accredited, offered or expended by Groupon in its performance of this Settlement Agreement and the
27 Settlement constitutes a fine, penalty, punitive damages or other form of assessment for any claim
28 against it or any of the Defendants.

1 **L. NO ADMISSIONS; NO USE**

2 1. The Settlement Agreement shall in no event be construed or deemed to be evidence or
3 an admission or a concession on the part of any Plaintiff, any Defendant, any Releasing Party, or any
4 Released Party with respect to any claim of any fault or liability, any defense, or any claim of injury
5 or damages.

6 2. The Settlement Agreement, whether or not consummated, and any proceedings taken
7 pursuant to the Agreement, are not and shall not in any event be:

8 (a) Construed as, offered in evidence as, received in evidence as, and/or deemed
9 to be, evidence of a presumption, concession or an admission by any Plaintiff, Defendant, Settlement
10 Class Member, or Released Party of the truth of any fact alleged or the validity of any claim or
11 defense that has been, could have been, or in the future might be asserted in any litigation or the
12 deficiency of any claim or defense that has been, could have been, or in the future might be asserted
13 in any litigation, or of any liability, fault, wrongdoing or otherwise of such Party; or

14 (b) Construed as, offered in evidence as, received in evidence as, and/or deemed
15 to be, evidence of a presumption, concession or an admission of any liability, fault or wrongdoing, or
16 in any way referred to for any other reason, by any Plaintiff, Defendant, Releasing Party or Released
17 Party in the Action or in any other civil, criminal or administrative action or proceeding other than
18 such civil proceedings as may be necessary to effectuate the provisions of the Agreement.

19 **M. MISCELLANEOUS PROVISIONS**

20 1. Entire Agreement

21 The Settlement Agreement, including all Exhibits hereto, shall constitute the entire
22 Agreement among the Parties with regard to the Settlement and shall supersede any previous
23 agreements, representations, communications and understandings among the Parties with respect to
24 the subject matter of the Settlement. The Settlement Agreement may not be changed, modified, or
25 amended except in a writing signed by all Parties and, if required, approved by the Court. The
26 Parties contemplate that certain of the Exhibits to the Settlement Agreement relating to Class Notices
27 may be modified by subsequent agreement of Groupon and Interim Class Counsel prior to
28 dissemination to the Settlement Class.

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2. Governing Law

The Settlement Agreement shall be construed under and governed by the laws of the State of California, applied without regard to laws applicable to choice of law.

3. Execution by Counterparts

The Settlement Agreement may be executed by the Parties in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Facsimile signatures or signatures sent by e-mail shall be treated as original signatures and shall be binding.

4. Notices

Any notice, instruction, application for Court approval or application for Court orders sought in connection with the Settlement and the Settlement Agreement or other document to be given by any Party to any other Party shall be in writing and delivered personally or sent by registered or certified mail, postage prepaid, if to any Defendant to the attention of Defendants' Counsel, and if to Settlement Class Members to the attention of Class Counsel on their behalf.

All notices to the Parties or counsel required by the Settlement Agreement shall be made in writing and communicated by fax and mail to the following addresses:

(a) If to Plaintiffs or Class Counsel:

ROBINS GELLER RUDMAN
& DOWD LLP
JOHN J. STOIA, JR.
THOMAS R. MERRICK
RACHEL L. JENSEN
PHONG L. TRAN
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)
johns@rgrdlaw.com
tmerrick@rgrdlaw.com
rachelj@rgrdlaw.com
ptran@rgrdlaw.com

1 (b) If to Defendants or Defendants' Counsel:

2 DLA PIPER LLP (US)
3 SHIRLI FABBRI WEISS
4 CHRISTOPHER M. YOUNG
5 401 B Street, Suite 1700
6 San Diego, CA 92101-4297
7 Telephone: 619/699-2700
8 619/699-2701 (fax)
9 shirli.weiss@dlapiper.com
10 christopher.young@dlapiper.com

11 5. Additional Provisions

12 (a) The Settlement Agreement shall be binding upon, and inure to the benefit of,
13 the heirs, successors, assigns, executors and legal representatives of the Parties to the Agreement and
14 all Defendants and Released Parties.

15 (b) Subject to Court approval, the Parties may agree to reasonable extensions of
16 time to carry out any of the provisions of the Settlement Agreement.

17 (c) The determination of the terms of, and the drafting of, the Settlement
18 Agreement has been by mutual understanding after negotiation, with consideration by, and
19 participation of, the Parties hereto and their counsel.

20 (d) The waiver by any Party of any provision of this Settlement Agreement shall
21 not constitute a waiver of any other provision of this Settlement Agreement.

22 (e) In the event of any variance between the terms of this Settlement Agreement
23 and any of the Exhibits hereto, the terms of this Agreement shall control and supersede the
24 Exhibit(s).

25 (f) All Exhibits to this Settlement Agreement are material and integral parts
26 hereof, and are incorporated by reference as if fully rewritten herein.

27 (g) No opinion concerning the tax consequences of the Settlement to any
28 Settlement Class Member is given or will be given by Groupon, Groupon's Counsel, Interim Class
29 Counsel, or Plaintiffs' Counsel; nor is any Party or their counsel providing any representation or
30 guarantee respecting the tax consequences of the Settlement as to any Settlement Class Member.

The Class Notice will direct Settlement Class Members to consult their own tax advisors regarding

1 the tax consequences of the Settlement and any tax reporting obligations with respect thereto. Each
2 Settlement Class Member is responsible for his/her tax reporting and other obligations respecting the
3 Settlement, if any.

4 **N. TERMINATION OF THIS SETTLEMENT AGREEMENT**

5 1. Nullification of Settlement Agreement

6 In the event that:

7 (a) The Court does not enter an order granting Preliminary Approval Order
8 conforming in all material respects to Section C.1 of this Settlement Agreement;

9 (b) The Court does not conditionally and finally certify the Settlement Class as
10 defined herein or the Court's order certifying the Settlement Class is reversed, vacated, or modified
11 in any material respect by another court; or

12 (c) The Court does not enter a Final Judgment and Order Approving Settlement
13 conforming in all material respects to Section J of this Settlement Agreement, or if entered, such
14 Final Judgment and Order Approving Settlement is reversed, vacated, or modified in any material
15 respect by another court or otherwise fails to become Non-Appealable, then any of the Parties may
16 terminate this Agreement within ten (10) business days of the event giving rise to the right to
17 terminate by serving written notice upon all Parties and Court. In the event of a termination under
18 Section N of this Agreement, Groupon shall request the Claims Administrator to post information
19 regarding the termination on the website established for the Settlement and to e-mail such
20 information to those Settlement Class Members who provided an e-mail address to the Claims
21 Administrator.

22 2. Termination; Restoration to Status Quo Ante

23 In the event of the termination of this Settlement Agreement, all Parties shall be restored to
24 their respective positions as of immediately prior to the date of execution of this Settlement
25 Agreement. Upon termination, Sections L-M of this Settlement Agreement shall survive and be
26 binding on the Parties, but this Agreement shall otherwise be null and void.

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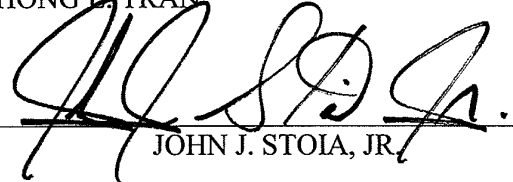
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IN WITNESS WHEREOF, each of the Parties hereto has caused the Settlement Agreement to be executed on its behalf by its duly authorized counsel of record, all as of the day set forth below.

AGREED:

DATED: March ~~30~~²⁹, 2012

ROBBINS GELLER RUDMAN
& DOWD LLP
JOHN J. STOIA, JR.
RACHEL L. JENSEN
THOMAS R. MERRICK
PHONG L. TRAN



JOHN J. STOIA, JR.

655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)

Interim Class Counsel

DATED: March 29, 2012

DLA PIPER LLP (US)
SHIRLI FABBRI WEISS
CHRISTOPHER M. YOUNG



SHIRLI FABBRI WEISS

401 B Street, Suite 1700
San Diego, CA 92101-4297
Telephone 619/699-2700
619.699.2701 (fax)

Attorneys for Defendants

INDEX OF EXHIBITS TO SETTLEMENT AGREEMENT

Exhibit	Description	Page
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EXHIBIT 1

Plaintiffs and Class Representatives

Cases Consolidated Within MDL No. 02238-DMS-RBB

CASE	NAMED PLAINTIFF(S)/ CLASS REPRESENTATIVE(S)
<i>Arliss et al. v. Groupon, Inc. et al.</i> , 3:11-cv-01374-DMS-RBB	Arliss, Barrie
	Lawrie, Jeff
<i>Booth v. Groupon, Inc.</i> , 3:11-cv-01320-DMS-RBB	Booth, Nevin
<i>Christensen v. Groupon, Inc. et al.</i> , 3:11-cv-01233-DMS-RBB	Christensen, Ashley
<i>Cohen v. Groupon, Inc.</i> , 3:11-cv-01245-DMS-RBB	Cohen, Jason
<i>Eidenmuller v. Groupon, Inc.</i> , 3:11-cv-01244-DMS-RBB	Eidenmuller, William
<i>Ferreira v. Groupon, Inc. et al.</i> , 3:11-cv-00132-DMS-RBB	Ferreira, Anthony
<i>Gosling v. Groupon, Inc.</i> , 3:11-cv-01231-DMS-RBB	Gosling, Sarah
<i>Hinton v. Groupon, Inc.</i> , 3:11-cv-02674-DMS-RBB	Hinton, Kenneth (individual plaintiff; not class representative)
<i>Johnson v. Groupon, Inc.</i> , 3:11-cv-02835-DMS-RBB	Johnson, E.G. (individual plaintiff; not class representative)
<i>Johnson, et al. v. Groupon, Inc., et al.</i> , 3:11-cv-01279-DMS-RBB	Buckley, Julie
	Johnson, Eli R.
<i>Kimel v. Groupon, Inc. et al.</i> , 3:11-cv-01225-DMS-RBB	Kimel, Heather

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CASE	NAMED PLAINTIFF(S)/ CLASS REPRESENTATIVE(S)
<i>McPherson v. Groupon, Inc.</i> , 3:11-cv-01551-DMS-RBB	McPherson, Michael
<i>Mehel v. Groupon Inc.</i> , 3:11-cv-01349-DMS-RBB	Mehel, Sarah
<i>Terrell v. Groupon, Inc.</i> , 3:11-cv-01595-DMS-RBB	Terrell, Eric
<i>Vazquez v. Groupon, Inc., et al.</i> , 3:11-cv-01253-DMS-RBB	Vazquez, Carlos
<i>Zard v. Groupon, Inc.</i> , 3:11-cv-01232-DMS-RBB	Zard, Brian

Illinois State Court Case

<i>Dremak v. Groupon, Inc.</i> , 11-CH-0876 (Ill. Cir. Ct., Kane County)	Dremak, Adam
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EXHIBIT 2

To: <<class member email address>>

From: Groupon Settlement Administrator

Re: Notice of Class Action Settlement Regarding Groupon Vouchers

(Email body:)

An Important Notice About a Class Action Settlement Involving Groupon Vouchers

IF YOU PURCHASED A Groupon VOUCHER BETWEEN NOVEMBER 1, 2008 AND DECEMBER 1, 2011, YOU MAY BE ELIGIBLE FOR BENEFITS FROM THE SETTLEMENT

A proposed settlement has been reached in a class action lawsuit concerning Groupon vouchers. You may be a member of the class whose rights may be affected by this lawsuit. **The sole purpose of this notice is to inform you of the lawsuit and the settlement so that you may decide what steps to take in relation to it.**

More information regarding the settlement, your rights under the settlement, instructions on how to be excluded from the settlement or object to the settlement, and a form to fill-out to obtain settlement benefits are available here: [HYPERLINK to SETTLEMENT WEBSITE URL].

Please visit the website linked above to obtain important information regarding the settlement and your rights.

If the settlement is approved, class members who complete and return a claim form may be eligible to receive a Settlement Voucher entitling them to redeem unused Groupon vouchers purchased between November 1, 2008 and December 1, 2011 that are past their stated expiration date. Settlement Vouchers may be redeemed at the location of the merchant identified on the voucher, for goods and/or services equal to the purchase price of the voucher. Rather than seeking a settlement benefit, you may choose to exclude yourself from the settlement. **There are deadlines associated with the choices you may make regarding the settlement. The last day to exclude yourself from the settlement or to object to the settlement is _____.**

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EXHIBIT 3

Welcome to the Informational Website for the Class Action Settlement
in:

In re Groupon Marketing and Sales Practices Litigation
Case No. 3:11-md-02238-DMS-RBB

United States District Court for the Southern District of California

NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF
CLASS ACTION AND FINAL APPROVAL HEARING

A Federal Court authorized this Notice. This is not a
solicitation from a lawyer.

If you purchased or received a Groupon Voucher issued for redemption in the United States between November 1, 2008 and December 1, 2011, then you are a member of the class (“Class Member”) for purposes of this class action settlement, and may be entitled to receive settlement benefits, unless you are one of the following: (1) an employee of Groupon, Inc.; (2) a business with whom Groupon has partnered to offer Groupon vouchers (“Merchant Partners”); or (3) a parent company, subsidiary, affiliate or director or officer of Groupon or a Merchant Partner.

This website was established to provide information to you about the proposed settlement of certain litigation relating to the marketing and sales practices of Groupon, Inc.

The litigation is currently pending in the United States District Court, Southern District of California. The case is called *In Re Groupon Marketing and Sales Practices Litigation*, Case No. 3:11-md-02238-DMS-RBB.

Set forth below is information related to the settlement. This website may be updated periodically.

Important Dates and Deadlines:

Following are important dates and deadlines relating to the settlement, which are explained more fully in the sections below:

Deadline to opt-out of settlement: *[14 Days Prior to Final Approval Hearing]*

Deadline to object to settlement: *[14 Days Prior to Final Approval Hearing]*

Deadline to submit claim form to obtain Settlement Voucher permitting redemption of voucher(s) past expiration date(s): *[60 days after dissemination of Settlement Fund Claims Notice]*

Deadline to use Settlement Voucher: *[130 days after date of issuance of Settlement Voucher]*

Deadline to submit Settlement Fund Refund Claim Form if Merchant is unwilling or unable to redeem Settlement Voucher *[185 days after issuance of Settlement Voucher]*

Deadline to submit claim form to obtain refund of vouchers purchased after December 1, 2011: *[2 years after Second Settlement Fund Notice is disseminated]*

Court Documents:

[Links to settlement documents, Claim Form to Obtain Settlement Voucher Used to Redeem Voucher Before Effective Date, and Claim Form to Obtain Refund of Vouchers Purchased After Effective Date]

Basic Information:

The purpose of this Notice is to inform you of (a) the pendency of this class action (the “Action”), (b) the proposed settlement of the Action (the “Settlement”), (c) the hearing to be held by the Court (the “Final Approval Hearing”) to consider (i) whether the Settlement should be approved, (ii) the application of Class Counsel for attorneys’ fees and expenses, (iii) the application for plaintiffs’ incentive awards, and (iv) certain other matters, and (d) the rights you may have and what steps you must take if you wish to participate in the Settlement, object to the Settlement or wish to be excluded from the Class.

- The Settlement provides a total recovery for the benefit of the Class described herein of \$8.5 million in cash, less plaintiffs’ attorneys’ fees and costs, plaintiffs’ incentive fees and expenses for administration of the settlement and less \$75,000 earmarked for a *cypres* fund.
- The Settlement resolves litigation alleging, among other things, that Groupon and its Merchant Partners illegally used expiration dates and other restrictions on Groupon Vouchers, engaged in sales or advertising practices that violated various federal and state consumer laws and failed to make adequate or required disclosures in the terms of use or terms of sale or otherwise on Groupon’s website relating to Groupon vouchers. The Defendants in the litigation deny the allegations of the plaintiffs, deny that they are liable in any way to plaintiffs and have asserted a number of defenses to plaintiffs’ claims.
- **Your legal rights will be affected by this Action and this Settlement whether you act or do not act. Please read this Notice carefully.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
SUBMIT A PROOF OF CLAIM FORM	The <u>only</u> way to get a Settlement Voucher or payment of any type from the Settlement.
EXCLUDE YOURSELF	If you are a Class Member but exclude yourself from the Settlement, you will get no Settlement Voucher or payment. Excluding yourself is the only option that allows you to ever bring or maintain your own lawsuit against the Defendants and the other Released Parties, or to be part of another lawsuit, concerning the Released Claims.
OBJECT	You may write to the Court about why you object to any part of the Settlement. Written objections to the Settlement must be filed with the Court no later than [_____, 2012]. Lodging an objection does not exclude you from the Settlement. If the Settlement is approved, you will be subject to the Settlement and will be bound by the Release described in response to Question 6.
GO TO THE FINAL APPROVAL HEARING	If you timely object in writing to the Settlement and file a timely Notice of Intention to Appear at the Final Approval Hearing, you will be entitled to ask to speak in Court about the Settlement during the Final Approval Hearing set for [_____, 2012.]
APPEAR THROUGH AN ATTORNEY	You may enter an appearance in this case through an attorney at your own expense if you desire, but you will still need to comply with the requirements for objecting to the Settlement and appearing at the Final Approval Hearing.
DO NOTHING	You will get no Settlement Voucher or payment, and you will give up rights and be bound by all of the court judgments in the Action.

- These rights and options—**and the deadlines to exercise them**—are explained in this Notice.
- The Court in charge of this case still must decide whether to approve the Settlement. If the Court approves the Settlement and after any appeals are

resolved and all proof of claim forms have been reviewed and processed, the Claims Administrator will email information about settlement benefits, and post further information on this website.

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Settlement Information and Commonly Asked Questions:

Background of the Litigation and Settlement

1. What is this litigation about?

Several lawsuits were filed against Groupon, Inc. (“Groupon”) and several businesses (“Merchant Partners”) with whom Groupon has partnered to offer and sell Groupon Vouchers, regarding the marketing and sale of Groupon Vouchers. Among other things, plaintiffs claimed that Groupon Vouchers contained expiration dates and other restrictions in violation of federal and state law and challenged statements on Groupon Vouchers and in terms of use and terms of sale on Groupon’s website used in connection with the offering or sale of Groupon Vouchers. Lawsuits were filed in several different courts but all lawsuits filed in United States District Courts are now centralized and pending before the United States District Court for the Southern District of California.

Please do not contact the Court.

2. Why is this a class action?

In a class action lawsuit, one or more people called “Class Representatives” sue on behalf of people whom they allege have similar claims. The people together are a “Class” or “Class Members.” In this case, the Class Representatives who filed lawsuits are Barrie Arliss, Nevin Booth, Julie Buckley, Ashley Christensen, Jason Cohen, Adam Dremak, William Eidenmuller, Anthony Ferreira, Sarah Gosling, Eli Johnson, Heather Kimel, Jeff Lawrie, Michael McPherson, Sarah Mehl, Eric Terrell, Carlos Vazquez, and Brian Zard. The defendants are Groupon, Inc., Nordstrom Inc., Full Circle Farms, Inc., Spa Blix, Inc., Whirly West Inc. d/b/a/ WhirlyBall, Fun Time, LLC d/b/a/ Wheel Fun Rentals, and YMCA of Metropolitan Washington (“Defendants”).

In a class action, one court decides the result of the lawsuit for everyone in the Class. The Court in this case has made a preliminary determination that, for settlement purposes only, this case can proceed as class action.

3. Why is there a settlement?

Plaintiffs have made claims against the Defendants. The Defendants deny that they have done anything wrong or illegal and admit no liability. The Court has not made any determination regarding the Class Representatives’ claims, and by requiring this Notice, the Court expresses no opinion regarding liability. Plaintiffs and Defendants met with a mediator and have agreed to the Settlement in order to avoid the costs and risks of a trial and appeal.

4. What are the possible benefits of this Settlement?

Groupon has agreed to make changes to its marketing and sales practices with respect to Groupon Vouchers. For example, Groupon has agreed that for a period of three years from the effective date of the Settlement, the purchase value (the amount the customer paid) of its Groupon Vouchers that have not been redeemed or refunded, with certain exceptions such as Groupon Now! Vouchers, will never expire, and that all expiration

dates shown on the Voucher will be clear and conspicuous. You can review a complete copy of the settlement agreement between the parties at [\[Link to Settlement Agreement\]](#).

In addition, Groupon has paid Eight Million, Five Hundred Thousand Dollars (\$8,500,000) into a Settlement Fund. Of this amount, \$75,000 will be paid into a *cy pres* fund (to be donated to a civic or other non-profit association), and any attorneys' fees and expenses and plaintiffs' incentive awards approved by the Court, as well as the expenses of Claims Administration will be deducted from the Settlement Fund. The balance will be used for the benefit of Class Members.

If you are a Class Member and you submit a timely Claim form, you may be entitled to receive a Settlement Voucher that will allow you to redeem unredeemed Groupon Vouchers that have not been refunded and that are past their stated expiration dates, for goods and services at the merchant listed in the voucher, up to the purchase price that you paid. The Settlement Voucher(s) must be presented to the Merchant Partners by the [DATE].

You may submit a Claim for a Settlement Voucher for any Groupon Voucher that meets the following criteria: (1) the Groupon Voucher was issued for redemption at a Merchant Partner located in the United States and was never redeemed or refunded; and (2) the Voucher was purchased on or after August 22, 2010 or was issued before August 22, 2010 to a resident of, or for redemption in, any of the following states: Arkansas, California, Connecticut, Florida, Hawaii, Illinois, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, New Hampshire, New Jersey, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Vermont, Washington.

If the Merchant Partner identified on the Groupon Voucher that is the basis for your claim has gone out of business, you may submit a Claim form requesting a refund of the purchase price on that basis and a refund will be paid to you in the form of a refund check. [\[Link to settlement voucher claim form and instructions.\]](#).

All claims for Settlement Vouchers must be submitted no later than [\[the deadline listed above\]](#). Class Members whose Claims meet the criteria above will receive a Settlement Voucher, valid for a period of 130 days from its issue date. If any merchant refuses to redeem a valid Settlement Voucher, the Class Member may submit a Claim form to the Claims Administrator (identified below) to receive a refund check for the purchase price you paid for the Groupon Voucher plus 20% of the promotional value of the Voucher that the basis of the Claim. [\[Link to settlement fund refund request form.\]](#) All requests for refunds from the Settlement Fund must be submitted within 185 days of issuance of the Settlement Voucher.

Once all the qualified and approved Claims submitted by Class Members based on unredeemed and unrefunded Groupon Vouchers that are past their expiration have been paid from the Settlement Fund, if an amount remains that is greater than \$75,000, the Claims Administrator will designate the remaining funds, less \$75,000 as a Second Settlement Fund. If you are a Class Member and you purchased one or more Groupon Vouchers after December 1, 2011 which have not been redeemed or refunded and you want a refund of your purchase price for any reason, you may submit a Second Settlement Fund Proof of Claim requesting a refund of your purchase price. You can

make this request for a period of two years following the email notice that the Claims Administrator will send to Class Members, informing Class Members that the Second Settlement Fund has been designated for this purpose, but the Claims Administrator will pay approved, timely claims only for so long as there is more than \$75,000 left in the Second Settlement Fund. A Class Member may also request a refund of the purchase price of a Groupon Voucher purchased after December 1, 2011, from Groupon and if Groupon provides the refund, Groupon may seek reimbursement from the Second Settlement Fund. [After the second settlement fund is designated, a link to the second settlement fund claim form and instructions should be added here.]

Who is in the Settlement

5. *How do I know if I am part of the Settlement?*

You are a Class Member and part of the Settlement if you purchased or received a Groupon Voucher issued for redemption at a merchant in the United States, during the time period from November 1, 2008 until December 1, 2011 and if you meet certain other criteria described in the Settlement Voucher Claim Form and Instructions [LINK TO FORM] Proof of Claim Forms. You are excluded from the class if you are a Defendant or an officer or director of any Merchant Partner or a Groupon employee. Certain other entities are excluded related to the Defendants. If you fall within the definition of a Class Member and are not excluded, you are a Class Member.

6. *Am I giving anything up in return for my benefit?*

Unless you affirmatively choose not to participate in the Settlement (which is called “excluding yourself” or “opting out”), you are part of the class. By staying part of the class, court orders will apply to you, and you will give Groupon and all of its Merchant Partners, including the Merchant Partners named as Defendants, a “release.” A release means that you cannot sue or be part of any other lawsuit against Groupon or its Merchant Partners about the claims or issues raised in this litigation ever again. In addition, you will be agreeing that effective December 1, 2011, Groupon may sell Groupon Vouchers with expiration dates applying to their Promotional Value and that you will not challenge the expiration of the Promotional Value. You may, however, contact Groupon to resolve any dispute that might arise concerning the promotional value of Groupon Vouchers, and in the event that such dispute is not resolved by contacting Groupon, you may submit the dispute to arbitration as detailed in Section __ of the Settlement Agreement. [LINK TO SETTLEMENT AGREEMENT RELEASE SECTION]

Your Rights – Choosing Not to Participate In the Settlement

7. *Can I get out of the Settlement?*

Yes. You can choose not to participate in the Settlement and the Class. This is called “excluding yourself” or “opting out.” If you exclude yourself from the Settlement, you will not receive a Settlement benefit and you may not object to the Settlement. However, you will not be bound by any judgment or Settlement of the case and will keep your right to sue Groupon and/or its Merchant Partners independently.

8. *How do I exclude myself from the Settlement?*

To exclude yourself from the Settlement Class, you must a letter to the address below, postmarked by [Date], that says you want to be excluded from the Settlement Class in *In Re Groupon Marketing and Sales Practices Litigation*, MDL No. 2238-DMS-RBB. Include your name, address, telephone number and sign your request.

[Claims Administrator name and contact info]

Your Rights – Objecting to the Settlement

9. Can I tell the Court I do not like the Settlement?

If you do not exclude yourself, but you object to any portion of the Settlement, you can tell the Court you do not like the Settlement or some part of it. This is called “objecting” to the Settlement. If you object to the Settlement, you still remain a Class Member and will be bound by all court judgments.

10. How do I object to the Settlement?

To object to any aspect of to the Settlement, including the requested attorneys’ fees, you must file your objection in the United States District Court for the Southern District of California (940 Front Street, Courtroom 10, San Diego, California 92101-8900) and you must mail a copy of it via First Class mail to each of the addresses listed below:

<p>John J. Stoia, Jr. Robbins Gellar Rudman & Dowd LLP 655 West Broadway, Suite 1900 San Diego, CA 92101 Tel: (619) 231-1058 Fax: (619) 231-7423</p> <p>Class Counsel</p>
<p>Shirli F. Weiss DLA Piper LLP (US) 401 B Street, Suite 1700 San Diego, CA 92101 Tel: (619) 699-3650 Fax: (415) 699-2701</p> <p>Attorneys for Defendants</p>

Your objection must include: (1) your full name, address, and telephone number and, if represented by counsel, that of your counsel; (2) the email address you used to register your Groupon purchase; (3) your objection to the Settlement; (4) any reasons supporting your position; (5) proof of purchase or acquisition of a Groupon Voucher; and (6) a statement of whether you intend to appear at the Final Approval Hearing.

If you or your lawyer wishes to speak about your objection at the Court’s Final Approval hearing in San Diego, you must include the following sentence in your objection: “I

intend to appear at the hearing.” If you do not file an objection according to the procedures listed above, you will not be allowed to raise any objection later.

Your objection must be postmarked no later than [Date.]

11. What is the difference between excluding and objecting

Excluding yourself, or opting out, means getting out of the Settlement altogether – you would not receive any benefits nor be bound by the terms of the Settlement and you cannot therefore object to any part of it. Objecting means remaining in the Settlement, but complaining about some part of it you do not like.

How to Get a Benefit – Submitting a Claim Form

12. What do I need to do to get a benefit from this Settlement?

To get a benefit from the Settlement Fund, you must submit a valid Claim form to receive a Settlement Voucher. You can submit a Claim Form via the settlement website, via email, or via mail or facsimile. Claim Forms are available here [LINK TO SETTLEMENT FUND PROOF OF CLAIM]. To get a benefit from the Second Settlement Fund, you must wait to receive notice from the Claims Administrator that the Second Settlement Fund has been designated and then submit a Claim Form. [LINK TO SECOND SETTLEMENT FUND PROOF OF CLAIM] To get a benefit from the Second Settlement Fund, you must submit a valid Claim Form for a refund of the purchase price of your unredeemed and unrefunded Groupon Voucher.

The Lawyer Representing You

13. Do I need to hire my own attorney?

You do not need to hire an attorney, but you can if you wish. You and the entire class are already represented by Class Counsel listed below. You do not have to pay for Class Counsel’s service. You may contact Class Counsel if you have any questions about this notice or the Settlement. **Please do not contact the Court.**

John J. Stoia, Jr.
Robbins Geller Rudman & Dowd LLP
655 West Broadway, Suite 1900
San Diego, CA 92101

14. What will Class Counsel and the Class Representatives get from this Settlement?

Class Counsel will seek an award of attorneys’ fees and costs in an amount not to exceed 25% of the total Settlement Fund, and the Class Representatives will seek an award of no more than \$500.00 each as an incentive for prosecuting this lawsuit. It is up to the Court to decide how much Class Counsel and the Class Representatives will receive. This request will be made to the Court as part of the final approval process. A copy of Class Counsel’s motion for attorneys’ fees, costs, and incentive award will be posted on the Settlement website. All attorney’s fees and costs and incentive awards will be paid from the Settlement Fund.

Final Approval of the Settlement

15. *When will the Settlement become final?*

The Court has scheduled a Final Approval hearing, to be held on _____, to decide whether to approve the Settlement and award attorneys' fees and costs and an incentive award. The Court is located at 940 Front Street, Courtroom 10, San Diego, California 92101-8900. The hearing may be rescheduled to a later date and time without further notice. You may, but do not have to, attend the Final Approval Hearing. After the Court rules on final approval and the time to appeal has expired, the Settlement will become final.

16. *Can I appear at the Settlement hearing?*

As long as you do not exclude yourself, you can (but do not have to) participate and speak for yourself. This is called making an appearance. You can also have your own lawyer speak for you, but you will have to pay for the lawyer yourself.

If you want to appear, or if you want your own lawyer – instead of Class Counsel – to participate or speak for you regarding the Settlement, you must give notice in your objection to the Settlement (as described in question 10). You must state in that paper “I intend to appear at the hearing.”

17. What happens if the Settlement is not approved?

If the Court does not approve the Settlement or the Settlement does not become final, Class Members will not receive the Settlement benefit. It will be as if no Settlement had been reached and no class had been established.

18. When is my Claim Form for a Settlement Voucher from the Settlement Fund due to be sent to the Claims Administrator?

All Claims for a Settlement Voucher must be electronically submitted to the Claims Administrator or postmarked by _____. Claims for refunds for a Merchant Partner's failure to honor a Settlement Voucher are due _____.

19. When is my Claim Form for a refund from the Second Settlement Fund due to be sent to the Claims Administrator?

If a Second Settlement Fund is established and the Claims Administrator has sent email notice to Class Members, all Claims must be electronically submitted to the Claims Administrator or postmarked by _____.

If You Do Nothing

20. What if I don't do anything?

If you do nothing, you will not receive any benefits from this Settlement, but you will still be a Class Member. You will be bound by the terms of the Settlement, which means you cannot bring a lawsuit against Groupon or its Merchant Partners regarding the same claims.

Please do not contact the Court, or Groupon regarding this Settlement. Neither the Court nor Groupon nor Merchant Partner employees can give you legal advice regarding this Settlement. If you would like more information regarding this settlement, please contact:

CLASS COUNSEL: John J. Stoia, Jr., Robbins Geller Rudman & Dowd LLP, 655 West Broadway, Suite 1900, San Diego, CA 92101.

EXHIBIT 4

To: <<class member email address>>

From: Groupon Settlement Administrator

Re: Notice of Class Action Settlement Regarding Groupon Vouchers

<<Email Attachments or Links: Settlement Voucher Claim Form and Instructions >>

(Email body:)

An Important Notice About a Class Action Settlement Involving Groupon Vouchers

IF YOU PURCHASED A Groupon VOUCHER BETWEEN NOVEMBER 1, 2008 AND
DECEMBER 1, 2011 IN THE UNITED STATES, YOU MAY BE ELIGIBLE FOR BENEFITS
FROM THE SETTLEMENT

Settlement has been approved in a class action lawsuit concerning Groupon Vouchers. You may be a member of the class whose rights may be affected by this lawsuit. **The sole purpose of this notice is to inform you of the lawsuit and the settlement and how to obtain settlement benefits.**

More information regarding the Settlement, your rights under the Settlement, and a form to fill out to obtain Settlement benefits are available here: *[HYPERLINK to SETTLEMENT WEBSITE URL and CLAIM FORM]*.

Settlement Class Members as defined in the Settlement Agreement who complete and return a Settlement Fund Proof of Claim (available on the website) may be eligible to receive a Settlement Voucher entitling them to redeem unused Groupon Vouchers that are past their stated expiration date, and that were purchased between November 1, 2008 and December 1, 2011 for goods and services at the merchant listed on the voucher, in the amount of the purchase price of the voucher. In the event that such merchant is no longer in business, the Class Member may be eligible to receive a refund of the voucher's purchase price. In the event that such merchant refuses or is unable to honor the Settlement Voucher, the Class Member may be eligible to receive a refund of the voucher's purchase price plus 20% of the voucher's promotional value. The last day to submit completed claim forms is _____.

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EXHIBIT 5

United States District Court
For the Southern District of California
In re Groupon Marketing and Sales Practices Litigation
No. 3:11-md-02238-DMS-RBB

SETTLEMENT FUND PROOF OF CLAIM FORM AND INSTRUCTIONS
GROUPON VOUCHER CLASS ACTION SETTLEMENT

TO: PERSONS WHO PURCHASED GROUPON VOUCHERS IN THE UNITED STATES
BETWEEN NOVEMBER 1, 2008 AND DECEMBER 1, 2011

This claim form should be submitted only by persons who purchased Groupon vouchers that have not been redeemed or refunded and: (1) who purchased Groupon vouchers in the United States between August 22, 2010 and December 1, 2011; or (2) who purchased Groupon vouchers between November 1, 2008 and December 1, 2011 and are or were residents of, or purchased Groupon vouchers for redemption in, the following states: Arkansas, California, Connecticut, Florida, Hawaii, Illinois, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, New Hampshire, New Jersey, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Vermont, Washington. The deadline to submit this claim form is _____. This means that you must complete and either email this claim form to [CLAIM ADMINISTRATOR EMAIL ADDRESS] by _____ or mail it via First Class mail to [CLAIM ADMINISTRATOR MAILING ADDRESS] postmarked by _____. Before you email or mail your claim form, please make sure that it is complete.

Please note that we cannot confirm that the information you transmit to the settlement administrator via email will remain secure. If you have a concern about sensitive information you are transmitting to the settlement administrator, please consider submitting this claim form to the settlement administrator by mail.

If you are a representative, assign, heir, executor, administrator, or custodian of the intended recipient of this claim form, you may complete this form on the Class Member's behalf. If you are submitting this claim form in a representative capacity, please include proof of your authority to act on behalf of and to bind the person or entity on whose behalf you are acting.

If your claim meets the criteria listed in Section __ of the Settlement Agreement [HYPERTEXT LINK TO SETTLEMENT AGREEMENT], you will receive a Settlement Voucher, valid for a period of 130 days from its issue date, to redeem the expired Groupon Voucher(s) that is/are the basis of your claim, for the goods and/or services at the Merchant Partner identified on the Voucher(s) for the amount of the Customer Purchase Price, regardless of the expiration date stated on the original Groupon Voucher(s).

History of Purchase

Class Member's Name: _____

Class Member's e-mail address used to purchase Groupon Voucher(s): _____

Expiration date shown on Groupon Voucher(s) _____

Identity of the merchant and its location referenced on Groupon Voucher(s): _____

Groupon Voucher Purchase Number(s): _____

Purchase Price and Face Value of Groupon Voucher(s): _____

Check ALL that apply. (If you are not able to make all of the statements below, you are NOT eligible to receive a Settlement Voucher:

- I am a Groupon Settlement Class Member as defined in the Settlement Agreement.
- The Groupon voucher(s) that is/are the subject of the Claim Form was/were purchased between August 22, 2010 and December 1, 2011 OR was/were purchased between November 1, 2008 and December 1, 2011 by a resident of or for use at a merchant located in, one of the following states: Arkansas, California, Connecticut, Florida, Hawaii, Illinois, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, New Hampshire, New Jersey, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Vermont, Washington.
- A copy of the Groupon Voucher or a copy of the credit card billing for the purchase of the Groupon Voucher for which I seek a refund is attached.
- The Groupon voucher(s) that is/are the subject of this Claim Form has/have not been redeemed or refunded.

If you meet the eligibility criteria to submit a Claim for a Settlement Voucher but you believe the Merchant listed on the Groupon Voucher that is the basis of your Claim is no longer in business, please complete the following:

- If it is determined that this Claim is otherwise approved but that the Merchant that was listed on the Groupon Voucher is no longer in business, I wish to receive a cash refund of the purchase price of the Groupon Voucher(s) in the form of a refund check.

I wish to receive the Settlement Voucher:

- By e-mail; or
- By U.S. mail

Declaration (must be completed to be eligible for settlement benefit)

I have received notice of the class action settlement in this case and I submit this claim form under the terms of the settlement. I also submit to the jurisdiction of the United States District Court for the Southern District of California with regard to my claim as a Class Member and for purposes of enforcing the release of claims stated in the Settlement Agreement. The full and precise terms of the proposed settlement are set forth in the Settlement Agreement. I further acknowledge that I am bound by the terms of any court judgment that may be entered in this action and may not bring any separate litigation against Groupon, Inc. or against any entity or person released in the Settlement Agreement related to this action, or that could have been asserted in this action, as set forth in the Settlement Agreement. I agree to furnish additional information to support this claim if required to do so.

I declare under penalty of perjury that the foregoing information and all information I have submitted in support of my claim is true and correct, and I agree to abide by the terms of the settlement in this action, including the acknowledgement that I am bound by the terms of any judgment in this action and may not bring separate litigation regarding related claims.

Executed this ____ day of _____, 20____, at _____, _____ (city, state).

(Signature)

Claimant's Printed Name: _____
 First Middle Last

Claimant's Address: _____
 No./Street/Apt. City State Zip Code

If applicable:

Claimant's Representative's Printed Name: _____
First Middle Last

Claimant's Representative's Address: _____
No./Street/Apt. City State Zip Code

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EXHIBIT 6

Settlement Voucher No. _____

SETTLEMENT VOUCHER
In Re Groupon Marketing and Sales Practices Litigation
United States District Court, Southern District of California
Case No. 3:11-md-02238-DMS-RBB

This Settlement Voucher is issued on _____ as part of a Court approved settlement in *In Re Groupon Marketing and Sales Practices Litigation*. It entitles the bearer to request \$ _____ in goods or services redeemable at [Name/Address of Merchant] until [130 days after issue date].

To Groupon's Valued Merchant Partner:

This Settlement Voucher is a reissue, in the amount of the purchase price, of a previous voucher that was purchased on Groupon's website for redemption at your business under a program between Groupon and you. The earlier voucher was never redeemed or refunded. Please redeem this Settlement Voucher for the dollar amount in goods or services shown above.

If you have any questions, please contact Groupon, Inc. at

_____.

Thank you.

EXHIBIT 7

SETTLEMENT FUND REFUND CLAIM FORM AND INSTRUCTIONS

GROUPON VOUCHER CLASS ACTION SETTLEMENT Case No. 3:11-md-02238-DMS-RBB

TO: PERSONS WHO PURCHASED GROUPON VOUCHERS IN THE UNITED STATES
BETWEEN NOVEMBER 1, 2008 AND DECEMBER 1, 2011

NOTE: This Refund Claim Form should be submitted only by persons who submitted a Settlement Fund Proof of Claim, received a Settlement Voucher, attempted to redeem the Settlement Voucher at the applicable merchant within 130 days of the date of issue, but could not redeem the Settlement Voucher because the merchant refused or was unable to do so.

The deadline to submit this Settlement Fund Refund Claim Form is _____. You must complete and either email this Refund Claim Form to [CLAIM ADMINISTRATOR EMAIL ADDRESS] by _____ or mail it via First Class mail to [CLAIM ADMINISTRATOR MAILING ADDRESS] postmarked by _____. Before you email or mail your Refund Claim Form, please make sure that it is complete.

Please note that we cannot confirm that the information you transmit to the settlement administrator via email will remain secure. If you have a concern about sensitive information you are transmitting to the settlement administrator, please consider submitting the information to the settlement administrator by mail.

If you are a representative, assign, heir, executor, administrator, or custodian of the intended recipient of this Refund Claim Form, you may complete this form on the class member's behalf. If you are submitting this Refund Claim Form in a representative capacity, please include proof of your authority to act on behalf of and to bind the person or entity on whose behalf you are acting.

History of Purchase

Your Name: _____

Your e-mail address used to purchase Groupon Voucher(s): _____

Your Groupon Account Number: _____

The identity of the merchant and its location referenced on the Settlement Voucher(s): _____

Date of Issuance of Settlement Voucher(s):

Check ALL that apply. (If you are not able to make all of the statements below, you are NOT eligible to receive a Refund:

- I am a Groupon Settlement Class Member as defined in the Settlement Agreement.
- I submitted a Settlement Fund Proof of Claim and received a Settlement Voucher.
- I presented my Settlement Voucher to the merchant(s) identified on the Settlement Voucher within 130 days of the date of issuance of the Settlement Voucher, but the merchant refused or was unable to redeem the Settlement Voucher.
- I wish to receive a refund of the purchase price of the Groupon Voucher identified in my Settlement Voucher.

Declaration *(must be completed to be eligible for settlement benefit)*

I have received notice of the class action settlement in this case, I have reviewed and understand the terms of the settlement, and I submit this Refund Claim Form under the terms of the settlement. I submit to the jurisdiction of the United States District Court for the Southern District of California with regard to my claim as a class member and for purposes of enforcing the release of claims set forth in the Settlement Agreement. I understand and acknowledge that the full and precise terms of the proposed settlement are set forth in the Settlement Agreement. I further acknowledge that I am bound by the terms of any court judgment that may be entered in this action and may not bring any separate litigation against Groupon, Inc. or against any entity or person released in the Settlement Agreement related to this action, or that could have been asserted in this action, as set forth in the Settlement Agreement. I agree to furnish additional information to support this claim if requested to do so.

I declare under penalty of perjury that the foregoing information and all information I have submitted in support of my claim is true and correct, and I agree to abide by the terms of the settlement in this action, including the acknowledgement that I am bound by the terms of any judgment in this action and may not bring separate litigation regarding related claims.

Executed this ____ day of _____, 20____, at _____, _____ (city, state).

_____ (Signature)

Your Printed Name: _____
First
Middle
Last

Your Address: _____
No./Street/Apt.
City
State
Zip Code

If applicable:

Representative's Printed Name: _____
First
Middle
Last

Representative's Address: _____
No./Street/Apt.
City
State
Zip Code

EXHIBIT 8

To: <<class member email address>>

From: Groupon Settlement Administrator

Re: Notice of Class Action Settlement Benefits Regarding Groupon Vouchers

<<Email Attachments/ Hyperlinks: Second Settlement Fund Proof of Claim >>

(Email body:)

An Important Notice About a Class Action Settlement Involving Groupon Vouchers

IF YOU PURCHASED A Groupon VOUCHER AFTER DECEMBER 1, 2011, YOU MAY BE
ELIGIBLE FOR BENEFITS FROM THE SETTLEMENT

Pursuant to a settlement of a class action lawsuit concerning Groupon Vouchers, you may be eligible for a refund of Groupon Vouchers purchased after December 1, 2011. **The sole purpose of this notice is to inform you on how to obtain settlement benefits.**

More information regarding the Settlement, your rights under the Settlement, and a form to fill-out to obtain Settlement benefits are available here: *[HYPERLINK to SETTLEMENT WEBSITE URL and SECOND SETTLEMENT FORM]*.

Class members who complete and return a Second Settlement Fund Proof of Claim (available on the website) may be eligible to receive a refund of the purchase price of Groupon Vouchers purchased after December 1, 2011. Claims must be submitted by _____. However, please note that Second Settlement Fund Claims will only be honored until the earlier of: (1) the date that no more than \$75,000 remains in the Second Settlement Fund; or (2) *[2 years after the notice of class members' right to file a Second Settlement Fund Claim]*.

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EXHIBIT 9

SECOND SETTLEMENT FUND PROOF OF CLAIM FORM AND INSTRUCTIONS

GROUPON VOUCHER CLASS ACTION SETTLEMENT No. 3:11-md-02238-DMS-RBB

TO: PERSONS WHO PURCHASED GROUPON VOUCHERS IN THE UNITED STATES
AFTER DECEMBER 1, 2011

This form should be submitted only by persons who are Class Members as defined in the Settlement Agreement [*HYPERLINK TO SETTLEMENT AGREEMENT*]. You should complete this Claim Form if you purchased a Groupon Voucher after December 1, 2011, and you wish to obtain the following settlement benefit: a refund of your purchase price of any unredeemed and unrefunded voucher purchased after December 1, 2011.

The deadline to submit this Claim Form is _____. This means that you must complete and either email this Claim Form to [*CLAIM ADMINISTRATOR EMAIL ADDRESS*] by _____ or mail it via First Class mail to [*CLAIM ADMINISTRATOR MAILING ADDRESS*] postmarked by _____. However, please note that Second Settlement Fund Claims will be honored only until the earlier of: (1) the date that no more than \$75,000 remains in the settlement fund; or (2) [*2 years after the notice of class members' right to file a second settlement fund submission*]. Therefore, if you intend to file a claim under the Second Settlement Fund as defined in the Settlement Agreement, you should do so as soon as possible. Before you email or mail your Claim Form, please make sure that it is complete.

Please note that we cannot confirm that the information you transmit to the settlement administrator via email will remain secure. If you have a concern about sensitive information you are transmitting to the settlement administrator, please consider submitting the information to the settlement administrator by mail.

If you are a representative, assign, heir, executor, administrator, or custodian of the intended recipient of this Claim Form, you may complete this form to be eligible to receive a benefit on the Class Member's behalf. If you are submitting this Claim Form in a representative capacity, please include proof of your authority to act on behalf of and to bind the person or entity on whose behalf you are acting.

If you have questions regarding the settlement, contact the settlement administrator. Questions may be sent by email to _____, by mail directed to _____, or you may call _____.

History of Purchase and Request for Refund

Claimant's name: _____

Claimant's e-mail address: _____

The identity of the merchant and its location as referenced on the Groupon Voucher: _____

Reason for requesting a refund: _____

Check ALL that apply. (If you are not able to check all of the boxes below, you are NOT eligible to receive a settlement benefit).

- I am a Groupon Settlement Class Member as defined in the Settlement Agreement.
- A copy of the Groupon Voucher or a copy of the credit card billing for the purchase of the Groupon Voucher for which I seek a refund is attached.
- The Groupon voucher(s) that is/are the subject of this Claim Form have not been redeemed or refunded.

Declaration (must be completed to be eligible for settlement benefit)

I have received notice of the class action settlement in this case and I submit this Claim Form under the terms of the settlement. I also submit to the jurisdiction of the United States District Court, District of Southern California with regard to my claim as a class member and for purposes of enforcing the release of claims stated in the Settlement Agreement. The full and precise terms of the proposed settlement are set forth in the Settlement Agreement. I further acknowledge that I am bound by the terms of any court judgment that may be entered in this action and may not bring any separate litigation against Groupon, Inc. or against any entities released in the Settlement Agreement of this action, or that could have been asserted in this action, as set forth in the Settlement Agreement. I agree to furnish additional information to support this claim if required to do so.

I declare under penalty of perjury that the foregoing information and all information I have submitted in support of my claim is true and correct, and I agree to abide by the terms of the settlement in this action, including the acknowledgement that I am bound by the terms of any judgment in this action and may not bring separate litigation regarding related claims.

Executed this ____ day of _____, 20 ___, at _____, _____ (city, state).

(Signature)

Claimant's Printed Name: _____
First
Middle
Last

Claimant's Address: _____
No./Street/Apt.
City
State
Zip Code

If applicable:

Claimant's Representative's Printed Name: _____
First
Middle
Last

Claimant's Representative's Address: _____
No./Street/Apt.
City
State
Zip Code

You may submit this form online or print and mail it to _____.

EXHIBIT 10

Merchant Communication

Dear Merchant Partner:

Beginning in February 2011, a number of class action lawsuits were filed against Groupon, Inc. and some of its Merchant Partners. In the lawsuits, the plaintiffs, who said they were purchasers of Groupon vouchers, challenged the expiration dates on vouchers and other marketing and business practices related to vouchers.

Groupon and the other defendants denied all the claims made in plaintiffs' complaints and both sides got ready for a long litigation. But as often happens, the parties decided to try mediation first and later arrived at a settlement that has now been approved by the court. You can view the full settlement details here [\[hyperlink\]](#). The Settlement Class is made up of all persons who purchased Groupon vouchers between November 1, 2008 and December 1, 2011. Plaintiffs were also seeking to sue all Merchant Partners, but, as part of the settlement, Groupon was able to obtain releases for it and its Merchant Partners, releasing them from any potential liability in connection with the claims made in the lawsuits.

As part of the settlement, class members who purchased but never redeemed Groupon vouchers can ask for a special "Settlement Voucher." The Settlement Voucher can be redeemed for the amount of the purchase price of their expired, unredeemed voucher (not for the full promotional value) for goods or services at the merchant identified on the original voucher. The Settlement Voucher does not include the promotional value that was part of the original Groupon voucher – it is for the paid-in price only. The Settlement Voucher will be valid for a period of ___ days from the issue date.

What does this mean for you?

If you are presented with one of these Settlement Vouchers, please honor it. Essentially it represents an extension of time on the originally issued voucher that the purchaser never redeemed. Please alert your staff that these Settlement Vouchers may be presented soon at your business.

The Settlement Voucher will look different than a typical Groupon voucher. Here is an example: [\[hyperlink\]](#). The blanks will be verified by a third party claims administrator approved by the court for this purpose, and this third party administrator will issue the Settlement Vouchers with all of the information filled in.

If you have questions, please call _____ or email _____.

EXHIBIT 11

**United States District Court
For the Southern District of California
In re Groupon Marketing and Sales Practices Litigation
Case No. 3:11-md-02238-DMS-RBB**

1. Arkansas (AR)
2. California (CA)
3. Connecticut (CT)
4. Florida (FL)
5. Hawaii (HI)
6. Illinois (IL)
7. Kansas (KS)
8. Kentucky (KY)
9. Louisiana (LA)
10. Maine (ME)
11. Maryland (MD)
12. Massachusetts (MA)
13. Michigan (MI)
14. Minnesota (MN)
15. Montana (MO)
16. New Hampshire (NH)
17. New Jersey (NJ)
18. New Mexico (NM)
19. North Dakota (ND)
20. Ohio (OH)
21. Oklahoma (OK)
22. Oregon (OR)
23. Rhode Island (RI)

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24. South Carolina (SC)
25. Tennessee (TN)
26. Vermont (VT)
27. Washington (WA)

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697940_1