

# SUPERIOR COURT

(Class Action Chamber)

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL.

No.: 500-06-001195-227

DATE: June 21, 2024.

---

**BY THE HONOURABLE PIERRE NOLLET, J.S.C.**

---

**EVA BITTON**  
Plaintiff - Class Representative

v.

**WAYFAIR LLC. ET AL**  
Defendants

---

## JUDGMENT REGARDING THE APPROVAL OF A SETTLEMENT WITH WAYFAIR LLC<sup>1</sup>

---

[1] This action arises from the sale of extended warranties for home appliances and consumer electronics, on Defendant's website and/or mobile application, without informing consumers in Quebec of the existence and nature of Quebec's legal warranty as provided for in sections 37 and 38 of the *Consumer Protection Act* ("CPA"), before proposing the purchase of the additional warranty.

---

<sup>1</sup> Puisqu'il est présentement impossible pour les juges de la Cour supérieure de soumettre leurs projets de jugement au Service de traduction en raison de contraintes techniques et opérationnelles, une traduction du présent jugement ne peut être jointe immédiatement et sans délai conformément à l'article 10 de la *Charte de la langue française*

[2] On or around October 21, 2022, Wayfair implemented business practice changes to the Wayfair.ca website and mobile application whereby the Quebec Legal Warranty Notice is provided prior to the sale of extended warranties.

[3] On August 10, 2023, the Court authorized the class action against Wayfair LLC on behalf of the following class:

<p>All consumers residing or domiciled in Quebec at the time of the purchase and who purchased an extended warranty on goods purchased from the Wayfair mobile application(s) and/or website(s) between February 7, 2019 and October 31, 2022.</p> <p>(the "<b>Wayfair Class</b>")</p>	<p>Tous les consommateurs résidants ou domiciliés au Québec au moment de l'achat et ayant acheté une garantie supplémentaire pour un bien acheté à partir de l'application(s) mobile(s) et/ou site(s) Web Wayfair entre le 7 février 2019 et le 31 octobre 2022.</p> <p>(le « <b>Groupe Wayfair</b> »).</p>
--	---

[4] The Court approved the form and content of short-form and long-form notices to Wayfair Class Members on January 8, 2024. The Class representative and Plaintiff later desisted from the judgment rendered on January 8, 2024.

[5] On January 11, 2024, the parties reached a first settlement agreement (the «**Settlement Agreement**»).

[6] On January 24, 2024, the Court approved new notices and their publication was effected February 2, 2024.

[7] After the publication of the notices, the parties noted that the compensation provision for Wayfair Class Members in the Settlement Agreement did not reflect one of the essential terms of the agreement between the parties.

[8] The proposed transaction between the parties was amended as of February 26, 2024, to reflect the agreement between the parties and the amended agreement has been filed as Exhibit R-1 in support of the Amended Application (the "**Modified Settlement Agreement**").

[9] Publication of new notices to Wayfair Class Members («**Wayfair Class Members New Notices**») was executed on April 5, 2024<sup>2</sup>.

[10] The Wayfair Class Members New Notices and all the materials were disseminated and made available to Wayfair Class Members in both French and in English.

---

<sup>2</sup> Exhibit R-2, par. 2.

[11] The Wayfair Class Members New Notices explained to the putative Wayfair Class Members the steps that they needed to take to be excluded from the Wayfair Class or to oppose the Modified Settlement Agreement.

[12] The Court received 7 opting-out form from Wayfair Class Members. No objection to the Modified Settlement Agreement was received prior to or made at the hearing.

[13] The Fonds d'aide aux actions collectives (FAAC) provided comments with respect to technical aspects of the execution of the judgment to intervene.

[14] The definitions set out in the Modified Settlement Agreement are incorporated herein unless otherwise defined herein.

## **1. THE APPROVAL OF THE SETTLEMENT AGREEMENT**

[15] Article 590 C.C.P. provides that a transaction is valid only if approved by the Court. The criteria which the case law has established for approval of a class action settlement are the following:

- i) the likelihood of success of the action;
- ii) the importance and nature of the evidence adduced;
- iii) the terms and conditions of the settlement;
- iv) the recommendation of counsel and his experience;
- v) the cost of future expenses and the probable duration of the litigation;
- vi) the recommendation of a neutral third party, if any;
- vii) the number and nature of objections to the settlement agreement; and
- viii) the good faith of the parties and the absence of collusion.<sup>3</sup>

[16] Not all factors need to be satisfied. The Court must look at the totality of these factors considering the specific circumstances involved.<sup>4</sup>

### **1.1 The Likelihood of Success**

[17] While the Plaintiff maintains that her action is well-founded, Wayfair denies any liability or wrongdoing of any kind.

[18] The CPA violation, if any, was technical in nature.

[19] There was always the risk that the case would not be successful on the merits. Indeed, damages would have been difficult to prove. This risk has been confirmed by

---

<sup>3</sup> 9085-4886 Quebec inc. c. Visa Canada Corporation, 2015 QCCS 5921, par. 24;  
Richard c. Volkswagen Group Canada inc., 2012 QCCS 5534, par. 45.

<sup>4</sup> Comité d'environnement de Ville-Émard (CEVE) c. Stodola, 2016 QCCS 1834, par. 18.

recent judgments dismissing class actions on the merits for CPA claims when the Class failed to prove damages, even when a CPA violation was established.<sup>5</sup>

[20] As the case law shows, even with a success on the merits, the method of recovery could have proven way more difficult for Wayfair Class Members requiring individual action and submission of information.<sup>6</sup>

## 1.2 The Amount and Nature of Discovery

[21] The parties entered confidential settlement negotiations, prior to and during which Wayfair provided information to the Plaintiff and her counsel on a confidential basis. Therefore, during the settlement negotiations, the Plaintiff and her attorneys exchanged relevant information with Wayfair related to the class action and the settlement thereof.

[22] This allowed for the Plaintiff to learn about the value of the extended warranties sold to Wayfair Class Members during the Class Period.

[23] In reaching the terms of the Modified Settlement Agreement, the following was considered:

- 23.1. 21 753 persons are Wayfair Class Members Together they bought 29 531 extended warranties.
- 23.2. During the Class period, Wayfair sold extended warranties ranging between \$1.00 and \$1,188.99.
- 23.3. The Settlement Amount of \$665,000.00 represents 50% of Wayfair's value of commerce for the sale of the extended warranties to Wayfair Class Members during the Class period.
- 23.4. The average price paid for per warranty is \$42.00. A credit of \$22.50 (at a minimum) that Wayfair Class Members will receive is meaningful in proportion to the average price paid. Applying an average indemnity is deemed acceptable by the case law in our current context.<sup>7</sup>
- 23.5. Given the number of household items sold on Wayfair, customers are likely to return to make additional purchases on Wayfair's site.
- 23.6. Class Counsel Fees are to be paid on top of the Settlement

---

<sup>5</sup> *Union des consommateurs c. Air Canada*, 2022 QCCS 4254, paras. 140, 149-150, 154, 157 and 160 (under appeal: C.A. no. 500-09-030343-222).

<sup>6</sup> *Masson c. Telus Mobilité*, 2019 QCCA 1106, paras. 7 and 83 to 85.

<sup>7</sup> *Masson c. Telus Mobilité*, 2017 QCCS 1675.

Amount.

- 23.7. Wayfair is assuming the administration fees related to the distribution.
- 23.8. The parties would have spent important resources and would have required experts on both sides, to determine whether there was a fault, and then what the aggregate amount of the damages would be.
- 23.9. Wayfair modified its business practice.

### 1.3 The Terms of the Modified Settlement Agreement

[24] The Modified Settlement Agreement provides that Wayfair will issue Direct Credit Reimbursements in the form of e-store credits with a value of at least \$22.50 per extended warranty purchased by Wayfair Class Member during the Class Period.

[25] At the hearing, the Parties agreed that the Modified Settlement Agreement Approval Notice<sup>8</sup> would be sent to all the 21 753 Wayfair Class Members including those whose Notice of Hearing and Opt-out email bounced-back.

[26] Pursuant to a new agreement, Wayfair will send Wayfair Class Members, within 21 days of this judgment, such email informing them of the Modified Settlement Agreement Approval (the «**Modified Settlement Agreement Approval Notice**»).

[27] Wayfair Class Members whose emails are bouncing back or who do not receive the notice, will have 45 days to communicate with Class Counsel to be added to the Direct Credit Reimbursements list.

[28] Then, within 90 days of this judgment, Wayfair will issue the entirety of the 665 000 \$ in e-store credits (Direct Credit Reimbursements) divided by the number of Wayfair Class Members having a valid email address and being then part of the Direct Credit Reimbursements list.

[29] Wayfair Class Members that have purchased multiple extended warranties will receive multiple Direct Credit Reimbursements.

[30] The Settlement Amount is a favorable result in proportion to the released claims.

---

<sup>8</sup> R-5 modified anew on June 14 and June 20, 2024, by emails addressed to the Court, a copy of the approved Modified Settlement Agreement Approval Notice will remain attached to this judgment.

[31] Wayfair assumes the entirety of the Administration Expenses, for the implementation of the settlement and claims administration, which are not deducted from the amount paid to Class Members.

[32] Wayfair Class Members will still benefit from the extended warranties they purchased.

#### **1.4 The Attorneys' Recommendations and their Experience**

[33] Both Class Counsel and Defendant's Counsel recommend the Modified Settlement Agreement as beneficial to the Wayfair Class in terms of monetary compensation and respecting the rule of proportionality, which clearly outweigh the risks that would arise from continuing the litigation.

[34] The Plaintiff provided her instructions to enter into the Modified Settlement Agreement on her own behalf and on behalf of the Class Members and signed the Modified Settlement Agreement<sup>9</sup>.

#### **1.5 The Future Expenses and Probable Length of the Litigation**

[35] If the case were to proceed in an adversarial fashion, there would be further important costs.

[36] The Plaintiff would have the burden to prove fault and damages on a collective basis and forensic accountants would have been hired to dispute damages.

[37] It is therefore safe to say that the present action would take several years to be decided on the merits and there would have been a possibility that a successful judgment could be brought into appeal, causing further delays.

[38] The Modified Settlement Agreement is a favorable result that is also in the interests of judicial economy and proportionality.

#### **1.6 The Number and Nature of any Objection**

[39] No Class Members have objected to the settlement. Seven Wayfair Class Members have requested their exclusion<sup>10</sup>, which is a very insignificant amount in proportion to the number of Wayfair Class Members.

[40] On the other hand, several Wayfair Class Members have contacted Class Counsel in support of the settlement and are eager to receive their credits.

---

<sup>9</sup> R-1.

<sup>10</sup> R-3.

### 1.7 Good Faith of the Parties and the Absence of Collusion

[41] Good faith must be presumed. There is no evidence to the contrary. The Settlement was negotiated at arm's-length.

[42] In approving credit-based settlements, the Court weighs the various factors:<sup>11</sup>

The individual value of the settlement:	<b>Favorable:</b> Considering that a warranty is worth \$42.00 on average ( <b>Exhibit R-2, par. 11</b> ), the \$22.50 (minimum) credit is worth more than 50% of the individual warranties purchased on average.
The possibility to choose other compensation or to transfer the voucher:	<b>Unfavorable/Favorable:</b> No other compensation is offered. The credits are transferable upon request. They can easily be used to purchase goods for someone else.
The value of the coupon in proportion to the cost of redeeming it:	<b>Favorable:</b> Wayfair sells a multitude of low-cost household products, some of which have a value equal to or less than the credit offered ( <b>Exhibit R-6</b> and par. 33 of the Application for Approval).
The likelihood that the coupons will be redeemed:	<b>Favorable:</b> The value of the credit makes it possible to buy a multitude of products, and Wayfair's customers are repeat customers, as indicated in Michael Licker's Sworn Statement ( <b>Exhibit R-2</b> ) at paragraph 12. The credits do not expire.
Restrictions or conditions that apply:	<b>Favorable:</b> No additional restrictions conditions apply. The credits are multi-use and do not expire. They are also easy to use as they do not require any additional step from the Wayfair Class Member.
A change of practice:	<b>Favorable:</b> Wayfair modified its business practices on or around October 21, 2022.
The obligation to provide a report on the implementation of the settlement:	<b>Favorable:</b> Michael Licker's Sworn Declaration ( <b>Exhibit R-2</b> ) at paragraphs 4 to 7 concerning the number of e-mails

<sup>11</sup> *Holcman c. Restaurant Brands International inc.*, 2022 QCCS 3428, para. 52; *Ohayon c. Dollarama*, 2024 QCCS 1363, para. 76.

	sent and “bounced back”. Paragraph 15 of the Distribution Protocol (Schedule D) provides that an additional report confirming the amounts successfully distributed will be prepared following Modified Settlement Agreement Approval and distribution.
Financial means of Wayfair:	<b>Favorable:</b> There is no reason to believe that Wayfair will not be able to honor the credits. Wayfair is a publicly traded company with a significant market cap.
Additional benefits	<b>Favorable:</b> Notwithstanding the credit, Wayfair Class Members continue to benefit from the extended warranty purchased.

[43] The first Settlement Agreement was reached shortly after the Class action was authorized even if it had to be modified afterwards to properly reflect the intent of the parties.

[44] The benefits offered to Wayfair Class Members through the Modified Settlement Agreement are otherwise fair and adequate and are worthy of approval. Wayfair Class Members need not to request the Credit. It will automatically be sent to them and without an expiry date.

[45] Plaintiff reached other settlements with other Defendants in this matter.

[46] Class Counsel is an experienced counsel. He has significant expertise in class actions including consumer class actions, has negotiated numerous settlements throughout his career and believes that the Modified Settlement Agreement is fair to the Wayfair Class Members.

[47] The settlement was reached in an adversarial context but is consistent with the terms of other credit-based settlements recently approved by this Court<sup>12</sup>. It is in the interests of judicial economy and proportionality that the Modified Settlement Agreement be approved.

<sup>12</sup> *Picard c. Ironman Canada inc.*, 2022 QCCS 2218, para. 56; *Holcman c. Restaurant Brands International Inc.*, 2022 QCCS 3428; *Abihsira c. Stubhub inc.*, 2019 QCCS 5659, *Abihsira v. Ticketmaster Canada LP et. al.*, 500-06-001153-218, December 7, 2022.



## **2. THE APPROVAL OF CLASS COUNSEL'S FEES**

### **2.1 The Professional Mandate & Attorneys' Fee Agreement**

[48] The mandate was signed by Plaintiff and Class Counsel on July 22, 2022.<sup>13</sup>

[49] It was agreed that the attorneys' fees with respect to the present class action be the higher of the following two calculations:

49.1. an amount equal to thirty percent (30%) of the total amount received, including interest, from any source whatsoever, whether by settlement or by judgment

or

49.2. an amount equal to multiplying the total number of hours worked on by the attorneys or other professionals in accordance with their hourly rates of 400 per hour. This amount will then be multiplied by a multiplier 3.5 to arrive at the total fee. (The hourly rates are reviewed from time to time).

[50] Class Counsel is requesting the Court's approval of its extrajudicial fees pursuant to sections 4.2(a) and 11.1(a) of the Modified Settlement Agreement, which provides for Class Counsel Fees of up to \$236,470.00 (plus GST and QST), which Wayfair has agreed to pay as part of the negotiated settlement.

[51] Class Counsel's extrajudicial fees represents **25.24%** of the total settlement value of \$936,881.38. It represents an even lower percentage when the administration costs of the settlement supported by Wayfair is considered.

[52] This percentage is consistent with the jurisprudence approving percentage-based mandates – especially when the settlement has a real value as in the present case.

[53] The following criteria have been developed by the jurisprudence in order to determine whether Class Counsel's fees are fair and reasonable:

53.1. Time and effort expended by the attorneys on the litigation;

53.2. The importance of the class action;

53.3. The degree of difficulty of the class action;

53.4. Class counsel's experience and expertise in a specific field;

53.5. The risks and responsibilities assumed by class counsel;

---

<sup>13</sup> R-7.

53.6. The result obtained; and

53.7. Fees are not contested.

## **2.2 Time and effort expended by the attorneys on the litigation**

[54] The mandate agreement with the Representative Plaintiff provides for the calculation of Class Counsel fees as 30% of the recovery plus taxes.

[55] Some of the steps and time expended by Class Counsel in this litigation include:

55.1. The Application to authorize this class action was initially filed on July 26, 2022, amended on November 7, 2022 and on June 2, 2023;

55.2. A contested authorization hearing was held on June 5, 2023;

55.3. On August 10, 2023, the Court granted the status of Representative Plaintiff to Ms. Bitton and authorized the case against Wayfair LLC for the benefit of Class Members;

55.4. On September 11, 2023, the Plaintiff filed her Application to Order the Publication of Notice to Class Members and Other Orders to Communicate the List of Class Members and to Preserve Evidence;

55.5. In January 2024, Wayfair and the Representative Plaintiff concluded a first Settlement Agreement.

55.6. On January 12, 2024, the Representative Plaintiff filed an Application for Approval of Notice to Class Members of a Settlement Approval Hearing;

55.7. On January 24, 2024, the Court approved the first short and long form notices to be sent to Wayfair Class Members;

55.8. On February 2, 2024, the first notices were sent to Wayfair Class Members;

55.9. Shortly thereafter, the parties realized that a human error outside of their control affected the first Settlement Agreement, resulting in a contradiction which did not reflect the essential terms of the agreement, incorrectly providing compensation of \$44.50 instead of \$22.50, which would have represented 100% of Wayfair's value of commerce for the sale of extended warranties rather than the 50% provided in article 1.1 (y) of the settlement;

55.10. On February 26, 2024, the parties concluded a Modified Settlement Agreement;

55.11. On March 5, 2024, Wayfair presented its Application for Approval of Notices to Class Members of the Modified Settlement Approval Hearing and Opt-out Procedure (Wayfair LLC);

55.12. On March 28, 2024, the Court approved and ordered the publication of the Notices to Class Members of the Modified Settlement Approval Hearing and Opt-out Procedure, fixed the date for Class Members to opt-out to May 20, 2024, fixed the date for object to the Settlement to May 23, 2024; and scheduled the Settlement approval hearing for May 24, 2024;

55.13. The Notices to Class Members of the Modified Settlement Approval Hearing and Opt-out Procedure and relevant settlement documents were disseminated and published by the parties;

55.14. Following the dissemination of notices, Class Counsel received phone calls and emails from Class Members; additional time and resources were expended responding to these Class Members.

[56] Initially, the time expended, and money invested by Class Counsel in the present file, was without any guarantee of payment. During this period, Class Counsel assumed all the costs and financial risks associated to the present class action.

[57] No financing was received from the Fonds d'aide aux actions collectives.

[58] It is likely that Class Counsel's ongoing future obligations to the settlement process will involve some work beyond the approval hearing, especially concerning the claims process and toward the request for a final administration report and obtaining a closing judgment.

### **2.3 The Importance of the Issue**

[59] Consumer protection issues are directly related to the access to justice of several thousands of persons.

[60] Claims of this nature usually involve relatively small sums of money for which individuals are not ready to spend to initiate a lawsuit. Class actions are often times the only way for consumers to obtain justice and for the society obtain that large companies or institutions change their practices.

[61] If it were not for this class action, Class Members would not have been likely to institute individual actions to obtain compensation nor is it likely that Wayfair would have modified its business practice. As such, this class action has allowed Class Members to achieve justice and behaviour modification, with a limited impact on judicial resources.

#### **2.4 Class counsel's experience and expertise in a specific field**

[62] LPC Avocats' practice is focused almost entirely on consumer protection-related class actions<sup>14</sup>.

[63] The firm primarily represents plaintiffs, but previously defended 4 private schools named as Defendants in a class action concerning tuition fees paid during Covid and is actively representing a corporation named as a Defendant in a class action alleging CPA violations.

[64] The professional services offered by Class Counsel require specific expertise.

[65] Often, in this type of work, communication with the public is also necessary, (e.g. by communicating with class members and with the media, maintaining and updating a website, etc.). This requires the firm to be more proactive to protect the interests of the class members whom they represent.

#### **2.5 The risk assumed**

[66] The risk of success or failure was borne entirely by Class Counsel.

[67] Given that Class Counsel's practice is focused on class action litigation, most of its work is done on a contingency basis, meaning that for cases that are not successful, the firm receives no payment for work performed.

[68] Neither the Plaintiff nor any Wayfair Class Members were asked to contribute any fees for the time spent on the file, nor for any of the disbursements made on their behalf by Class Counsel.

#### **2.6 The results obtained**

[69] Plaintiff succeeded in having Wayfair's practices improved, for the benefit of all consumers. This was achieved in a relatively short time.

---

<sup>14</sup> R-8.

[70] While the Wayfair Class Members will keep the benefit of the extended warranty purchased, they will receive a non expirable gift card representing 50 % of the average amount paid for such extended warranty during the Class Period.

[71] The Court must also highlight the simplicity of the recovery process even if it requires a further purchase from the Wayfair Class Member.

**2.7 Conclusion on fees**

[72] The requested amount of Class Counsel’s Fees under the Modified Settlement Agreement is lower than what was agreed to in the Professional Mandate & Attorneys’ Fee Agreement signed with the Plaintiff.

[73] It also represents a reasonable percentage of the potential settlement value at the time it was negotiated.

[74] The Court will approve Class Counsel’s fees of \$ 236,470 (plus GST and QST).

**3. FONDS D’AIDE AUX ACTIONS COLLECTIVES;**

[75] The FAAC recommends that a conclusion be added to indicate that this matter is proceeding to a collective recovery.

[76] Although the FAAC was initially asking the Court that the value of Direct Credit Reimbursements unable to be delivered by emails (bounce back) constitute the balance pursuant to the *Règlement sur le pourcentage prélevé par le Fonds d’aide aux actions collectives*<sup>15</sup>, the parties then agreed that the Settlement Amount would be entirely depleted to the greatest extent possible by recalculating the number of Wayfair Class Members after the end of the 45-day grace period. It is therefore intended that no balance exist after the issuance of the Direct Credit Reimbursements.

**FOR THESE REASONS’ THE COURT:**

<p>[77] <b>ACCUEILLE</b> la Demande d’approbation d’une Entente de Règlement modifiée de l’action collective Wayfair et des Honoraires des avocats du Groupe;</p>	<p><b>GRANTS</b> the <i>Application to Approve the Modified Wayfair Class Action Settlement and for Approval of Class Counsel Fees;</i></p>
---	---

---

<sup>15</sup> RLRQ, c. F-3.2.0.1.1, r. 2.

<p>[78] <b>DÉCLARE</b> que les définitions apparaissant dans l'Entente de Règlement Modifiée (pièce R-1) s'appliquent au présent jugement sauf lorsqu'autrement modifiées par le présent jugement;</p>	<p><b>DECLARES</b> that the definitions found in the Modified Settlement Agreement (Exhibit R-1) find application in the present Judgment except when otherwise modified herein;</p>
<p>[79] <b>APPROUVE</b> l'Entente de Règlement Modifiée en tant que transaction au sens de l'article 590 du <i>Code de procédure civile</i> et <b>ORDONNE</b> aux Parties de s'y conformer;</p>	<p><b>APPROVES</b> the Modified Settlement Agreement as a transaction pursuant to article 590 of the <i>Code of Civil Procedure</i> and <b>ORDERS</b> the Parties to abide by it;</p>
<p>[80] <b>DÉCLARE</b> l'Entente de Règlement Modifiée (y compris son préambule et ses Annexes) juste, raisonnable et dans l'intérêt véritable des Membres du Groupe, constituant une transaction au sens de l'article 2631 du <i>Code civil du Québec</i>, qui lie toutes les parties et tous les Membres du Groupe Wayfair;</p>	<p><b>DECLARES</b> that the Modified Settlement Agreement (including its Recitals and its Schedules) is fair, reasonable and in the best interest of the Wayfair Class Members and constitutes a transaction pursuant to article 2631 of the <i>Civil Code of Quebec</i>, binding upon all parties and upon all Wayfair Class Members;</p>
<p>[81] <b>ORDONNE</b> et <b>DÉCLARE</b> que le présent jugement, incluant l'Entente de Règlement Modifiée, lie chaque Membre du Groupe Wayfair;</p>	<p><b>ORDERS</b> and <b>DECLARES</b> that this judgment, including the Modified Settlement Agreement, shall be binding on every Wayfair Class Member;</p>
<p>[82] <b>DÉCLARE</b> que le paiement par Wayfair LLC des montants détaillés dans l'Entente de Règlement Modifiée, sera versé en règlement intégral des réclamations quittancées contre les parties quittancées au sens attribué à ces termes dans l'Entente de Règlement Modifiée;</p>	<p><b>DECLARES</b> that Wayfair LLC payment of the amounts as detailed in the Modified Settlement Agreement will be in full satisfaction of the Released Claims against the Releasees as defined in the Modified Settlement Agreement;</p>
<p>[83] <b>ORDONNE</b> le recouvrement collectif des réclamations faites avec paiement individuel des réclamations des membres;</p>	<p><b>ORDERS</b> the collective recovery of the claims made with individual payment of the members' claims;</p>

[84] <b>APPROUVE</b> le paiement des honoraires et débours des avocats du groupe prévus à l'article 11.1 de l'Entente de Règlement Modifiée;	<b>APPROVES</b> the payment of Class Counsel Fees and disbursements provided for at Article 11.1 of the Modified Settlement Agreement;
[85] <b>APPROUVE</b> l'Avis de d'approbation de l'Entente de Règlement Modifiée, substantiellement dans la forme de la pièce R-5, une copie de tel avis demeurant jointe au présent jugement;	<b>APPROVES</b> the Modified Settlement Agreement Approval Notice, substantially in the form of Exhibit R-5, a copy of such notice remaining attached to this judgment;
[86] <b>APPROUVE</b> le Protocole de Distribution (annexe D de l'Entente de Règlement Modifiée) tel que modifié par les parties et communiqué au Tribunal par courriels des 14 et 20 juin 2024 et <b>ORDONNE</b> aux parties de s'y conformer;	<b>APPROVES</b> the Distribution Protocol (Schedule D of the Modified Settlement Agreement) as modified by the parties and communicated to the Court by emails of June 14 and 20, 2024, and <b>ORDERS</b> the parties to abide by it;
[87] <b>ORDONNE</b> la diffusion de l'Avis d'approbation de l'Entente de Règlement Modifiée par la défenderesse Wayfair, dans les 21 jours du présent jugement;	<b>ORDERS</b> the dissemination of the Modified Settlement Agreement Approval Notice by the defendant Wayfair, within 21 days of this judgment;
[88] <b>ACCORDE</b> une période de grâce de 45 jours à compter de la diffusion de l'Avis d'approbation de l'Entente de Règlement Modifiée pour que les Membres du Groupe qui n'ont pas reçu l'Avis d'approbation de l'Entente de Règlement Modifiée puissent s'inscrire auprès des avocats du Groupe;	<b>GRANTS</b> a grace period of 45 days from the issuance of the Modified Settlement Agreement Approval Notice, for Class Members who have not received the Notice of the Modified Settlement Agreement Approval, to register with Class Counsel;
[89] <b>ORDONNE</b> que les Remboursements par crédit direct soient effectués par Wayfair aux Membres du Groupe Wayfair dans les 90 jours du présent jugement, conformément au Protocole de Distribution (Annexe D) tel que modifié par les parties et communiqué au Tribunal par courriels des 14 et 20 juin 2024;	<b>ORDERS</b> that the Direct Credit Reimbursements be issued by Wayfair within 90 days of this judgment, in accordance with the Distribution Protocol (Schedule D) as modified by the parties and communicated to the Court by emails of June 14 and 20, 2024;
[90] <b>ORDONNE</b> que les documents soient accessibles sur le site Web du	<b>ORDERS</b> that the documents be made available on the website of Class

cabinet des avocats du Groupe : <a href="http://www.lpclex.com/fr/garantiesprolongees/">www.lpclex.com/fr/garantiesprolongees/</a> ;	Counsel: <a href="http://www.lpclex.com/extendedwarranties/">www.lpclex.com/extendedwarranties/</a> ;
[91] <b>ORDONNE</b> à la défenderesse Wayfair de transmettre au Tribunal et au Fonds d'aide aux actions collectives, dans les 120 jours du présent jugement, un rapport de distribution indiquant notamment, le nombre et la valeur des crédits émis par la défenderesse, les sommes payées aux avocats du Groupe Wayfair de même que tout reliquat s'il en est;	<b>ORDERS</b> the defendant Wayfair to provide within 120 days from this judgment, a distribution report to the Tribunal and to the Fonds d'aide aux actions collectives indicating, among other things, the number and value of the credits issued by the defendant, the amounts paid to Class Counsel and to the extent there is any, the balance;
[92] <b>ORDONNE</b> aux parties de demander un jugement de clôture lorsque l'administration du règlement sera complétée;	<b>ORDERS</b> the parties to ask for a closing judgment once the administration of the settlement is completed;
[93] <b>LE TOUT</b> , sans frais de justice.	<b>THE WHOLE</b> , without legal costs.

---

 PIERRE NOLLET, J.S.C.

Mtre Joey Zukran  
 Mtre Léa Bruyère  
 LPC AVOCATS INC.  
 Attorneys for the Plaintiff

Mtre Yves Martineau  
 Mtre Marianne Bastille-Parent  
 STIKEMAN ELLIOTT LLP  
 Attorneys for Wayfair LLC.

Me Ryan Mayele  
 Attorney for the Fonds d'aide aux actions collectives

Hearing date: May 24, 2024



**R-5 Modified Settlement Agreement Approval Notice/ Avis d'approbation de l'Entente de Règlement Modifiée**

[Wayfair's LetterHead]

[Date]

[Email]

**By email**

**Re: Digital credits to be issued under the Modified Wayfair Settlement Agreement (class action no. 500-06-001195-227)**

---

Dear valued Wayfair customer:

**A. Why are you receiving this email?**

Following the notice to Class Members that you received on or about April 5, 2024, from Wayfair LLC ("**Wayfair**"), the Modified Settlement Agreement ("**Agreement**") between the Representative Plaintiff and Wayfair was approved by the Superior Court of Quebec on June 21, 2024.

**B. How will you receive a digital credit from Wayfair?**

In accordance with the Agreement, a Wayfair digital credit for a minimum of **\$22.50** will be deposited in your customer account associated with this email address at the latest on [insert date corresponding to 90 days following the approval judgment]. Please note that this digital credit can be used on the website ([www.wayfair.ca](http://www.wayfair.ca)) or on Wayfair's mobile application. This digital credit does not expire and is transferable (on demand to Wayfair's customer services at : 1-844-776-7996).

Please also note that depending on the number of Class Members who will claim a digital credit from Wayfair through the process described under heading D below (namely the process reserved to those Class Members who did not receive the notice

by email nor the present email), the value of the digital credits to be issued by Wayfair will range from \$22.50 to \$23.13.

**C. Who should receive the digital credit from Wayfair?**

Class Members are entitled to receive a digital credit. Class Members are defined by the Court as follows: “*All consumers residing or domiciled in Quebec at the time of the purchase and who purchased an extended warranty on goods purchased from the Wayfair mobile application(s) and/or website(s) between February 7, 2019 and October 31, 2022*”.

**D. What about other people who may be entitled to a digital credit but did not receive a notice or this email from Wayfair?**

People who think that they are Class Members, but did not receive this email may claim a digital credit. In order to claim such digital credit, they must **send an email to Class Counsel (JZUKRAN@LPCLEX.COM) before [insert date corresponding to 45 days following the publication of this notice]**. In that email, they must provide their new email address and the previous email address that they used to purchase an extended warranty on goods purchased from Wayfair between February 7, 2019 and October 31, 2022. Class Counsel will then contact Wayfair, who must reply within 10 days, to verify whether said Class Member is entitled to a digital credit and will then contact the Class Member within 10 days to confirm whether a digital Wayfair credit will be provided to him/her.

**E. If you have questions:**

If you have questions about the Agreement, please contact the law firm LPC Avocats, which represents the Representative Plaintiff and Class Members, by mail, email or phone:

Mtre. Joey Zukran  
LPC Avocats  
276 Saint-Jacques Street, Suite 801  
Montreal, Quebec, H2Y 1N3  
Telephone: 514-379-1572  
Email: [jzukran@lpclex.com](mailto:jzukran@lpclex.com)

Please do not contact any of the judges of the Superior Court.

Best regards,

**Wayfair LLC**

Par courriel

**Re: Crédits numériques qui seront émis en vertu de l'Entente de règlement modifiée (action collective no. 500-06-001195-227)**

---

Chers clients Wayfair :

**A. Pourquoi recevez-vous ce courriel?**

Suite à l'avis aux Membres du groupe que vous avez reçu le ou vers le 5 avril 2024 de Wayfair LLC (« **Wayfair** »), l'entente de règlement modifiée (« **Entente** ») entre la Représentante et Wayfair a été approuvée par la Cour supérieure du Québec le 21 juin 2024.

**B. Comment recevrez-vous un crédit numérique de la part de Wayfair?**

Conformément à l'Entente, un crédit numérique d'un montant minimum de 22,50 \$ sera déposé sur votre compte client associé à cette adresse e-mail au plus tard le [ajouter date correspondant à 90 jours après le jugement d'approbation]. Veuillez noter que ce crédit numérique peut être utilisé sur le site web ([www.wayfair.ca](http://www.wayfair.ca)) ou sur l'application mobile de Wayfair. Ce crédit numérique n'expire pas et est transférable (sur demande au service à la clientèle de Wayfair au : 1-844-776-7996).

Veuillez également noter qu'en fonction du nombre de Membres du groupe qui réclameront un crédit numérique auprès de Wayfair selon le processus décrit au point D ci-dessous (à savoir le processus réservé aux Membres du groupe qui n'ont pas reçu l'avis par courriel ni le présent courriel), la valeur des crédits numériques que Wayfair émettra sera entre 22,50 \$ à 23,13 \$.

**C. Qui devrait recevoir un crédit numérique de Wayfair?**

Les Membres du groupe ont le droit de recevoir un crédit numérique. Les Membres du groupe ont été définis par la Cour supérieure du Québec comme suit : « *Tous les consommateurs résidents ou domiciliés au Québec au moment de l'achat et ayant acheté une garantie supplémentaire pour un bien acheté à partir de l'application(s) mobile(s) et/ou site(s) Web Wayfair entre le 7 février 2019 et le 31 octobre 2022.* ».

**D. Qu'en est-il des personnes qui ont droit à un crédit numérique, mais qui n'ont pas reçu l'avis ni le présent courriel?**

Les personnes qui pensent être des Membres du groupe, mais qui n'ont pas reçu ce courriel, peuvent réclamer un crédit numérique. Afin de réclamer ce crédit numérique, elles doivent envoyer un courriel à l'avocat du groupe ([JZUKRAN@LPCLEX.COM](mailto:JZUKRAN@LPCLEX.COM)) avant le [insérer la date correspondant à quarante-cinq jours après la publication

**de cet avis]**. Dans ce courriel, ces personnes doivent fournir leur nouvelle adresse courriel et l'adresse courriel précédemment utilisée pour acheter une garantie prolongée auprès de Wayfair entre le 7 février 2019 et le 31 octobre 2022. L'avocat du groupe contactera ensuite Wayfair, qui doit répondre un délai de 10 jours, pour vérifier si ledit Membre du groupe a droit à un crédit numérique, et contactera ensuite le Membre du groupe dans les 10 jours pour confirmer si un crédit numérique Wayfair lui sera émis.

**E. Si vous avez des questions :**

Si vous avez des questions concernant l'accord, veuillez contacter le cabinet d'avocats LPC Avocats, qui représente la Représentante et les Membres du groupe, par courrier, par courriel ou par téléphone :

Me Joey Zukran  
LPC Avocats  
276, rue Saint-Jacques, Suite 801  
Montréal, Québec, H2Y 1N3  
Téléphone: 514-379-1572

Courriel : [jzukran@lpclex.com](mailto:jzukran@lpclex.com)

Prière de ne pas contacter les juges de la Cour supérieure du Québec.

Sincèrement,

**Wayfair LLC**