

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Class Action)

NO: 500-06-000884-177

MARTIN PREISLER-BANOON

Representative Plaintiff

v.

AIRBNB IRELAND UC

and

AIRBNB, INC.

and

AIRBNB PAYMENTS UK LTD.

Defendants

and

FONDS D'AIDE AUX ACTIONS
COLLECTIVES

Impleaded Party

APPLICATION TO APPROVE A CLASS ACTION SETTLEMENT

(Articles 590 and 591 C.C.P., article 58 of the *Regulation of the Superior Court of Québec in civil matters*, CQLR c C-25.01, r 0.2.1, and article 32 of the *Act Respecting the Fonds d'aide aux actions collectives*, ch. F- 3.2.0.1.1)

TO THE HONOURABLE LUKASZ GRANOSIK OF THE SUPERIOR COURT OF QUEBEC, DESIGNATED JUDGE IN THE PRESENT CASE, THE REPRESENTATIVE PLAINTIFF AND HIS COUNSEL SUBMIT THE FOLLOWING:

I. INTRODUCTION

1. On September 23rd, 2019, the Court authorized the class action for settlement purposes only against the Defendants Airbnb Ireland UC., Airbnb Inc. and Airbnb Payments UK LTD. (hereinafter "**Airbnb**") and approved the notice program set out at paragraphs 16 and 17 of the Transaction Agreement, disclosed herewith as **Exhibit R-1**;

2. The class was described the Class Members as follows in the authorization judgment:

In English:

Every person residing in Quebec, who between August 22nd, 2014 and June 26th, 2019, while located in the province of Quebec, made a booking for anywhere in the world, for a purpose other than business travel, using Airbnb's websites and/or mobile application and who paid a price higher than the price initially advertised by Airbnb (excluding the QST or the GST);

In French:

Tous les résidents du Québec qui, entre le 22 août 2014 et le 26 juin 2019, alors qu'ils se trouvaient dans la province de Québec, ont effectué une réservation d'un séjour n'importe où dans le monde en utilisant l'application mobile ou le site web de Airbnb, pour des fins autres que d'affaires, et qui ont payé un prix supérieur au prix initialement affiché par Airbnb (à l'exclusion de la TVQ ou de la TPS);

3. The Notices were emailed directly to all Class Members in accordance with the notice program approved by the Court, as it appears from a copy of the Claim's Administrator's report disclosed herewith as **Exhibit R-2**;
4. As appears from the Claim's Administrator's report, Exhibit R-2, the Claims Administrator sent Pre-Approval Notices by email to all of the email addresses that Airbnb provided according to its records, representing the Credit Eligible Members, and received notice that only 1.42% of those emails had bounced back as undeliverable;
5. The Parties have determined that it is not reasonable, proportionate or economically efficient in the circumstances to make efforts to provide further notice of the settlement by other means or compensation to the relatively low number of Credit Eligible Members whose emails bounced back;
6. It is worth emphasizing that the value of the settlement is \$3 million and that the Transaction Agreement was negotiated in a way that encourages participation in the benefits of the settlement among active and traceable members (in this case 98.58% of emails did not bounce back and appear to be active and valid) and to provide *cy-près* benefits by payment to charity if a certain threshold of Credit Eligible Members do not claim the Credit;
7. A total of 27 "opt-outs" were received by Class Counsel, although one Class Member sent an email to Class Counsel stating that she wanted to be included in the Transaction Agreement after all (there are therefore 26 opt-outs), the whole

as it appears from copies of the exclusion requests received by Class Counsel via email or postal mail disclosed *en liasse* herewith as **Exhibit R-3**;

8. Two (2) Class Members each sent an email to Class Counsel raising their objections to the Transaction Agreement, as appears from copies of said emails disclosed *en liasse* herewith as **Exhibit R-4**;
9. The Parties have agreed on a draft of the Notice of Approval of the Transaction Agreement, with the French and English versions respectively disclosed herewith *en liasse* as **Exhibit R-5**;
10. For the reasons that follow, the Representative Plaintiff asks that this Court approve the Transaction Agreement;
11. For clarity, the request for approval of Class Counsel's fees and disbursements and for the Representative Plaintiff's indemnity, provided for respectively at sections 52 and 57 of the Transaction Agreement (both of which require Court approval pursuant to article 593 C.C.P. and which are **not** conditional upon the Court approving them in their entirety pursuant to section 3 of the Transaction Agreement), will be presented to this Honourable Court for approval at the hearing fixed for March 13th, 2020;

II. APPROVAL OF THE AIRBNB TRANSACTION AGREEMENT

12. The criteria which the case law has established for approval of a class action settlement are the following:
 - i) The probability of success;
 - ii) The amount and nature of discovery;
 - iii) The terms and conditions of the Settlement Agreement;
 - iv) The attorneys' recommendation and their experience;
 - v) Approval of the Plaintiff;
 - vi) The future expenses and probable length of the litigation;
 - vii) The number and nature of any opt-outs and/or objectors;
 - viii) Good faith of the parties and the absence of collusion;
13. The Representative Plaintiff submits that an analysis of all of these criteria should lead this Court to conclude that the Transaction Agreement is fair and reasonable and in the best interest of Class Members;

i. The Probability of Success:

14. While the Representative Plaintiff maintains that his action is well-founded, Airbnb vigorously denies his claims and allegations;
15. The Parties would have entered into a serious and contradictory debate as to whether Quebec's *Consumer Protection Act* applies in the circumstances and whether Airbnb committed the alleged violations of this Act;
16. It goes without saying that this debate would have extended to the Parties hiring experts and bringing in consumers to testify at trial in order to counter each other's claims;
17. There is always a risk that: i) the Court would not authorize the class action or it would not be successful on the merits; or ii) it would be a challenge to recover even if it were successful on the merits after many years of litigation, and this risk is abated through the Transaction Agreement which guarantees recovery to Class Members, as well a modification to the business practice of Airbnb which was implemented on June 26, 2019;
18. Lastly, if the Representative Plaintiff was successful in having the Class authorized and/or in the ensuing proceeding, Class Counsel is aware that Airbnb could very well have filed appeals in respect of multiple issues, thus resulting in increased risk and considerable delays. This issue is all the more pressing as article 578 of the *Code of Civil Procedure* gives defendants the right to apply for leave to appeal from a judgment authorizing a class action;

ii. The Amount and Nature of Discovery

19. The Representative Plaintiff and his attorneys were given access to and reviewed relevant information concerning Airbnb's sales figures to Class Members for bookings they made anywhere in the world using the Airbnb platform (on a confidential basis);
20. In reaching the terms of the Transaction Agreement, the following considerations were taken into account:
 - a) The Parties would have spent important resources and would have required complex expertise, including forensic accountants, to determine the aggregate amount of the alleged damages in this case;
 - b) The parties would have tendered a great deal of evidence on, among other things, the Class Members' physical location at the time they made their reservations (including cyber forensics and I.T. experts for when the booking was made by a Quebec user for accommodations listed on the Airbnb platform that are outside of the province of Quebec);

- c) All of this evidence would have been complicated to obtain, notably due to the fact that Airbnb had listings for thousands of accommodations around the world during the Class Period, not to mention the fact that Airbnb has always contended that: **i)** Airbnb is not a party to the accommodation agreements which are made directly between Hosts and Guests; **ii)** Airbnb does not own, operate nor manage the accommodations that Hosts list on the platform; **iii)** When a Guest searches for listings without dates, Airbnb displays listings that match the location and other initial parameters specified by the Guest based on the rates set by the Host but does not - and could not - provide exact accommodation fees until the Guest specifies their dates and, in certain cases, the number of people within their travelling party; and **iv)** all fees charged by Airbnb to Guests in connection with a reservation are disclosed prior to the Guest's creation of a booking request from the Listing Page.

- As alleged at **paragraphs 3, 19, 21 and 22** of the draft affidavit filed by Airbnb on January 19, 2018, disclosed herewith as **Exhibit R-6**;

iii. The Terms of the Transaction Agreement:

21. The Transaction Agreement is a favorable result for Class Members in that it provides for a resolution of the litigation and for the following noteworthy benefits:
- a) The settlement has a total gross value of \$3,000,000.00 as detailed at its section 7;
 - b) This is a real \$3 million value because instead of just “dumping” a smaller credit in a larger number of accounts (some of which may be inactive) section 40 of the Transaction Agreement provides that the remaining balance of the Gross Value of the Credits (the “Leftover Funds”) will be paid, less the amount of the *Fonds levy* payable from the Leftover Funds, on a *cy près* basis, to a charitable organization to be approved by the Court (in other words, there is no windfall for Airbnb if a low number of members claim the Credit, because the value of the unclaimed portion will be paid to a charity);
 - c) This way of proceeding ensures that Members are in fact compensated and provides a greater compensation to Class Members with active email accounts;
 - d) Compensation to Credit Claimed Members in the form of a Credit of up to \$45.00 applied to his or her Airbnb account, available to be redeemed automatically at their next check-out, as it appears from section 40 of the Transaction Agreement. This amount compares favourably with the

average service fee per booking on Airbnb (according to the confidential information provided by Airbnb);

- e) There are currently active listings on Airbnb's platform for accommodations in the city of Montreal for as low as \$15.00 per night (and many around the world in the same price range), as it appears from the screen capture taken on November 29, 2019 disclosed herewith as **Exhibit R-7**;
- f) The Credit is easy to claim, as no claim form is required. All a Member has to do is click on the hyperlink contained at the beginning of the Approval Notice email (Exhibit R-5). Each hyperlink is programmed with a unique code that will enable the Claim's Administrator to instantly know who has clicked on the hyperlink and transmit this data to Airbnb;
- g) The Credits will be added to the Credit Claimed Members account with Airbnb in such a way as to be automatically available for use at the checkout page when making a reservation anywhere in the world;
- h) For clarity, the Credits are not coupons, as there is no need to keep track of any coupon or code, and no need to redeem anything. The credit box will be pre-checked, so there is no positive action required in order for it to apply;
- i) The credits will expire after 24 months (but can be used for a booking that extends beyond this period, so long as it is *booked* within 24 months);
- j) There is no need for any of the Credit Eligible Members to produce invoices or a proof of purchase to claim compensation;
- k) There is no need for any of the Credit Eligible Members to prove that they were physically located in the province of Quebec when making their reservation to claim compensation;
- l) On June 26, 2019, Airbnb implemented a business practice change to their on-line transaction process (on its mobile application and desktop version) across Canada to make it clearer at the first step of said process that the price announced for an accommodation is a price inclusive of applicable Service Fees ("all-in"), except for taxes and optional costs or services, as it appears from the screen captures disclosed as **Exhibit R-8**;

iv. The Attorneys' Recommendations and their Experience:

- 22. Class Counsel's practice is focused entirely in the area of consumer class actions, as it appears from a copy of the firm's biography disclosed herewith as **Exhibit R-9**;

23. Class Counsel, has negotiated and recommended the terms and conditions of the Transaction Agreement;
24. Class Counsel believes that the Transaction Agreement adequately addresses concerns raised in initial Application to Authorize (compensation and behaviour modification), respects the rule of proportionality (the jurisprudence has recognized that it would cost \$3.00 to send cheques by mail and \$15.00 to re-issue these cheques once they expire after 6 months) and provides substantial relief and benefits to the Class Members in the circumstances and in light of the risks that would arise from continuing the litigation;

v. Approval of the Representative Plaintiff:

25. The Representative Plaintiff assisted in negotiating the terms of the settlement and then provided his instructions to enter into the Transaction Agreement on his own behalf and on behalf of the Class Members and signed the Transaction Agreement, as it appears from the Affidavit sworn by Mr. Preisler-Banoon on November 29th, 2019, disclosed herewith as **Exhibit R-10**;

vi. The Future Expenses and Probable Length of the Litigation:

26. If the case were to proceed in an adversarial fashion, there is no doubt that there would be protracted litigation and important costs;
27. In addition, it is safe to say that the present action would take several years to be decided on the merits and there would have been a possibility that a successful judgment could be brought into appeal, causing further delays;
28. Conversely, having obtained a settlement in the form of compensation and a business practice modification, relatively quickly, is in the interests of judicial economy, proportionality and a favorable result for Class Members;

vii. The Number and Nature of any Opt-Outs and/or Objectors:

29. Following the emailing of the Pre-Approval Notices to all of the Credit Eligible Members, a total of 27 "opt-outs" were received by Class Counsel (including the 3 that were sent directly to the Claims Administrator), Exhibit R-3;
30. Of the 27 opt-outs received, one person sent an email to Class Counsel stating that she wanted to finally be included in the Transaction Agreement (Exhibit R-3), so as of this date there is a total of 26 opt-outs from this settlement;
31. The deadline to opt-out was November 15th, 2019;
32. Two (2) Class Members sent emails to Class Counsel objecting to the Transaction Agreement on October 16th and November 28th, 2019 (Exhibit R-4);
33. The deadline to object to the settlement was on November 28th, 2019;

34. It is worth mentioning that more than thirty (30) other Class Members wrote to Class Counsel (or in some case to the Claim's Administrator) supporting the settlement (specifically the compensation in the form of a Credit), as it appears from copies of said emails disclosed *en liasse* **Exhibit R-11**;
35. On September 30th, 2019, the *Fonds d'aide* wrote to Class counsel advising that the only representations they intend on making concerns the Plaintiff indemnity provided for at section 57 of the Transaction (which shall be debated on March 13th, 2020) and we understand that the *Fonds d'aide* has no other objections or representations to make, as it appears from a copy of the letter communicated herewith as **Exhibit R-12**;

viii. Good Faith of the Parties and the Absence of Collusion:

36. The Transaction Agreement was negotiated at arm's-length and in utmost good faith by the parties;
37. The Transaction Agreement finally came following a full day at a CRA that was held on February 12th, 2019 and presided by retired Justice Daniel H. Tingley;
38. The negotiations were lengthy and frequently adversarial, lasting several months. In fact, the negotiations continued into the summer of 2019 and the final text of Transaction Agreement was signed in September 2019 (seven (7) months after the agreement in principle was entered into);

III. CONCLUSION

39. It is respectfully submitted that the Transaction Agreement is fair and reasonable and in the best interest of Class Members.

PAR CES MOTIFS, PLAISE AU TRIBUNAL :	FOR THESE REASONS, MAY IT PLEASE THE COURT TO:
[1] ACCUEILLIR la demande du Représentant en approbation de l'Entente de Règlement concernant les Défenderesses Airbnb Ireland UC., Airbnb Inc. and Airbnb Payments UK LTD.;	[1] GRANT Representative Plaintiff's Application to Approve the Transaction Agreement with respect to Defendants Airbnb Ireland UC., Airbnb Inc. and Airbnb Payments UK LTD.;
[2] DÉCLARER que les définitions contenues dans l'Entente de Règlement s'appliquent et sont incorporées au présent jugement, et en conséquence en font partie intégrante, étant entendu que les définitions lient les parties à l'Entente de Règlement;	[2] DECLARE that the definitions set forth in the Transaction Agreement apply to and are incorporated into this judgment, and as a consequence shall form an integral part thereof, being understood that the definitions are binding on the parties to the Transaction Agreement;

<p>[3] APPROUVER l'Entente de Règlement («Transaction Agreement») conformément à l'article 590 du <i>Code de procédure civile du Québec</i>, et ORDONNER aux parties de s'y conformer;</p>	<p>[3] APPROVE the Transaction Agreement as a transaction pursuant to article 590 of the <i>Code of Civil Procedure</i>, and ORDER the parties to abide by it;</p>
<p>[4] DÉCLARER que l'Entente de Règlement (incluant son préambule et ses annexes) est juste, raisonnable et qu'elle est dans le meilleur intérêt des Membres du Groupe et qu'elle constitue une transaction en vertu de l'article 2631 du <i>Code civil du Québec</i>, qui lie toutes les parties et tous les Membres du Groupe tel qu'énoncé aux présentes;</p>	<p>[4] DECLARE that the Transaction Agreement, (including its Preamble and its Schedules) is fair, reasonable and in the best interest of the Class Members and constitutes a transaction pursuant to article 2631 of the <i>Civil Code of Quebec</i>, which is binding upon all parties and all Class Members as set forth herein;</p>
<p>[5] ORDONNER ET DÉCLARER que le présent jugement, incluant l'Entente de Règlement, lie chaque Membre éligible au Crédit;</p>	<p>[5] ORDER AND DECLARE that this judgment, including the Transaction Agreement, shall be binding on every Credit Eligible Member;</p>
<p>[6] ORDONNER à Velvet Payments inc., l'Administrateur du Règlement, d'aviser chaque Membre Éligible au Crédit par courriel reproduisant l'Avis d'approbation, pièce R-5, dans les dix (10) jours suivant la Date d'entrée en vigueur du Règlement et d'envoyer en courriel de rappel 20 jours après, afin de les informer de l'approbation de l'Entente de Règlement et du délai pour réclamer leur Crédit;</p>	<p>[6] ORDER Velvet Payments Inc., the Settlement Administrator, to notify each Credit Eligible Member by email containing the Approval Notice, Exhibit R-5, within ten (10) days of the Effective Date of the Settlement and to send a reminder email 20 days thereafter, in order to inform them of the approval of the Transaction Agreement and the delay to claim their Credit;</p>
<p>[7] PERMETTRE aux avocats du groupe et au demandeur de présenter leurs demandes d'approbation des honoraires des avocats du groupe et d'approbation de l'indemnité au demandeur le 13 mars 2020;</p>	<p>[7] ALLOW Class Counsel and the Representative Plaintiff to present their Applications for Approval of Class Counsel Fees and for Approval of the Plaintiff's indemnity on March 13th, 2020;</p>
<p>[8] LE TOUT, sans frais de justice.</p>	<p>[8] THE WHOLE, without legal costs.</p>

Montreal, November 29th, 2019

(s) LPC Avocat Inc.

LPC AVOCAT INC.

Per: Mtre Joey Zukran

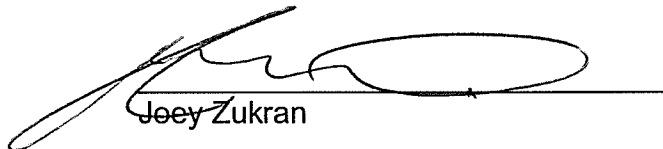
Attorney for Representative Plaintiff

AFFIDAVIT OF JOEY ZUKRAN

I, Joey Zukran, attorney, practicing my profession at 5800 Cavendish Boulevard, Suite 411, Montreal, Quebec, H4W 2T5, solemnly affirm:

1. That I am the attorney for the Representative Plaintiff in the present Action;
2. That I have taken cognizance of the Application attached and the facts alleged therein are accurate to the best of my knowledge;
3. That said Application is made in good faith.

AND I HAVE SIGNED



Joey Zukran

Solemnly affirmed before me at Montreal
this 29th day of November, 2019

Me Yolanda Rossano

YOLANDA ROMAN, avocate

284276-9

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

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**FONDS D'AIDE AUX ACTIONS
COLLECTIVES**

Impleaded Party

LIST OF EXHIBITS

- Exhibit R-1:** Copy of Transaction Agreement signed between the Parties;
- Exhibit R-2:** Copy of the Report prepared by the Claims Administrator dated November 28, 2019;
- Exhibit R-3:** *En liasse*, copies of emails sent to Class Counsel from Class Members requesting to opt-out of the class action;
- Exhibit R-4:** Copy of emails sent to Class Counsel from two (2) Class Members objecting to the settlement;
- Exhibit R-5:** *En liasse*, copies of Approval Notice in French and English;
- Exhibit R-6:** Copy of Airbnb's Application to adduce evidence, including the draft affidavit filed on January 19, 2018;

- Exhibit R-7:** Screen capture taken of the Airbnb platform on November 29, 2019 showing accommodations in the city of Montreal for as low as \$15.00 per night;
- Exhibit R-8:** *En liasse*, screen captures of Airbnb platform (desktop and mobile application) after June 26, 2019 practice change;
- Exhibit R-9:** Copy of the biography of LPC Avocat Inc.;
- Exhibit R-10:** Affidavit sworn by Martin Preisler-Banoon;
- Exhibit R-11:** *En liasse*, copies of emails from Class Members supporting the credit settlement;
- Exhibit R-12:** Copy of letter dated September 30th, 2019, from the *Fonds d'aide aux actions collectives*.

Montreal, November 29th, 2019

(s) LPC Avocat Inc.

LPC AVOCAT INC.

Per: Mtre Joey Zukran

Attorney for Representative Plaintiff

NOTICE OF PRESENTATION

TO: Mtre. Yves Martineau
Mtre. Jean-François Forget
Stikeman Elliott, SENCRL
ymartineau@stikeman.com
Attorneys for Airbnb Defendants

Me Frikia Belogbi
Fonds d'aide aux actions collectives
Palais de justice de Montréal
1, rue Notre-Dame Est, bureau 10.30
Montréal, Québec, H2Y 186
frikia.belogbi@justice.gouv.qc.ca

TAKE NOTICE that the present *Application to Approve a Class Action Settlement* shall be presented for adjudication before the Honourable Lukasz Granosik, J.S.C., on **December 3rd, at 9:00 a.m. in room 16.06**, in the Montreal Courthouse, situated at 1 Notre-Dame Street East, Montréal (Quebec), H2Y 1B6.

Montreal, November 29th, 2019

(s) LPC Avocat Inc.

LPC AVOCAT INC.

Per: Mtre Joey Zukran
Attorney for Representative Plaintiff

500-06-000884-177

(Class Action)
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ORIGINAL

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BL 6059

N/D: JZ-161
