

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

**SUPERIOR COURT OF WASHINGTON
COUNTY OF KING**

**BARRIE ARLISS, individually and on behalf
of all others similarly situated,**

Plaintiff,

vs.

**GROUPON, Inc., a Delaware Corporation,
d/b/a Groupon,**

Defendant

No.

Class Action Complaint

CLASS ACTION COMPLAINT

Plaintiff Barrie Arliss (“Plaintiff”), for her Class Action Complaint, alleges as follows upon personal knowledge as to herself and her own acts and experiences and, as to all other matters, upon information and belief based upon, *inter alia*, investigation conducted by her attorneys:

I. Introduction

1. Plaintiff’s claims herein are based upon Defendant Groupon, Inc.’s (d/b/a Groupon) (“Defendant”) illegal practices related to its business selling online gift certificates.

2. Defendant is a company that sells gift certificates to consumers, as defined by RCW 19.240.010(4), (5). Defendant refers to its gift certificates as “Groupons.” Defendant sells these

1 gift certificates online throughout the State of Washington, and targets specific cities in the State for
2 the sale of certificates.

3 3. Defendant violates Washington law by inducing consumers to buy gift certificates
4 intended for use in the State of Washington, while knowing that its certificates contain expiration
5 dates, which are forbidden under RCW 19.240.020. In fact, Defendant prints the illegal expiration
6 dates in bold print on the face of its certificates. Defendant imposes other illegal restrictions on the
7 use of its certificates as well. For example, Defendant states: “**Must use gift certificate in one**
8 **visit**” or similar language in bold print on the face of its certificates. Defendant also states: “Not
9 valid for cash back (unless required by law)” on the face of its certificates. These limitations are
10 also clearly forbidden under RCW 19.240.020.
11

12 4. Defendant’s deceptive business practices violate the Washington Consumer Protection
13 Act (RCW 19.86 *et seq.*)(“CPA”) by unlawfully printing expiration dates and other limitations on
14 the face of the certificates that its customers have purchased, and by falsely informing customers
15 that they are not entitled to retain surplus value or use the certificates in multiple transactions.
16 Customers are never informed that these restrictions are in direct violation of Washington law. On
17 information and belief, many customers choose to forego using their “Groupons” when the
18 “Groupon” shows on its face that it has already expired. On information and belief, many
19 customers forego asking for a refund of any unused value of their “Groupon,” based upon the
20 bolded statement on the “Groupon”: “**Must use gift certificate in one visit.**” On information and
21 belief, many customers forgo asking for a refund of any unused value of their “Groupon,” based on
22 the statement on the “Groupon”: “not valid for cash back (unless required by applicable law).” The
23
24
25
26
27
28
29

1 result of these unfair and deceptive practices is that consumers are often deceived out of redeeming
2 their certificates, or deceived to believe that they must redeem them at a reduced rate.

3 5. During the process of purchasing a “Groupon,” Defendant does not disclose all of these
4 stated restrictions to consumers. These stated restrictions in some cases contradict statements
5 within Defendant’s “terms of use” that a consumer is required to “acknowledge,” but not actually
6 review, before purchasing a “Groupon.” This is a misleading marketing practice that violates RCW
7 19.86 *et seq.*
8

9
10 6. On information and belief, Defendant engages in these unfair and deceptive practices in
11 an effort to maximize the number of customers who either never redeem their “Groupon” because
12 of the perceived expiration date (therefore losing the entire value of the “Groupon”), and to
13 maximize the number of customers who never redeem their “Groupon” for its full value. It is well
14 known in the gift certificate industry that a significant source of the benefit for a business selling
15 gift certificates is that a substantial number of customer never redeem them. Defendant is seeking
16 to maximize this “margin” in the gift certificate business by misleadingly encouraging consumers to
17 never redeem their gift certificates, or to redeem them for less than the full value to which they are
18 entitled under law.
19

20
21 7. Plaintiff brings this action on behalf of herself and a Class and Subclasses of individuals
22 seeking injunctive relief, damages, and reasonable costs and attorneys’ fees for Defendant’s
23 violations of the CPA, breach of contract, unjust enrichment, and such other and further relief as the
24 Court deems equitable and just.
25
26

27 **II. Facts of the Claim**

28 1. Defendant offers its services to consumers throughout the State of Washington.
29

1
2
3
4
5
6
7
8
9

V. Facts Regarding Plaintiff

10 1. **Plaintiff Barrie Arliss:** Plaintiff is a resident of Seattle, Washington. Plaintiff
11 purchased “Groupons” from Defendant on May 8, 2010, July 9, 2010, August 20, 2010, and
12 September 19, 2010. In clear violation of Washington State law, the gift certificates have
13 expiration dates of one year or less and other terms that violate Washington State as described in
14 this Complaint.

VI. Class Allegations

15 1. Plaintiff seeks certification of a class and subclasses as defined below.

16 (a) **The Expiration Class:** All citizens of the State of Washington who at any time
17 for three years from the date of this action purchased a “Groupon” in the State of Washington and
18 were deceived into the belief that the certificate validly expired before use.

19 (b) **The Unused Certificate Subclass:** All members of the Class who, for three
20 years from the date of this action purchased a gift certificate that contained an expiration date and
21 have not yet redeemed the certificate for goods or services.

22 (c) **The Surplus Value Subclass:** All members of the class who, for three years
23 from the date of this action purchased a gift certificate and were unlawfully required to either
24 surrender surplus value after their purchase using the certificate or who were induced to accept
25 goods and/or services they did not want in order to exhaust the full value of the certificate, thereby
26 depriving them of the full face value of the certificate.

27 Excluded from the Class and Subclasses are (i) any judge presiding over this action and
28 members of their families; (ii) Defendant, Defendant’s subsidiaries, parents, successors,
29 predecessors, and any entity in which Defendant or its parents have a controlling interest and their

1 current or former employees, officers and directors; (iii) persons who properly execute and file a
2 timely request for exclusion from the Class; and (iv) the legal representatives, successors or assigns
3 of any such excluded persons.

4
5 2. **Numerosity:** The exact number of Class members is unknown to Plaintiff at this time,
6 but on information and belief, Defendant has contracted with thousands of Class members
7 throughout the State of Washington, making joinder of each individual member impracticable.
8 Ultimately, the Class and members will be easily identified through Defendant's records.

9
10 3. **Commonality and Predominance:** Common questions of law and fact exist as to all
11 members of the Class and Subclasses and predominate over any questions affecting only individual
12 members.

13
14 These common questions include but are not limited to:

15 (a) Whether Defendant sold gift certificates to members of the Class and Subclasses
16 containing an expiration date and other restrictions in violation of Washington law;

17
18 (b) Whether Defendant's practices violate the CPA;

19 (c) Whether Defendant's practices violate the public policy of the State of
20 Washington;

21 (d) Whether Defendant was unjustly enriched as a result of receiving payments from
22 Plaintiffs, the Class and Subclasses; and

23
24 (e) Whether Plaintiff, the Class, and Subclasses are entitled to relief, and the nature
25 of such relief.
26
27
28
29

1 4. **Typicality:** Plaintiff's claims are typical of the claims of the other members of the Class
2 and Subclasses. Plaintiff, the Class, and Subclasses sustained damages as a result of Defendant's
3 uniform wrongful conduct during transactions with Plaintiff, the Class, and Subclasses.

4
5 5. **Adequate Representation:** Plaintiff will fairly and adequately represent and protect the
6 interests of the Class and Subclasses, and has retained counsel competent to litigate this action.
7 Plaintiff has no interests antagonistic to those of the Class or Subclasses, and Defendant has no
8 defenses unique to Plaintiff.

9
10 6. **Appropriateness:** This class action is appropriate for certification because class
11 proceedings are superior to all other available methods for the fair and efficient adjudication of this
12 controversy and joinder of all members of the Class and Subclasses is impracticable. The damages
13 suffered by the individual members of the Class and Subclasses will likely be small relative to the
14 burden and expense of individual prosecution of the complex litigation necessitated by Defendant's
15 wrongful conduct. Thus, it would be virtually impossible for the individual members of the Class
16 and Subclasses to obtain effective relief from Defendant's misconduct. Even if members of the
17 Class and Subclasses could sustain such individual litigation, it would not be preferable to a class
18 action because individual litigation would increase the delay and expense to all parties due to the
19 complex legal and factual controversies presented in this Complaint. By contrast, a class action
20 presents far fewer management difficulties and provides the benefits of single adjudication,
21 economy of scale, and comprehensive supervision by a single court. Economies of time, effort, and
22 expense will be fostered and uniformity of decisions will be ensured.

23
24 7. **Policies Generally Applicable to the Class:** This class action is also appropriate for
25 certification because Defendant has acted or refused to act on grounds generally applicable to the
26
27
28
29

1 Class and Subclasses, thereby requiring the Court's imposition of uniform relief to ensure
2 compatible standards of conduct toward the members of the Class and Subclasses, and making final
3 injunctive relief appropriate with respect to the Class and Subclasses as a whole. Defendant's
4 policies challenged herein apply and affect members of the Class and Subclasses uniformly and
5 Plaintiff's challenge of these policies hinges on Defendant's conduct with respect to the Class and
6 Subclasses as a whole, not on facts or law applicable only to Plaintiff.
7

8 8. Plaintiff reserves the right to revise the Class and Subclasses definitions based upon
9 information learned through discovery.
10

11 **VII. Amount in Controversy**

12 Plaintiff makes no specific allegations that the amount in controversy (including requests for
13 attorneys' fees, injunctive and other relief) exceeds any specific dollar amount, let alone
14 \$5,000,000.
15

16 **VIII. Claims**

17 **Count 1: Declaratory Relief pursuant to RCW 7.24 *et seq.***

18 **(On behalf of Plaintiff, the Class, and Subclasses)**

- 19
- 20 1. Plaintiff incorporates the foregoing allegations as if fully set forth herein.
 - 21 2. There exists an actual controversy between Plaintiff, the Class and Subclasses on the one
22 hand, and Defendant on the other, to the extent Defendant's Sales and Issuance of gift certificates
23 are contrary to Washington law and public policy.
 - 24 3. As explained *infra*, Defendant's agreements with Plaintiff, the Class and Subclasses
25 violate the Washington Consumer Protection Act by, *inter alia*, selling gift certificates that purport
26 to have expiration dates and unlawfully restricting redemption to a single transaction.
27
28
29

1 4. Defendant's sales of gift certificates with expiration dates and redemption restrictions to
2 Plaintiff, the Class and Subclasses are contrary to applicable Washington law and are therefore void
3 under RCW 19.240.110.

4 5. Plaintiff, the Class and Subclasses have tangible legal interests in the instant
5 controversy, including but not limited to:

6 (a) Their interest in receiving full value of the certificates they purchased from
7 Defendant without regard to unlawful expiration dates and single-transaction redemption
8 restrictions; and
9

10 (b) Their interest in obtaining injunctive relief so that Defendant does not in the
11 future employ deceptive practices in its business dealings with consumers.
12

13 6. Plaintiff, the Class and Subclasses seek injunctive relief prohibiting Defendant from
14 refusing to honor certificates in accordance in Washington, and to prevent Defendant from
15 continuing its unlawful, unfair and deceptive business practices as described in this Complaint.
16

17 **Count II: Violation of the Washington Consumer Protection Act**

18 **(On behalf of Plaintiff, the Class, and Subclasses)**

19 1. Plaintiff incorporates the foregoing allegations as fully set forth herein.
20

21 2. The CPA provides that “[u]nfair methods of competition and unfair or deceptive acts or
22 practices in the conduct of any trade or commerce are hereby declared unlawful.” RCW 19.86.020.
23

24 3. Defendant engages in numerous unfair or deceptive practices in violation of the
25 Consumer Protection Act, including but not limited to: (1) marketing and selling “Groupons” that
26 are subject to purported expiration dates which violate state law, (2) marketing and selling
27 “Groupons” with purported explicit restrictions on the “Groupon,” such as those stating: "**Must use**
28

1 **gift certificate in one visit**” and “not valid for cash back (unless required by applicable law),”
2 which restrictions violate state law, (3) marketing and selling “Groupons” with terms on the face of
3 the “Groupon” that contradict terms contained in Groupon’s own terms of use, thereby misleadingly
4 obfuscating the contents and meaning of the terms of use.

5
6 4. The result of these unfair and deceptive practices is that members of the Class and
7 Subclasses have been deprived of the full value of the certificate to which they are legally entitled
8 under Washington law, and have either discarded certificates that they were deceived into believing
9 had “expired,” or have been deceived into either giving up some portion of the value of the
10 certificate or accepting delivery of goods and/or services that they did not want for the sole purpose
11 of receiving some approximation of full value of the certificate. Defendant’s unfair and deceptive
12 business practices have therefore caused economic harm to Plaintiff, the Class, and the Subclasses.
13
14

15 **Count III: Violation of the RCW 19.240.020: Expiration, Surplus Value**

16 **(On behalf of Plaintiff, the Class, and Subclasses)**

17
18 1. Plaintiff incorporates the foregoing allegations as fully set forth herein.

19 2. RCW 19.240.020 prohibits the sale or issuance of a gift certificate containing an
20 expiration date. It also requires that when a purchase is made with a gift certificate for an amount
21 that is less than the value of the gift certificate, the issuer must make the remaining value available
22 to the bearer in cash or as a gift certificate at the option of the issuer.
23

24 3. Defendant sold gift certificates to Plaintiff, the Class, and Subclasses that are
25 represented by Defendant to have expiration dates, which is unlawful under Washington law (RCW
26 19.240.020(1)(a)). Similarly, the face of the certificates indicates that the consumer must use the
27 full value of the certificate during a single transaction and that no residual value will be returned to
28
29

1 the consumer. This violates RCW 19.240.020(3).

2 4. The result of these unfair and deceptive practices is that members of the Class and
3 Subclasses have been deprived of the full value of the certificate to which they are legally entitled
4 under Washington law, and have either discarded certificates that they were deceived into believing
5 had “expired,” or have been deceived into either giving up some portion of the value of the
6 certificate or accepting delivery of goods and/or services that they did not want for the sole purpose
7 of receiving some approximation of full value of the certificate. Defendant’s unfair and deceptive
8 business practices have therefore caused economic harm to Plaintiffs, the Class, and the Subclasses.
9

11 **Count IV: Restitution/Unjust Enrichment**

12 **(On behalf of Plaintiff, the Class, and Subclasses)**

- 13
- 14 1. Plaintiff incorporates the foregoing allegations as if fully set forth herein.
 - 15 2. Defendant has knowingly received and retained benefits from Plaintiff, the Class, and
16 Subclasses under circumstances that would render it unjust to allow Defendant to retain such
17 benefits.
18
 - 19 3. Under principles of equity and good conscience, Defendant should not be permitted to
20 retain the monies belonging to Plaintiff, the Class, and Subclasses that they were paid in the form of
21 payment for gift certificates and that Defendant unjustly received as a result of its misconduct
22 alleged herein.
23

24 **IX. Prayer for Relief**

25 WHEREFORE, Plaintiff, on her own behalf and on behalf of the Class and
26 Subclasses, prays that the Court enter an order and judgment in her favor and against Defendant as
27 follows:
28

1 (a) Certifying this case as a class action, and designating Plaintiff as Class
2 Representative and her attorneys as Class Counsel;

3 (b) Declaring Defendant's conduct in the sale of gift certificates to Plaintiff, the
4 Class and Subclasses to be illegal under State law, and granting injunctive relief as necessary to
5 protect the Plaintiff, Class, and Subclasses and to prohibit the continuing conduct of Defendant's
6 business in ways that violate State law;

7 (c) Awarding actual and liquidated damages to Plaintiff, the Class, and Subclasses in
8 an amount to be proven at trial;

9 (d) Granting equitable and injunctive relief to Plaintiff, the Class, including
10 restitution, disgorgement, and an accounting of all revenue gained by Defendant through its
11 unlawful conduct alleged herein;

12 (e) Awarding Plaintiff, the Class, and Subclasses reasonable costs and attorneys'
13 fees;

14 (f) Awarding Plaintiff, the Class, and Subclasses pre- and post-judgment interest;
15 and

16 (g) Granting such other and further relief as the Court deems equitable and just.

17 X. DEMAND FOR JURY TRIAL

18 Plaintiff request trial by a jury of 12 members of all matters that can be so tried.

19 Dated this March 23, 2011.

20 Respectfully submitted,

CARNEY GILLESPIE ISITT PLLP



Christopher Carney, WSBA No. 30325
Sean Gillespie, WSBA No. 35365
Kenan Isitt, WSBA No. 35317
CARNEY GILLESPIE & ISITT PLLP
Jay Carlson, WSBA No. 30411
CARLSON LEGAL
Shaun Van Eyk, WSBA No. 41476
Jason Moore, WSBA No. 41324
VAN EYK & MOORE, PLLC
Attorneys for Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29