

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

(Class Action)
SUPERIOR COURT

No: 500-06-001147-210

ROBERT ITZKOVITZ

Applicant

v.

AIR CANADA

Defendant

APPLICATION FOR CLOSING JUDGMENT IN THE SETTLEMENT BETWEEN THE
APPLICANT AND THE DEFENDANT

(Art. 59 of the *Regulation of the Superior Court of Québec in Civil Matters*)

TO THE HONOURABLE CHRISTIAN IMMER, JSC, THE DEFENDANT SUBMITS THE
FOLLOWING:

I. PROCEDURAL CONTEXT

1. On May 11, 2021, the Applicant filed an application against the Defendant (hereinafter “**Air Canada**”) seeking authorization to institute a class action and to be appointed Representative Plaintiff of the following class:

All persons worldwide who travelled to or from the United Kingdom with Air Canada and who were charged the Air Passenger Duty on a ticket for a child under 16 years old on the date of the flight, for travel as of March 1, 2016.

2. On August 16, 2022, a National Settlement Agreement was reached between the Parties (the “**Settlement**”) to settle the class action, as appears from the Settlement communicated herewith as **Exhibit R-1**.
3. This Settlement provided for the full refund of the Air Passenger Duty charged for each ticket purchased by Class Members for a passenger under 16 years of age on the date of the flight actually taken (the “**Refunds**”).

4. On December 19, 2022, this Court approved the Settlement. The maximum amount to be distributed to Class Members by Air Canada was \$520,301.

II. SETTLEMENT REPORT

5. Notices to Class Members were disseminated in the following manner:
 - a) *Sending of Notices by Air Canada:* On October 21, 2022, an email containing the court-approved Short-Form Notice was sent to all the Class Members for whom Air Canada had an email address, which is about 3,169 Class Members. The email included a link to the Long-Form Notice.
 - b) *Publication of Notices by the Settlement Administrator:* On October 27, 2022, online ads were placed by the Settlement Administrator for 20 days on the following websites and apps, in either English or French as appropriate:
 - i. Facebook;
 - ii. Instagram;
 - iii. Audience network (which allows to extend the reach of the ads beyond Facebook and into other mobile apps).

The online ads included a hyperlink directing to Class Counsel's website (<https://lpclex.com/airpassengerduty/>) where Class Members were able to access the Settlement and copies of the notices in English and in French.

6. The affidavit of a representative of Air Canada relating to the Refunds is communicated herewith as **Exhibit R-2**.
7. This affidavit (Exhibit R-2) states the following:
 - a) On January 20, 2023, the Credit Card Processing team at Air Canada issued the Refunds in accordance with the method of payment used by the Class Member, i.e. by credit card, 3,687 Refunds were successfully made and 44 were unsuccessful.
 - b) Between February 14, 2023 and March 17, 2023, the Refund Services team at Air Canada used Agency Credit Memos ("**ACM**") to process Refunds for Class Members who booked directly with a travel agency and for whom Air Canada did not have credit card details or a personal physical address on file. 59 Refunds were successfully made in this manner. On January 24,

2024, two additional Refunds were made in this manner in relation to two Class Members whose files had been transferred to a new travel agency.

- c) Between May 25 and 26, 2023, for the 76 Refunds that could not be made in accordance with the method of payment used by the Class Member, whether because of an unsuccessful credit card Refund or because Air Canada did not have a credit card recorded on file, the Refund Services team at Air Canada sent a cheque by mail to the last known address of the Class Member.
 - d) As of January 29, 2024, 54 cheques had been cashed and 22 cheques had not been cashed within the 6 months of their issuance.
 - e) Accordingly, 99.4% of the Refunds were successfully made.
 - f) The total amount of Refunds issued by Air Canada to Class Members is \$503,544.81. Of this amount, a total of \$500,816.23 has been successfully received by 3,802 Class Members.
- 8. In addition to the Refunds, Air Canada paid all administration expenses and notices costs in the amount of \$44,840.26 for the Settlement Administrator's costs.
 - 9. Air Canada paid Class Counsel fees and disbursements of \$300,084.75 inclusive of all fees, disbursements and all taxes.
 - 10. The Residual Settlement Amount (as defined under the Settlement) amounts to \$2,728.58.
 - 11. The amount levied by the Fonds d'aide aux actions collectives pursuant to the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives*, CQLR c F-3.2.0.1.1, r.2 is \$1,364.29.
 - 12. No request was made to the Fonds d'aide aux actions collectives for funding.
 - 13. Following the terms of the Settlement, Air Canada seeks this Court's approval to pay the Residual Settlement Amount (less the payment of the amount owed to the Fonds d'aide aux actions collectives) to the charitable organization Make-A-Wish Canada (registered charity number 881291918 RR 0001), which helps fulfill the wishes of children with a critical illness, including by helping them travel, as appears from the Registered Charity Information Return communicated herewith as **Exhibit R-3**.

III. CONCLUSION

14. Based on the foregoing, Air Canada respectfully requests that this Court issue a closing judgment.
15. To this end, a draft closing judgment is communicated herewith as **Exhibit R-4**.

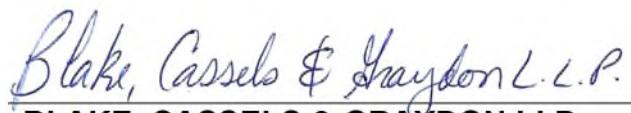
FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present *Application for Closing Judgment in the Settlement Between the Applicant and the Defendant*;

PRONOUNCE the closing judgment (Exhibit R-4);

THE WHOLE without costs, unless contested.

Montreal, August 22, 2024



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EXHIBIT R-1

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Class action)

No: 500-06-001147-210

ROBERT ITZKOVITZ

Plaintiff

v.

AIR CANADA

Defendant

NATIONAL SETTLEMENT AGREEMENT

1. RECITALS

- A. This National Settlement Agreement is entered into by and among Plaintiff Robert Itzkovitz, on behalf of himself, as well as on behalf of the Class Members, and Defendant Air Canada to resolve in full the Action. Subject to Court approval as required by the *Code of Civil Procedure*, CQLR, c. C-25.01, and as provided herein, the Parties hereby stipulate and agree that, in consideration for the promises and covenants set forth in the Agreement and upon the issuance by the Court of a Final Judgment Approving Settlement and the occurrence of the Effective Date, the Action shall be settled and terminated upon the terms and conditions contained herein.
- B. **WHEREAS**, on May 11, 2021, the Plaintiff filed the Application for Authorization which asserted claims under the *Consumer Protection Act*, CQLR, c. P-40.1 as well as under the *Civil Code of Québec*, CQLR, c. CCQ-1991, in relation to the purchase of tickets to

travel to or from the United Kingdom with Air Canada and the Air Passenger Duty charged on a ticket for a child under 16 years old on the date of the flight.

- C. **WHEREAS** the Application for Authorization has not been adjudicated.
- D. **WHEREAS** the Parties have reached the resolution set forth in this Agreement, providing for, *inter alia*, the settlement of the Action between and among the Plaintiff, on behalf of himself, as well as on behalf of the Class Members, and the Defendant on the terms and subject to the conditions set forth below.
- E. **WHEREAS** the Parties have determined that a settlement of the Action on the terms reflected in this Agreement is fair, reasonable, adequate, and in the best interests of the Parties and the Class.
- F. **WHEREAS** the Defendant denies the allegations made by the Plaintiff in its proceedings as well as in its pleadings, has not conceded or admitted, shall not be deemed to have conceded or admitted and expressly denies any liability, including any liability for monetary compensation or compensation in kind to the Class Members.
- G. **WHEREAS** the Parties, to avoid the cost of litigation, a judgment being rendered on the merits of the Action and any uncertainty as to the judgment that could be rendered, have concluded that it is desirable that the claims in the Action be settled, without admission, on the terms reflected in this Agreement.
- H. **WHEREAS** the Defendant now consents to the authorization of the Action solely for the purposes of implementing this Agreement in a coordinated and consistent manner across Canada and contingent on the Court's approval as provided for in this Agreement, on the express understanding that such authorization shall not limit the respective rights of the Parties in the event that this Agreement is not approved or is terminated.

- I. **WHEREAS** the Parties assert that the Plaintiff is an adequate Class representative for settlement purposes.

NOW, THEREFORE, this Agreement is entered into by and among the Parties, by and through their respective counsel and representatives, and in consideration of the mutual promises, covenants and agreements contained herein and for value received, the Parties agree that upon the Effective Date, the Action and all Released Claims shall be settled and terminated as between the Plaintiff and the Class Members, on the one hand, and the Defendant, on the other hand, as detailed herein.

2. DEFINITIONS

- 2.1 As used in this Agreement and the attached schedules, the following terms shall have the meanings set forth below, unless this Agreement specifically provides otherwise:

- (i) **"Action"** means *Robert Itzkovitz v. Air Canada* (S.C.M.: 500-06-001147-210).
- (ii) **"Agreement"** means this National Settlement Agreement (including all Schedules hereto).
- (iii) **"Air Canada's Counsel"** means Blake, Cassels & Graydon LLP.
- (iv) **"Application for Authorization"** means the *Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff* dated May 11, 2021, filed by the Plaintiff against the Defendant.
- (v) **"Attorneys' Fees and Expenses"** means the attorneys' fees and expenses in the amount of \$261,000 plus GST & QST, as described more particularly in Section 9 of this Agreement.

- (vi) **“Class”** and **“Class Member(s)”** means all Canadian residents who purchased an economy class ticket from Air Canada during the Class Period for a flight departing from the United Kingdom and who were charged the Air Passenger Duty for a passenger under 16 years of age on the date of the flight actually taken, except those purchasers who had their ticket previously refunded or credited by Air Canada. However, any person who files a valid and timely Request for Exclusion is excluded from the Class.
- (vii) **“Class Counsel”** means Renno Vathilakis Inc. and LPC Avocat Inc.
- (viii) **“Class Notice”** or **“Notice”** means the notices (see Long-Form Notice and Short-Form Notice) to be published about the authorization of the Action for settlement purposes and the Agreement or any notices ordered in case of the termination of the Agreement.
- (ix) **“Class Period”** means:
- (1) For the Alberta residents: February 25, 2019, up to and including the date of May 15, 2021.
 - (2) For the British Columbia residents: May 11, 2018, up to and including the date of May 15, 2021.
 - (3) For the Manitoba residents: March 1, 2016, up to and including the date of May 15, 2021.
 - (4) For the New Brunswick residents: November 11, 2018, up to and including the date of May 15, 2021.
 - (5) For the Newfoundland and Labrador residents: November 11, 2018, up to and including the date of May 15, 2021.
 - (6) For the Northwest Territories residents: March 1, 2016, up to and including the date of May 15, 2021.
 - (7) For the Nova Scotia residents: May 11, 2019, up to and including the date of May 15, 2021.

- (8) For the Nunavut residents: March 1, 2016, up to and including the date of May 15, 2021.
- (9) For the Ontario residents: November 9, 2018, up to and including the date of May 15, 2021.
- (10) For the Prince Edward Island residents: March 1, 2016, up to and including the date of May 15, 2021.
- (11) For the Quebec residents: November 22, 2017, up to and including the date of May 15, 2021.
- (12) For the Saskatchewan residents: May 11, 2019, up to and including the date of May 15, 2021.
- (13) For the Yukon residents: March 1, 2016, up to and including the date of May 15, 2021.

- (x) “**Court**” means the Superior Court of Québec, district of Montréal, in which the Action was filed and where the Parties will seek approval of the Agreement.

- (xi) “**Days**” means calendar days, except that, when computing any period of time prescribed or allowed by this Agreement, the day of the act, event or default from which the designated period of time begins to run shall not be included. Further, when computing any period of time prescribed or allowed by this Agreement, the last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday in Quebec, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday in Quebec.

- (xii) “**Defendant**” means Air Canada.

- (xiii) “**Effective Date**” means:
 - a) if no appeal is taken from the Final Judgment Approving Settlement, forty (40) Days after the Court renders the Final Judgment Approving Settlement; or

- b) if an appeal is taken from the Final Judgment Approving Settlement, the date on which all appeal rights have expired, been exhausted, or been finally disposed of in a manner that affirms the Final Judgment Approving Settlement.
- (xiv) **“Final Approval Hearing”** means the hearing to be conducted by the Court on such date as the Court may order to determine the fairness, adequacy, and reasonableness of the Agreement and to determine the Attorneys’ Fees and Expenses.
- (xv) **“Final Judgment Approving Settlement”** means the Final Judgment Approving Settlement to be rendered by the Court:
- a) approving the Settlement as fair, adequate, and reasonable;
 - b) discharging the Released Parties of and from all further liability for the Released Claims;
 - c) permanently barring and enjoining the Releasing Parties from instituting, filing, commencing, prosecuting, maintaining, continuing to prosecute, directly or indirectly, as an individual or collectively, representatively, derivatively, or on their behalf, or in any other capacity of any kind whatsoever, any action in any Court, before any regulatory authority or in any other tribunal, forum or proceeding of any kind against the Released Parties that asserts any Released Claims; and
 - d) issuing such other findings and determinations as the Court and/or the Parties deem necessary and appropriate to implement the Agreement.

- (xvi) “**Long-Form Notice**” means the proposed Notice in the form provided at **Schedule A** (English) and **Schedule B** (French), which will be submitted to the Court for approval.
- (xvii) “**Notice and Administration Expenses**” means all costs and expenses incurred by the Settlement Administrator, including all notice expenses as well as the cost of administering the publication of the Class Notice. Such costs and expenses shall not exceed one hundred thousand dollars (\$100,000).
- (xviii) “**Notice Date**” means thirty (30) Days after the Court’s approval of the Class Notice or any other date set by the Court, by which the Settlement Administrator and the Parties shall complete the Notice Program.
- (xix) “**Notice Program**” means the notice program set forth in **Schedule C** and described in Section 6.
- (xx) “**Objection Date**” means the date by which Class Members must file with the Court and notify to the Parties any objection to the Settlement and shall be no later than fifteen (15) Days before the date of the Final Approval Hearing.
- (xxi) “**Opt-Out Date**” means the postmark date by which a Request for Exclusion must be submitted to the Court in order for a Class Member to be excluded from the Class, and shall be stated in the Class Notice. The actual date cannot be earlier than thirty (30) Days after the date on which the Class Notice is first sent to Class Members and shall be no later than fifteen (15) Days before the date first set for the Final Approval Hearing.
- (xxii) “**Parties**” means the Plaintiff and the Defendant.

- (xxiii) “**Plaintiff**” means Robert Itzkovitz.
- (xxiv) “**Released Claims**” means any and all actions, claims, demands, rights, suits, and causes of action of whatever kind or nature that could have been, or in the future might be asserted by the Plaintiff or any Class Member or any Releasing Party either in the Action or in any action or proceeding in this Court or in any other court or forum, against the Released Parties, including damages, costs, expenses, penalties, and attorneys’ fees, known or unknown, suspected or unsuspected, in law or equity arising out of or relating to the allegations made in the Action or in the Application for Authorization. For avoidance of doubt, this includes, *inter alia*, all such claims that related in any way to the purchase of economy-class tickets from Air Canada during the Class Period for a flight departing from the United Kingdom and for which the Air Passenger Duty was charged for a passenger under 16 years of age on the date of the flight actually taken.
- (xxv) “**Released Parties**” means Air Canada, including all of its respective predecessors, successors, assigns, parents, subsidiaries, divisions, departments, and affiliates, and any and all of their past, present and future officers, directors, employees, stockholders, partners, agents, servants, successors, attorneys, insurers, representatives, licensees, licensors, subrogees and assigns. It is expressly understood that, to the extent a Released Party is not a Party to the Agreement, all such Released Parties are intended third-party beneficiaries of the Agreement.
- (xxvi) “**Releasing Parties**” means the Plaintiff and each and every Class Member, including each of their respective spouses, executors, representatives, heirs, successors, bankruptcy trustees, guardians, agents, assigns, predecessors,

divisions, departments, and affiliates, and any and all of their past, present and future employees, partners, agents, servants, attorneys, insurers, representatives and subrogees and all those who claim through them or who assert duplicative claims for relief on their behalf.

(xxvii) **“Request(s) for Exclusion”** means the written communication that must be submitted to the Court pursuant to article 580 C.C.P. and postmarked on or before the Opt-Out Date by a Class Member who wishes to be excluded from the Class.

(xxviii) **“Residual Settlement Amount”** means any Refunds remaining uncashed by the Class Members. Should the total amount of issued Refunds be less than \$400,000, the Residual Settlement Amount shall be increased by the difference between \$400,000 and the amount of the Refunds.

(xxix) **“Settlement”** means the settlement set forth in this Agreement.

(xxx) **“Settlement Administrator”** means Velvet Payment Inc., subject to Court approval.

(xxxi) **“Settlement Amount”** means the amount of eight hundred eighty-one thousand three hundred one dollars (\$881,301), being the maximum amount of the Defendant’s monetary obligations under this Agreement, and inclusive of capital, interest, additional indemnity, taxes, legal fees and costs of all kinds.

(xxxii) **“Short-Form Notice”** means the proposed Notice in the form provided at **Schedule D** (English) and **Schedule E** (French), which will be submitted to the Court for approval.

2.2 Other capitalized terms in this Agreement but not specifically defined in this section shall

have the meanings ascribed to them elsewhere in this Agreement, including by reference to capitalized terms indicating in parentheses.

3. CONDITIONAL AUTHORIZATION OF THE CLASS ACTION FOR SETTLEMENT PURPOSES ONLY

- 3.1 This Agreement is for settlement purposes only, and neither the fact of, nor any provision contained in this Agreement, nor any action taken hereunder, shall constitute or be construed as an admission of: (a) the validity of any claim or allegation made by the Plaintiff, or of any defence asserted by the Defendant in the Action, or (b) any wrongdoing, fault, violation of law, or liability on the part of any Party, Released Party, Class Member, or their respective counsel; or (c) the propriety of class action authorization in the Action or any other action or proceeding.
- 3.2 As part of an Application to Approve the Settlement, Plaintiff will seek authorization of the Action for settlement purposes only and approval of the Class Notice. The Defendant hereby consents, solely for purposes of the Agreement, to the authorization of the Action and to the approval of the Plaintiff as an adequate representative of the Class; provided, however, that if the Court fails to approve this Agreement or the Agreement otherwise fails to be consummated by the Effective Date, then the Defendant shall retain all rights it had immediately preceding the execution of this Agreement to object to the maintenance of the Action as a class action and this Agreement shall be void and will not constitute, be construed as, or be admissible in evidence as an admission of any kind or be used for any purpose in the Action or in any other pending or future action. Moreover, the Court's authorization of the Class shall not be deemed to be an adjudication of any fact or issue for any purpose other than the accomplishment of the provisions of this Agreement, and shall not be considered the law of the case, *res judicata*, unless and until the Court enters

a Final Judgment Approving Settlement, and regardless of whether the Effective Date occurs, the Parties' agreement to class action authorization for settlement purposes only (and any statements or submissions made by the Parties in connection with seeking the Court's approval of this Agreement) shall not be deemed to be a stipulation as to the propriety of class action authorization, or any admission of fact or law regarding any request for class action authorization, in any other action or proceeding, whether or not involving the same or similar claims. In the event the Court does not render a Final Judgment Approving Settlement, or the Effective Date does not occur, or the Agreement is otherwise terminated or rendered null and void, the Parties' agreement to class action authorization for settlement purposes shall be null and void, the Court's authorization order shall be vacated, and thereafter no class or classes will remain authorized; provided, however, that Plaintiff may thereafter seek authorization of the same or a new class or classes in the Action, and the Defendant may oppose such authorization on any available grounds.

4. SETTLEMENT RELIEF

- 4.1 The maximum amount of the Defendant's monetary obligations under this Agreement is the Settlement Amount.
- 4.2 Each Class Member is eligible to obtain a full refund of the Air Passenger Duty charged for each ticket he or she purchased for a passenger under 16 years of age on the date of the flight actually taken (the "**Refunds**"). The maximum amount to be distributed to Class Members by Defendant is five hundred twenty thousand three hundred one dollars (\$520,301).
- 4.3 The Refunds shall be processed automatically by Air Canada and made in accordance

with the method of payment used by the Class Member or, when the former is not possible, by cheque mailed to the last known address of the Class Member. Said cheques shall be valid for a period of six (6) months from their issuance, following which said cheques will be stale-dated and Class Members will forfeit their right to a Refund.

- 4.4 The Refunds shall be processed on the Effective Date or within sixty (60) Days thereof.
- 4.5 The admissibility for a Refund for Class Members with open tickets that have not yet been flown as of the Effective Date or with travel credits resulting from the cancellation of their flight for which they have not sought a refund shall be determined reasonably by Air Canada at the date of the use of the open ticket or the exchange of that credit for a flight, as the case may be.
- 4.6 In accordance with the *cy pres* doctrine, the Residual Settlement Amount, if any, shall, subject to Court approval, be paid to a charitable organization to be chosen by the Parties (after payment of any amounts owing to the Fonds d'aide aux actions collectives pursuant to the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives*, CQLR c. F-3.2.0.1.1, r. 2, if any). Such distribution of the Residual Settlement Amount, if any, shall be made within twelve (12) months after the payment of all Refunds according to the payment distribution date outlined in Section 4.4.

5. RETENTION OF THE SETTLEMENT ADMINISTRATOR

- 5.1 The Parties have retained Velvet Payment Inc. as the Settlement Administrator to help implement the terms of the Agreement. All Notice and Administration Expenses, which shall not exceed \$100,000, shall be paid by the Defendant.
- 5.2 The Settlement Administrator shall assist with various administrative tasks, including,

without limitation: (1) causing the Class Notice to be published pursuant to the Notice Program set forth in Schedule C, (2) answering written inquiries from Class Members and/or forwarding such inquiries to Class Counsel or its designee, and (3) otherwise assisting with administration of the Agreement.

5.3 The contract with the Settlement Administrator and the Defendant shall obligate the Settlement Administrator to abide by the following performance standards:

5.3.1 The Settlement Administrator shall accurately and objectively describe, and shall train and instruct its employees and agents to accurately and objectively describe the provisions of this Agreement in communications with Class Members.

5.3.2 The Settlement Administrator shall provide prompt, accurate and objective responses to inquiries from Class Counsel or its designee and/or Air Canada's Counsel.

5.3.3 The Settlement Administrator shall keep a clear and careful record of all communications with Class Members, all expenses, and all tasks performed in administering the notices.

6. NOTICE TO THE CLASS

(a) Notice

6.1 No later than the Notice Date, the Settlement Administrator shall cause the Class Notice, in both French and English, to be published in accordance with the Notice Program. The Parties agree that the Notice Program provides for the most efficient means under the circumstances of this case to effect notice to the Class.

6.2 At or prior to the Final Approval Hearing, the Settlement Administrator shall provide the Court with an affidavit attesting that Class Notice have been published in accordance with the Notice Program.

(b) Long-Form Notice

6.3 The Long-Form Notice shall be in substantially the form of **Schedules A and B**, attached hereto, agreed to by the Parties and to be approved by the Court. At a minimum, the Long-Form Notice shall: (a) include a short, plain statement of the background of the Action and the Agreement; (b) describe the proposed settlement relief as set forth in this Agreement; (c) inform Class Members that, if they do not exclude themselves from the Class, they may be bound by the Settlement; (d) describe the Settlement process; (e) explain the scope of the releases provided in this Agreement; (f) state that the implementation of the Settlement is contingent on the Court's final approval of the Agreement; (g) state the identity of Class Counsel and the amount sought in Attorneys' Fees and Expenses; (h) explain the procedure for opting-out of the Class, including the applicable deadline; (i) explain the procedure for objecting to the Agreement, including the applicable deadline; (j) explain that any judgment or order entered in the Action, whether favourable or unfavourable to the Class, shall include and be binding on all Class Members; and (k) provide any other information required by the Court.

(c) Short-Form Notice

6.4 The Short-Form Notice shall be in substantially the form attached hereto as **Schedules D and E**. At a minimum, the Short-Form Notice shall: (a) include the telephone number and email address to contact Class Counsel; (b) include the definition of the Class; (c) include a brief description of the proposed settlement relief as set forth in this Agreement; and (d)

inform of the right to object to the Settlement and/or opt-out of the Class and the deadlines to exercise these rights.

(d) Notice Program and Publication of the Class Notice

6.5 The Short-Form Notice (**Schedules D and E**) and Long-Form Notice (**Schedules A and B**) shall be published in accordance with the Notice Program no later than by the Notice Date.

6.6 The Short-Form Notice (**Schedules D and E**) and/or the Long-Form Notice (**Schedules A and B**), in both French and English, may also be sent via e-mail to all persons that subscribed to Class Counsel's mailing list or request a copy from Class Counsel.

6.7 The Short-Form Notice (**Schedules D and E**) and/or the Long-Form Notice (**Schedules A and B**), in both French and English, shall also be prominently posted on the website of Class Counsel (<https://lpclex.com/airpassengerduty/>).

7. OBJECTIONS, REQUESTS FOR EXCLUSION, AND MEDIA COMMUNICATIONS

(a) Objections

7.1 Unless otherwise authorized by the Court, any Class Member who intends to object to the approval of the Agreement must do so in writing no later than the Objection Date. The written objection must be filed with the Court and notified to Class Counsel and Air Canada's Counsel no later than the Objection Date. The written objection must include: (a) a heading which refers to the Action; (b) the objector's name, address, telephone number and email address and, if represented by counsel, of his/her counsel; (c) a statement that the objector purchased an economy class ticket from Air Canada, during the Class Period, for a flight departing from the United Kingdom and was charged the Air

Passenger Duty for a passenger under 16 years of age on the date of the flight actually taken; (d) whether the objector intends to appear at the Final Approval Hearing, either in person, remotely or through counsel; (e) a statement that the Class Member is objecting to the approval of the Agreement and the grounds supporting the objection; (f) copies of any papers, briefs, or other documents upon which the objection is based; and (g) the objector's signature.

7.2 Any Class Member who files and serves a written objection, as described in the preceding Section, may appear at the Final Approval Hearing, either in person, remotely or through counsel hired at the Class Member's expense, to object to any aspect of the fairness, reasonableness, or adequacy of this Agreement.

7.3 Unless otherwise authorized by the Court, any Class Member who fails to comply with the above provisions shall waive and forfeit any and all rights he or she may have to appear separately and/or to object, and shall be bound by all the terms of this Agreement and by all proceedings, orders and judgments entered in in the Action.

(b) Requests for Exclusion (Opt-Out)

7.4 Any Class Member may request to be excluded from the Class. A Class Member who wishes to opt-out of the Class must do so by sending to the clerk of the Court a written Request for Exclusion that is postmarked no later than the Opt-Out Date. The Request for Exclusion must be personally signed by the Class Member requesting exclusion, include his/her email and mailing address, and contain a statement that indicates a desire to be excluded from the Class.

7.5 Any Class Member who does not file a timely written Request for Exclusion shall be bound by all subsequent proceedings, orders and the Final Judgment Approving Settlement in

the Action, unless he or she has already pending litigation or arbitration against the Defendant relating to the Released Claims.

- 7.6 Any Class Member who properly requests to be excluded from the Class shall not: (a) be bound by any orders or judgments entered in the Action; (b) gain any rights by virtue of the Agreement; and (c) be entitled to object to any aspect of the Agreement.

(c) Media Communications

- 7.7 Following the issuance of the judgment authorizing the Action and approving the Class Notice, the Parties agree that they may issue a joint or separate press release.

- 7.8 The Defendant and Class Counsel may post the joint or separate press release on their websites, if they so choose. Any such press release shall only include information relating to the Action or this Agreement available in the public record. The Parties agree not to make any disparaging comments about the other and any other statements or communications to the media pertaining to the Action, this Agreement or its terms shall be limited to promoting the virtues of this Agreement. Defendant may make such disclosures regarding the Action and the terms of the Agreement as it deems necessary in its filings with regulators, to its auditors, or as otherwise required by provincial, federal or foreign law.

- 7.9 Nothing herein shall prevent Class Counsel from responding to Class Members' inquiries regarding the Settlement in a manner consistent with the terms and conditions of this Agreement.

8. RELEASES

- 8.1 The Agreement shall be the sole and exclusive remedy for any and all Released Claims

of all Releasing Parties against all Released Parties. No Released Party shall be subject to liability of any kind to any Releasing Party with respect to any Released Claim. Upon the Effective Date, and subject to fulfillment of all of the terms of this Agreement, each and every Releasing Party shall be permanently barred and enjoined from initiating, asserting and/or prosecuting any Released Claim against any Released Party in any court or any forum.

- 8.2 On the Effective Date, each Releasing Party shall be deemed to have released and forever discharged each of the Released Parties of and from any and all liability for any and all Released Claims.
- 8.3 On the Effective Date, each of the Released Parties shall be deemed to have released and forever discharged each of the Releasing Parties and their respective counsel, including Class Counsel, for all claims arising out of or relating to the institution, prosecution and resolution of the Action, except to enforce the terms and conditions contained in this Agreement.
- 8.4 The Court shall retain exclusive and continuing jurisdiction to interpret, apply and enforce the terms, conditions, and obligations under the Agreement, including managing any ancillary matters that may arise from this Agreement

9. ATTORNEYS' FEES AND EXPENSES

- 9.1 Subject to Court approval, the Defendant agrees to pay Attorneys' Fees and Expenses in the amount of \$261,000 plus GST & QST, which are to be deducted and paid from the Settlement Amount. Defendant shall take no position with regards to the approval of the Attorneys' Fees and Expenses described herein during the Final Approval Hearing, other than that it has agreed to pay them.

- 9.3 During the Final Approval Hearing, Class Counsel will make representations before the Court to obtain approval of the Attorneys' Fees and Expenses, which includes all taxes, legal fees, extrajudicial costs and disbursements incurred up to the date of the Final Judgment Approving Settlement.
- 9.4 No later than ten (10) Days before the Effective Date, Class Counsel will provide the Defendant with an invoice for the amount of Attorneys' Fees and Expenses approved by the Court, to be paid by the Defendant to Class Counsel as legal fees and extrajudicial costs incurred up to the date of Final Judgment Approving Settlement, along with the wire transfer / payment information.
- 9.5 On the Effective Date, the Defendant will pay to Class Counsel the amount of Attorneys' Fees and Expenses if and as approved by the Court in the Final Judgment Approving Settlement.
- 9.6 In consideration for the payment of legal fees, extrajudicial costs, expert fees, and disbursements above, as decided by the Court, Class Counsel will not claim any other fee or disbursement from the Defendant or from the Class Members.

10. FINAL JUDGMENT APPROVING SETTLEMENT

- 10.1 This Agreement is subject to and conditional upon the issuance by the Court of the Final Judgment Approving Settlement that grants final approval of the Agreement, and provides the relief specified herein, which relief shall be subject to the terms and conditions of the Agreement and the Parties' performance of their continuing rights and obligations hereunder.

11. REPRESENTATIONS AND WARRANTIES

11.1 The Defendant represents and warrants: (1) that it has the requisite corporate power and authority to execute, deliver and perform the Agreement and to consummate the transactions contemplated hereby; (2) that the execution, delivery and performance of the Agreement and the consummation by it of the actions contemplated herein have been duly authorized by necessary corporate action on the part of the Defendant; and (3) that the Agreement has been duly and validly executed and delivered by the Defendant and constitutes its legal, valid and binding obligation.

11.2 The Plaintiff represents and warrants (1) that he is entering into the Agreement without the receipt of any consideration other than what is provided in the Agreement or disclosed to, and authorized by, the Court; and (2) that he has reviewed the terms of the Agreement in consultation with Class Counsel and believes them to be fair and reasonable.

11.3 The Parties warrant and represent that no promise, inducement or consideration for the Agreement has been made, except those set forth herein. No consideration, amount or sum paid, accredited, offered, or expended by the Defendant in its performance of this Agreement constitutes a fine, penalty, punitive damage, or other form of assessment for any claim against it.

12. NO ADMISSIONS, NO USE

12.1 The Agreement and every stipulation and term contained in it is conditional upon final approval of the Court and is made for settlement purposes only. Whether or not consummated, this Agreement shall not be: (a) construed as, offered in evidence as, received in evidence as, and/or deemed to be, evidence of a presumption, concession or an admission by the Plaintiff, the Defendant, any Class Member, any Releasing Party or any Released Party, of the truth of any fact alleged or the validity of any claim or defence

that has been, could have been, or in the future might be asserted in any litigation or the deficiency of any claim or defence that has been, could have been, or in the future might be asserted in any litigation, or of any liability, fault, or wrongdoing of such Party; or (b) construed as, offered in evidence as, received in evidence as, and/or deemed to be evidence of a presumption, concession or an admission of any liability, fault or wrongdoing, or in any way referred to for any other reason, by the Plaintiff, the Defendant, any Releasing Party or any Released Party in the Action or in any other civil, criminal or administrative action or proceeding other than such proceedings as may be necessary to effectuate the provisions of the Agreement.

13. TERMINATION OF THIS AGREEMENT

13.1 Either Party may terminate this Agreement by providing written notice to the other Parties within ten (10) Days of the occurrence of any of the following:

- (i) The Court does not authorize the Action for settlement purposes as contemplated herein or the Court's order authorizing the Action is reversed, vacated, or modified in any material respect by another court; or
- (ii) The Court does not enter the Final Judgment Approving Settlement in its entirety, or, if entered, such Final Judgment Approving Settlement is reversed, vacated, or modified in any material respect by another court.

13.2 The Defendant may unilaterally withdraw from and terminate this Agreement if more than fifty (50) Class Members have submitted valid and timely Requests for Exclusion. Defendant may exercise its right to terminate under this provision by giving notice on or before the date of the Final Approval Hearing. If the Defendant elects to terminate the Agreement pursuant to this Section 13.2, the Agreement, subject to Section 13.5 hereto,

and all related documents exchanged or signed by the Parties or submitted to the Court shall be null and void and shall have no effect whatsoever on the Action or its adjudication.

13.3 It is expressly agreed that neither the failure of the Court to grant the Attorneys' Fees and Expenses award nor the amount of any Attorneys' Fees and Expenses that may be finally determined and awarded shall provide a basis for termination of this Agreement by the Plaintiff or by Class Counsel.

13.4 In the event of termination, the Settlement Administrator shall provide information regarding the termination to the Class Members under the same conditions as those provided in the Notice Program.

13.5 In the event this Agreement terminates for any reason, all Parties shall be restored to their respective positions as of immediately prior to the date of execution of this Agreement. Upon termination, Section 3 herein shall survive and be binding on the Parties, but this Agreement shall otherwise be null and void.

14. MISCELLANEOUS PROVISIONS

14.1 **Entire Agreement:** The Agreement, including all Schedules hereto, shall constitute the entire Agreement among the Parties with regard to the Agreement and shall supersede any previous agreements, representations, communications and understandings among the Parties with respect to the subject matter of the Agreement. The Agreement may not be changed, modified, or amended except in a writing signed by one of Class Counsel and one of Air Canada's Counsel and, if required, approved by the Court. The Parties contemplate that the Schedules to the Agreement may be modified by subsequent agreement of Air Canada's Counsel and Class Counsel, or by the Court. The Parties may make non-material changes to the Schedules to the extent deemed necessary, as agreed

to in writing by all Parties.

14.2 **Governing Law and Jurisdiction:** The Agreement shall be construed under and governed by the laws of the Province of Quebec, Canada applied without regard to conflict of laws provisions. The Parties hereby submit themselves exclusively to the Courts of the Province of Quebec, District of Montreal, concerning any and all matters related to the interpretation or application of this Agreement.

14.3 **Execution in Counterparts:** The Agreement may be executed by the Parties in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Signatures scanned to PDF and sent by e-mail shall be treated as original signatures and shall be binding.

14.4 **Notices:** Whenever this Agreement requires or contemplates that one Party shall or may give notice to the other, notice shall be provided in writing by email to:

(a) If to Class Counsel:

Mtre. Michael E. Vathilakis
mvathilakis@renvath.com [mailto:](mailto:mvathilakis@renvath.com)

and

Mtre. Joey Zukran
izukran@lpclex.com

(b) If to Air Canada's Counsel:

Mtre. Robert J. Torralbo
robert.torralbo@blakes.com

and

Mtre. Simon J. Seida
simon.seida@blakes.com

14.5 **Suspension of Proceedings:** Upon the execution of this Agreement, all proceedings in

this Action shall be suspended until further order of the Court, except for proceedings to seek authorization of the Action and approval of the Class Notice, and proceedings that may be necessary to implement the Agreement or comply with or effectuate the terms of this Agreement.

- 14.6 **Good Faith:** The Parties agree that they will act in good faith and will not engage in any conduct that will or may frustrate the purpose of this Agreement. The Parties further agree, subject to Court approval as needed, to reasonable extensions of time to carry out any of the provisions of the Agreement.
- 14.7 **Binding on Successors:** The Agreement shall be binding upon, and enure to the benefit of the heirs, successors and assigns of the Released Parties.
- 14.8 **Arms'- Length Negotiations:** The determination of the terms and conditions contained herein and the drafting of the provisions of this Agreement has been by mutual understanding after negotiation, with consideration by, and participation of, the Parties hereto, Air Canada's Counsel and the Class Counsel. This Agreement shall not be construed against any Party on the basis that the Party was the drafter or participated in the drafting. Any statute or rule of construction providing that ambiguities are to be resolved against the drafting party shall not be employed in the implementation of this Agreement and the Parties agree that the drafting of this Agreement has been a mutual undertaking.
- 14.9 **Waiver:** The waiver by one Party of any provision or breach of the Agreement shall not be deemed a waiver of any other provision or breach of the Agreement.
- 14.10 **Variance:** In the event of any variance between the terms of this Agreement and any of the Schedules hereto, the terms of this Agreement shall control and supersede the

Schedule(s).

- 14.11 **Schedules:** All Schedules to this Agreement are material and integral parts hereof, and are incorporated by reference as if fully rewritten herein.
- 14.12 **Taxes:** No opinion concerning the tax consequences of the Agreement to any Class Member is given or will be given by the Defendant, Air Canada's Counsel, Class Counsel or the Plaintiff; nor is any Party or their counsel providing any representation or guarantee respecting the tax consequences of the Agreement as to any Class Member. Each Class Member, including the Plaintiff, is responsible for his/her tax reporting and other obligations respecting the Agreement, if any.
- 14.13 **Retain Jurisdiction:** The Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of this Agreement, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the agreement embodied in this Agreement.
- 14.14 **Language:** The Parties acknowledge that they have required and consented to this Agreement and all related documents be drafted in English. *Les parties reconnaissent avoir exigé et consenti à ce que la présente convention et tous les documents connexes soient rédigés en anglais.*
- 14.15 **Translation:** Nevertheless, the Defendant shall procure a French translation of the Agreement. In the event of any dispute as to the interpretation or application of this Agreement, the English version shall govern.
- 14.16 **Transaction:** The present Agreement constitutes a transaction in accordance with Articles 2631 and following of the C.C.Q., and the Parties hereby renounce to any errors

of fact, of law and/or calculation.

14.17 **Recitals:** The recitals to this Agreement are true and form part of the Agreement.

14.18 **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 Agreement, on behalf of the Parties identified above and their law firms.

[Signature page follows]

1

IN WITNESS WHEREOF, each of the Parties hereto, Class Counsel and Air Canada's Counsel have executed this Agreement as of the date set forth below.

Date: 8/16/2022 | 6:31 PM EDT

City: Montreal, Québec

DocuSigned by:

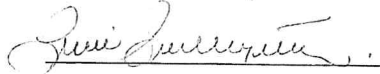

86936EA3F20E457

Mtre. Simon J. Seida

Blake, Cassels & Graydon LLP
Attorneys for Defendant Air Canada

Date: Aug 16, 2022

City: 1111 St. Laurent



Lucie Guillemette, Executive Vice President
and Chief Commercial Officer

Duly authorized representative of Air Canada,
as she so declares

Date: August 16, 2022

City: Montreal



Mtre. Joey Zukran

LPC Avocat Inc.
Class Counsel

Date: August 17, 2022

City: Montreal

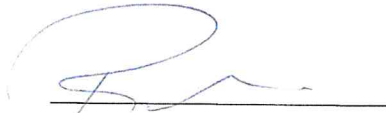


Mtre. Michael Vathilakis

Renno Vathilakis Inc.
Class Counsel

Date: August 17, 2022

City: Montreal



Mr. Robert Itzkovitz

Plaintiff

EXHIBIT R-2

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

(Class Action)
SUPERIOR COURT

No: 500-06-001147-210

ROBERT ITZKOVITZ

Applicant

v.

AIR CANADA

Defendant

AFFIDAVIT OF ANGÈLE KLOS

I, the undersigned, Angèle Klos, Senior Manager, Sales and Refund Accounting for Air Canada, exercising my profession at 355 Portage Ave, in the city of Winnipeg, province of Manitoba, solemnly affirm the following:

1. I am employed by Air Canada. I have been employed by Air Canada for 14 years. My current position is Senior Manager, Sales and Refund Accounting.
2. I am the person who was responsible for overseeing the Refunds process (as hereinafter defined) to the Class Members. The process was performed by several teams within Air Canada's Revenue Accounting Department, i.e., Refund Services and Credit Card Processing.
3. On August 16 and 17, 2022, Air Canada and Robert Itzkovitz, the Plaintiff, signed a *National Settlement Agreement* (the "**Settlement Agreement**") to settle this case. Under the Settlement Agreement, Air Canada agrees to pay an approximate amount of \$881,301, which includes a full refund to the Class Members of the Air Passenger Duty charged for each ticket they purchased for a passenger under 16 years of age on the date the flight was actually taken (the "**Refunds**").
4. On December 19, 2022, the Settlement Agreement was approved by the Superior Court.
5. Air Canada has established a list of the Class Members who purchased an economy class ticket from Air Canada during the Class Period (as defined under the Settlement Agreement) for a flight departing from the United Kingdom and who were charged the Air Passenger Duty for a passenger under 16 years of age on the date the flight was actually taken (except those purchasers who had their ticket

previously refunded or credited by Air Canada). The list of Class Members contained a total of 3,824 Class Members.

6. The Refunds were first made in accordance with the method of payment used by the Class Member when he or she purchased the ticket.
7. On January 20, 2023, the Credit Card Processing team at Air Canada made the Refunds in accordance with the method of payment used by the Class Member, i.e. by credit card, 3,687 Refunds were successfully made and 44 were unsuccessful.
8. Between February 14, 2023 and March 17, 2023, the Refund Services team at Air Canada used Agency Credit Memos ("**ACM**") to process Refunds for Class Members who booked directly with a travel agency and for whom Air Canada did not have credit card details or a personal physical address on file. 59 Refunds were successfully made in this manner. On January 24, 2024, two additional Refunds were made in this manner in relation to two Class Members whose files had been transferred to a new travel agency.
9. For the 76 Refunds that could not be made in accordance with the method of payment used by the Class Member, whether because of an unsuccessful credit card Refund or because Air Canada did not have a credit card recorded on file, the Refund Services team at Air Canada sent a cheque by mail to the last known address of the Class Member between May 25 and 26, 2023.
10. As of today, 54 cheques have been cashed and 22 cheques have not been cashed within the 6 months of their issuance.
11. In other words, 99.4% of the Refunds were successfully made.
12. The total amount of Refunds issued by the Refund Services team and the Credit Card Processing team at Air Canada to Class Members is \$503,544.81. Of this amount, a total of \$500,816.23 has been successfully received by 3,802 Class Members.
13. The Residual Settlement Amount (as defined under the Settlement Agreement) thus represents an amount of \$2,728.58.
14. All the facts alleged in the present Affidavit are true.

AND I HAVE SIGNED AT DUGALD,
MANITOBA:

Angèle Klos

ANGÈLE KLOS

SOLEMNLY DECLARED before me, by
technological means (MS Teams), in
Dorval, this 29th of January, 2024

Evandra Zingaro

EVANDRA ZINGARO, 236203
Commissioner of Oaths for Québec and
outside of Québec



EXHIBIT R-3



Make-A-Wish Foundation of Canada / Fondation Rêves d'enfants Canada – Quick View

[Charity's detail page](#)

Registration no.:	881291918 RR 0001
Status:	Registered
Effective date of status:	2001-09-01
Type of qualified donee:	Charity
Designation:	Charitable organization ⓘ
Website:	MAKEAWISH.CA ↗

Reporting period views

Quick View	Full View
2023-09-30	2023-09-30
2022-09-30	2022-09-30
2021-09-30	2021-09-30
2020-09-30	2020-09-30
2019-12-31	2019-12-31

Reporting period ending: 2023-09-30

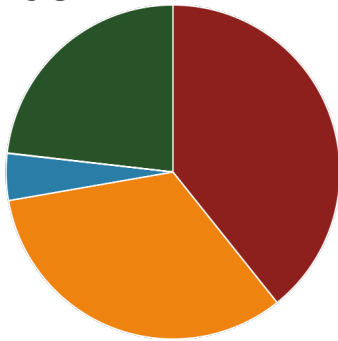
Programs and activities:

Ongoing programs:

Make-A-Wish creates life-changing wishes for children with critical illnesses. We are on a quest to bring every eligible child's wish to life, because a wish is an integral part of a child's treatment journey. Research shows children who have wishes granted can build the physical and emotional strength they need to fight a critical illness.

New programs:

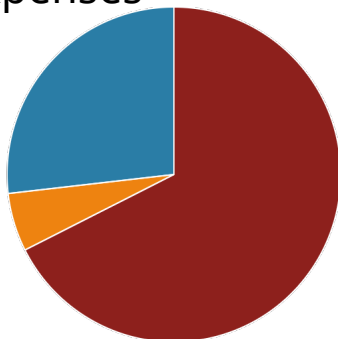
Revenue



- Received donations \$16,749,855.00 (39.28%)
- Non-receipted donations \$14,064,224.00 (32.98%)
- Gifts from other registered charities \$1,932,844.00 (4.53%)
- Government funding \$15,150.00 (0.04%)
- All other revenue \$9,884,385.00 (23.18%)

Total revenue: \$42,646,458.00

Expenses



- Charitable programs \$33,702,218.00 (67.55%)
- Management and administration \$2,810,851.00 (5.63%)
- Fundraising \$13,377,120.00 (26.81%)
- Gifts to other registered charities and qualified donees \$0.00 (0.00%)
- Grants made to non qualified donees (grantees) \$0.00 (0.00%)
- Other \$0.00 (0.00%)

Total expenses: \$49,890,189.00

Compensation

Total compensation for all positions **\$13,194,925.00**

Full-time employees	157
Part-time employees	9

Professional and consulting fees **\$889,142.00**

Compensated full-time positions:

\$120,000 to \$159,999	1
\$160,000 to \$199,999	5
\$200,000 to \$249,999	1
\$250,000 to \$299,999	2
\$350,000 and over	1

Additional information

- [How to amend the return](#)
- [Information for Charity Quick View users](#)
- [View the complete T3010 return for the period being displayed](#)
- [Directors and trustees worksheet](#)

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Screen ID: CRA-HACC-QVP1

11/11/2020 09:57 AM

Version: 2022-05-25



Detail page



Use this page to confirm an organization's status and its Business/Registration number. The Charities Directorate has not necessarily verified the other information provided by the organization.

Make-A-Wish Foundation of Canada / Fondation Rêves d'enfants Canada

Business/Registration number: **881291918 RR 0001**

Status: **Registered**

Effective date of status: **2001-09-01**

Type of qualified donee: **Charity**

Sanction: **N/A**

Language of correspondence: **ENGLISH**

Designation: **Charitable organization**

Charity type: **Other purposes beneficial to the community**

Category: **Supportive Health Care**

Address: **301A - 4211 YONGE ST**

City: **NORTH YORK**

Province, territory, outside of Canada: **ON**

Country: **CA**

Postal code/Zip code: **M2P2A9**

Email address: **INFO@MAKEAWISH.CA**

Website address: **MAKEAWISH.CA**

View this organization's quick view information **[Quick view](#)**

Links to Websites not under the control of the Government of Canada (GoC) are provided solely for the convenience of users. The GoC is not responsible for the accuracy, currency or the reliability of the content. The GoC does not offer any guarantee in that regard and is not responsible for the information found through these links, nor does it endorse the sites and their content. Users should be aware that information offered by non-GoC sites that are not subject to the Official Languages Act and to which the CRA links, may be available only in the languages used by the sites in question.

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Screen ID: CRA-HACC-DP

Version: 2022-05-25

EXHIBIT R-4

SUPERIOR COURT

(Class Action)

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No: 500-06-001147-210

DATE: _____, 2024

IN THE PRESENCE OF: THE HONOURABLE CHRISTIAN IMMER, J.C.S.

ROBERT ITZKOVITZ

Applicant

v.

AIR CANADA

Defendant

CLOSING JUDGMENT

[1] On May 11, 2021, the Applicant filed an application against the Defendant (hereinafter “**Air Canada**”) seeking authorization to institute a class action and to be appointed Representative Plaintiff of the following class:

All persons worldwide who travelled to or from the United Kingdom with Air Canada and who were charged the Air Passenger Duty on a ticket for a child under 16 years old on the date of the flight, for travel as of March 1, 2016.

[2] On August 16, 2022, a National Settlement Agreement was reached between the parties (the “**Settlement**”) to settle the class action (Exhibit R-1).

[3] This Settlement provided for the full refund of the Air Passenger Duty charged for each ticket purchased by Class Members for a passenger under 16 years of age on the date of the flight actually taken (the “**Refunds**”).

[4] On December 19, 2022, the Court approved the Settlement. The maximum amount to be distributed to Class Members by Air Canada was \$520,301.

[5] Notices to Class Members were disseminated in the following manner:

- a) *Sending of Notices by Air Canada:* On October 21, 2022, an email containing the court-approved Short-Form Notice was sent to all the Class Members for whom Air Canada had an email address, which is about 3,169 Class Members. The email included a link to the Long-Form Notice.
- b) *Publication of Notices by the Settlement Administrator:* On October 27, 2022, online ads were placed by the Settlement Administrator for 20 days on the following websites and apps, in either English or French as appropriate:
 - i. Facebook;
 - ii. Instagram;
 - iii. Audience network (which allows to extend the reach of the ads beyond Facebook and into other mobile apps).

The online ads included a hyperlink directing to Class Counsel’s website (<https://lpclex.com/airpassengerduty/>) where Class Members were able to access the Settlement and copies of the notices in English and in French.

[6] The affidavit of a representative of Air Canada (Exhibit R-2) states the following:

- a) On January 20, 2023, the Credit Card Processing team at Air Canada issued the Refunds in accordance with the method of payment used by the Class Member, i.e. by credit card, 3,687 Refunds were successfully made and 44 were unsuccessful.
- b) Between February 14, 2023 and March 17, 2023, the Refund Services team at Air Canada used Agency Credit Memos (“**ACM**”) to process Refunds for Class Members who booked directly with a travel agency and for whom Air Canada did not have credit card details or a personal physical address on

file. 59 Refunds were successfully made in this manner. On January 24, 2024, two additional Refunds were made in this manner in relation to two Class Members whose files had been transferred to a new travel agency.

- c) Between May 25 and 26, 2023, for the 76 Refunds that could not be made in accordance with the method of payment used by the Class Member, whether because of an unsuccessful credit card Refund or because Air Canada did not have a credit card recorded on file, the Refund Services team at Air Canada sent a cheque by mail to the last known address of the Class Member.
- d) As of January 29, 2024, 54 cheques had been cashed and 22 cheques had not been cashed within the 6 months of their issuance.
- e) Accordingly, 99.4% of the Refunds were successfully made.
- f) The total amount of Refunds issued by Air Canada to Class Members is \$503,544.81. Of this amount, a total of \$500,816.23 has been successfully received by 3,802 Class Members.

[7] In addition to the Refunds, Air Canada paid all administration expenses and notices costs in the amount of \$44,840.26 for the Settlement Administrator's costs.

[8] Air Canada paid Class Counsel fees and disbursements of \$300,084.75 inclusive of all fees, disbursements and all taxes.

[9] The Residual Settlement Amount (as defined under the Settlement) amounts to \$2,728.58.

[10] The amount levied by the Fonds d'aide aux actions collectives pursuant to the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives*, CQLR c F-3.2.0.1.1, r.2 is \$1,364.29.

[11] No request was made to the Fonds d'aide aux actions collectives for funding.

[12] Air Canada filed an application to obtain a closing judgment.

[13] The Settlement has been duly implemented and executed by the Parties in accordance with the contents of the Settlement and the judgment approving it.

POUR CES MOTIFS, LE TRIBUNAL:

[14] **ACCUEILLE** la demande pour l'émission d'un jugement de clôture;

[15] **DÉCLARE** que les Parties ont rempli leurs obligations en vertu de la Convention de règlement ainsi que leur obligation de faire rapport à la Cour;

[16] **ORDONNE** que le montant de 1 364,29 \$ soit payé au Fonds d'aide aux actions collectives;

[17] **ORDONNE** que le montant de 1 364,29 \$ soit payé à *Rêves d'enfants Canada*;

[18] **PRONONCE** la clôture du dossier;

[19] **LE TOUT** sans frais de justice.

FOR THESE REASONS, THE COURT:

GRANTS the application to obtain a closing judgment;

DECLARES that the Parties have fulfilled their obligations under the Settlement Agreement as well as their obligation to report to the Court;

ORDERS that the amount of \$1,364.29 be paid to the Fonds d'aide aux actions collectives;

ORDERS that \$1,364.29 be paid to *Make-A-Wish Canada*;

PRONOUNCES the closing of the file;

THE WHOLE without legal costs.

Christian Immer, J.S.C.

Mtre. Joey Zukran
LPC AVOCAT INC.
Attorneys for the Applicant

Mtre. Michael E. Vathilakis
RENNO VATHILAKIS INC.
Attorneys for the Applicant

Mtre. Simon J. Seida
Mtre. Maude Gérin-Lajoie
BLAKE, CASSELS & GRAYDON LLP
Attorneys for the Defendant

COUR SUPÉRIEURE

(actions collectives)

CANADA

PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

No: 500-06-001147-210

DATE : _____, 2024

SOUS LA PRÉSIDENTE DE L'HONORABLE CHRISTIAN IMMER, J.C.S.

ROBERT ITZKOVITZ

Demandeur

v.

AIR CANADA

Défenderesse

JUGEMENT DE CLÔTURE

[1] Le 11 mai 2021, le demandeur a déposé une demande contre la défenderesse (ci-après « **Air Canada** ») afin d'obtenir l'autorisation d'intenter une action collective et d'être nommé représentant du groupe suivant :

Toutes les personnes dans le monde entier qui ont voyagé à destination ou en provenance du Royaume-Uni avec Air Canada et qui ont dû payer la Taxe sur le transport de passagers aériens pour un passager âgé de moins de 16 ans à la date à laquelle le vol a effectivement eu lieu, pour les voyages effectués à partir du 1^{er} mars 2016.

[2] Le 16 août 2022, une entente de règlement nationale a été conclue entre les parties (le « **Règlement** ») pour régler l'action collective (pièce R-1).

[3] Ce Règlement prévoit le remboursement intégral de la Taxe sur le transport de passagers aériens facturée pour chaque billet acheté par les Membres du Groupe pour un passager âgé de moins de 16 ans à la date à laquelle le vol a effectivement eu lieu (les « **Remboursements** »).

[4] Le 19 décembre 2022, la Cour a approuvé le Règlement. Le montant maximum à distribuer aux Membres du Groupe par Air Canada était de 520 301 \$.

[5] Les avis aux Membres du Groupe ont été diffusés de la manière suivante :

- a) *Envoi des avis par Air Canada* : Le 21 octobre 2022, un courriel contenant l'Avis abrégé approuvé par le tribunal a été envoyé à tous les Membres du Groupe pour lesquels Air Canada disposait d'une adresse électronique, soit environ 3 169 Membres du Groupe. Le courriel comprenait un lien vers l'Avis détaillé.
- b) *Publication des avis par l'Administrateur du Règlement* : Le 27 octobre 2022, des annonces en ligne ont été placées par l'Administrateur du Règlement pendant 20 jours sur les sites web et applications suivants, en anglais ou en français selon le cas :
 - i. Facebook;
 - ii. Instagram;
 - iii. Audience network (qui permet d'étendre la portée des publicités au-delà de Facebook et dans d'autres applications mobiles).

Les annonces en ligne comprenaient un lien hypertexte renvoyant au site web des Avocats du Groupe (<https://lpclex.com/airpassengerduty/>) où les Membres du Groupe pouvaient accéder au Règlement et à des copies des Avis en anglais et en français.

[6] La déclaration sous serment d'un représentant d'Air Canada (pièce R-2) indique ce qui suit :

- a) Le 20 janvier 2023, l'équipe de traitement des cartes de crédit d'Air Canada a émis les Remboursements conformément au mode de paiement utilisé par le Membre du Groupe, c'est-à-dire par carte de crédit; 3 687 Remboursements ont été effectués avec succès et 44 ont échoué.

- b) Entre le 14 février 2023 et le 17 mars 2023, l'équipe des services de remboursement d'Air Canada a utilisé des notes de crédit d'agence (« **NCA** ») pour traiter les Remboursements des Membres du Groupe qui avaient réservé directement auprès d'une agence de voyage et pour lesquels Air Canada n'avait pas de données de carte de crédit ou d'adresse physique personnelle dans ses dossiers. 59 Remboursements ont été effectués de cette manière. Le 24 janvier 2024, deux autres Remboursements ont été effectués de cette manière pour deux Membres du Groupe dont les dossiers avaient été transférés à une nouvelle agence de voyage.
- c) Entre le 25 et le 26 mai 2023, pour les 76 Remboursements qui n'ont pas pu être effectués conformément au mode de paiement utilisé par le Membre du Groupe, soit parce que le Remboursement par carte de crédit a échoué, soit parce qu'Air Canada n'avait pas de carte de crédit enregistrée dans ses dossiers, l'équipe des services de remboursement d'Air Canada a envoyé un chèque par la poste à la dernière adresse connue du Membre du Groupe.
- d) Au 29 janvier 2024, 54 chèques étaient encaissés et 22 chèques n'avaient pas été encaissés dans les 6 mois suivant leur émission.
- e) En conséquence, 99,4 % des Remboursements ont été effectués avec succès.
- f) Le montant total des Remboursements émis par Air Canada aux Membres du Groupe est de 503 544,81 \$. De ce montant, un total de 500 816,23 \$ a été reçu par 3 802 Membres du Groupe.

[7] En plus des Remboursements, Air Canada a payé tous les frais d'administration et les frais de notification d'un montant de 44 840,26 \$ pour les frais de l'Administrateur du Règlement.

[8] Air Canada a payé aux Avocats du Groupe des honoraires et des débours de 300 084,75 \$, y compris tous les honoraires, les débours et les taxes.

[9] Le Montant résiduel du Règlement (tel que défini dans le Règlement) s'élève à 2 728,58 \$.

[10] Le montant prélevé par le Fonds d'aide aux actions collectives en vertu du *Règlement sur le pourcentage prélevé par le Fonds d'aide aux actions collectives*, RLRQ c F-3.2.0.1.1, r.2 est de 1 364,29 \$.

[11] Aucune demande de financement n'a été adressée au Fonds d'aide aux actions collectives.

[12] Air Canada a déposé une demande pour obtenir un jugement de clôture.

[13] Le Règlement a été dûment mis en œuvre et exécuté par les Parties conformément au contenu du Règlement et au jugement l'approuvant.

POUR CES MOTIFS, LE TRIBUNAL :

[14] **ACCUEILLE** la demande pour l'émission d'un jugement de clôture;

[15] **DÉCLARE** que les Parties ont rempli leurs obligations en vertu de la Convention de règlement ainsi que leur obligation de faire rapport à la Cour;

[16] **ORDONNE** que le montant de 1 364,29 \$ soit payé au Fonds d'aide aux actions collectives;

[17] **ORDONNE** que le montant de 1 364,29 \$ soit payé à *Rêves d'enfants Canada*;

[18] **PRONONCE** la clôture du dossier;

[19] **LE TOUT** sans frais de justice.

FOR THESE REASONS, THE COURT:

GRANTS the application to obtain a closing judgment;

DECLARES that the Parties have fulfilled their obligations under the Settlement Agreement as well as their obligation to report to the Court;

ORDERS that the amount of \$1,364.29 be paid to the Fonds d'aide aux actions collectives;

ORDERS that \$1,364.29 be paid to *Make-A-Wish Canada*;

PRONOUNCES the closing of the file;

THE WHOLE without legal costs.

Christian Immer, J.S.C.

Me Joey Zukran
LPC AVOCAT INC.
Avocats du demandeur

Me Michael E. Vathilakis
RENNO VATHILAKIS INC.

Avocats du demandeur

Me Simon J. Seida
Me Maude Gérin-Lajoie
BLAKE, CASSELS & GRAYDON LLP
Avocats de la défenderesse

N°: 500-06-001147-210

SUPERIOR COURT
(Class Action Division)
DISTRICT OF MONTREAL

ROBERT ITZKOVITZ

Applicant

V.

AIR CANADA

Defendant

**APPLICATION FOR CLOSING JUDGMENT IN
THE SETTLEMENT BETWEEN THE
APPLICANT AND THE DEFENDANT AND
EXHIBITS R-1 TO R-4**

ORIGINAL

The logo for the law firm Blakes, featuring the word "Blakes" in a stylized, cursive script.

M^{re}. Simon J. Seida

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