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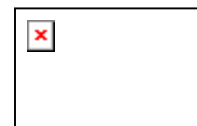
SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY In re EXPEDIA HOTEL TAXES AND FEES LITIGATION <hr/> This Document Relates To: ALL ACTIONS	CONSOLIDATED CIVIL ACTION Master File No. 05-2-02060-1 SEA FOURTH CONSOLIDATED AMENDED CLASS ACTION COMPLAINT [REDACTED VERSION]
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REDACTED PURSUANT TO ORDER TO SEAL, DATED MAY 7, 2007

Plaintiffs Jose Alba and Michelle Huggins (“Plaintiffs”), by and through their attorneys, on behalf of themselves and all others similarly situated, bring this Consolidated Amended Class Action Complaint against Expedia, Inc. (“Defendant”) and allege, based upon personal knowledge as to themselves and their own acts, and as to all other matters upon information and belief, as follows:

I. NATURE OF ACTION

1. Defendant operates a business selling travel-related products and services to consumers through the United States-based website www.expedia.com and through telephone call centers (Defendant’s online- and telephone-based operations are referred to herein collectively as “Expedia”). These products and services include hotel reservations, airline tickets, and rental cars.

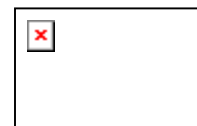


1 2. As part of its hotel reservation business, Defendant enters into agreements with
2 hotels to obtain access to certain room reservations at discounted rates (the “Wholesale Rate”),
3 and then offers those rooms (the “Rooms”) to consumers at a marked-up price (the “Consumer
4 Rate”). Each time a Room is reserved through Expedia, Defendant collects the Consumer Rate
5 from the consumer, remits the Wholesale Rate to the hotel, and retains the difference.

6 3. In addition to the Consumer Rate, Defendant also collects from consumers an
7 amount to cover the transaction taxes associated with the reservation. When a consumer reserves
8 a Room through Expedia, the hotel is required to collect and remit applicable transaction taxes to
9 the taxing authorities based on the Wholesale Rate. Hotels collect these taxes from Defendant,
10 which in turn recovers them from consumers by imposing a “Tax Recovery Charge” on every
11 Room reservation. Defendant describes this “Tax Recovery Charge” as “a recovery of all
12 applicable transaction taxes (*e.g.*, sales and use, occupancy, room tax, excise tax, value added
13 tax, etc.) that Expedia Travel pays to the vendors (*e.g.*, hotels, car suppliers, etc.) in connection
14 with your travel arrangements.”

15 4. Defendant does not disclose the amount of the “Tax Recovery Charge,” nor does
16 it disclose the amount that it “pays to the [hotel]” for taxes, the fact that this amount is based on
17 the Wholesale Rate, or even the Wholesale Rate itself. Instead, Defendant conceals the amount
18 of the “Tax Recovery Charge” by combining it with a “Service Fee” and then disclosing the two
19 charges as a single “taxes & service fees” line item, without identifying which portion of the
20 combined charge is attributable to taxes and which portion is attributable to service fees.

21 5. In doing so, Defendant falsely portrays the Consumer Rate as the amount upon
22 which transaction taxes, and thus the “Tax Recovery Charge,” are properly based. This enables
23 Defendant to impose excessive charges by misleading consumers to believe that Defendant is
24 obligated to calculate and recover taxes in an amount based on the higher Consumer Rate, as
25 opposed to the lower Wholesale Rate. It also enables Defendant to conceal its excessive
26 “Service Fee.”



1 6. Defendant describes the “Service Fee” as a charge to cover costs incurred by
2 Defendant in servicing the reservation. In reality, the service fees charged by Defendant are a

3 [REDACTED]
4 [REDACTED]. Defendant, however, deceives consumers into believing
5 otherwise by omitting to disclose either the amount of legitimate taxes associated with the
6 transaction or the amount of the “Service Fee,” thereby giving the appearance of lower service
7 fees in the combined “taxes & service fees” charge.

8 7. Ultimately, by combining the “Tax Recovery Charge” and the “Service Fee,”
9 Defendant is able to conceal the true nature, purpose, and amount of each, while collecting a
10 single excessive “taxes & service fees” charge from consumers.

11 8. An illustration of Expedia’s practices follows below (in light of the Protective
12 Order entered in this case on January 13, 2006, Plaintiffs use a hypothetical example to avoid the
13 need to redact any portion of this Complaint):

- 14 • Defendant enters into an agreement with the Star Hotel to obtain access to
15 certain Rooms at the Wholesale Rate of \$240 and to pay the hotel for any
16 transaction taxes associated with that rate upon the reservation of such Rooms
17 through Expedia.
- 18 • Defendant marks up that rate and charges a consumer \$320 for one of the
19 Rooms. The \$80 spread between the Consumer Rate and the Wholesale Rate
20 covers Defendant’s costs and expenses, and creates a profit.
- 21 • By not disclosing the amount of taxes it purports to recover, Defendant falsely
22 portrays the \$320 rate as the amount upon which transaction taxes, and thus
23 the “Tax Recovery Charge,” are properly based. ***Because the consumer is
24 only aware of the amount of the Consumer Rate, and is unaware of the
25 amount of the Wholesale Rate, it is simply not possible for the consumer to
26 believe that the taxes are based on the \$240 Wholesale rate.***
- When a consumer purchases only a hotel room (or rooms) from Defendant,
the consumer picks the hotel based upon the Consumer Rate. Thus, in this
hypothetical example, the Consumer would see (or hear) that the Star Hotel
was available for \$320 per night. Only when the consumer clicks the “book
it” button (or tells the agent to “book it”) would the consumer learn of a “taxes
and fees” charge.
- Defendant never separately identifies which portion of the charge is
attributable to taxes and which portion is attributable to service fees.



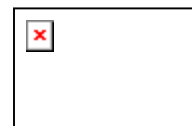
1 Supposing that the total for “taxes and fees” was \$50 in the Star Hotel
2 example, the per-night hotel costs would end up as \$370.

- 3 • Suppose, in the Star Hotel example, that the taxes actually paid by Expedia
4 were \$30 per night. Unbeknownst to the consumer, Expedia would be able to
5 pocket an additional \$20 in service fees for each night for each room booked.
- 6 • By concealing this information, Defendant is able to calculate and impose
7 “taxes & service fees” in excess of the actual taxes and the actual costs, if any,
8 associated with the reservation.

9 9. In the Star Hotel example above, a hotel consumer would choose the Star Hotel
10 based on the “Consumer Rate” of \$320. Only after either clicking the “book it” button on
11 Expedia’s website or telling Expedia’s phone agent to book the reservation would the consumer
12 learn of a bundled “taxes and service fees” charge. Thus, consumers who are looking for the
13 lowest “bottom line” charge are deceived into paying a “taxes and fees” charge that, while
14 presented as unavoidable hard costs, in reality, contains a larger fee than a consumer would
15 anticipate, which is merely additional profit for Expedia.

16 10. As indicated above, in addition to pocketing the spread between the Consumer
17 Rate that it charges consumers and the Wholesale Rate that it pays hotels, Defendant also
18 imposes an improper and excessive “taxes & fees” charge on consumers by concealing relevant
19 information and misleading consumers to believe that taxes must be paid to hotels based on the
20 Consumer Rate, and that service fees are the costs incurred by Defendant in servicing
21 reservations. This is referred to hereinafter as the “Excessive Taxes & Fees Scheme.”

22 11. Defendant does not provide consumers with any information from which they
23 could determine the actual taxes associated with their Room reservation. Specifically, Defendant
24 does not disclose (1) the Wholesale Rate, (2) the fact that taxes are based only on the Wholesale
25 Rate, (3) the amount of the “Tax Recovery Charge,” or (4) the amount that Defendant pays to the
26 hotel for taxes associated with the reservation. As a result, consumers have no way of
 determining how much they should be paying in taxes, and, thus, how much of the “taxes &
 service fees” charge is improper and excessive.



1 connection with each reservation, Defendant imposed, and Ms. Huggins paid, an improper and
2 excessive “taxes & service fees” charge.

3 **B. Defendant**

4 19. Expedia, Inc. is a Washington corporation with its principal place of business in
5 Bellevue, Washington.

6 **III. JURISDICTION AND VENUE**

7 20. This Court has jurisdiction over Defendant because all or part of the alleged
8 wrongful conduct took place in the State of Washington; Expedia, Inc. maintains its principal
9 place of business in Bellevue, Washington; and Defendant has and continues to transact
10 substantial business, including the wrongful conduct alleged herein, in the State of Washington.

11 21. The claims of each member of the Class (as defined below) do not exceed
12 seventy-five thousand dollars (\$75,000), exclusive of interest and costs.

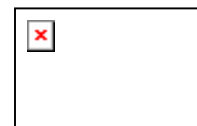
13 **IV. SUBSTANTIVE ALLEGATIONS**

14 22. Defendant operates and controls Expedia, “the world’s leading online travel
15 service and the fourth largest travel agency in the U.S.” Consumers using Expedia supposedly
16 can search discount rates at more than 60,000 hotels worldwide.

17 23. Pursuant to its “merchant model” hotel program instituted in mid 2000, Defendant
18 enters into agreements with hotels in advance for volume discount commitments and availability.
19 Consumers book and pay for these rooms through Expedia over the internet or by telephone.

20 24. When booking a room through Expedia, a consumer is given price quotes for
21 Rooms in a particular city or town. If the consumer chooses to book a Room, Defendant then
22 notifies the consumer that there is an additional charge for “taxes & service fees.” As alleged
23 above, this single line item is actually a combination of Defendant’s “Tax Recovery Charge” and
24 “Service Fee.”

25 25. Defendant does not disclose the amount of taxes actually imposed by the taxing
26 authorities and/or collected by the hotels, or the nature, purpose, or amount of the service fees.



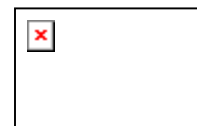
1 Defendant does not even disclose which portion of the “taxes & service fees” charge is
2 attributable to taxes and which portion is attributable to service fees.

3 26. Nowhere in Defendant’s reservation notices, invoices, or other disclosures is the
4 amount of the taxes imposed by the taxing authorities and/or collected by the hotels explained to
5 consumers. Thus, Defendant willfully leads Plaintiffs and the other putative Class members to
6 believe that it is obligated to calculate and recover taxes on the Consumer Rate, that such taxes
7 are attributable to the taxing authorities and/or the destination hotels, and that such taxes are
8 passed through or paid to these entities. Nowhere does Defendant explain any other purpose for
9 the taxes portion of the “taxes & service fees” charge. This allows Defendant to engage in its
10 Excessive Taxes & Fees Scheme.

11 27. In addition to failing to disclose or explain the amount of the taxes, Defendant
12 also makes no disclosure or explanation of the nature, purpose, or amount of the service fees.
13 Instead, Defendant willfully leads Plaintiffs and the other putative Class members to believe that
14 the alleged “service fees” are the actual direct costs that Defendant incurs in servicing hotel
15 reservations. Nowhere does Defendant explain any other purpose for these “service fees.”

16 28. By lumping together “taxes & service fees” and failing to disclose the nature or
17 amount of each, Defendant intended to, and did, mislead Plaintiffs and the putative Class
18 members into believing that the “service fees” were required charges that were actually incurred
19 by Expedia in processing a given reservation. In reality, however, these “service fees” bear no
20 relation to any such costs. In part, the “fee” is simply the remainder of what is left over after
21 paying the hotel the legitimate transaction taxes.

22 29. In order to purchase a hotel, or a “package” that includes a hotel in addition to a
23 flight and/or a car rental, consumers have always been required to create an account with
24 Defendant. In order to create the account, online consumers are required to provide an email
25 address and agree to the “terms and conditions,” or “Terms of Use.” Telephone users are
26 referred to the Terms of Use and are asked for an email address.



1 30. Once a transaction is completed, all consumers are sent a confirmation by email,
2 which, once again incorporates the Terms of Use. Phone consumers cannot access their
3 confirmation or account information without accepting the Terms of Use.

4 31. Beginning in late 2002 or early 2003, the Terms of Use contained the following
5 language concerning “Tax Recovery Charges” and “Service Fees,” under the Heading “Terms,
6 Conditions and Warranties”:

- 7 a.) “Tax Recovery Charge. The tax charge ... is a recovery of all applicable
8 transaction taxes (e.g. sales and use, occupancy, room tax, excise tax,
9 value added tax, etc.) that Expedia pays to the vendors (e.g., hotels, etc.) in
10 connection with your travel arrangements.”
- 11 b.) “Service Fee. These fees cover the costs incurred by Expedia Travel in
12 servicing your reservation.”

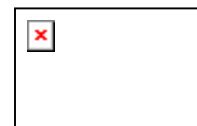
13 32. That language remained constant until sometime in 2006.

14 33. Sometime in 2006, the “Terms of Use” changed to include the following
15 language: “Our service fees are retained by the Companies as compensation in servicing your
16 travel reservation. Our service fees vary based on the amount and type of hotel reservation.”

17 V. CLASS ALLEGATIONS

18 34. Pursuant to CR 23, Plaintiffs bring this class action on behalf of themselves and
19 all members of the following class (the “Class”):

20 All persons and entities throughout the United States who were
21 assessed a “Tax Recovery Charge” and a “Service Fee” when
22 paying for lodging through Expedia, Inc. (the “Class”), asserting
23 the following claims: (1) for all Class members, from January 1,
24 2003, to the present, claims for breach of contract, and (2) for all
25 Class members from January 10, 2001 to the present who paid for
26 lodging that was *not* part of a “package,” claims for violations of
the Washington Consumer Protection Act. For purposes of this
Class definition, a “package” is a reservation that includes lodging
plus airline tickets and/or a rental car. Excluded from the Class are
all consumers who did not provide Expedia with an email address,
Expedia, Inc. and its employees and agents, and all state and other
governmental entities

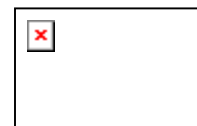


1 35. Plaintiffs believe that the Class includes thousands of consumers and businesses
2 across the United States, though the exact number and the identities of the Class members are
3 currently unknown.

4 36. The members of the Class are so numerous that joinder of all Class members is
5 impracticable.

6 37. Common questions of law and fact exist as to all members of the Class and
7 predominate over any questions affecting solely individual members of the Class. Nearly all
8 factual, legal, and statutory relief issues raised in this Complaint are common to each of the
9 members of the Class and will apply uniformly to every member of the Class. Among the
10 questions of law and fact common to Class members are:

- 11 (a) Whether Expedia fails to disclose the amount of government-imposed taxes
12 associated with hotel reservations;
- 13 (b) Whether Expedia fails to disclose the amount of service fees it charges for
14 hotel reservations;
- 15 (c) Whether Expedia’s practice of combining the “Tax Recovery Charge” and
16 the “Service Fee” into a single charge without disclosing which portion is
17 attributable to taxes and which portion is attributable to fees is unfair and/or
18 deceptive;
- 19 (d) Whether Expedia’s conduct amounts to a violation of the Washington
20 Consumer Protection Act, RCW Chapter 19.86;
- 21 (e) Whether Expedia’s “Terms of Use” give rights to consumers and obligations
22 to Expedia with respect to “Tax Recovery Charges” and “Service Fees”;
- 23 (f) Whether Expedia breaches its contractual obligations by pocketing a
24 substantial portion of its “taxes and fees” charge as profit;
- 25 (g) Whether Plaintiffs and the Class have sustained damages, and the proper
26 measure of those damages;



1 (h) Whether permanent injunctive relief should be issued as a result of
2 Defendant's unlawful conduct; and

3 (i) Whether, and in what amount, Plaintiffs and the other Class members are
4 entitled to recover treble damages, court costs, and attorneys' fees.

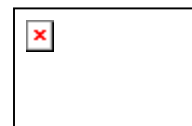
5 38. In addition, the "taxes & service fees" charge at issue in this lawsuit is calculated
6 by Defendant using the same automated process for every consumer and every transaction.
7 Accordingly, the same process that would be used to calculate one consumer's damages is just as
8 easily used to calculate the damages suffered by every consumer throughout the country.

9 39. Plaintiffs' claims are typical of the claims of other members of the Class because
10 Plaintiffs and every member of the Class have suffered similar injuries as a result of the same
11 unfair or deceptive acts or practices and breach of contract alleged herein. Plaintiffs have no
12 interest adverse to the interests of the other members of the Class.

13 40. Plaintiffs will fairly and adequately represent and protect the interests of the
14 Class. Plaintiffs have retained able counsel with extensive experience in class action litigation.
15 The interests of Plaintiffs are coincident with, and not antagonistic to, the interests of the other
16 Class members.

17 41. The questions of law and fact common to the members of the Class predominate
18 over any questions affecting only individual members, including legal and factual issues relating
19 to liability and damages.

20 42. Plaintiffs and other members of the Class have suffered damages as a result of
21 Defendant's unlawful and wrongful conduct. Absent a class action, Defendant will retain
22 substantial funds received as a result of its wrongdoing, and such unlawful and improper conduct
23 shall, in large measure, go unremedied. Absent a class action, the members of the Class will not
24 be able to effectively litigate these claims and will suffer further losses, as Defendant will be
25 allowed to continue such conduct with impunity and retain the proceeds of its ill-gotten gains.
26



1 charge) applicable Room charges, taxes, and fees corresponding to the actual costs incurred by
2 Defendant in servicing Class members' reservations.

3 56. Defendant charged, and Plaintiffs and the members of the Class paid, a "taxes &
4 service fees" charge that is far in excess of the combined total of (i) the taxes imposed by the
5 applicable taxing authorities and/or collected by hotels, and (ii) the costs actually incurred by
6 Expedia in processing Class members' reservations.

7 57. Plaintiffs and the members of the Class performed all of their obligations under
8 the contracts with Defendant.

9 58. Defendant has breached its contracts with Plaintiffs and the members of the Class
10 by collecting "taxes & service fee" charges in excess of the combined total of (i) the taxes
11 collected and remitted to the appropriate taxing authorities and/or hotels, and (ii) the costs
12 incurred by Expedia in servicing Class members' reservations.

13 59. Plaintiffs and the members of the Class have been proximately damaged by
14 Defendant's breaches.

15 **WHEREFORE**, Plaintiffs, on their behalf and on behalf of the Class, pray for judgment,
16 as follows:

17 (a) For an Order certifying this case as a class action against Defendant and
18 appointing Plaintiffs as Representatives of the Class;

19 (b) For money damages against Defendant and in favor of Plaintiffs and the Class on
20 all claims asserted in this Complaint, but in no event for more than \$75,000 each;

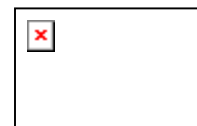
21 (d) For costs of suit incurred herein;

22 (e) For prejudgment interest to the extent allowed by law;

23 (f) For penalties as allowed by law;

24 (g) For permanent injunctive relief to enjoin further violations of the law; and

25 (h) For such other and further relief as this Court may deem just and proper.
26



1 DATED this 10th day of May, 2007.

2 HAGENS BERMAN SOBOL SHAPIRO LLP

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