

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

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

NO: 500-06-000865-176

MOSHE CHETRIT

Representative Plaintiff

vs.

SOCIÉTÉ EN COMMANDITE TOURAM

Defendant

APPLICATION FOR APPROVAL OF NOTICES TO CLASS MEMBERS OF A
SETTLEMENT APPROVAL HEARING
(Arts. 25, 49, 576, 579, 581 and 590 C.C.P.)

TO THE HONORABLE PIERRE-C. GAGNON OF THE SUPERIOR COURT OF
QUÉBEC, ACTING AS THE DESIGNATED JUDGE IN THE PRESENT CASE, THE
REPRESENTATIVE PLAINTIFF SUBMITS THE FOLLOWING:

I. OBJECT OF THIS APPLICATION

1. On September 25th and October 1st 2019, the parties signed a Transaction to resolve the present class action and are asking this Court to approve the form, content and method of dissemination of the pre-approval notices to Class Members, including the opt-out deadline;

II. PROCEDURAL CONTEXT

2. On June 6, 2017, the Representative Plaintiff filed an application against the Defendant (hereinafter "**Touram**") seeking authorization to institute a class proceeding and to be appointed Representative Plaintiff of the following class of persons:

All consumers within the meaning of Quebec's Consumer Protection Act who, from April 19th to 20th, 2016 (the "Class Period"), purchased a vacation package (flight, hotel, or both) from Defendant, and who, after receiving a purchase confirmation from Defendant at the price which Defendant initially advertised, subsequently had their purchase

cancelled by Defendant, who did not respect the price it initially advertised.

3. The Representative Plaintiff alleged that Touram violated paragraph c of section 224 of Quebec's *Consumer Protection Act* (the "CPA"), by cancelling the vacation packages that he and others purchased on April 19th and 20th, 2016. Plaintiff further alleged that Touram failed to fulfill its obligations under sections 10, 12, 16 and 54.1 CPA, by cancelling consumers' orders and refusing to deliver vacation packages validly purchased;
4. On September 12, 2017, by consent of the parties, the Court authorized the class action on behalf of the class described below and stayed the present matter, including the notices to Class members, until a final and enforceable judgment is rendered on the merits in the case of *Hurst v. Air Canada* (C.S.M. no.: 500-06-000756-151):

All consumers within the meaning of Quebec's *Consumer Protection Act* who, from April 19th to 20th, 2016 (the "Class Period"), purchased a vacation package (flight, hotel, or both) from Defendant, and who, after receiving a purchase confirmation from Defendant at the price which Defendant initially advertised, subsequently had their purchase cancelled by Defendant.

5. On February 6th, 2019, two (2) individuals contacted Class Counsel in writing to exclude themselves from this class action, as it appears from the Court record;
6. On April 24th, 2019, the Court reactivated the present class action given that a transaction had recently been reached in *Hurst*;
7. On May 27th, 2019, Touram filed an Answer to Summons stating its intention to defend against the class action;
8. On June 28th, 2019, the Representative Plaintiff notified and subsequently filed his Originating Application, as it appears from the Court record;
9. On July 19th, 2019, the parties informed the Court that a settlement was reached in the present file;

III. PROPOSED SETTLEMENT

10. The Representative Plaintiff and Touram have reached an agreement to settle the present matter, as it appears from an executed copy of the proposed Transaction and its French translation filed herewith *en liasse* as **Exhibit A-1**;
11. The settlement has a total gross value of \$83,213.83 as detailed at paragraph 1.1(iv) of Exhibit A-1;

12. Pursuant to the Transaction, each Settlement Class Member is eligible to obtain \$587.23, less the percentage withheld by the *Fonds d'aide aux actions collectives* (if any), for each passenger on their cancelled Vacation Package reservation, which shall be paid in the form of cheques, as it appears from paragraph 2.2 of the Transaction, Exhibit A-1;

IV. NOTICE TO CLASS MEMBERS

13. The parties intend to file a joint application for the approval of the Transaction;
14. However, before the Court can approve the Transaction, the Class Members must be advised that a hearing will take place on the matter;
15. The proposed pre-approval notice to Class Members, filed herewith in its French and English versions as **Exhibit A-2**, has a specific purpose to inform the Class Members of the following, in conformity with articles 579 and 590 of the *Code of civil procedure* ("CCP"):
 - a) the judgment authorizing the class action and the definition of the Class;
 - b) the existence of the Transaction and the fact that it will be submitted to the Court for approval, specifying the date and place of the approval hearing;
 - c) the nature of the Transaction, including the compensation offered to Class Members and the payment of class counsel fees;
 - d) the contact information of the Representative Plaintiff's lawyer;
 - e) the consequences and effects of the approval of the Transaction by the Court with respect to the release and discharge of Touram from all Class Members;
 - f) the possibility for the Class Members to make objections or other representations at the hearing for the approval of the Transaction;
 - g) the right of Class Members to opt-out of the class action and the delays for doing so; and
 - h) that class members have the right to seek intervenor status in the class action.
16. The parties have agreed that the pre-approval notice required pursuant to articles 579 and 590 CCP will be sent by email directly to each Class Member, as detailed at paragraph 3.1 of the Transaction. To the extent an email address is no longer valid, Touram shall send the notice by regular mail to the potential Settlement Class Member(s) at the address they provided when purchasing the Vacation Package (paragraph 3.2);

17. The parties therefore request that this Court approve the form and content of the pre-approval notices (Exhibit A-2), in both its English and French version, and the proposed modes of distribution;
18. The parties request that this Court set the time limit for Class Members to file objections to Court approval of the Transaction at fifteen (15) days before the final approval hearing;
19. The parties request that this Court set the time limit for Class Members to opt-out of the class action at thirty-five (35) days after the notification via email of the pre-approval notices to the Group Members;
20. The present application is in the interests of justice and of the Class Members.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

<p>[21] APPROUVER la forme, le contenu et le mode de dissémination des avis aux membres du groupe, dans ses versions française et anglaise (Pièce A-2);</p>	<p>[21] APPROVE the form, content and mode of dissemination of the pre-approval notice to Class Members, in its French and English version (Exhibit A-2);</p>
<p>[22] DÉCLARER que les Membres du Groupe désirant s'opposer à l'approbation par le Tribunal de la Transaction devront procéder de la manière prévue dans l'avis de préapprobation (Pièce A-2), à une date à être déterminée par le Tribunal;</p>	<p>[22] DECLARE that Class Members who wish to object to Court approval of the Transaction must do so in the manner provided for in the pre-approval notice (Exhibit A-2), on or before a date to be determined by the Court;</p>
<p>[23] DÉCLARER que les Membres du Groupe désirant s'exclure de l'action collective et de l'application de la Transaction devront transmettre un avis écrit confirmant leur intention de s'exclure du Groupe de la manière prévue dans l'avis de pré-approbation (Pièce A-2), à une date à être déterminée par le Tribunal;</p>	<p>[23] DECLARE that Class Members who wish to opt-out from the class action and the Transaction thereof may do so by delivering a written notice confirming their intention to opt-out of this class action, in the manner provided for in the pre-approval notice (Exhibit A-2), on or before a date to be determined by the Court;</p>
<p>[24] DÉCLARER que les Membres du Groupe qui n'auront pas requis leur exclusion du Groupe seront liés par tout jugement à être rendu quant à la présente action collective à être instituée conformément à la loi;</p>	<p>[24] DECLARE that all Class Members that have not requested their exclusion be bound by any judgement to be rendered on the class action to be instituted in the manner provided for by the law;</p>
<p>[25] FIXER la présentation de la Demande pour approbation de la Transaction à une date à être déterminée en salle 1.156 du</p>	<p>[25] SCHEDULE the presentation of the Application for Approval of the Transaction on a date to be determined, in room 1.156</p>

Palais de Justice de Montréal;	of the Montréal courthouse;
[26] LE TOUT , sans frais.	[26] THE WHOLE , without costs.

Montreal, October 7th, 2019

(s) LPC Avocat Inc.

LPC AVOCAT INC.

Per: Mtre Joey Zukran

Attorney for Representative Plaintiff

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Defendant

LIST OF EXHIBITS

- Exhibit A-1:** *En liasse*, copy of the executed Transaction between the parties on September 25th and October 1st, 2019 and a copy of its French translation;
- Exhibit A-2:** *En liasse*, copies of the proposed pre-approval notices in English and French.

Montreal, October 7th, 2019

(s) *LPC Avocat Inc.*

LPC AVOCAT INC.
Per: Mtre Joey Zukran
Attorney for Representative Plaintiff

NOTICE OF PRESENTATION

TO: Me Simon J. Seida
Me Robert Torralbo
Blake, Cassels & Graydon
S.E.N.C.R.L./s.r.l.
simon.seida@blakes.com
For Touram

Me Frikia Belogbi
Fonds d'aide aux actions collectives
frikia.belogbi@justice.gouv.qc.ca

TAKE NOTICE that the present *Application for Approval of Notice to Class Members of a Settlement Approval Hearing* shall be presented for adjudication before the Honourable Pierre-C. Gagnon, J.S.C., at a date, time and location to be determined by the Court.

Montreal, October 7th, 2019

(s) LPC Avocat Inc.

LPC AVOCAT INC.

Per: Mtre Joey Zukran
Attorney for Representative Plaintiff

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DISTRICT OF MONTREAL

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N/D : JZ-152
