

Court file no. 500-06-000891-172 – *Maryse Nicolas v. Vivid Seats LLC*

SETTLEMENT AGREEMENT

Made as of April 3, 2023

Between:

Maryse Nicolas

(Plaintiff)

-and-

Vivid Seats LLC

(Defendant)

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RECITALS

- A. WHEREAS the Plaintiff Maryse Nicolas (the "**Plaintiff**") commenced a proposed class action in the Quebec Superior Court on November 16, 2017, bearing Court file no. 500-06-000891-172 against the Defendant and the Authorization Judgment was rendered on September 6, 2018 (the "**Class Action**");
- B. WHEREAS on or around February 26, 2019, the Defendant sent notice of the Authorization Judgment to Class Members pursuant to the Court's judgment of February 1, 2019;
- C. WHEREAS the Court fixed the deadline to opt-out of the Class Action by no later than April 1, 2019 and 9 Class Members exercised their right to opt-out;
- D. WHEREAS the Class Action asserts claims against the Defendant on behalf of the Class in relation to tickets purchased from the Defendant's web site or mobile application in US Dollars;
- E. WHEREAS the Plaintiff maintains that the claims in the Class Action are valid; the Defendant denies all of the allegations asserted by the Plaintiff in the Class Action, and maintain that they have good and valid defences to the claims asserted therein;
- F. WHEREAS the Parties estimate that a further two years or more could be required to litigate this matter through trial (excluding appeals);
- G. WHEREAS the Parties have agreed to enter into this Settlement Agreement in order to achieve an early full and final resolution of the Class Action and to avoid further expense, inconvenience and burdens of protracted litigation, subject to approval by the Superior Court of Québec;
- H. WHEREAS the Parties and their respective counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their respective analyses of the facts and law applicable to the Plaintiff's claims asserted in the Class Action, and having regard to the burdens and expense of prosecuting the Class Action, including, in particular, the risks and uncertainties associated with trials and appeals, and taking into account the maximum recovery for the Class weighed against those costs, risks, uncertainties and delays, the Parties and their respective counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interest of the Class;
- I. WHEREAS the Plaintiff and Class Counsel agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by, or evidence against the Defendant, or evidence

of the truth of any of the Plaintiff's allegations against the Defendant; and the Defendant and Defence Counsel agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by, or evidence against the Plaintiff or the Class, or evidence of the truth or validity of any of the Defendant's defences or arguments against the Plaintiff's claims; and

- J. WHEREAS the Parties therefore wish to, and hereby do, finally resolve the Class Action and all Released Claims, as defined below, subject to the approval of this Settlement Agreement by the Superior Court of Québec;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Class Action shall be settled on the following terms and conditions:

ARTICLE I - DEFINITIONS

1.1 Definitions

The following terms, as used in this Agreement, including the Recitals, mean:

- (a) **Account** means an interest-bearing trust account, if reasonably possible, with a Canadian financial institution under the control of the Claims Administrator in which the total valid amount claimed in Foreign Exchange Reimbursements will be held prior to distribution in accordance with the Distribution Protocol.
- (b) **Administration Expenses** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred by, payable by, or chargeable by the Claims Administrator, for the approval, implementation and operation of this Settlement Agreement including the costs of notices and claims administration, and the costs of translating the relevant Settlement documents, but excluding: (i) internal fees, costs or expenses of the Defendant to provide information to the Claims Administrator in order to provide notices to the Class as provided in the Notice Plan; (ii) fees, costs and disbursements payable to Defence Counsel; and (iii) Class Counsel Fees and Disbursements. A maximum of \$19,939.45 will be paid by the Defendant for Administration Expenses. To the extent the Administration Expenses exceed \$19,939.45, the excess will be paid from the Available Claims Amount prior to payment to Class Members.
- (c) **Available Claims Amount** means the \$360,000.00 available to satisfy Class Member claims under the Distribution Protocol (in the form of **Schedule D** hereto) after Administration Expenses and Class Counsel Fees and Disbursements have been paid from the Total Settlement

Maximum. This represents the maximum available funds for the Foreign Exchange Reimbursements (defined below).

- (d) **Claims Administrator** means Velvet Payments Inc., to be approved and appointed by the Court, to administer this Settlement Agreement, and any of their employees.
- (e) **Claims Deadline** is the date that is sixty (60) days from the date that Notice of Court Order is first published.
- (f) **Claims Period** means the period beginning on the date that Notice of Court Order is first published, and ending on the Claims Deadline.
- (g) **Claims Process** means the process by which Class Members will request a Foreign Exchange Reimbursement.
- (h) **Class or Amended Class** means all consumers in Quebec who purchased a ticket from Vivid Seats from the beginning of the class period until the dates upon which Vivid Seats modified its website and mobile application in order to address the issue raised in the Class Action, namely:
 - On its website between November 16, 2014 and December 29, 2017; or
 - On its mobile application between November 16, 2014 and January 15, 2018;and **Class Member** means any one thereof.
- (i) **Class Action** means the class proceeding commenced by the Plaintiff Maryse Nicolas in the Quebec Superior Court of Justice bearing Court File No. 500-06-000891-172 which was authorized by the Authorization Judgment rendered on September 6, 2018.
- (j) **Class Counsel** means LPC Avocat Inc.
- (k) **Class Counsel Fees and Disbursements** means the amount payable to Class Counsel for its extrajudicial fees, including any amount to be reimbursed to the Fonds d'aide for any advances given, and is inclusive of all fees, disbursements, costs, interest, and other applicable taxes or charges of Class Counsel in respect of the prosecution of the Class Action, subject to Court approval.
- (l) **Court** means the Superior Court of Québec.
- (m) **Defence Counsel** means McCarthy Tétrault LLP.
- (n) **Defendant** means Vivid Seats LLC.

- (o) **Distribution Protocol** means the plan for distributing the Available Claims Amount to the Class as approved by the Court, in the form of **Schedule D** hereto.
- (p) **Effective Date** means (i) the date upon which the ability to appeal from the last-rendered anticipated Second Order expires; or (ii) if any appeal is taken from the Second Order, then the Effective Date shall be the date upon which any such appeal is concluded by way of a Final order.
- (q) **Final** when used in relation to a Court order means all rights of appeal from such order or judgment have expired or have been exhausted and that the ultimate court of appeal (or court of last resort) to which an appeal (if any) was taken has upheld such order.
- (r) **First Order** means the proposed order of the Court: (1) providing the Court's approval of the Notice of Hearing; and (2) the appointment of the Claims Administrator, which will be substantially in the form of **Schedule A** hereto or as modified by the Court.
- (s) **Fonds d'aide** means the *Fonds d'aide aux actions collective* created pursuant to the *Act respecting the Fonds d'aide aux actions collectives* (CQLR c F-3.2.0.1.1).
- (t) **Foreign Exchange Reimbursement** means the payment issued by the Defendant to Class Members, for validly submitted claims made during the Claims Process, which will be equal to, at maximum, 30% of their Ticket Order, minus the percentage withheld for the Fonds d'aide, pursuant to the terms of the Distribution Protocol, in the form of **Schedule D** hereto.
- (u) **Notice of Hearing** means (as applicable) the French and English short and long form notices of the hearing for settlement approval, approved by the Court, to inform the Class of *inter alia*: (1) the date of the hearing to approve this Settlement Agreement; and (2) the key terms of this Settlement Agreement, which will be substantially in the form of **Schedule B** hereto, or as modified by the Court.
- (v) **Notice of Court Order** means (as applicable) the various iterations of the notices of the order approving the settlement and Class Counsel Fees and Disbursements, as approved by the Court, to inform the Class Members of *inter alia*: (1) the approval of this Settlement Agreement and (2) the process by which the Class Members can make claims, which shall be agreed upon by the Parties and submitted to the Court in draft form.
- (w) **Parties**, when capitalized, means the Plaintiff and Defendant, and **Party** means any one thereof.
- (x) **Plaintiff's Personal Claim**. As part of the confidential settlement negotiations leading to the present Settlement, the Parties agreed that the

Plaintiff Maryse Nicolas' personal claim is pre-approved in the amount of \$271.79, without the necessity of having to file a formal claim form. The pre-approved claim of Ms. Nicolas is included in the Total Settlement Maximum. Nevertheless, and for avoidance of doubt, the parties hereby confirm and agree that Ms. Nicolas' pre-approved claim of \$271.79 will in no circumstance be reduced by any pro rata reduction provided in this Settlement or in any other manner whatsoever, except for the portion of said claim that must lawfully be paid to the Fonds d'aide. The Defendant will pay said amount to Ms. Nicolas within 10 days after the Effective Date, by way of Interac e-Transfer payable to Ms. Nicolas or cheque if she requests it in writing.

- (y) **Released Claims** means any and all manner of claims, complaints, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, damages of any kind whenever incurred, declaratory relief, liabilities of any nature whatsoever, including assigned claims, claims for injunction, contribution, indemnity, interest, costs, expenses, class administration costs (including Administration Expenses), and lawyers' fees (excluding Class Counsel Fees and Disbursements, which are addressed at Article 11.1 of the present Settlement Agreement), known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity, that the Releasors, or any of them, whether directly or indirectly, ever had, could have that were the subject matter of allegations in the Class Action, or related to the facts alleged in the Class Action.
- (z) **Releasees** means the Defendant and each of its respective predecessors, successors, parents, subsidiaries, affiliates, divisions, partners, insurers and each of their past and current officers, directors, employees, agents, shareholders and beneficiaries of any kind.
- (aa) **Releasors** means, individually and collectively, the Plaintiff and the Class Members, and their respective successors, heirs, executors, administrators, trustees, assigns, devisees or representatives of any kind (excluding Class Counsel, whose release is addressed at Article 11.1 of the present Settlement Agreement).
- (bb) **Second Order** means the anticipated order of the Court approving the terms of this Settlement Agreement and approving Class Counsel Fees and Disbursements, which shall be agreed upon by the Parties and submitted to the Court in draft form.
- (cc) **Settlement** means the settlement provided for in this Settlement Agreement.
- (dd) **Settlement Agreement** means this agreement, including the recitals and Schedules.

- (ee) ***Ticket Order*** means the order by which the Class Members purchased their event tickets. As per the Distribution Protocol, to the extent a Class Member made more than one admissible Ticket Order, the first Ticket Order made chronologically by the Class Member will be the one eligible for the Foreign Exchange Reimbursement.
- (ff) ***Total Settlement Maximum*** means the maximum all-inclusive amount of five hundred and thirty thousand, two hundred and fifty Canadian Dollars (CAD \$530,250.00), from which all amounts, including the Class Counsel Fees and Disbursements, Plaintiff's disbursements, the Administration Expenses and all Foreign Exchange Reimbursements will be paid pursuant to the Distribution Protocol (**Schedule D**). The Total Settlement Maximum represents the maximum amount that Defendant would pay (including Class Counsel Fees and Disbursements and Administration Expenses) in any circumstance.

ARTICLE II - BEST EFFORTS TO SECURE COURT APPROVAL

2.1 Best Efforts

The Parties shall use their best efforts to effectuate this Settlement Agreement and shall cooperate to seek and obtain the Court's approval of this Settlement Agreement and all other matters addressed herein.

If Defendant intends to seek a sealing order in respect of commercially-sensitive information to be included in the materials submitted on any of the applications contemplated under this Settlement Agreement, they will notify Class Counsel in advance. The Plaintiff will not object to any such Application for a sealing order.

Defendant will cooperate to provide information to Class Counsel and the Court that is reasonable and necessary to obtain Court approval of this Settlement Agreement, including the total number of Ticket Orders in the Class and the total value.

2.2 Court Approval Required for Enforceable Agreement

With the exception of those Articles expressly stated to survive termination of this Settlement Agreement, this Settlement Agreement shall be of no force or effect unless approved by the Court.

ARTICLE III – SETTLEMENT APPROVAL

Subject to the discretion of the Court regarding the approval process, the Parties propose to seek the orders contemplated in this Settlement Agreement as follows. The Parties agree that the applications contemplated in this article may be conducted in-person, by videoconference, or by teleconference, as directed by the Court.

3.1 Applications for Approval of Notice of Hearing

- (a) As soon as practicable after this Settlement Agreement is executed, Plaintiff shall bring an application for the Court's approval of an order substantially in the form of the draft First Order at **Schedule A** (being the draft order approving the Notice of Hearing and the appointment of Claims Administrator). Defendant will consent to this application.
- (b) Until the application for the Court's approval of an order substantially in the form of the draft First Order at **Schedule A** is brought, the Parties shall keep all of the terms of the Settlement Agreement confidential and shall not disclose them without prior written consent of the Parties, except as required for the purposes of mandating the Claims Administrator, financial reporting, communications with insurers and auditors, and/or the preparation of financial records (including tax returns and financial statements), as necessary to give effect to its terms or as otherwise required by law.

3.2 Application for Approval of Settlement Agreement and Class Counsel Fees and Disbursements

- (a) As soon as practicable after an order substantially in the form of the First Order is made, and the Notice of Hearing is published as detailed in the Notice Plan (**Schedule C**), the Plaintiff shall bring an application for the Court's issuance of the Second Order. Defendant will consent to this application, and the Fonds d'aide will be served with the application. Defendant will take no position on the aspects of such application that concern Class Counsel Fees and Disbursements other than that they have agreed to pay them as part of the negotiated Settlement. The Parties waive any rights of appeal if the Second Order is granted by the Court.
- (b) Defendant will review and approve all application materials before they are filed.
- (c) If the Plaintiff, Class Counsel, the Defendant, or Defence Counsel become aware that a Class Member or other person intends to object to those applications, they will advise the Parties (through their counsel) in writing as soon as practicable and in any event no later than two (2) business days before the hearing of the application in Article 3.2 (a).

ARTICLE IV - SETTLEMENT CLAIMS

4.1 Composition of the Total Settlement Maximum

- (a) This Settlement Agreement provides for individual recovery and a claims process for Class Members to make claims for Foreign Exchange Reimbursements from the Defendant. Defendant's obligation hereunder is

to make or fund the Foreign Exchange Reimbursements, along with the Administration Expenses and the Class Counsel Fees and Disbursements. All amounts expressed in this Settlement Agreement are in Canadian Dollars (CAD).

- (b) In no event shall the total value of the Foreign Exchange Reimbursements exceed the Available Claims Amount (CAD \$360,000), including Plaintiff's Personal Claim.
- (c) The Defendant will only be obligated to pay to the Account from the Available Claims Amount the amount actually validly claimed by the Class Members through the Claims Process. This payment will be made in full satisfaction of the Released Claims against the Releasees, subject to approval of the Court.
- (d) In no event shall the Foreign Exchange Reimbursements, the Administration Expenses, and Class Counsel Fees and Disbursements payable by Defendant exceed the Total Settlement Maximum.
- (e) The Defendant shall pay to Class Counsel the Class Counsel Fees as approved by the Court, in full satisfaction of any claims for fees, costs and disbursements related to the Class Action (as described more fully at Article 10.1 of the present Settlement Agreement).
- (f) The Claims Administrator will issue monthly invoices to Defendant (copies of which to be sent to Class Counsel) for payment of the Administration Expenses beginning after the appointment of the Claims Administrator by the Court.
- (g) Defendant shall not have any obligation to pay to the Claims Administrator any amount in addition to or exceeding the Administration Expenses, and never more than what is actually invoiced, unless otherwise expressly provided for in this Agreement.

4.2 Taxes and Interest

- (a) The Parties agree that the Plaintiff, Defendant, Class Counsel, and Defence Counsel are in no way liable for any taxes any Class Members may be required to pay as a result of receiving any benefits under this Settlement Agreement. No opinion concerning the tax consequences of this Settlement Agreement to any Class Member is given or will be given by the Parties or their respective counsel, nor is any Party or their counsel providing any representation or guarantee respecting the tax consequences of this Settlement Agreement as to any Class Member. Each Class Member is responsible for their tax reporting and other obligations respecting this Settlement Agreement, if any.

ARTICLE V - DISTRIBUTION OF FUNDS

5.1 Distribution Protocol

The Distribution Protocol is part of this Settlement Agreement and will be subject to approval by the Court, as part of the application seeking Court approval of this Settlement Agreement (the Second Order). The Distribution Protocol is set out at **Schedule D** hereto.

5.2 No responsibility for External Administration Fees

Defendant acknowledges that it may incur internal costs to provide information to the Claims Administrator in order to provide notices to Class Members pursuant to the Notice Plan. However, Defendant will not be required to incur any external administration fees (separate from the Administration Expenses) in connection with the Distribution Protocol.

ARTICLE VI - TERMINATION OF SETTLEMENT AGREEMENT

6.1 Right of Termination

(a) Defendant shall have the option to terminate this Settlement Agreement in the event that:

(i) The Plaintiff or Class Counsel breach any material term of this Settlement Agreement;

(ii) The Court declines to issue an order substantially in the form of the Second Order, or to approve any material part of the Settlement Agreement (which does not include Class Counsel Fees and Disbursements or the reimbursement of the advance to the Fonds d'aide), or requires a material change to the Settlement Agreement as a pre-condition to approval; or

(iii) The Court issues an order substantially in the form of the Second Order, but it does not become Final or is materially altered on appeal.

(b) The Plaintiff and Class Counsel, collectively but not separately, shall have the option to terminate the Settlement Agreement in the event that:

(i) Defendant or Defence Counsel breach any payment terms of this Settlement Agreement;

(ii) The Court declines to issue an order substantially in the form of the Second Order, or to approve of any material part of the Settlement Agreement (which does not include Class Counsel Fees and Disbursements or the reimbursement of the advance to the Fonds d'aide) or requires a material change to the Settlement Agreement as a pre-condition to approval; or

- (iii) The Court issues an order substantially in the form of the Second Order, but it does not become Final or is materially altered on appeal.
- (c) If Defendant elects to terminate the Settlement Agreement pursuant to Article 6.1(a), or the Plaintiff together with Class Counsel elect to terminate the Settlement Agreement pursuant to Article 6.1(b), a written notice of termination shall be provided by the terminating Party(s) to the other Party(s) forthwith, and, in any event, no later than ten (10) business days after the event upon which the terminating Party relies. Upon delivery of such written notice, this Settlement Agreement shall be terminated and, except as provided for in Article 6.2, and the related Definitions in Article I, it shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any Released Claims, including but not limited to any trial on the merits, except with the written consent of all Parties or as otherwise required by a Court.
- (d) Any order, ruling or determination made by the Court with respect to the Class Counsel Fees and Disbursements shall not be a material modification of this Settlement Agreement and shall not constitute a basis for the termination of this Settlement Agreement.

6.2 If Settlement Agreement is Terminated

If this Settlement Agreement is terminated:

- (a) The Parties will be restored to their respective positions prior to the execution of this Settlement Agreement, except as expressly provided for herein;
- (b) Any step taken by Defendant or the Plaintiff in relation to this Settlement Agreement shall be without prejudice to any position that the Parties may later take in respect of any procedural or substantive issues in the Class Action;
- (c) Any order or judgment rendered by the Court pursuant to this Settlement Agreement shall be set aside or vacated. The Parties consent and will cooperate in seeking to have all prior orders or judgments sought from and rendered by the Court, in accordance with this Settlement Agreement, set aside and declared null and void and of no force or effect, and any Party shall be estopped from asserting otherwise; and
- (d) All documents and information exchanged by the Parties during the settlement process are subject to settlement privilege, except to the extent that the documents or information were, are or become publicly available or obtained in the course of discovery. Within thirty (30) days of such termination having occurred, Class Counsel shall destroy all documents and other materials provided by Defendant or containing or reflecting

information derived from such documents for the purposes of implementing this Settlement. Class Counsel shall provide Defence Counsel with a written certification by Class Counsel of such destruction upon request.

ARTICLE VII - RELEASES AND DISMISSALS

7.1 Release of Releasees

Except in the case of the termination of this Settlement Agreement, and conditional upon the approval of this Settlement Agreement by the Court, as at the Effective Date, the Releasers immediately, forever and absolutely release the Releasees from the Released Claims. The Plaintiff acknowledges that she may thereafter discover facts in addition to, or different from, the facts which she knows or believes to be true regarding the Released Claims, and it is her intention to release fully, finally and forever all Released Claims and, in furtherance of such intention, this release by all of the Releasers shall be and shall remain in effect notwithstanding the discovery or existence of new or different facts.

7.2 No Further Claims

The Releasers shall not now, nor hereafter institute, continue, maintain, or assert, either directly or indirectly, on their own behalf or on behalf of any class or any other person, any Released Claim against any Releasee or any other person who may claim contribution or indemnity from any Releasee in respect of any Released Claim.

ARTICLE VIII - EFFECT OF SETTLEMENT

8.1 No Admission of Liability

Whether or not this Settlement Agreement is approved or terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions, and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any fault, wrongdoing or liability by any of the Releasees, or of the truth of any claims or allegations contained in the Class Action or any other allegation made by the Plaintiff or the Class in any forum or context. The Releasees deny any liability and deny the truth of the allegations made against them. If the Settlement Agreement is not approved, they will defend the Class Action at trial.

The Defendant reserves their rights and defences with respect to anyone who validly opted out of the Class Action, and no term of this Settlement Agreement shall be tendered as evidence in any subsequent litigation by any such person against the Defendant.

8.2 This Agreement Not Evidence

The Parties agree that, whether or not it is approved or terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions, and proceedings associated with this Settlement Agreement, and any action

taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence, or received in evidence in any pending or future civil, criminal, or administrative action or other proceeding, in this or any other jurisdiction, except in a proceeding to approve or enforce this Settlement Agreement or in connection with the other applications contemplated in this Settlement Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law, or with the written consent of all Parties.

ARTICLE IX - NOTICE TO CLASS

9.1 Notice Required

The Class shall be given the following notices, subject to approval by the Court:

- (a) Notices of Hearing (**Schedule B**);
- (b) Notices of Court Order, in a form to be agreed upon by the parties and approved by the Court;
- (c) Notice of termination of this Settlement Agreement if it is terminated pursuant to this Settlement Agreement, or as otherwise ordered by a Court, in a form to be agreed upon by the Parties and approved by the Court or, if the Parties cannot agree on the form of the notice of termination of the Settlement Agreement, then in the form ordered by the Court.

9.2 Costs of Disseminating Notice

The costs of disseminating each Notice shall be paid by Defendant from the Total Settlement Maximum, and more specifically from the Administration Expenses, regardless of whether the Settlement is approved by the Court or the Settlement Agreement is terminated. The Plaintiff, the Class and the Class Counsel are not liable to pay for such costs.

9.3 Method of Disseminating Notices

The Notices required under Article 9.1 shall be disseminated pursuant to the Notice Plan attached as **Schedule C** as approved by the Court or in a manner otherwise ordered by the Court.

ARTICLE X- CLASS COUNSEL FEES AND DISBURSEMENTS

10.1 Class Counsel Fees and Disbursements and Release

- (a) As part of the application for approval detailed at Article 3.2(a), Class Counsel will seek the Court's approval of Class Counsel Fees and Disbursements in the amount of \$120,000 in fees (plus GST & QST) plus \$12,090.55 (including taxes) to reimburse the advance of the Fonds d'aide, and an order that the Class Counsel Fees and Disbursements shall be paid

as outlined in Articles 5.1(b) and (c). The Defendant will take no position on this request, other than that they have agreed to pay this amount.

- (b) Upon full payment to Class Counsel of the Class Counsel Fees and Disbursements approved by the Court pursuant to the order to be rendered by the Court, Class Counsel forever releases the Releasees of and from any and all claims or demands for fees, costs, expenses and/or disbursements, known or unknown, that Class Counsel ever had, could have had, or now has, whether directly or indirectly related to the Class Action.
- (c) Plaintiff will also seek Court approval for \$250 in disbursements pursuant to article 593 CCP. For clarity, Plaintiff and Class Counsel cannot seek to terminate the Settlement Agreement if the Court approves the Settlement Agreement, but does not approve or decreases Class Counsel Fees and Disbursements or the reimbursement of the advance to the Fonds d'aide.

ARTICLE XI - MISCELLANEOUS

11.1 Applications for Directions

- (a) The Plaintiff, Defendant, or the Claims Administrator may bring applications to the Court for directions in respect of the implementation and administration of this Settlement Agreement at any time.
- (b) All applications contemplated by this Settlement Agreement shall be on reasonable notice to the Parties.

11.2 Headings, etc.

In this Settlement Agreement:

- (a) The division of the Settlement Agreement into articles and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and
- (b) The terms "this Settlement Agreement", "hereof", "hereunder", "herein", and similar expressions refer to this Settlement Agreement and not to any particular article or other portion of this Settlement Agreement.

11.3 Computation of Time

In the computation of time in this Settlement Agreement, except where a contrary intention appears:

- (a) Where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first

event happens and including the day on which the second event happens, including all calendar days; and

- (b) Only in the case where the time for doing an act expires on a holiday (including Canadian and US holidays) or a weekend, the act may be done on the next day that is a business day.

11.4 Governing Law

This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Québec and Canada.

11.5 Entire Agreement

This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding or agreement in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

11.6 Amendments

This Settlement Agreement may not be modified or amended except in writing and on consent of the Plaintiff and Defendant, subject approval by the Court where required.

11.7 No Waiver

No waiver of any provision of this Settlement Agreement will be binding unless consented to in writing by the Parties. No waiver of any provision of this Settlement Agreement will constitute a waiver of any other provision.

11.8 Binding Effect

This Settlement Agreement shall be binding upon and inure to the benefit of the Plaintiff, the Class Members, the Defendant, the Releasors, and the Releasees once it is approved by a Final order of the Court, except that the Parties are required to perform their obligations under this Settlement Agreement prior to the application for approval of this Settlement Agreement. Without limiting the generality of the foregoing, each and every covenant and agreement made by the Plaintiff shall be binding upon all Releasors, once it is approved by Final order of the Court.

11.9 Counterparts

This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile or PDF signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

11.10 Negotiated Agreement

This Settlement Agreement has been the subject of negotiations and discussions among the Parties, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

11.11 Language

The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; *les parties reconnaissent avoir exigé que la présente convention de règlement et tous les documents connexes soient rédigés en anglais.* Nevertheless, a French translation of this Settlement Agreement, the Distribution Protocol and the Notices shall be prepared, the cost of which shall be paid by the Defendant.

11.12 Transaction

The present Settlement Agreement constitutes a transaction in accordance with Articles 2631 and following of the *Civil Code of Quebec*.

11.13 Recitals

The Recitals to this Settlement Agreement are true and form part of the Settlement Agreement.

11.14 Schedules

The Schedules annexed hereto form part of this Settlement Agreement and are:

- (a) **Schedule A** – Draft First Order (the draft order approving the Notice of Hearing, and appointing the Claims Administrator).
- (b) **Schedule B** – Notice of Hearing.
- (c) **Schedule C** - Notice Plan.
- (d) **Schedule D** – Distribution Protocol.

11.15 Acknowledgements

Each of the Parties hereby affirms and acknowledges that:

- (a) He, she, or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;
- (b) The terms of this Settlement Agreement and the effects thereof have been fully explained to him, her, or the Party's representative by his, her or its counsel;
- (c) He, she, or the Party's representative fully understands each term of the Settlement Agreement and its effect; and
- (d) No Party has relied upon any statement, representation, or inducement (whether material, false, negligently made or otherwise) of any other Party with respect to the first Party's decision to execute this Settlement Agreement.

11.16 Authorized Signatures

Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement.

11.17 Notice

Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another, such notice, communication or document shall be provided by email, facsimile or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

For the Plaintiff and for Class Counsel:

LPC Avocat Inc.
276 Saint-Jacques Street, Suite 801
Montreal, QC, H2Y 1N3

Joey Zukran
Telephone: 514-379-1572
Fax: 514-221-4441
Email: jzukran@lpclex.com

For the Defendant and Defence Counsel:

McCarthy Tétrault LLP
1000 Gauchetière Street West
Suite MZ400
Montreal, QC H3B 0A2

Jean Lortie

Telephone: 514-397-4146

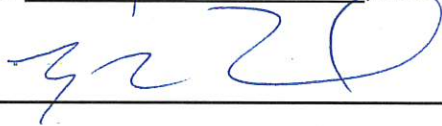
Facsimile: 514-875-6246

Email: jlortie@mccarthy.ca

Date of Execution

The Parties have executed this Settlement Agreement effective as of the date on the cover page.

Dated at Montreal, Quebec, Canada, this 14th day of may, 2023



MARYSE NICOLAS

Plaintiff

Dated at Montreal, Quebec, Canada, this _____ day of _____, 2023

LPC AVOCAT INC.

Per: Joey Zukran

Lawyers for the Plaintiff and the Class,

Dated at Mississauga, Ontario, Canada, this _____ day of _____,
2023

VIVID SEATS LLC

Per: _____

●(Defendant)

Vivid Seats LLC

●, Vivid Seats LLC.