

C A N A D A

S U P E R I O R C O U R T  
(Class Action Division)

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PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No.: 500-06-000754-156

STEVE ABIHSIRA

Petitioner

v.

STUBHUB, INC. et al.

Respondents

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**APPLICATION BY RESPONDENT VIVID SEATS, LLC  
FOR AUTHORIZATION TO SUBMIT RELEVANT EVIDENCE**  
(Article 574 of the *Code of Civil Procedure*)

TO THE HONOURABLE KIRKLAND CASGRAIN, s.c.j., DESIGNATED JUDGE IN THIS INSTANCE, SITTING IN AND FOR THE CLASS ACTION DIVISION OF THE DISTRICT OF MONTREAL, THE RESPONDENT VIVID SEATS, LLC RESPECTFULLY SUBMITS THE FOLLOWING:

A. INTRODUCTION

1. Respondent Vivid Seats, LLC ("**Vivid Seats**") is seeking the authorization to submit relevant evidence for the purpose of the authorization hearing;
2. Vivid Seats submits that the evidence it wishes to submit is relevant and necessary to allow the Court to conduct an efficient verification as to whether the criteria of Article 575 of the *Code of Civil Procedure* ("**CCP**") are met in this case;

B. DESCRIPTION OF THE PROPOSED CLASS ACTION

3. On or about June 23, 2016, the Petitioner notified his 2<sup>nd</sup> Re-Amended Motion to Authorize the bringing of a Class Action and to Ascribe the Status of Representative (the "Motion") against, *inter alia*, Vivid Seats in respect of the following purported class:

**Group:**

Every consumer, pursuant to the terms of Quebec's Consumer Protection Act ("**CPA**"), who since August 28th, 2012 (the "**Class Period**"), has purchased from any of the Respondents at least one "**Ticket**" (as defined in section 236.1 *CPA* as meaning any

document or instrument that upon presentation gives the ticket holder a right of entry to a show, sporting event, cultural event, exhibition or any other kind of entertainment);  
(hereinafter referred to as the "**Group**")

**Subgroup 1:**

Every consumer, pursuant to the terms of the *CPA*, residing in Quebec at the time of the purchase, who since August 28th, 2012, while physically located in Quebec, has purchased from any of the Respondents at least one "**Ticket**" giving the holder thereof a right of entry to an event in Quebec and/or outside of Quebec, at a price above that announced by the vendor authorized to sell the Tickets by the producer of the event, and  
this after Bill n°25: *An Act to prohibit the resale of tickets at a price above that authorized by the producer of the event* ("**Bill n°25**") came into force on June 7, 2012;  
(hereinafter referred to as "**Subgroup 1**")

**Subgroup 2:**

Every consumer, pursuant to the terms of the *CPA*, residing in Quebec at the time of the purchase, who since August 28th, 2012, while physically located outside of Quebec, has purchased from any of the Respondents at least one "**Ticket**" giving the holder thereof a right of entry to an event in Quebec, at a price above that announced by the vendor authorized to sell the Tickets by the producer of the event, and this after **Bill n°25** came into force;  
(hereinafter referred to as "**Subgroup 2**")

**Subgroup 3:**

Every consumer, pursuant to the terms *CPA*, non-resident of Quebec at the time of purchase, who since August 28th, 2012, while located in the province of Quebec, has purchased from any of the Respondents at least one "**Ticket**", giving the holder thereof a right of entry to an event in Quebec and/or outside of Quebec, at a price above that announced by the vendor authorized to sell the Tickets by the producer of the event, and this after **Bill n°25** came into force;  
(hereinafter referred to as "**Subgroup 3**")

**Subgroup 4:**

Every consumer, pursuant to the *CPA*, non-resident of Quebec at the time of purchase, who since August 28th, 2012, while outside of the province of Quebec, has purchased from any of the Respondents at least one "**Ticket**", giving the holder thereof a right of entry to an event in Quebec, at a price above that announced by the vendor authorized to sell the Tickets by the producer of the event, and this after **Bill n°25** came into force;  
(hereinafter referred to as "**Subgroup 4**")

**Subgroup 5:**

All current and former residents of Canada (subsidiarily Quebec), as well as non-residents, who since August 28th, 2012, while in Canada (subsidiarily Quebec) purchased a "**Ticket**" from any of the Respondents and who paid a price higher than the price advertised by Respondents on their respective websites and/or mobile applications (at the first step), excluding the Québec sales tax or the Goods and Services Tax;  
(hereinafter referred to as "**Subgroup 5**")

or any other group to be determined by the Court;

the whole as appears from paragraph 1 of the Motion;

4. In the Motion, the Petitioner is alleging, *inter alia*, that Vivid Seats and the other Respondents violated section 236.1 of the *Quebec Consumer Protection Act* (the "CPA") by selling tickets for events held in the province of Quebec and elsewhere around the world at a price above that announced by the vendor authorized to sell said tickets by the producer of the event (above "Face Value") without prior authorization from the producer, as appears from paragraphs 11 to 31.2 of the Motion;
5. In the Motion, the Petitioner is also alleging, *inter alia*, that Vivid Seats and the other Respondents violated section 224 of the CPA and sections 52 and 74.05 of the *Competition Act* by selling tickets for events held in the province of Quebec and elsewhere around the world at a price higher than the advertised price, as appears from paragraphs 32 to 32.14 of the Motion.
6. As a result, the Petitioner is claiming for himself and each member of the purported class compensatory and punitive damages, as appears from paragraph 46 of the Motion;

**C. THE NECESSITY OF THE ADDITIONAL EVIDENCE**

7. Vivid Seats submits that the Motion contains allegations that are vague, incomplete, or imprecise, that do not allow for a full and complete comprehension of the proposed class action;
8. Notably, Petitioner filed, as Exhibit P-4 to the Motion, Vivid Seats' "Seller Terms and Conditions", which governs the relationship between registered sellers and Vivid Seats, but omitted to file any agreement that would apply to individuals buying tickets on Vivid Seats' marketplace;
9. In other words, Petitioner omitted to file the agreement that would apply to the alleged members of the purported class;
10. Moreover, Petitioner, at paragraph 32.7 of the Motion, alleges to present "an illustration of what Group members and consumers experience" when using Vivid Seats' website;
11. However, Petitioner does not present the process in its entirety;
12. It is necessary that the Court be presented with all relevant evidence in order to determine whether there is a *prima facie* case against Vivid Seats;
13. The relevant evidence which Vivid Seats wish to present is contained in the Annex A to the present Application;
14. Annex A includes a draft affidavit from a representative of Vivid Seats containing neutral facts pertaining to Vivid Seats' website, as well as Vivid Seats "Sales Terms and Conditions" and extracts from the FAQs section of its website;

D. CONCLUSION

15. As described more fully above, Vivid Seats submits that the evidence it seeks to submit is necessary, relevant and appropriate;
16. Without going into the merits of the case, said evidence will be necessary for the Court in conducting an efficient verification of the criteria of Article 575 CCP in a judicious manner, and will complete and shed light on some of the allegations of the Motion which are vague, incomplete or imprecise;
17. The evidence sought to be submitted by Vivid Seats also satisfies the principle of proportionality and the requirements of Articles 18 and 19 CCP;
18. It is in the interest of the parties and the interests of justice that the evidence sought to be submitted be authorized by this Court;
19. The foregoing is respectfully submitted for the sole purpose of this Application for Authorization to submit relevant evidence, without prejudice to the defences and recourses of Vivid Seats and without the waiver of any privilege to which it may be entitled at law.

**FOR THESE REASONS, MAY IT PLEASE THE SUPERIOR COURT TO:**

**GRANT** the present Application by Respondent Vivid Seats LLC. For Authorization to Submit Relevant Evidence;

**AUTHORIZE** the Respondent Vivid Seats to submit additional evidence;

**THE WHOLE** without costs, unless the present application is contested.

Montreal, August 26, 2016

  
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Attorneys for Vivid Seats LLC

Our reference : BH 0834

# **ANNEX A**

C A N A D A

S U P E R I O R C O U R T  
(Class Action Division)

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PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No.: 500-06-000754-156

STEVE ABIHSIRA

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Respondents

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AFFIDAVIT

I, the undersigned, •, (position) exercising my profession at (address) having been duly sworn, do depose and solemnly affirm the following:

1. I am a representative of Respondent Vivid Seats LLC and I have held the position of • since •;
2. Vivid Seats is an online marketplace that facilitates transactions between individuals looking to buy or resell tickets to events, such as sporting events or concerts;
3. Vivid Seats does not own or generate tickets; all tickets listed on its marketplace are managed and owned by pre-screened sellers who have already purchased those tickets;
4. Vivid Seats' business and operations are more fully explained in the FAQs section of its website, as appears from extracts of the FAQs section, attached hereto as **Annex A.1**;
5. Any potential buyer must follow a checkout process that culminates in the seller having to approve the request for tickets before the sale is finalized, as more fully explained below and as appears from the screenshots attached hereto as **Annex A.2**;
6. A potential buyer must first select the quantity of tickets desired and specify the seating section;
7. Then, the potential buyer (new or returning) is required to login to the Vivid Seats marketplace, and then select a delivery option, which varies for each event depending on delivery options made available by the seller, and other circumstances including the amount of time before the event is scheduled to take place. Different prices apply to different delivery options;

8. The buyer then provides his or her shipping information and desired payment method;
9. Finally, the buyer provides the applicable billing information, next to which a summary of the order is visible, including the quantity of tickets, the section, the delivery method and the total cost;
10. The buyer must agree to the Vivid Seats Sales Terms & Conditions, attached hereto as **Annex A.3**, before placing an order;
11. It is only once the buyer has accepted the Sales Terms & Conditions, that the checkout process is successfully completed;
12. It is only when the tickets seller accepts the order that the sale is finalized and the buyer is charged accordingly;
13. All the facts alleged herein are true.

AND I HAVE SIGNED:

\_\_\_\_\_

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SOLEMNLY AFFIRMED BEFORE ME  
this \_\_\_\_\_ day of \_\_\_\_\_, 2016

\_\_\_\_\_  
Notary Public

# **ANNEX A-1**



## What is Vivid Seats?

Modified on: Mon, 19 Oct, 2015 at 11:30 AM

Vivid Seats is a full-service marketplace that facilitates transactions between fans looking to buy or resell tickets to their favorite sports, concerts, and theater events. We were founded on a passion for live events and a mission to improve and simplify the ticket-purchasing experience, which means we're committed to helping you find tickets quickly and safely, so you can focus on what matters: enjoying your event.

Vivid Seats offers a premium shopping experience and the industry's best ticket prices. Our superior relationships with trusted sellers give you an unmatched selection of tickets to the hottest and most exclusive events around the world. And we don't stop there; we invest in technology to keep our costs low, and pass the savings on to you. Thanks to this commitment, our ticket prices average lower than those found on any other full-service marketplace.

In our commitment to your safety, we keep all of your personal information secure and back every order with our **100% Buyer Guarantee** (<http://www.vividseats.com/guarantee.html>). Meanwhile, our industry-leading, in-house customer service team is available seven days a week to answer any questions, and ensure you have the best ticket-buying experience possible.

## How does Vivid Seats obtain tickets for resale? How about tickets to sold-out events?

Modified on: Fri, 6 Nov, 2015 at 12:49 PM

Vivid Seats does not own or generate tickets; rather, all tickets listed in our marketplace are managed and owned, by professional ticket resellers and pre-screened individual sellers who have already purchased those tickets. Vivid Seats' marketplace allows these sellers to resell their tickets in a secure, controlled e-commerce environment. Many of our professional resellers own season tickets for various teams or venues, or have direct business partnerships with teams, venues, and promoters. As a result, they are able to provide premium tickets or passes to sold-out events.

## What is the 100% Buyer Guarantee?

Modified on: Mon, 19 Oct, 2015 at 11:43 AM

The 100% Buyer Guarantee promises that your transaction will be secure, that your tickets will be delivered before your event, and that those tickets will be valid and authentic. Your trust is our top priority, and this Guarantee is part of our commitment to ensuring the security of your purchase as well as your satisfaction and peace of mind. Click [here](http://www.vividseats.com/guarantee.html) to read more about the protection offered by our Buyer Guarantee!

## What is the secondary market? What is a resale marketplace?

Modified on: Fri, 6 Nov, 2015 at 2:20 PM

Vivid Seats is a resale marketplace, which means we operate on the secondary or "resale" market; an industry defined by a collection of tickets listed by professional and independent resellers. This means we do not own or generate tickets as a team or venue box office would; rather, we list and sell tickets from verified resellers.

The secondary market is a "live marketplace" where ticket prices and availability change constantly based on the supply and demand of interested fans. Therefore, the prices of any tickets listed for sale may be above or below the printed "face value," or the price originally assigned to and often printed on those tickets. Due to the nature of the ticket industry, tickets are subject to availability; this fact is noted in our [Sales Terms \(http://www.vividseats.com/forms.html\)](http://www.vividseats.com/forms.html). All orders are considered requests until the respective seller confirms availability of the tickets. At that point, our **100% Buyer Guarantee** goes into effect.

# ANNEX A-2

# VIVIDSEATS

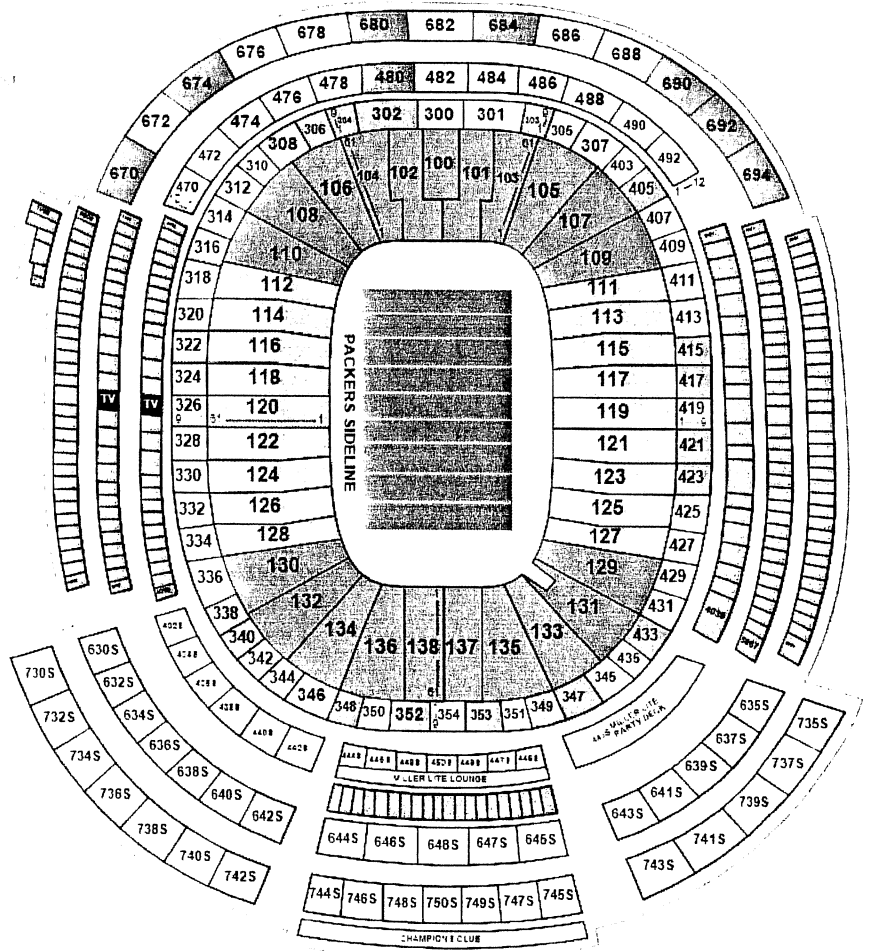
## DETROIT LIONS AT GREEN BAY PACKERS

NOTE: Prices set by seller. May include face value seats and other charges. See listing for details.

Price: \$172.00 \$194.11 Group Selector

Help Center Lambeau Field Guide

SECTION 716S ROW 4	✓	\$172.00	BUY
UPPER LEVEL 347 ROW 5	✓	\$181.00	BUY
UPPER LEVEL 308 ROW 9	✓	\$190.00	BUY
LOWER LEVEL 110 ROW 9	✓	\$201.00	BUY
LOWER LEVEL 100 ROW 11	✓	\$210.00	BUY
LOWER LEVEL 104 ROW 11	✓	\$210.00	BUY
LOWER LEVEL 138 ROW 10	✓	\$212.00	BUY
LOWER LEVEL 112 ROW 15	✓	\$215.00	BUY
LOWER LEVEL 101 ROW 15	✓	\$220.00	BUY
LOWER LEVEL 104 ROW 20	✓	\$220.00	BUY
LOWER LEVEL 104 ROW 21	✓	\$220.00	BUY
LOWER LEVEL 105 ROW 24	✓	\$220.00	BUY
LOWER LEVEL 138 ROW 20	✓	\$220.00	BUY
LOWER LEVEL 114 ROW 21	✓	\$220.00	BUY
LOWER LEVEL 114 ROW 22	✓	\$220.00	BUY



# VIVIDSEATS



Home | My Account | My Orders | My Cart

My Account Register

My Account My Account Register

My Account

- [My Account My Account Register](#)

[My Account My Account Register](#)

**SECURE CHECKOUT**

## ORDER SUMMARY

My Account My Account Register

My Account

My Account My Account Register

My Account

Quantity

My Account My Account Register

## Payment Information & Secure

My Account My Account Register

My Account My Account Register



vividseats.com



americanexpress.com

# VIVIDSEATS



CHECKOUT

Home

My Account

My Cart

## 2. Shipping & Delivery

### SHIPPING & DELIVERY

Delivery Country



Delivery Method



Shipping to a different address than your account address? [Click here to create a new address.](#)

A signature may be required for delivery.

Shipping Address

• [Add a new address](#)

First Name

Last Name

City

Address

State

Zip

Country

Phone

or

Mobile

Company

Business

Phone

Company

or

Mobile

CONTINUE

### Your information is secure ✓

Our payment processors use industry-standard encryption to protect your information. We never store your credit card information on our servers.

For more information, please visit our [Privacy Policy](#).



# VIVIDSEATS



CHECKOUT

View Cart | My Account | Live Chat

## 3. Billing Information

### PAYMENT TYPE & BILLING

Payment Method

Card

Account

CONTINUE

### Your information is Secure ✓

Your payment information is protected by a secure connection. We use the latest security technology to protect your information. All information is encrypted and stored securely.

For more information, please visit our privacy policy page.



CHECKOUT

Need Assistance? [View All Tickets](#) [Live Chat](#)

1 Place Order

ORDER SUMMARY

PAYMENT

**Amex Express**  
 Card Number:   
 Exp. Date:  /   
 Cardholder Name:   
 Billing Address:   
 City:  State:  Zip:   
 Phone Number:

Event: **Justin Bieber - Believe Live**  
Date: **Friday, December 25, 2015 10:00 PM**

**Ticket Details**  
Section: **Lower Level 110**  
Row: **59**  
Price: **\$201.00 each**

Quantity:   
 **View Details**  
 **View All Available Seats**

**Ticket Total: \$201.00**  
**Service Total: \$60.25**  
**RS, US, Canada: \$20.47**

**Total Charge: \$281.72**

CREATE ACCOUNT

Password:   
 Retype password:

Your Information is Secure

The information you enter on our website is protected using SSL encryption. SSL is the same technology that protects your online banking information and helps keep your information safe and secure.

Vivid Seats does not rent, sell, or disclose your personal information to third parties. To learn more, visit our Privacy Policy.

EVENT TICKET INSURANCE

Get reimbursed up to 133% with Event Ticket Insurance. You can insure an unlimited number of events. It covers lost, stolen, rescheduled, canceled, and other events and provides up to 133% of the face value of the ticket to you.

Protect your purchase:  Add Event Ticket Insurance for an extra \$16.17 (133% of the face value of the ticket)

Terms, conditions and exclusions apply. Please read our policy before purchasing. Insurance provided by American Family Life Insurance Company. US State of NY. State licensed insurance broker and provider of insurance. Insurance is not available in all states.

REVIEW & PLACE ORDER

Please review your order details and confirm that the purchase is correct by clicking on the "Place Order" button. All prices in US Dollars. All sales are final.

By clicking "Place Order" you consent and will be charged \$281.72

**Place Order**

# **ANNEX A-3**

[VIVID SEATS](#)

[About Us](#)

[Experience Vivid Seats](#)

[Buyer Guarantee](#)

[Is Vivid Seats Legitimate?](#)

[Vivid Seats App](#)

[BBB Rating](#)

[Contact Customer Service](#)

[Customer Testimonials](#)

[Company Reviews](#)

[Corporate Careers](#)

[Operations Careers](#)

[FAQs](#)

[Press](#)

[Data Resource](#)

[Partners](#)

[Affiliate/White Label Program](#)

[Corporate Ticket Program](#)

[Giveback Nonprofit Program](#)

[Vivid Values Rewards Program](#)

[Sales Terms](#)

[Privacy Policy](#)

[Site Map](#)

## SALES TERMS & CONDITIONS

Our goal is to make your search and purchasing experience as easy and efficient as possible. These Sales Terms and Conditions ("Sales Terms") govern your use of Vivid Seats.com, our mobile application, or through our customer call center and your purchase of any product from Vivid Seats, Ltd. ("Vivid Seats"). By using or visiting this site, or purchasing tickets in any manner from the Vivid Seats Marketplace, you expressly agree to abide and be bound by these Sales Terms, as well as all applicable laws, ordinances and regulations. You represent that you are legally able to enter into a binding contract. If you are under the age of 18, then you may only use this site or our customer call center in conjunction with, and under the supervision of, a parent or guardian.

Below you will find the full Sales Terms, which include but are not limited to, the specific items below that we are highlighting for you:

- All orders placed on Vividseats.com or our customer call center must be confirmed by the respective seller before the Buyer Guarantee takes effect.
- Ticket prices may be above "face value" listed on the ticket (they may also be below "face value").
- Confirmed orders may be filled with comparable or upgraded tickets if the original tickets are no longer available.
- All sales are final; there are no cancellations, returns, or exchanges.
- If an event is canceled, you will be given a full refund. If an event is postponed or rescheduled, and the original tickets are valid for entry at the time of the rescheduled event, your order will not qualify for a refund.
- Our Buyer Guarantee provides for a full refund in the unlikely event that you do not receive valid tickets in time for you to attend your event.

### The Marketplace

Vivid Seats is acting as a ticket marketplace. This means that we are an intermediary between ticket buyers and ticket sellers, allowing ticket buyers to find tickets for all their favorite live events. It also means that the Vivid Seats Marketplace is not the ticket seller and the listed tickets are not listed by Vivid Seats on behalf of any venue, promoter, team, league or organizing group. Vivid Seats is not representing any official organizer of the events listed.

### Ticket Listings

Buyers may search Vividseats.com for a specific artist or team, event date or other search category. Each listing contains the event name, date, seat location, and price per ticket. Please note, the ticket price may be higher than the "face value" that appears on the ticket. The notes section of the listing, if present, highlights special characteristics of the tickets contained in the listing. Because you will have an opportunity to look at the tickets available for a particular event and determine which tickets to purchase, it is your responsibility to confirm any relevant details by contacting Vivid Seats. Vivid Seats does not guarantee the accuracy of any information provided by sellers on the Vivid Seats Marketplace.

### Selecting and Purchasing Tickets

Once you identify the tickets you would like to purchase, and select them, you will be directed through the checkout process where you will enter your name and address, and provide payment information. You will also be able to review the ticket details, total order price, and service and delivery fees. The total order value will include a service and delivery fee that is added by Vivid Seats to the price of the tickets set by the seller. The service and delivery fees cover the costs of company operations, including connecting buyers to sellers with premium inventory to listed events, premium customer service, website improvements, and safe and secure checkout and delivery of ordered tickets.

By placing an order, you authorize Vivid Seats to charge your method of payment for the total order amount. Your order is then sent to the seller for confirmation. The seller will confirm the tickets are still available and you will receive notification that the tickets will be delivered. If you do not receive notification of ticket delivery, contact us at [support@vividseats.com](mailto:support@vividseats.com) for assistance. Upon seller confirmation, your method of payment will be charged.

### Payment

By placing your order, you authorize Vivid Seats to charge your method of payment for the total amount, which includes the ticket price and service and delivery fees. We accept Visa, Mastercard, Discover, American Express and PayPal. In the event that you dispute a charge and it is determined that the charge was valid and not the result of credit card or other payment fraud, Vivid Seats has the right to seek payment, including all associated fees, by whatever means necessary, including using collection agencies and legal proceedings. Vivid Seats may also mitigate its damages by relisting and selling the tickets that are the subject of the underlying payment dispute.

### **Pricing Errors**

A large volume of tickets are listed on the Vivid Seats Marketplace and Vivid Seats makes every effort to prevent pricing errors. On rare occasions when pricing errors occur, Vivid Seats shall not be liable to the customer for this error. For the avoidance of doubt, if a ticket is subject to a pricing error, Vivid Seats may offer the tickets to you at the corrected price. If the corrected price is not acceptable to you, Vivid Seats will allow you to cancel your order.

### **Ticket Availability**

All orders are subject to ticket availability. Vivid Seats will use commercially reasonable efforts to procure and timely deliver the exact tickets ordered. If those tickets are no longer available, Vivid Seats reserves the right to replace tickets with comparable or upgraded tickets, at Vivid Seats reasonable discretion.

### **Delivery of Tickets**

Tickets may be delivered via Instant Download, Email, UPS, or Special Delivery for the charge stated during the checkout process. Some tickets are delivered by an alternative method which will be described at the time of checkout or in a subsequent email. For listings with no designated delivery method, tickets will typically be shipped by UPS. The delivery charge consists of the actual cost of delivery as well as a surcharge that supports Vivid Seats' safe and secure ticket delivery, whether electronic, via shipping, or otherwise.

Delivery will occur on or before the delivery date on the listing, regardless of delivery method. Special Delivery includes same day delivery and may include Will Call, onsite pick up at the venue, pick up from another designated location (typically within two (2) miles of the venue, if possible), or messenger service. The exact delivery location for Special Delivery orders will be designated by the seller.

Vivid Seats reserves the right to change the delivery method, at its sole discretion, and may deliver tickets for any order up to one (1) hour prior to the event start time listed on the tickets. If the delivery method changes at any time prior to delivery, Vivid Seats will not charge the buyer additional delivery fees. You must notify Vivid Seats if you do not receive your tickets within 48 hours of the event. If you do not timely notify Vivid Seats, you may not be eligible for a refund based on non-delivery of tickets. Photo ID or other verification may be required to accept delivery.

Tickets are typically delivered per this schedule unless the delivery date in the listing is a date in the future:

- Instant Download – Within a few minutes of placing the order.
- E-tickets – Within a few minutes of placing your order.
- Shipped – Arrive in 1-3 business days from placing the order.
- Special Delivery – at least one (1) hour before the scheduled event.

### **Ticket Holder Behavior Policy**

Attendees to live events must abide by the rules and policies of the venue, promoter and anyone else responsible for the event. Failure to follow such rules and policies may lead to consequences against you or the seller or original ticket holder. If you or another person using the ticket you purchased from Vivid Seats fails to abide by those rules and policies, you are responsible for all applicable fines and legal or other expenses associated therewith. If you are asked to leave the event or you miss part of the event due to suspected or confirmed inappropriate behavior, you will not qualify for a refund. Further, should any violation result in the loss of the ticket seller's season ticket rights or right to use any other tickets at that venue, or the right to purchase other tickets from that venue, you shall be held liable for all reasonable costs, expenses and losses associated with said loss including, but not limited to, all direct, indirect, vicarious, consequential, exemplary, incidental, special or punitive damages, including lost profits.

### **All Sales are Final**

**All sales are final.** No refunds will be given for any reason other than cancellation of the event or failure to timely deliver valid tickets. This policy is necessary because of our status as a live marketplace. When a purchase is confirmed, the seller removes the associated tickets from the seller's inventory. The pricing in the market also changes frequently and just as the seller is not permitted to decline to confirm an order in anticipation of the market going up, buyers are not permitted to return tickets or cancel an order due to the market price going down. A buyer may always sell their tickets on the Vivid Seats Marketplace if, after purchase, the buyer decides not to attend the event.

If Vivid Seats fails to deliver any ticket contracted for, then Vivid Seats' sole obligation or liability shall be limited to refunding the buyer any payments made to Vivid Seats under this Agreement. Vivid Seats reserves the right to cancel and refund the buyer's order at any time for any reason.

## **Cancelled or Postponed Events**

Vivid Seats will refund the purchase price, including delivery charges, for canceled events. To qualify for a refund, the buyer must return their tickets to Vivid Seats within 2 weeks of notice from Vivid Seats that the event is deemed "Cancelled". No refunds will be given without the original tickets, unless otherwise determined by Vivid Seats, in its sole discretion. Vivid Seats will determine when an event is canceled based upon the best information available. Postponed or rescheduled events will not be refunded.

Event date, times, venue and subject matter may change. We are not always notified if a show is postponed, rescheduled or canceled. It is the buyer's responsibility to monitor the event and to confirm any changes to the event with the entity putting on the event. In certain instances, a venue, promoter, or any entity putting on the event will require a ticket holder to relocate his or her seat. Vivid Seats shall not be held responsible for any such change and will not be obligated to provide a refund or any other compensation.

Vivid Seats, in its sole discretion, may cancel orders for a postponed event for any reason, including but not limited to a situation where the event may materially change when rescheduled (*i.e.* responsible to repay Vivid Seats for the full amount of the ticket(s) included in those cancelled orders).

## **Denial of Admission**

If you have difficulty gaining admission to an event, contact us immediately by calling 800.504.2851. If the issue you are experiencing is not resolved and you are denied admission, you must obtain proof from the venue verifying that you were denied entry and send that to Vivid Seats along with a statement describing the specific circumstances. Vivid Seats will provide you with a form to complete.

Upon receipt of the evidence and form, Vivid Seats will conduct an investigation. During that investigation, we will review the proof you submit and contact the seller. In the event that Vivid Seats determines that you were indeed denied entry, at no fault of your own, you will receive a full refund of the cost of the ticket including all fees and shipping charges, as the sole remedy. If the investigation results in a finding that you either did not attempt to use your tickets, you were granted entry, or your claim that you were denied entry has been found to be false, you will not be refunded and you may be subject to the consequences described below.

## **Lost, Stolen, or Damaged Tickets**

Please keep your tickets in a safe place. Vivid Seats is not responsible for lost, stolen, damaged or destroyed tickets and will not refund your order if you cannot locate your tickets once they are delivered to you. As stated above, Vivid Seats is a Marketplace and not associated with any venue so we do not generate tickets and cannot reissue replacements. Please note that direct sunlight or heat can damage certain types of tickets.

## **Privacy Policy**

Vivid Seats uses your information only as described in Vivid Seats' Privacy Policy. [View Privacy Policy](#)

## **Unlawful Activity**

Vivid Seats prohibits the use of its Marketplace, website, or mobile application for unlawful conduct. All users must comply with all local, state, federal and international laws, ordinances and regulations. By using this site, you agree not to use any false personal information or use an invalid or unauthorized credit or debit card. You agree not to use or permit anyone to use information provided through Vividseats.com for any unlawful or unauthorized purpose.

## **Investigations and Consequences**

Vivid Seats monitors compliance with these Sales Terms and investigates alleged violations and other complaints against users. This includes any attempt to defraud, or otherwise harm Vivid Seats or sellers on the Marketplace. You are required to cooperate in such investigations including, but not limited to, providing any and all information requested.

Following an investigation, or for any other reason, Vivid Seats may, without prior notice, enforce certain consequences for violations of the Sales Terms, attempts to harm Vivid Seats and/or sellers on the Marketplace, or failure to cooperate with an investigation. Such consequences include but are not limited to:

- Canceling confirmed orders
- Issuing a warning
- Suspending or terminating your account
- Denying access to the Vivid Seats Marketplace
- Rejecting pending orders
- Blocking future transactions
- Taking legal action such as filing civil or criminal charges, or seeking an injunction.

You agree that monetary damages may not provide a sufficient remedy to Vivid Seats for violations of these Sales Terms and that the damages and harm caused by such violation may lead to impaired good will, lost sales and increased expenses that are difficult to calculate. Accordingly, you consent to injunctive or other equitable relief for

such violati

Vivid Seats reserves the right to report to appropriate law enforcement authorities or other relevant third parties any activity that it believes, in its sole discretion, may in any way violate any local, state, federal or international law.

### **Intellectual Property Ownership**

The site, including all site software, databases, trademarks, logos, service marks, proprietary information and materials (and any intellectual property and other rights relating thereto) ("Vivid Seats' Property") is owned by Vivid Seats and will remain the property of Vivid Seats. Users of this site acknowledge that they do not acquire any ownership rights by using the site. Users may not use any Vivid Seats' Property in connection with any product or service that is not offered by Vivid Seats, in any manner that is likely to cause confusion with Vivid Seats' business, or in any manner that disparages Vivid Seats. Nothing contained on the site should be construed as granting, by implication, estoppel or otherwise, any license or right to use any Vivid Seats' Property without the express written permission of Vivid Seats.

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Vivid Seats respects the intellectual property of others, and we ask you to do the same. If you believe that your work has been copied in a way that constitutes copyright infringement, please provide our Copyright Agent with the following information: (a) an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest; (b) a description of the copyrighted work that you claim has been infringed; (c) a description of where the material that you claim is infringing is located on the site; (d) your address, telephone number and email address; (e) a statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; and (f) a statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf. Our Copyright Agent for notice of claims of copyright infringement can be reached at: Attn: Copyright Complaints 344 N Ogden Avenue, 4<sup>th</sup> Floor, Chicago, IL 60607 or [legal@vividseats.com](mailto:legal@vividseats.com).

### **Indemnification**

You agree to indemnify, defend and hold Vivid Seats, its parents, affiliates, licensors, suppliers, advertisers and sponsors, and their respective employees, consultants, agents and other representatives ("Indemnified Parties") harmless from and against any and all claims, damages, losses, costs (including reasonable attorneys' fees) and other expenses that arise directly or indirectly out of or from: (a) your breach of any of these terms and conditions; (b) any allegation that any information you submit or transmit to the site infringe or otherwise violates the copyright, trademark, trade secret or other intellectual property or other rights of any third party; (c) any federal, state, or county tax obligation or amounts due or owing under any tax regulation, law, order or decree or any dispute concerning the tax status of Vivid Seats; and/or (d) your activities in connection with your use of this site.

### **Disclaimers and Limitations on Liability**

#### **No Warranty**

THE SITE, THE MATERIALS ON THE SITE AND ANY TICKET OR SERVICE OBTAINED THROUGH THE SITE IS PROVIDED "AS IS" AND WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. VIVID SEATS DISCLAIMS, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SITE, THE MATERIALS, AND ANY TICKETS OR SERVICE OBTAINED THROUGH THE SITE, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES THAT MAY ARISE FROM COURSE OF DEALING OR USAGE OF TRADE. VIVID SEATS DOES NOT WARRANT THAT YOUR USE OF THE SITE WILL BE UNINTERRUPTED, ERROR-FREE OR SECURE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE SITE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. YOU ASSUME ALL RESPONSIBILITY AND RISK FOR YOUR USE OF THE SITE AND YOUR RELIANCE THEREON. VIVID SEATS IS NOT RESPONSIBLE IN ANY WAY FOR THE ACCURACY OR SUITABILITY OF ANY PAYMENT OF TAXES TO ANY ENTITY ON YOUR BEHALF. YOUR USE OF THE SITE AND ANY MATERIALS PROVIDED THROUGH THE SITE ARE ENTIRELY AT YOUR OWN RISK. YOU SHOULD USE YOUR BEST JUDGMENT AND EXERCISE CAUTION WHERE APPROPRIATE.

#### **Limitation of Liability**

NEITHER VIVID SEATS NOR ANY OTHER INDEMNIFIED PARTY OR USER WILL BE RESPONSIBLE OR LIABLE TO YOU OR TO ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, PUNITIVE OR OTHER DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS OR LOST PROFITS). UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY ARISING OUT OF OR RELATING IN ANY WAY TO THE SITE, THE MATERIALS ON THE SITE OR ANY TICKET OR SERVICE OBTAINED THROUGH THE SITE. WITHOUT LIMITING THE FOREGOING, YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT VIVID SEATS AND ANY OTHER INDEMNIFIED PARTY SHALL HAVE NO LIABILITY OR RESPONSIBILITY WHATSOEVER FOR: (I) ANY ACTION OF ANOTHER USER TO THE SITE; (II) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, WHETHER ARISING IN CONTRACT OR IN TORT, RESULTING FROM YOUR ACCESS TO AND USE OF THE SITE, INCLUDING ANY CLAIM, CAUSE OF ACTION, OBLIGATION, LIABILITY, RIGHT, OR REMEDY WHETHER OR NOT ARISING FROM THE NEGLIGENCE OF VIVID SEATS; (III) ANY UNAUTHORIZED ACCESS; (IV) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE SITE; (V) ANY BUGS, VIRUSES, WORMS, DEFECTS OR OTHER ITEMS OF A DESTRUCTIVE NATURE WHICH MAY BE TRANSMITTED TO OR THROUGH THE SITE BY ANY THIRD PARTY; (VI) ANY ERROR, MISTAKE, INACCURACY OR OMISSION IN ANY MATERIALS, OR FOR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF THE USE OF ANY MATERIALS AVAILABLE THROUGH THE SITE; AND/OR (VII) ANY LOST, STOLEN OR DAMAGED TICKETS. YOUR SOLE AND EXCLUSIVE REMEDY FOR DISSATISFACTION WITH THE SITE IS TO STOP USING THE SITE. THE MAXIMUM LIABILITY OF VIVID SEATS, AND ANY OTHER INDEMNIFIED PARTY, AND YOUR SOLE AND EXCLUSIVE REMEDY, FOR ALL DAMAGES, LOSSES SUFFERED BY YOU AND CAUSES OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE) OR OTHERWISE, SHALL BE THE TOTAL AMOUNT PAID BY YOU, IF ANY, TO ACCESS THE SITE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

#### **Arbitration and Dispute Resolution**

You and Vivid Seats each agree that any and all disputes, controversies, or claims arising out of or relating to: (i) these Sales Terms; (ii) your use of, or access to, this site; (iii) Vivid Seats' services; or (iv) any tickets or other items sold or purchased through this site shall be resolved exclusively through final and binding arbitration rather than in court. The Federal Arbitration Act governs the interpretation and enforcement of this agreement to arbitrate.

The arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve any dispute arising out of or relating to the interpretation, applicability, enforceability or formation of this agreement to arbitrate, any part of it, or of these Terms including, but not limited to, any claim that all or any part of this agreement to arbitrate or the Terms is void or voidable.

If either you or Vivid Seats intends to bring a claim against the other, that party must first send to the other, by certified mail, a completed Intent to Arbitrate Notice ("Intent Notice"). The Intent Notice to Vivid Seats should be sent to Vivid Seats, Ltd., Attention: Litigation Department, 344 North Ogden Avenue, 4th Floor, Chicago, Illinois 60607. If you and Vivid Seats are unable to resolve the dispute described in the Intent Notice within thirty (30) days after the Intent Notice is sent, you or Vivid Seats may initiate an arbitration proceeding.

The arbitration will be conducted by the American Arbitration Association ("AAA") in accordance with its Commercial Arbitration Rules, as modified by this agreement to arbitrate. The AAA's rules are available at [www.adr.org](http://www.adr.org). A form for initiating arbitration proceedings, Demand for Arbitration, is available on the AAA's website. In addition to filing the Demand for Arbitration with the AAA, in accordance with its rules and procedures, you must send a copy of the completed form to Vivid Seats at the following address: Vivid Seats, Ltd., Attention: Litigation Department, 344 North Ogden Avenue, 4th Floor, Chicago, Illinois 60607.

Payment of all filing, administration and arbitrator fees will be governed by the AAA's rules, unless otherwise stated in this agreement to arbitrate. If the value of the relief sought is \$10,000 or less, at your request, Vivid Seats will pay all filing, administrative and arbitrator fees associated with the arbitration. Any request for payment of fees by Vivid Seats should be submitted by mail to the AAA along with the Demand for Arbitration and Vivid Seats will make arrangements to pay all necessary fees directly to the AAA. In the event the arbitrator determines the claim you asserted in the arbitration to be frivolous or brought for an improper purpose, you agree to reimburse Vivid Seats for all fees associated with the arbitration paid by Vivid Seats.

The arbitrator will decide the substance of all claims in accordance with the laws of the State of Illinois. The arbitrator's award shall be final and binding, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

You can choose to reject this agreement to arbitrate. If you do not wish to be bound by this agreement to arbitrate, you must notify Vivid Seats in writing within thirty (30) days of the date that you first access the site. Your written notification must include your name and address, as well as a clear statement that you do not wish to resolve disputes with Vivid Seats through arbitration. Written notification should be mailed by certified mail to: Vivid Seats, Ltd., Attention: Litigation Department, 344 North Ogden Avenue, 4th floor, Chicago, Illinois 60607.

YOU AND VIVID SEATS AGREE THAT EACH MAY ONLY BRING CLAIMS AGAINST THE OTHER ON AN INDIVIDUAL BASIS AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE ACTION OR PROCEEDING UNLESS BOTH YOU AND VIVID SEATS ACKNOWLEDGE AND



AGREE THAT THE WAIVER IS MATERIAL AND ESSENTIAL TO THE ARBITRATION OF ANY DISPUTES BETWEEN THE PARTIES AND IS NON-SEVERABLE FROM THE AGREEMENT TO ARBITRATE CLAIMS. IF THE WAIVER IS LIMITED, VOIDED OR FOUND UNENFORCEABLE, THEN THE PARTIES' AGREEMENT TO ARBITRATE SHALL BE NULL AND VOID WITH RESPECT TO SUCH PROCEEDING, SUBJECT TO THE RIGHT TO APPEAL THE LIMITATION OR INVALIDATION OF THE WAIVER. UNLESS YOU AND VIVID SEATS AGREE OTHERWISE, THE ARBITRATOR MAY NOT CONSOLIDATE OR JOIN MORE THAN ONE PERSON'S OR PARTY'S CLAIMS, AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A CONSOLIDATED, REPRESENTATIVE, OR CLASS PROCEEDING. ALSO, THE ARBITRATOR MAY AWARD RELIEF (INCLUDING MONETARY, INJUNCTIVE, AND DECLARATORY RELIEF) ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF NECESSITATED BY THAT PARTY'S INDIVIDUAL CLAIMS. ANY RELIEF AWARDED CANNOT AFFECT OTHER VIVID SEATS' USERS.

Pursuant to 815 ILCS 414/1.5(c), for transactions involving tickets to events in Illinois, You or ticket sellers may elect to submit complaints against one another to the American Arbitration Association ('AAA') under its rules and procedures. The AAA's rules are available at [www.adr.org](http://www.adr.org). Such complaints shall be decided by an independent arbitrator in accordance with these Sales Terms and other Terms and Conditions of using this Marketplace. You and ticket sellers also agree to submit to the jurisdiction of the State of Illinois for complaints involving a ticketed event held in Illinois.

#### **Modification**

Vivid Seats has the right, in its sole discretion, to modify, suspend or discontinue any part of this site at any time, with or without notice.

#### **Changes in Terms and Conditions**

Vivid Seats reserves the right, in its sole discretion, to change these Terms at any time. If Vivid Seats changes any term or condition, said modification, revision and additional information shall be posted here and shall automatically replace the terms and conditions and become binding on all users of this site. Your continued use of the site following Vivid Seats' posting of revised terms and conditions constitute your acceptance of the revised agreement.

#### **Force Majeure**

Vivid Seats shall not be deemed in default or otherwise liable under these Terms due to its inability to perform its obligations by reason of any act of God, fire, earthquake, blizzard, flood, epidemic, accident, explosion, casualty, strike, lockout, labor controversy, riot, civil disturbance, act of public enemy, embargo, war, any law ordinance or regulation, legal order (unless caused by Vivid Seats' default hereunder), any failure or delay of any transportation, power, or communications system or any other similar cause not under Vivid Seats' control.

#### **Allocation of Risk**

You acknowledge and agree that the foregoing disclaimers and limitations of liability represent bargained for allocations of risk and that the pricing and other terms and conditions of this agreement reflect such allocation of risk.

#### **Additional Provisions**

No agency, partnership, joint venture or other relationship is intended or created by your use of the site.

If any provision of these Terms is held invalid or unenforceable under any circumstance, its application in any other circumstances and the remaining provisions shall not be affected. Further, the provision that has been deemed to be invalid or ineffective shall be enforced to the greatest extent permitted by law.

The heading at the beginning of each paragraph is for reference purposes and no way defines the scope or extent of such paragraph.

**NOTICE OF PRESENTATION**

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Ticketmaster Canada ULC,  
Ticketmaster Canada Holdings  
ULC, Ticketmaster Entertainment  
LLC and TNOW Entertainment  
Groupe Inc.

**TAKE NOTICE** that the Application for Authorization to Examine the Petitioner of Vivid Seats, LLC will be presented for adjudication before this Honourable Court, at a date, time and place to be determined by the Honourable Kirkland Casgrain, S.C.J., at the Montreal Courthouse located at 1, Notre-Dame Street East, Montreal (Quebec) H2Y 1B6.

DO GOVERN YOURSELVES ACCORDINGLY.

Montreal, August 26, 2016



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Attorneys for Vivid Seats LLC

Our reference : BH 0834

No. 500-06-000754-156

SUPERIOR COURT  
PROVINCE OF QUÉBEC  
DISTRICT OF

STEVE ABIHSIRA

Petitioner

vs.

STUBHUB, INC ET AL

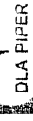
Respondents

APPLICATION BY RESPONDENT VIVID  
SEATS, LLC FOR AUTHORIZATION TO  
SUBMIT RELEVANT EVIDENCE  
(Art. 574 C.C.Q.) AND ANNEXES 1 to 1-3  
AND NOTICE OF PRESENTATION

ORIGINAL

Mtre Lucy-Maude Lachance O/F: 16525-00001

1501, McGill College Ave., Suite 1400  
Montréal (Québec) H3A 3M8  
Phone: (514) 392-8419  
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BH 0834

**MÉMO DE TRANSMISSION**

DATE : Le 26 août 2016

# DOSSIER : 16525-00001

# CAUSE : 500-06-000754-156

DE : (VOTRE NOM) *Lucy-Maude Lachance*

VOTRE # DE TÉL. : *514-392-8445*

**SIGNIFICATIONS ET OU EXÉCUTIONS :**

AUJOURD'HUI SANS FAUTE \_\_\_\_\_

DEMAIN SANS FAUTE \_\_\_\_\_

AU PLUS TARD LE / / \_\_\_\_\_

RÉGULIER \_\_\_\_\_

ÉMETTRE AUJ. SANS FAUTE \_\_\_\_\_

ÉMETTRE DEMAIN SANS FAUTE \_\_\_\_\_

AU PLUS TARD LE / / \_\_\_\_\_

RÉGULIER \_\_\_\_\_

PRODUIRE AUJ. SANS FAUTE \_\_\_\_\_ ✓

DEMAIN SANS FAUTE \_\_\_\_\_

AU PLUS TARD LE / / \_\_\_\_\_

RÉGULIER \_\_\_\_\_

TIMBRER \_\_\_\_\_

ABRÉGER DÉLAIS AUJ. SANS FAUTE \_\_\_\_\_

ABRÉGER DÉLAIS DEMAIN \_\_\_\_\_

INSCRIRE AUJ. SANS FAUTE \_\_\_\_\_

INSCRIRE AU PLUS TARD LE / / \_\_\_\_\_

RÉGULIER \_\_\_\_\_

CONFIRMATION PAR FAX \_\_\_\_\_

CONFIRMATION PAR \_\_\_\_\_

COURRIEL \_\_\_\_\_

COMMENTAIRES : \_\_\_\_\_

## Wajnberg, Stephanie

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**From:** Microsoft Outlook  
**To:** eric.dunberry@nortonrosefulbright.com; henrisimon@simonlaw.ca; jzukran@simonlegal.ca; francois-david.pare@nortonrosefulbright.com; andres.garin@nortonrosefulbright.com; famine@millertomson.com; acgeorgescu@millertomson.com; krenno@renvath.com; mkrishtalka@renvath.com; ymartineau@stikeman.com; mangelus@stikeman.com; mldelisle@woods.qc.ca; crichter@woods.qc.ca  
**Sent:** August-26-2016 3:24 PM  
**Subject:** Relayed: NOTIFICATION PAR COURRIER ÉLECTRONIQUE (Art. 134 of the Civil Code of Procedure) - S.C.M.: 500-06-000754-156 - Steve Abihira v. Stubhub, Inc. et al - APPLICATION BY RESPONDENT VIVID SEATS, LLC FOR AUTHORIZATION TO SUBMIT RELEVANT EVIDENCE (Art...

**Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:**

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Subject: NOTIFICATION PAR COURRIER ÉLECTRONIQUE (Art. 134 of the Civil Code of Procedure) - S.C.M.: 500-06-000754-156 - Steve Abihira v. Stubhub, Inc. et al -APPLICATION BY RESPONDENT VIVID SEATS, LLC FOR AUTHORIZATION TO SUBMIT RELEVANT EVIDENCE (Art. 574 CCP)