

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

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

In re GROUPON MARKETING AND SALES PRACTICES LITIGATION)	No. 3:11-md-02238-DMS-RBB
_____)	ORDER PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT

1 Plaintiffs and Defendants (collectively, the “Parties”) in the above-captioned
 2 multidistrict litigation pending before this Court have entered into a Stipulation of
 3 Class Action Settlement (“Settlement Agreement”) after extensive, arm’s-length
 4 settlement negotiations.¹

5 The Parties have now jointly moved this Court, pursuant to Federal Rule of
 6 Civil Procedure 23(e) for an order preliminarily approving the classwide settlement
 7 of this Action upon the terms and conditions set forth in the Settlement Agreement.

8 This Court has reviewed and considered the Settlement Agreement and
 9 accompanying exhibits, and the Parties’ submissions and found good cause to grant
 10 the joint motion.

11 **NOW, THEREFORE, IT IS HEREBY ORDERED:**

12 **I. The Settlement Class**

13 1. Jurisdiction. The Court has jurisdiction over the Parties and the subject
 14 matter of the dispute.

15 2. Conditional Certification of Settlement Class. Pursuant to Federal
 16 Rules of Civil Procedure 23(b)(3) and 23(c)(1), and for purposes of the Settlement
 17 only, the Court hereby conditionally certifies this Action as a class action on behalf
 18 of the following Settlement Class:

19 All Persons who purchased or received one or more Groupon Vouchers
 20 for redemption at a Merchant in the United States, from November
 21 2008 until December 1, 2011. Excluded from the Settlement Class are
 22 Defendants, Merchant Partners, their parent companies, subsidiaries,
 affiliates, officers and directors, any entity in which Defendants have a
 controlling interest, Groupon employees, and all judges assigned to
 hear any aspect of this litigation, as well as immediate family members
 of any of the preceding referenced individuals.

23 3. Appointment of Class Representatives. Pursuant to Federal Rule of
 24 Civil Procedure 23, the Court hereby appoints the named Plaintiffs in the putative
 25

26
 27 ¹ All capitalized terms used herein have the meanings set forth and defined in the
 Settlement Agreement.
 28

1 Class Actions listed in Exhibit 1 of the Settlement Agreement to serve as Class
2 Representatives of the Settlement Class.

3 4. Appointment of Class Counsel. The Court previously appointed
4 Robbins Geller Rudman & Dowd LLP (“Robbins Geller”) as Class Counsel for
5 Plaintiffs in conjunction with its order granting preliminary approval of the 2012
6 Proposed Settlement Agreement (Dkt. No. 42). Having considered the factors set
7 forth in Federal Rules of Civil Procedure 23(g)(1) and (4), and having found Robbins
8 Geller to be adequate, the Court hereby affirms its appointment of Robbins Geller
9 as Class Counsel to represent the Settlement Class.

10 5. Preliminary Findings. The Court, having conducted a preliminary
11 assessment of the fairness, reasonableness, and adequacy of the Settlement
12 Agreement, hereby finds that the Settlement Agreement falls within the range of
13 reasonableness meriting further proceedings and possible final approval and
14 dissemination of the Class Notice to the Settlement Class. The Court hereby
15 preliminarily approves the Settlement Agreement, and the terms and conditions of
16 the Settlement Agreement set forth therein, subject to further consideration in the
17 Approval Hearing described below.

18 **II. The Approval Hearing**

19 1. Pursuant to Federal Rule of Civil Procedure 23(e), the Court will hold
20 an Approval Hearing on **February 26, 2016, at 1:30 p.m.** for the purposes of:

21 (a) Determining whether the Settlement Class meets all applicable
22 requirements of Federal Rule of Civil Procedure 23 and, thus, whether the Action
23 should be certified as a class action for purposes of effectuating the Settlement
24 Agreement;

25 (b) Determining whether the settlement on the terms and conditions
26 set forth in the Settlement Agreement, is fair, just, reasonable, and adequate to the
27 Settlement Class and should be approved by the Court;

1 (c) Considering the application of Class Counsel for an award of
2 attorneys' fees and reimbursement of expenses, as provided for in the Settlement
3 Agreement;

4 (d) Considering the application of the Class Representatives for
5 Class Representative Awards, as provided for in the Settlement Agreement;

6 (e) Reviewing objections, if any, regarding the Settlement
7 Agreement;

8 (f) Determining the validity of Requests for Exclusion, if any, and
9 excluding from the Settlement Class those Persons who validly and timely opted out;

10 (g) Considering whether the Court should enter the Order Approving
11 Class Action Settlement and Judgment of Dismissal with Prejudice dismissing the
12 Actions with prejudice and without costs to any Party;

13 (h) Ruling upon such other matters as the Court may deem necessary
14 and appropriate.

15 2. Modifications to Settlement. The Parties may modify the Settlement
16 Agreement prior to the Approval Hearing, so long as such modifications do not
17 materially change the terms of the settlement provided thereunder. The Court may
18 approve the Settlement Agreement with such modifications as may be agreed to by
19 the Parties, if appropriate, without further notice to the Settlement Class.

20 3. Objections to Settlement Agreement.

21 (a) Any Settlement Class Member who desires to object to the
22 Settlement Agreement, the application for Attorneys' Fees and Expenses, or Class
23 Representative Awards must submit their objection to the Court and serve a copy of
24 the objection on Class Counsel and Defendants' Counsel at least forty-two (42) days
25 prior to the Approval Hearing ("Opt-Out and Objection Date"). Any Settlement
26 Class Member who fails to timely submit and serve a written objection and notice
27 of his or her intent to appear at the Approval Hearing on or before the Opt-Out and
28

Objection Date shall not be permitted to object to the approval of the Settlement Agreement at the Approval Hearing and shall be foreclosed from seeking any review of the Settlement Agreement or the terms of the Settlement Agreement by appeal or other means.

(b) All objections must include the following information: (1) a reference to *In re Groupon Marketing and Sales Litigation*, No. 3:11-md-02238-DMS-RBB (S.D. Cal.); (2) the name, address, telephone number and email address of the Settlement Class Member submitting the objection; (3) proof of purchase or acquisition of a Groupon Voucher; (4) a written statement of his or her objection, including the bases for such objection and any evidence the Settlement Class Member wishes to introduce in support of his or her objection; and (5) the submitting Person's signature. In addition, each Settlement Class Member submitting an objection must state whether he or she (or his or her representative) intends to appear at the Approval Hearing.

(c) Settlement Class Members must submit their objections and any supporting papers to the Court, and serve copies of such papers on Class Counsel and Defendants' Counsel by hand or First Class Mail, on or before the Opt-Out and Objection Date, at the following addresses:

Class Counsel

ROBBINS GELLER RUDMAN
& DOWD LLP
John J. Stoia, Jr.
Rachel L. Jensen
Phong L. Tran
655 West Broadway, Suite 1900
San Diego, CA 92101

Defendants' Counsel

DLA PIPER LLP (US)
Shirli Fabbri Weiss
Christopher M. Young
Katherine J. Page
401 B Street, Suite 1700
San Diego, CA 92101

4. Response to Objections. Any response to timely, completed objections must be filed with the Court and served no later than fourteen (14) days prior to the Approval Hearing.

1 5. Appearance at Approval Hearing. Attendance at the Approval Hearing
2 is not necessary; however, any Person wishing to be heard orally with respect to
3 approval of the Settlement, the application for Attorneys' Fees and Expenses, or the
4 application for Class Representative Awards, are required to provide written notice
5 of their intention to appear at the Approval Hearing no later than the Opt-Out and
6 Objection Deadline, as provided in the Class Settlement Notice. Persons who do not
7 intend to oppose the Settlement, Attorneys' Fees and Expenses or Class
8 Representative Awards need not take any action to indicate their approval. A
9 Person's failure to submit a written objection in accordance with the Opt-Out and
10 Objection Deadline and the procedure set forth in the Class Notice waives any right
11 the Person may have to object to the Settlement Agreement, Attorneys' Fees and
12 Expenses, or Class Representative Awards, or to appeal or seek other review of the
13 Order Approving Class Action Settlement and Judgment dismissing the Action with
14 prejudice and without costs. Any Settlement Class Member may enter an appearance
15 in the Actions at his or her own expense, individually or through counsel. All
16 Settlement Class Members who do not enter an appearance will be represented by
17 Class Counsel.

18 6. All papers in support of the Settlement Agreement must be filed with
19 the Court and served at least twenty-eight (28) days prior to the Approval Hearing.

20 **III. The Court Approves the Form and Method of Class Notices**

21 1. Class Notice. The Court approves, as to form and content, the proposed
22 Class Notice to be emailed to Settlement Class Members and the content of the
23 notice to be posted on the Settlement Website, which are Exhibits 2 and 3
24 respectively, to the Settlement Agreement.

25 2. Distribution of Class Notice. The Court finds that the distribution of
26 the Class Notice substantially in the manner and form set forth in the Settlement
27 Agreement and Exhibits 2 and 3, meets the requirements of Federal Rule of Civil
28

1 Procedure 23 and due process, is the best notice practicable under the circumstances,
2 and constitutes due and sufficient notice to all Persons entitled thereto.

3 3. Approval of Claims Administrator.

4 (a) The Court approves the designation of Rust Consulting, Inc. to
5 serve as the Court-appointed Claims Administrator for the Settlement. The Claims
6 Administrator shall disseminate the Class Notice and supervise and carry out the
7 Notice Program; review and process Settlement Claims; compile the Claims
8 Database; administer and inform Groupon of the Groupon Credits to be deposited in
9 Settlement Class Members' accounts for validly-submitted Claims; and handle other
10 administrative functions, as set forth in the Settlement Agreement and this Order,
11 under the direction and supervision of the Court.

12 (b) The Court directs the Claims Administrator to create and
13 maintain the Settlement Website, which shall contain relevant documents and
14 information relating to the Settlement Agreement, including all applicable deadlines;
15 the Settlement Class definition; instructions on how to submit Settlement Claims
16 online or by e-mail, mail or facsimile; orders of the Court pertaining to this
17 Settlement Agreement, including all supporting exhibits; and such other information
18 as may be of assistance to Settlement Class Members or required under the
19 Settlement Agreement.

20 (c) The Claims Administrator is ordered to cause the Class Notice to
21 be disseminated to Settlement Class Members and update the Settlement Website in
22 the manner set forth in the Notice Program, no later than fifteen (15) days after the
23 entry of this Preliminary Approval Order ("Class Notice Date"). The Claims
24 Administrator may request assistance from Groupon to facilitate providing Class
25 Notice as necessary; to assist with updating the Settlement Website; and to
26 accomplish such other purposes as may be approved by Groupon and Class Counsel.

1 (d) No later than 10 days after entry of this Preliminary Approval
2 Order, Groupon shall deposit funds with the Claim Administrator to pay the Class
3 Notice Expenses and automated call center expenses incurred by the Claims
4 Administrator. All Claims Administration Expenses, including Class Notice
5 Expenses, automated call center expenses, and other administrative expenses
6 incurred by the Claims Administrator, as provided in the Settlement Agreement,
7 shall be paid from the Settlement Amount.

8 (e) Prior to the Approval Hearing, the Claims Administrator shall
9 provide to the Court documentation that the Class Notice was provided in
10 accordance with the Notice Program.

11 4. Submission of Settlement Claims.

12 (a) Settlement Class Members who have purchased or received a
13 Groupon Voucher that has never been redeemed or refunded and wish to receive
14 Groupon Credits under the Settlement Agreement must submit a valid Settlement
15 Claim Form to the Claims Administrator by e-mail, U.S. mail or facsimile, no later
16 than 60 (sixty) days after Class Notice Date (“Settlement Claims Deadline”). The
17 Settlement Claims Deadline shall be clearly set forth in the Class Notice and on the
18 Settlement Website, and the website of Class Counsel.

19 (b) Claims submitted by Settlement Class Members pursuant to the
20 2012 Proposed Settlement Agreement shall be deemed to have been timely
21 submitted under this Settlement Agreement, and shall be valid so long as they meet
22 the criteria set forth in the claim form that was posted on the Settlement Website in
23 connection with the 2012 Proposed Settlement Agreement, provided, however, that
24 no Claim shall be valid if based on a Groupon Voucher that has been previously
25 redeemed or refunded at any time.

26 (c) Any Class Member who does not opt out of this Settlement
27 Agreement, but wishes to withdraw his or her Claim submitted under the 2012
28

1 Proposed Settlement Agreement, may withdraw the Claim by sending an email to
2 the Claims Administrator at the email address provided in the Class Notice within
3 sixty (60) days after the Class Notice Date.

4 **IV. Procedure for Requesting Exclusion from the Settlement Class**

5 1. Any Person falling within the definition of the Settlement Class may,
6 upon his or her request, be excluded from the Settlement Class. Any such Person
7 must complete and send to the Claims Administrator a Request For Exclusion that
8 is received or post marked no later than the Opt Out and Objection Date (*i.e.*, forty-
9 two (42) days prior to the Approval Hearing), as set forth in the Class Settlement
10 Notice. The Request for Exclusion must be personally signed by the Settlement
11 Class Member requesting exclusion and contain a statement that indicates a desire
12 to be excluded from the Settlement Class. Requests for Exclusion purportedly filed
13 on behalf of multiple Persons or classes of Persons are prohibited and will be deemed
14 to be void.

15 2. Any Claim that had been submitted pursuant to the 2012 Proposed
16 Settlement Agreement by a Class member who submits a Request for Exclusion shall
17 be deemed withdrawn.

18 3. Any Settlement Class Member who does not submit a completed and
19 signed Request for Exclusion to the Claims Administrator on or before the Opt Out
20 and Objection Date will be deemed to be a member of the Settlement Class for all
21 purposes and will be bound by all further orders of the Court in this Action and by
22 the terms of the Settlement Agreement, if finally approved by the Court. All Persons
23 who submit valid and timely Requests for Exclusion in the manner set forth in the
24 Settlement Agreement shall have no rights under the Settlement Agreement and shall
25 not be bound by the Settlement Agreement or the Order and Judgment Approving
26 Class Action Settlement.

1 4. The Claims Administrator shall provide Class Counsel and Defendants'
2 Counsel a list of all timely Requests for Exclusion within ten (10) business days after
3 the Opt-Out and Objection Deadline.

4 **V. Miscellaneous Provisions**

5 1. Stay. Pending final determination of whether the Settlement
6 Agreement should be approved, all discovery and all proceedings in the Action
7 unrelated to the approval of the Settlement Agreement, the application for Attorneys'
8 Fees and Expenses, and the Application for Class Representative Awards are stayed.

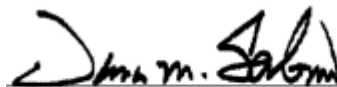
9 2. Termination of Settlement Agreement. This Order shall become null
10 and void and shall be without prejudice to the rights of the Parties, all of whom shall
11 be restored to their respective positions existing immediately before this Court
12 entered this Order, if the settlement is terminated in accordance with the Settlement
13 Agreement.

14 3. Use of Order. This Order shall not be used by any Party or otherwise
15 or construed as an admission, concession, or a presumption by or against any of the
16 Released Parties of any fault, wrongdoing, failure of disclosure, improper or illegal
17 business practice or waiver of any claim, defense, right to arbitration or to defend
18 against arbitration that he, she or it may have in the event the Settlement Agreement
19 is terminated, nor shall it be used in any manner prohibited by Section II.K of the
20 Settlement Agreement. In the event that this Order becomes of no force or effect, it
21 shall not be construed or used as an admission, concession or presumption by or
22 against the Released Parties, the Plaintiffs or the Class.

23 4. The Court retains exclusive jurisdiction to consider all further
24 applications arising out of or connected with the proposed Settlement Agreement.

25 IT IS SO ORDERED.

26 Dated: October 22, 2015

27 

28 Hon. Dana M. Sabraw
United States District Judge