

C A N A D A

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

SUPERIOR COURT  
(Class Action Division)

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NO: 500-06-000754-156

STEVE ABIHSIRA

Representative Plaintiff

-vs-

STUBHUB, INC.  
EBAY, INC.  
VIVID SEATS, LLC.  
SEATGEEK, INC.  
FANXCHANGE LIMITED  
TICKETNETWORK, INC.  
UBERSEAT

Settling Respondents

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**JOINT APPLICATION FOR APPROVAL OF NOTICES TO NEW CLASS MEMBERS OF  
A SETTLEMENT APPROVAL HEARING AND TO MODIFY THE CLASS DESCRIPTION**  
(Articles 25, 49, 581, 588 al. 2 and 590 C.C.P.)

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**TO THE HONORABLE PIERRE-C. GAGNON OF THE SUPERIOR COURT OF  
QUÉBEC, ACTING AS THE DESIGNATED JUDGE IN THE PRESENT CASE, THE  
PARTIES SUBMIT THE FOLLOWING:**

**I. CONTEXT**

1. On August 28<sup>th</sup>, 2015, the Representative Plaintiff filed an application against the Defendants seeking authorization to institute a class proceeding and to be appointed Representative Plaintiff;
2. The authorization hearing was fixed for September 19<sup>th</sup>, 2017, and the Parties exchanged argument plans on September 12<sup>th</sup>, 2017;
3. The Representative Plaintiff and Defendants StubHub Inc., eBay Inc., Vivid Seats LLC, SeatGeek Inc., FanXchange Limited, Ticketnetwork Inc. and Uberseat (the "**Settling Respondents**") initially agreed to settle the litigation just before the authorization hearing;
4. On January 24, 2018, the Court authorized the class action for settlement purposes only on behalf of the following class:

**English:**

Every consumer, pursuant to the terms of Quebec's *Consumer Protection Act* ("CPA"), residing in Quebec at the time of purchase, who since August 28<sup>th</sup>, 2012 (the "Class Period"), while physically located in Quebec, has purchased from any of the Respondents or the Vivid Seats Subsidiary Clients 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) either:

(a) at a price above that announced by the vendor authorized to sell the Tickets by the producer of the event; and/or,

(b) 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 Quebec sales tax or the Goods and Services Tax;

**French:**

Chaque consommateur, en vertu des modalités de la *Loi sur la protection du consommateur* du Québec (« LPC » ), résidant au Québec au moment de l'achat, qui depuis le 28 août 2012 (« Période visée par l'action collective » ), alors qu'il était physiquement situé au Québec, a acheté auprès d'une des Défenderesses ou des Clients de la filiale de Vivid Seats au moins un « Billet » (au sens défini dans l'alinéa 236.1 de la LPC, soit tout document ou instrument dont la présentation donne le droit à son détenteur d'être admis à un spectacle, à un évènement sportif, à un évènement culturel, à une exposition ou à tout autre divertissement de quelque nature que ce soit) soit :

(a) à un prix supérieur à celui annoncé par le vendeur autorisé par le producteur de l'évènement; et/ou,

(b) qui a payé un prix supérieur au prix annoncé par les Défenderesses sur leurs sites Web respectifs et/ou leurs applications mobiles respectives (à la première étape), compte non tenu de la taxe de vente du Québec ou de la taxe sur les produits et services;

5. In the same judgment, the Court also approved the form and content of the pre-approval notice to Class Members, in its French and English version (previously filed as Exhibit SVT-2) and ordered the Settling Respondents and the Claims Administrator, Collectiva Class Action Services Inc., to disseminate the pre-approval notices to Class Members;
6. In January of 2020, the parties executed a final Transaction Agreement, communicated herewith as **Exhibit SVT-4**;
7. As it appears from paragraph 40 of the Transaction Agreement, the pre-approval notices were sent to Eligible Members by the Settling Respondents and the Claims Administrator as per the January 24, 2018 judgment to known Eligible Members up until January 29, 2018;
8. The Transaction Agreement (Exhibit SVT-4) is more advantageous to Class Members than the previous version (Exhibit SVT-1) that was referred to in the January 24, 2018 judgment for which notices were sent to the then Class Members on January 29, 2018;
9. This Court has previously decided that a second notice is not required when the amendments to a transaction are not contrary to the interest of members (*Halfon c. Moose International Inc.*, 2017 QCCS 4300, para. 4; *Abihisira c. StubHub inc.*, C.S.M. no. 500-06-000754-156, Ordonnance de gestion du 28 juin 2019, Gagnon J., para. 8) and the Parties hereto agree that it is not necessary to send notices once again to everyone who received notice up until January 29, 2018;
10. Notwithstanding the preceding paragraph, the Transaction Agreement provides that new notices intended for new Members since January 29, 2018 up until the practice change dates listed at paragraph 7 of the Transaction Agreement (and reproduced below) must be approved by the Court and notified to new members who would have contracted with the Settling Respondents during the following periods:
  - (a) StubHub Inc.: between January 29, 2018 and October 18, 2019;
  - (b) Vivid Seats LLC: between January 29, 2018 and October 10, 2019;
  - (c) Vivid Seats' Subsidiary's Clients: between January 29, 2018 and October 10, 2019;
  - (d) FanXchange Limited: between January 29, 2018 and April 25, 2018;
  - (e) Ticketnetwork: between January 29, 2018 and November 15, 2019;
  - (f) Ticketnetwork-Third Party Marketers: between January 29, 2018 and November 15, 2019;
  - (g) SeatGeek (a.d.b.a UberSeat): between January 29, 2018 and September 18, 2019.

## **II. PROPOSED TRANSACTION**

11. Pursuant to the executed Transaction Agreement, each Eligible Quebec Member will automatically receive a CAD \$24.29 Credit from each Settling Respondent they contracted with during the Class Period, as detailed at paragraphs 8 and following of the Transaction Agreement;
12. The Transaction Agreement also provides that each Eligible International Member must submit a Claim online and would then receive a CAD \$24.29 Credit from each Settling Respondent they contracted with during the Class Period, as detailed at paragraphs 15 and following of the Transaction Agreement;
13. Pursuant to the definition of “Group” (page 5 of the Transaction Agreement), as well as paragraph 7 of the Transaction Agreement, the Class Period - which has heretofore been “open” – is now closed;

## **III. OBJECT OF THIS APPLICATION**

14. The Parties are asking this Court to:
  - a) approve the form and content of the pre-approval notice to new Class Members (i.e. those who contracted with any of the Settlements Respondents between the initial dissemination of notices on January 29, 2018 and the date of the respective practice change), including the objection and opt-out deadlines;
  - b) modify the class definition pursuant to article 588 al. 2. C.C.P. to refer to the practice change date for clarity;

## **IV. NEW NOTICE TO CLASS MEMBERS**

15. The parties intend to file a joint application for the approval of the Transaction Agreement;
16. However, before the Court can approve the Transaction Agreement, the members of the Class must be advised that a hearing will take place on the matter;
17. The proposed pre-approval notice to New Members since January 29, 2018, filed herewith in its French and English versions as **Exhibit SVT-5**, has a specific purpose to inform the Class Members of the following, in conformity with articles 579 and 590 CCP:
  - a) the judgment authorizing the class action for the sole purpose of the settlement and the definition of the Class;
  - b) the principal issues to be dealt with collectively and the conclusions sought in relation to those issues;

- c) the existence of the Transaction Agreement and the fact that it will be submitted to the Court for approval, specifying the date and place of the approval hearing;
  - d) the nature of the settlement, including the reparation offered to Class Members and the payment of the Class counsel fees;
  - e) the contact information of the Representative Plaintiff's lawyer, as well as the district in which the class action is to proceed;
  - f) the consequences and effects of the approval of the Transaction Agreement by the Court with respect to the release and discharge of Settling Respondents from Class Members;
  - g) the possibility for the Class Members to make objections or other representations at the hearing for the approval of the Transaction Agreement;
  - h) the right of Class Members to opt-out of the class action;
18. The Parties have agreed that the pre-approval notices required pursuant to articles 579 and 590 CCP will be sent by email directly to each Eligible Quebec Class Member by the Settling Respondents and by the Claims Administrator by email directly to each Eligible International Member, as detailed at paragraph 45 of the Transaction Agreement;
19. The Parties therefore request that this Court approve the form and content of the new pre-approval notice (Exhibit SVT-5), in both its English and French versions, and its proposed modes of distribution;
20. The Parties request that this Court set the time limit for new Class Members to file objections to Court approval of the Transaction Agreement at thirty (30) days after the date on which the new pre-approval notices are notified via email;
21. The parties request that this Court set the time limit for new Class Members to opt-out of the class action at thirty (30) days after the notification via email of the pre-approval notices to the new Class Members;

**V. MODIFICATION TO CLASS DEFINITION**

22. Article 588 al. 2 CCP allows the Court to modify the Class at any time "*if circumstances so require*";
23. Given that pursuant to the executed Transaction Agreement the class definition now has a defined start and end date, being the date of the practice change of each Settling Respondent (see definition of "Group" on page 5 and paragraph 7 of the Transaction Agreement), it is appropriate that these dates be reflected in the Class definition as follows:

**English:**

Every consumer, pursuant to the terms of Quebec's *Consumer Protection Act* ("**CPA**"), residing in Quebec at the time of purchase, who since August 28<sup>th</sup>, 2012 to the dates found at paragraph 7 of the Transaction for each Settling Respondent (the "**Class Period**"), while physically located in Quebec, has purchased from any of the Respondents, or Vivid Seats' Subsidiary's Clients, or the Ticketnetwork-Third Party Marketers, 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) either:

(a) at a price above that announced by the vendor authorized to sell the Tickets by the producer of the event; and/or,

(b) 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 Quebec sales tax or the Goods and Services Tax;

The dates of the practice change for each Settling Respondent referred to at paragraph 7 of the Transaction are:

- StubHub Inc.: October 18, 2019;
- Vivid Seats LLC and Vivid Seats' Subsidiary's Clients: October 10, 2019;
- FanXchange Limited: April 25, 2018;
- Ticketnetwork and Ticketnetwork-Third Party Marketers: November 15, 2019;
- SeatGeek (a.d.b.a UberSeat): September 18, 2019.

**French:**

Chaque consommateur, en vertu des modalités de la *Loi sur la protection du consommateur* du Québec (« **LPC** »), résidant au Québec au moment de l'achat, qui depuis le 28 août 2012 jusqu'aux dates figurant au paragraphe 7 de la Transaction pour chaque Défenderesse partie au règlement (« **Période visée par l'action collective** »), alors qu'il était

physiquement situé au Québec, a acheté auprès d'une des Défenderesses, ou des Clients de la filiale de Vivid Seats, ou des Distributeurs tiers de Ticketnetwork, au moins un « Billet » (au sens défini dans l'alinéa 236.1 de la LPC, soit tout document ou instrument dont la présentation donne le droit à son détenteur d'être admis à un spectacle, à un événement sportif, à un événement culturel, à une exposition ou à tout autre divertissement de quelque nature que ce soit) soit :

(a) à un prix supérieur à celui annoncé par le vendeur autorisé par le producteur de l'événement; et/ou,

(b) qui a payé un prix supérieur au prix annoncé par les Défenderesses sur leurs sites Web respectifs et/ou leurs applications mobiles respectives (à la première étape), compte non tenu de la taxe de vente du Québec ou de la taxe sur les produits et services;

Les dates auxquelles les Défenderesses parties au règlement ont mis en œuvre la modification de leur pratique commerciale mentionné au paragraphe 7 de la Transaction sont les suivantes :

- StubHub, inc. : 18 octobre 2019;
- Vivid Seats LLC et les Clients de la filiale de Vivid Seats : 10 octobre 2019;
- FanXchange Limited : 25 avril 2018;
- Ticketnetwork et les Distributeurs tiers de Ticketnetwork : 15 novembre 2019;
- SeatGeek (f.é.a.n. UberSeat) : 18 septembre 2019.

24. The present application is in the interests of justice and of the Class Members, and respects the principle of proportionality.

<b>PAR CES MOTIFS, PLAISE AU TRIBUNAL :</b>	<b>FOR THESE REASONS, MAY IT PLEASE THE COURT TO:</b>
<b>[1] MODIFIER</b> la définition du groupe pour lire comme suit:  « Chaque consommateur, en vertu des modalités de la Loi sur la protection du consommateur du Québec (« <b>LPC</b> »),	<b>[1] MODIFY</b> the class definition to read as follows:  “Every consumer, pursuant to the terms of Quebec’s Consumer Protection Act (“ <b>CPA</b> ”), residing in Quebec at the time of

<p>résidant au Québec au moment de l'achat, qui depuis le 28 août 2012 jusqu'aux dates figurant au paragraphe 7 de la Transaction pour chaque Défenderesse partie au règlement (« <b>Période visée par l'action collective</b> »), alors qu'il était physiquement situé au Québec, a acheté auprès d'une des Défenderesses, ou des Clients de la filiale de Vivid Seats, ou des Distributeurs tiers de Ticketnetwork, au moins un « Billet » (au sens défini dans l'alinéa 236.1 de la LPC, soit tout document ou instrument dont la présentation donne le droit à son détenteur d'être admis à un spectacle, à un événement sportif, à un événement culturel, à une exposition ou à tout autre divertissement de quelque nature que ce soit) soit :</p> <p>(a) à un prix supérieur à celui annoncé par le vendeur autorisé par le producteur de l'événement; et/ou,</p> <p>(b) qui a payé un prix supérieur au prix annoncé par les Défenderesses sur leurs sites Web respectifs et/ou leurs applications mobiles respectives (à la première étape), compte non tenu de la taxe de vente du Québec ou de la taxe sur les produits et services;</p> <p>Les dates auxquelles les Défenderesses parties au règlement ont mis en œuvre la modification de leur pratique commerciale mentionné au paragraphe 7 de la Transaction sont les suivantes :</p> <ul style="list-style-type: none"><li>• StubHub, inc. : 18 octobre 2019;</li><li>• Vivid Seats LLC et les Clients de la filiale de Vivid Seats : 10 octobre 2019;</li><li>• FanXchange Limited : 25 avril 2018;</li><li>• Ticketnetwork et les Distributeurs tiers de Ticketnetwork : 15 novembre 2019;</li></ul>	<p>purchase, who since August 28th, 2012 to the dates found at paragraph 7 of the Transaction for each Settling Respondent (the "<b>Class Period</b>"), while physically located in Quebec, has purchased from any of the Respondents, or Vivid Seats' Subsidiary's Clients, or the Ticketnetwork-Third Party Marketers, 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) either:</p> <p>(a) at a price above that announced by the vendor authorized to sell the Tickets by the producer of the event; and/or,</p> <p>(b) 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 Quebec sales tax or the Goods and Services Tax;</p> <p>The dates of the practice change for each Settling Respondent referred to at paragraph 7 of the Transaction are:</p> <ul style="list-style-type: none"><li>• StubHub Inc.: October 18, 2019;</li><li>• Vivid Seats LLC and Vivid Seats' Subsidiary's Clients: October 10, 2019;</li><li>• FanXchange Limited: April 25, 2018;</li><li>• Ticketnetwork and Ticketnetwork-Third Party Marketers: November 15, 2019;</li><li>• SeatGeek (a.d.b.a UberSeat): September 18, 2019."</li></ul>
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<p>• SeatGeek (f.é.a.n. UberSeat) : 18 septembre 2019. »</p>	
<p><b>[2] APPROUVER</b> la forme et le contenu de l’avis de pré-approbation aux nouveaux membres du groupe depuis le 29 janvier 2018, dans sa version française et anglaise (pièce SVT-5);</p>	<p><b>[2] APPROVE</b> the form and content of the pre-approval notice to new Class Members since January 29, 2018, in its French and English version (Exhibit SVT-5);</p>
<p><b>[3] ORDONNER</b> aux Défenderesses parties au règlement de notifier par courriel l’avis de pré-approbation (pièce SVT-5) directement à chaque nouveau Membre admissible du Québec, au plus tard sept (7) jours du présent jugement;</p>	<p><b>[3] ORDER</b> the Settling Respondents to notify by email the pre-approval notice (Exhibit SVT-5) directly to each new Eligible Quebec Member, no later than seven (7) days after the judgment on the present application is rendered by the Court;</p>
<p><b>[4] ORDONNER</b> aux Défenderesses parties au règlement de fournir à l’administrateur des réclamations tous les renseignements personnels concernant les nouveaux membres du groupe qui sont nécessaires pour mettre en œuvre la Transaction;</p>	<p><b>[4] ORDER</b> the Settling Respondents to provide the Claims Administrator such personal information regarding the new Class Members as is necessary to implement the Transaction Agreement;</p>
<p><b>[5] ORDONNER</b> à Collectiva Services en Recours Collectifs inc. de notifier par courrier électronique l’avis de pré-approbation (pièce SVT-5) directement à chaque nouveau membre du groupe qui fait partie du Sous-groupe d’acheteurs de billets pour un événement international, au plus tard sept (7) jours du présent jugement;</p>	<p><b>[5] ORDER</b> Collectiva Class Action Services Inc. to notify by email the pre-approval notice (Exhibit SVT-5) directly to each new Class Member that is part of the International Ticket Sub-Group, no later than seven (7) days after the judgment on the present application is rendered by the Court;</p>
<p><b>[6] DÉCLARER</b> que les nouveaux membres du groupe qui souhaitent s’objecter à l’approbation par le tribunal de la Transaction doivent le faire de la manière prévue dans l’avis de pré-approbation (pièce SVT-5), au plus tard le <b>15 mars 2020</b>;</p>	<p><b>[6] DECLARE</b> that new Class Members who wish to object to Court approval of the Transaction Agreement must do so in the manner provided for in the pre-approval notice (Exhibit SVT-5), on or before <b>March 15<sup>th</sup>, 2020</b>;</p>
<p><b>[7] DÉCLARER</b> que les nouveaux membres du groupe qui souhaitent s’exclure de l’action collective et de son</p>	<p><b>[7] DECLARE</b> that new Class Members who wish to opt-out from the class action and the settlement thereof may do so by</p>

règlement peuvent le faire en remettant un avis écrit confirmant leur intention de s'exclure de la présente action collective, de la manière prévue dans l'avis de pré-approbation (pièce SVT-5), au plus tard le <b>15 mars 2020</b> ;	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 SVT-5), on or before <b>March 15<sup>th</sup>, 2020</b> ;
<b>[8] DÉCLARER</b> que tous les membres du groupe qui n'ont pas demandé leur exclusion seront liés par tout jugement à rendre sur l'action collective de la manière prévue par la loi;	<b>[8] DECLARE</b> that all Class Members that have not requested their exclusion be bound by any judgement to be rendered on the class action in the manner provided for by the law;
<b>[9] FIXER</b> la date d'audience pour la demande d'approbation de la Transaction déposée comme pièce SVT-4 à une date et une heure à déterminer, dans la salle 2.08 du palais de justice de Montréal;	<b>[9] SCHEDULE</b> the hearing date for the Application for Approval of the Transaction Agreement filed as Exhibit SVT-4 on a date and time to be determined, in room 2.08 of the Montreal courthouse;
<b>[10] PERMETTRE</b> aux avocats du groupe de présenter leur demande d'approbation des honoraires des avocats du groupe lors d'une audience subséquente, à une date et une heure à déterminer;	<b>[10] ALLOW</b> Class Counsel to present its Application for Approval of Class Counsel Fees at a subsequent hearing, at a date and time to be determined;
<b>[11] LE TOUT</b> , sans frais de justice.	<b>[11] THE WHOLE</b> , without legal costs.

Montreal, January 28<sup>th</sup>, 2020

*(s) LPC Avocat Inc.*

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**LPC AVOCAT INC.**

Per: Mtre Joey Zukran

Attorney for Representative Plaintiff

*(s) Stikeman Elliott LLP*

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**STIKEMAN ELLIOTT LLP**

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C A N A D A

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

(Class Action)  
SUPERIOR COURT

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NO: 500-06-000754-156

STEVE ABIHSIRA

Representative Plaintiff

-vs-

STUBHUB, INC.  
EBAY, INC.  
VIVID SEATS, LLC.  
SEATGEEK, INC.  
FANXCHANGE LIMITED  
TICKETNETWORK, INC.  
RAZORGATOR, INC.  
UBERSEAT

Settling Respondents

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**LIST OF EXHIBITS**

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- Exhibit SVT-4:** Copy of Transaction Agreement executed between the parties in January of 2020;
- Exhibit SVT-5:** *En liasse*, copies of the proposed pre-approval notice for New Class Members in English and French.

500-06-000754-156

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(Class Action)  
SUPERIOR COURT  
DISTRICT OF MONTREAL

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STEVE ABIHSIRA

*Representative Plaintiff*

-VS-

STUBHUB INC. ET ALS.

*Settling Respondents*

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**JOINT APPLICATION FOR APPROVAL OF NOTICES TO NEW  
CLASS MEMBERS OF A SETTLEMENT APPROVAL HEARING  
AND TO MODIFY THE CLASS DESCRIPTION**  
(Articles 25, 49, 581, 588 al. 2 and 590 C.C.P.)

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**ORIGINAL**

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**N/D: JZ-103**

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