

Action No: T-1663-17

**CLASS PROCEEDING  
FEDERAL COURT**

BETWEEN:

**Arthur Lin**

Plaintiff

AND:

**Airbnb, Inc.  
Airbnb Canada Inc.  
Airbnb Ireland Unlimited Company  
Airbnb Payments UK Limited**

Defendants

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**PLAINTIFF'S MOTION RECORD**

(MOTION FOR APPROVAL OF NOTICES RE: SETTLEMENT APPROVAL HEARING)

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Airbnb Payments UK Limited

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Federal Court



Cour fédérale

**Date: 20191205**

**Docket: T-1663-17**

**Citation: 2019 FC 1563**

**Ottawa, Ontario, December 5, 2019**

**PRESENT: The Honourable Mr. Justice Gascon**

**PROPOSED CLASS PROCEEDING**

**BETWEEN:**

**ARTHUR LIN**

**Plaintiff**

**and**

**AIRBNB, INC., AIRBNB CANADA INC.,  
AIRBNB IRELAND UNLIMITED COMPANY,  
AIRBNB PAYMENTS UK LIMITED**

**Defendants**

**ORDER AND REASONS**

**I. Overview**

[1] In March 2016, Mr. Arthur Lin, a British Columbia resident, booked an accommodation in Japan using the Airbnb online platform [Airbnb Platform]. The Airbnb Platform is a digital

marketplace connecting individuals seeking accommodations [Guests] with other individuals offering accommodations [Hosts], and allowing them to transact. Mr. Lin claims he was ultimately charged a price higher than the price initially displayed to him for the accommodation booking services supplied on the Airbnb Platform. Many other individuals residing in Canada have reserved accommodations using the Airbnb Platform, also experiencing different prices displayed to them.

[2] Mr. Lin seeks an order certifying this action as a class proceeding under Rule 334.16(1) of the *Federal Courts Rules*, SOR/98-106 [Rules] and granting an order under Rule 334.17. As the proposed representative plaintiff, Mr. Lin seeks compensation from the defendants Airbnb, Inc., Airbnb Canada Inc. and Airbnb Ireland Unlimited Company, as well as Airbnb Payments UK Limited [collectively, Airbnb], on behalf of all individuals residing in Canada who, on or after October 31, 2015, reserved an accommodation anywhere in the world using Airbnb, excluding individuals reserving an accommodation primarily for business purposes.

[3] Mr. Lin alleges that Airbnb breached section 54 of the *Competition Act*, RSC 1985, c C-34 [*Competition Act*], a rarely used criminal offence known as “double ticketing”. Section 54 prohibits a person from supplying a product at a price that exceeds the lowest of two or more clearly expressed prices at the time the product is supplied. More specifically, Mr. Lin contests the fact that Airbnb adds “service fees” to the final price it charges for its accommodation booking services, although these fees are not included in the initial price per night displayed on the Airbnb Platform. In his proposed class proceeding, the main remedies sought by Mr. Lin are damages and the costs of investigation and prosecution, both pursuant to section 36 of the

*Competition Act*. Mr. Lin also had claims of permanent injunction and punitive damages but he abandoned them at the hearing before this Court.

[4] In addition to his motion for certification, Mr. Lin brought a motion to add Airbnb Payments UK Limited [Airbnb Payments] as a defendant, which was unopposed by the defendants.

[5] Mr. Lin maintains that all required legal elements for certification have been met, namely, (i) that there is a reasonable cause of action; (ii) that there is an identifiable class; (iii) that there are common questions of law and fact; (iv) that certification is the preferred procedure; and (v) that he is an appropriate representative of the class. Airbnb opposes certification of the class as it claims that Mr. Lin has failed to meet those five necessary preconditions.

[6] The only issue before the Court is whether Mr. Lin has met the requirements of Rule 334.16(1) to certify this action as a class proceeding and, if so, the details of the certification order that should be issued under Rule 334.17 as a result. At the center of the debate between the parties are the scope and interpretation of section 54 on “double ticketing” and its application to the circumstances of Mr. Lin and to Airbnb.

[7] For the reasons detailed below, and considering the generous approach that courts are required to take at the certification stage, I will grant Mr. Lin’s motion for certification, conditional upon an amendment to be made to his proposed class definition. Even though the

scope of section 54 of the *Competition Act* and its application to this case are not free from doubt, I conclude that it is not plain and obvious that the pleadings disclose no reasonable cause of action. I further find that, conditional upon the amendment discussed below, (i) there is an identifiable class of two or more persons [Class]; (ii) there are common issues predominating over questions affecting only individual members, and their resolution will advance the claims of all Class members and help the Court avoid duplication of fact-finding and/or legal analysis; (iii) a class proceeding is the preferable procedure for the just and efficient resolution of the common questions of law and fact, and will achieve all three principles underpinning class actions (i.e., judicial economy, behavioural modification and access to justice) more effectively than alternative procedures; and (iv) Mr. Lin is an appropriate representative plaintiff.

## **II. Background**

### **A. *Factual context***

[8] Airbnb operates the Airbnb Platform. In Canada, the Airbnb Platform is available through the website [www.airbnb.ca](http://www.airbnb.ca), as well as through various mobile applications. The Airbnb Platform allows Guests to book overnight stays from Hosts anywhere in the world.

[9] Airbnb operates what can be described as a two-sided transaction platform, providing services simultaneously to two different groups of customers (identified as Hosts and Guests) who depend on the platform to conclude a transaction. In other words, the Airbnb Platform brings together providers and consumers of a particular service, namely the booking of overnight stays in other people's accommodations.

[10] In its Terms of Service, various versions of which are attached to the affidavit of Airbnb's deponent, Mr. Kyle Miller, Airbnb states that it provides an online platform connecting Hosts, who have accommodations to list and book, with Guests seeking to book such accommodations. In its Terms of Service, Airbnb itself defines these as its "Services" accessible on different websites. The Terms of Service also state that Airbnb makes available an online platform or marketplace with related technology for Guests and Hosts to meet online and arrange for bookings of accommodations, directly with each other.

[11] Various entities are involved in operating Airbnb in Canada. First, Airbnb Ireland Unlimited Company is the entity entering into contractual relationships with Canadian users. Second, Airbnb, Inc. (also referred to as "Airbnb US" by Airbnb) owns and operates the [www.airbnb.com](http://www.airbnb.com) website. Airbnb, Inc. employs Mr. Miller, whose team is responsible for the localized versions of the Airbnb Platform, and its name is mentioned on the [www.airbnb.ca](http://www.airbnb.ca) website. The same contact address is used on the [www.airbnb.ca](http://www.airbnb.ca) and [www.airbnb.com](http://www.airbnb.com) websites, and Airbnb, Inc. owns four registered Canadian trademarks displayed on the [www.airbnb.ca](http://www.airbnb.ca) website. Third, Airbnb Canada Inc. is involved in procuring and holding the domain [www.airbnb.ca](http://www.airbnb.ca), although Airbnb claims it is only a marketing entity. Fourth, Airbnb Payments collects and distributes payments made on the Airbnb Platform.

[12] It is not disputed that Airbnb does not own accommodations nor manage accommodations on behalf of the Hosts. Hosts decide when they want to make their accommodations available on the Airbnb Platform, the price for their accommodations, and the booking requests they accept. With respect to price, Hosts can set different rates depending on

the dates and length of the contemplated stay, and they can decide to charge cleaning fees or fees for additional visitors.

[13] When Guests search for accommodations on the Airbnb Platform, they are typically directed to a search results page. This page lists the accommodations and displays the properties' price per night [First Price] based on the Guest's search parameters, with no indication that additional fees will be added. The First Price shown on the search results page includes: (i) the price per night as set by the Host; (ii) cleaning fees, if applicable, divided by the number of nights; and (iii) fees per night for additional visitors, if applicable. If the dates of the stay or the number of visitors are not specified by the Guest in the search parameters, the search results page will only display an average First Price. When Guests select the desired accommodation, they are redirected to another page known as the listing page. The listing page displays a second price [Second Price or Total Price] consisting of: (i) the First Price for the specific dates and number of visitors, multiplied by the number of nights; (ii) Airbnb's service fees [Service Fees]; and (iii) taxes. When they are on the listing page, Guests can modify the dates and number of visitors, in which case the Second Price is updated accordingly. In some cases (such as when they search an accommodation they already know or have already booked), Guests can also directly access the listing page of an accommodation without running a search, and therefore without actually being shown the First Price displayed on the search results page. The First Price and the Second Price are both displayed on the Guests' receipt.

[14] Airbnb charges a Service Fee to Guests (between 0% and 20% of the First Price according to Airbnb, or between 5% and 15% according to Mr. Lin), as well as a Service Fee to

Hosts (generally 3% of the First Price). Airbnb collects the Second Price from Guests and pays to Hosts the First Price, after having deducted the Hosts' Service Fee.

[15] Mr. Lin used the Airbnb Platform both as a Guest and as a Host. The event he describes in his Statement of Claim to illustrate how Airbnb allegedly engaged in "double ticketing" is a reservation he made as a Guest, on or about March 20, 2016, for a vacation to Japan. On the Airbnb Platform, Mr. Lin searched for the dates May 24, 2016 to May 31, 2016. A number of accommodations were displayed on a search results page, including the one he eventually booked; the First Price for that accommodation was displayed as being \$109.00 per night for a stay of seven nights. When Mr. Lin selected this accommodation, he was redirected to a listing page displaying a Second Price of \$855.00, or \$122.14 per night. This Second Price was broken down as follows: \$102.00 per night for seven nights, \$48.00 for cleaning fees, and \$91.00 for Airbnb's Services Fees. I add that, in other transactions he separately made on the Airbnb Platform as a Host, Mr. Lin also offered an accommodation which was booked six times in 2016.

[16] Guests and Hosts are bound by Airbnb's Terms of Service, for transactions made since October 2015, as well as by Airbnb's Payments Terms of Service for transactions made since March 2016 [collectively, the Terms]. Guests and Hosts have to accept the Terms during the account creation process prior to booking an accommodation. When the Terms are updated, Guests and Hosts further have to accept the updated version before transacting again on the Airbnb Platform. Both Airbnb's Terms of Service and Payments Terms of Service have been updated several times since October 2015 and March 2016, respectively. The Terms notably include provisions to the effect that:

- Canadian residents are deemed to be contracting with Airbnb Ireland Unlimited Company;
- Canadian residents are not subject to the arbitration agreement and class action waiver provisions;
- The agreement with Airbnb will be interpreted in accordance with the laws of Ireland without negating consumer protection laws applicable in Canada;
- Guests and Hosts enter into contractual relationships with each other when a booking is made, with Airbnb acting on behalf of Hosts only to facilitate payments; and
- Airbnb may charge Service Fees to Hosts and Guests for using the Airbnb Platform.

[17] In its Terms, Airbnb identifies the First Price described by Mr. Lin as “Listing Fee”, and the Service Fees it charges to Hosts and Guests as the “Host Fee” and “Guest Fee”, respectively. Airbnb calls the Second Price or Total Price described by Mr. Lin as the “Total Fees”. The damages sought by Mr. Lin are specifically defined in his Statement of Claim as being equivalent to the difference between the Second Price and the First Price, minus the taxes. In other words, the damages claimed are the Service Fees.

[18] Airbnb estimates that approximately 2.2 million Canadian-resident Guests reserved an accommodation using the Airbnb Platform between October 31, 2015 and August 2018.

**B. *Orders sought***

[19] In his motion for certification, Mr. Lin seeks the following orders from the Court:

1. This Action is certified as a class proceeding;
2. The Class is defined as:



All individuals residing in Canada who, on or after October 31, 2015, reserved an accommodation for anywhere in the world using Airbnb, excluding individuals reserving an accommodation primarily for business purposes.

3. The Plaintiff is appointed as the representative plaintiff for the Class;
4. The Common Questions are stated to be those set out in Schedule “A” to the Notice of Motion;
5. The nature of the Class is stated to be violations of section 54 of the *Competition Act*;
6. The relief sought by the Class is stated to be:
  - a. a declaration that the Defendants charged every Class member a price higher than the lowest of two or more prices clearly expressed by the Defendants to each Class Member, contrary to section 54 of the *Competition Act*;
  - b. damages, pursuant to section 36 of the *Competition Act*, for the Defendants’ conduct in contravention of section 54 of the *Competition Act*;
  - c. an Order pursuant to Rules 334.28(1) and (2) for the aggregate assessment of monetary relief and its distribution to the Plaintiff and the Class members;
  - d. costs of investigation and prosecution of this proceeding on a full-indemnity basis, pursuant to section 36 of the *Competition Act*;
  - e. pre-judgment and post-judgment interest pursuant to sections 36 and 37 of the *Federal Courts Act*, RSC 1985, c. F-7;
  - f. exemplary or punitive damages; and
  - g. such further and other relief as this Honourable Court deems just.
7. The Litigation Plan attached as Schedule “B” to the Notice of Motion is approved as a workable method of advancing the litigation;

8. The Notice Plan included in the Litigation Plan is approved as a workable method of contacting the Class members;
9. The Defendants pay the costs of the Notice Plan;
10. The Defendants provide counsel for the Plaintiff with a list of Class members and those Class members' contact information following the expiry of the opt-out period in part 11 of the Order;
11. Class members who wish to opt-out of the Action must do so in writing within thirty days of the date of the Order;
12. Both the Plaintiff and Defendants bear their own costs for this certification motion, pursuant to Rule 334.39, without limiting the Plaintiff's right to seek the costs for prosecution of the whole proceeding at the conclusion of the trial, pursuant to section 36 of the *Competition Act*; and
13. Such further and other relief as this Honourable Court deems just.

**C. *Legislative framework***

[20] Part 5.1 of the Rules sets out the framework for establishing and managing class proceedings before this Court. Rules 334.16(1) and (2) and 334.18 are the main provisions governing the certification of class proceedings. They are reproduced in their entirety in Annex A of these Reasons.

[21] Rule 334.16(1) prescribes that a class action shall be certified if the following five conditions are met: (i) the pleadings disclose a reasonable cause of action; (ii) there is an identifiable class of two or more persons; (iii) the claims raise common questions of law or fact; (iv) a class proceeding is the preferable procedure for the just and efficient resolution of those common questions; and (v) there is an appropriate representative plaintiff. Rule 334.16(1) uses mandatory language, meaning that the Court shall grant certification where all five elements of

the test are satisfied (*Sivak v Canada*, 2012 FC 271 at para 5). Since the test is conjunctive, if a plaintiff fails to meet any of the five listed criteria, the certification motion must fail (*Buffalo v Samson First Nation*, 2008 FC 1308 [*Buffalo FC*] at para 35, aff'd 2010 FCA 165 at para 3).

[22] Conversely, Rule 334.18 describes factors which cannot by themselves, either singly or combined with the other factors listed, provide a sufficient basis to decline certification (*Kenney v Canada (Attorney General)*, 2016 FC 367 [*Kenney*] at para 17; *Buffalo FC* at para 37). These factors are: (i) the relief claimed includes a claim for damages that would require an individual assessment after a determination of the common questions of law or fact; (ii) the relief claimed relates to separate contracts involving different class members; (iii) different remedies are sought for different class members; (iv) the precise number of class members or the identity of each class member is not known; or (v) the class includes a subclass whose members have claims that raise common questions of law or fact not shared by all of the class members. Nevertheless, by using the word “solely”, the provision suggests that these factors may be relevant considerations on a motion for certification, provided the overall conclusion underlying a potential refusal is based on other concerns as well (*Kenney* at para 17).

[23] It bears noting that the certification criteria established in Rule 334.16(1) are akin to those applied by the courts in Ontario and British Columbia (*Canada v John Doe*, 2016 FCA 191 [*John Doe FCA*] at para 22; *Buffalo v Samson Cree National*, 2010 FCA 165 [*Buffalo FCA*] at para 8). Indeed, much of the Supreme Court of Canada’s [SCC] case law relating to class actions on which this Court and the Federal Court of Appeal [FCA] have relied arose in those provinces.

**D. General principles for certification**

[24] Before analyzing the individual requirements prescribed by the Rules, some general and fundamental principles governing certification motions must be underscored.

[25] In *Hollick v Toronto (City)*, 2001 SCC 68 [*Hollick*], the SCC stated that the certification criteria should always be assessed while keeping in mind the overarching purposes of class proceedings. First, foremost consideration should be given to the fact that class actions serve judicial economy by avoiding unnecessary duplication of fact-finding and legal analysis. Second, class actions improve access to justice by making economical the prosecution of claims that any one class member would find too costly to bring forward on his or her own. Third, class actions serve efficiency and justice by ensuring that wrongdoers modify their behaviour by taking full account of the harm that they have caused or might cause. Therefore, it is “essential [...] that courts [do] not take an overly restrictive approach to the legislation, but rather interpret [class action legislation] in a way that gives full effect to the benefits foreseen by the drafters” (*Hollick* at para 15; *Western Canadian Shopping Centres Inc. v Dutton*, 2001 SCC 46 [*Dutton*] at paras 27-29; *Condon v Canada*, 2015 FCA 159 [*Condon*] at para 10). As the SCC noted in *Hollick*, “the certification stage focuses on the form of the action. The question at the certification stage is not whether the claim is likely to succeed, but whether the suit is appropriately prosecuted as a class action” (emphasis in original) (*Hollick* at para 16). In other words, the court plays a screening role and must view the application as a procedural means (*Infineon Technologies AG v Option consommateurs*, 2013 SCC 59 [*Infineon*] at para 65; *Vivendi Canada Inc. v Dell’Aniello*, 2014 SCC 1 [*Vivendi*] at para 37). The objective of certification is to determine if, from a

procedural standpoint, the action is best brought in the form of a class action (*Hollick* at para 16). Conversely, certification seeks to filter out manifestly unfounded and frivolous claims.

[26] The SCC recently firmly reiterated and reaffirmed these core principles in *Pioneer Corp. v Godfrey*, 2019 SCC 42 [*Godfrey*] and in *L'Oratoire Saint-Joseph du Mont-Royal v J.J.*, 2019 SCC 35.

[27] It is also well established that the onus on a party seeking certification is not an onerous one. The test to be applied on the first criterion for certification – that the pleadings disclose a reasonable cause of action – is similar to that applicable on a motion to strike or dismiss (*Pro-Sys Consultants Ltd. v Microsoft Corporation*, 2013 SCC 57 [*Pro-Sys*] at para 63; *Alberta v Elder Advocates of Alberta Society*, 2011 SCC 24 [*Elder*] at para 20). The test is whether it is “plain and obvious” that the pleadings disclose no reasonable cause of action and that no claim exists (*Godfrey* at para 27; *R. v Imperial Tobacco Canada Ltd.*, 2011 SCC 42 [*Imperial Tobacco*] at para 17; *Elder* at para 20; *Hollick* at para 25; *Hunt v Carey Canada Inc.*, [1990] 2 SCR 959 [*Hunt*] at p 980).

[28] This threshold is very low (*Rae v Canada (National Revenue)*, 2015 FC 707 [*Rae*] at para 54; *Buffalo FC* at para 43). It must be “used with care”, bearing in mind that the “law is not static and unchanging”, and that “[a]ctions that yesterday were deemed hopeless may tomorrow succeed” (*Imperial Tobacco* at para 21). Stated otherwise, a pleading should only be struck where the claim is so clearly futile that it has not the slightest chance of succeeding or is certain to fail (*Hunt* at para 33). Pursuant to that test, the claim must be so clearly improper as to be

“bereft of any possibility of success” (*LJP Sales Agency Inc. v Canada (National Revenue)*, 2007 FCA 114 at para 7; *Wenham v Canada (Attorney General)*, 2018 FCA 199 [*Wenham*] at paras 27-33). The test is best expressed in the negative, and the Court must be convinced that the contemplated action has no chance of success and is doomed to fail (*Wenham* at para 22).

[29] For this first criterion, the facts alleged in the pleadings are assumed to be true and no evidence may be considered by the Court (*John Doe FCA* at para 23; *Condon* at para 13). Even though the facts are assumed to be true, they must still be pleaded in support of each cause of action; bald assertions of conclusions are not allegations of material fact and cannot support a cause of action (*John Doe FCA* at para 23; *Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227 at para 27; *Merchant Law Group v Canada Revenue Agency*, 2010 FCA 184 at para 34).

[30] For the remaining four certification criteria, the plaintiffs have the burden of adducing evidence to show “some basis in fact” that they have been met (*Hollick* at para 25; *Pro-Sys* at para 99). This threshold is also low, given the Court’s limited scope of factual inquiry and its inability to “engage in the finely calibrated assessments of evidentiary weight” at the certification stage (*AIC Limited v Fischer*, 2013 SCC 69 [*Fischer*] at para 40; *Pro-Sys* at paras 102, 104). That said, the “some basis in fact” standard cannot be assessed in a vacuum, and each case must be decided on its own facts. The “some basis in fact” requirement means that, for all certification criteria except the cause of action, an evidentiary foundation is needed to support a certification award, and the use of the word “some” implies that the evidentiary record need not be exhaustive or be a record on which the merits will be argued (*Fischer* at para 41, citing

*McCracken v Canadian National Railway Co.*, 2012 ONCA 445 at paras 75-76). The Court must therefore refrain from assessing the sufficiency of the alleged facts on its merits, and is not tasked with resolving conflicts in the evidence. It is trite law that the “some basis in fact” standard falls below the standard of proof on a balance of probabilities (*Pro-Sys* at para 102; *John Doe FCA* at para 24).

[31] While the certification stage is not intended to determine the viability or strength of the contemplated class action, the analysis of the evidence, however, cannot “amount to nothing more than symbolic scrutiny” (*Pro-Sys* at para 103). Given that the Court does not engage in a robust analysis of the merits at the certification stage, the outcome of a motion for certification will not be predictive of the action’s success at the common issues trial (*Pro-Sys* at para 105).

### **III. Analysis**

#### **A. *Rule 334.16(1)(a): Reasonable cause of action***

[32] The first certification requirement is that the pleadings disclose a reasonable cause of action. Mr. Lin’s Statement of Claim invokes one single cause of action based on sections 36 and 54 of the *Competition Act*. Mr. Lin pleads that, in providing its accommodation booking services to him and other Class members, Airbnb displayed an initial First Price excluding Airbnb’s Service Fees and a final, higher Second Price including such fees, and that Airbnb thus charged the Class members the higher of two displayed prices, in contravention of section 54 of the *Competition Act*. This breach of section 54, says Mr. Lin, renders Airbnb liable, under section 36 of the *Competition Act*, for damages equal to the Service Fees and for the costs of investigation.

[33] Airbnb responds that the pleadings (i.e., Mr. Lin's Statement of Claim) do not disclose a reasonable cause of action since: (i) section 54 of the *Competition Act* does not apply to the pleaded facts, described by Airbnb as a situation where there are two prices for two different products; (ii) the defence provided by section 60 of the *Competition Act* applies to Airbnb; and (iii) Mr. Lin does not plead any loss or damage as required by section 36 of the *Competition Act*, since he would have paid the same price if the Service Fees were included in the First Price on the search results page. Airbnb notably relies on the Terms to support its arguments.

[34] I do not agree with Airbnb. Further to my review of the pleadings, I find that Airbnb mischaracterizes the "product" effectively defined and described by Mr. Lin in his Statement of Claim. In addition, even though Airbnb raises numerous valid points regarding the interpretation of sections 36 and 54 of the *Competition Act* and their application to this case, I am unable to conclude that, when the alleged facts are accepted as true, the cause of action pleaded by Mr. Lin is "plain and obvious" to fail. The objections voiced by Airbnb are matters to be determined at the trial on the merits with the benefit of a full evidentiary record and full legal submissions.

(1) Section 54 of the *Competition Act*

[35] Mr. Lin's proposed class proceeding is based on section 54 of the *Competition Act*. This section creates the criminal offence of "double ticketing" and is part of the deceptive marketing practices offences contained in Part VI of the *Competition Act* entitled "Offences in Relation to Competition". Section 54 reads as follows.



### Double ticketing

**54** (1) No person shall supply a product at a price that exceeds the lowest of two or more prices clearly expressed by him or on his behalf, in respect of the product in the quantity in which it is so supplied and at the time at which it is so supplied,

(a) on the product, its wrapper or container;

(b) on anything attached to, inserted in or accompanying the product, its wrapper or container or anything on which the product is mounted for display or sale; or

(c) on an in-store or other point-of-purchase display or advertisement.

### Double étiquetage

**54** (1) Nul ne peut fournir un produit à un prix qui dépasse le plus bas de deux ou plusieurs prix clairement exprimés, par lui ou pour lui, pour ce produit, pour la quantité dans laquelle celui-ci est ainsi fourni et au moment où il l'est :

a) soit sur le produit ou sur son emballage;

b) soit sur quelque chose qui est fixé au produit, à son emballage ou à quelque chose qui sert de support au produit pour l'étalage ou la vente, ou sur quelque chose qui y est inséré ou joint;

c) soit dans un étalage ou la réclame d'un magasin ou d'un autre point de vente.

[36] This prohibition against “double ticketing” first came into effect in 1975, as section 36.2 of the *Combines Investigation Act*, SC 1974-1975-1976, c 76 [*Combines Act*]. The language of section 36.2 of the *Combines Act* was identical to the current wording of section 54 of the *Competition Act*. Pursuant to that provision, a person commits a “double ticketing” offence when that person: (i) supplies a product; (ii) at a price that exceeds the lowest of two or more prices; (iii) which are clearly expressed on the product, on anything attached to or accompanying the product, or on any point-of-purchase display or advertisement. There are no other requirements for the offence. The language of the provision clearly suggests that section 54 relates strictly to the supplier’s conduct, and that it only applies to situations where different prices are expressed

in respect of the same product in terms of quantity and time of supply. Subsection 2(1) of the *Competition Act* defines “product” as including an “article” and a “service”, so section 54 can apply to both. The word “supply” also has a broad meaning, being defined by subsection 2(1) as “in relation to a service, sell, rent or otherwise provide a service or offer so to provide a service”.

[37] I pause to observe that the “double ticketing” offence came into force at the same time as the “sale above advertised price” criminal offence, which was previously contained in former section 37.1 of the *Combines Act* and prohibited the supply of a product at a price higher than the price advertised. This criminal provision was repealed in 1999 and was replaced by the civilly reviewable conduct of “sale above advertised price” now contained at section 74.05 of the *Competition Act*. This reviewable conduct is sometimes referred to by the Competition Bureau as fragmented pricing or drip pricing (see for example: Competition Bureau, *The Deceptive Marketing Practices Digest*, June 2015).

[38] A brief review of the legislative history of section 54 suggests that this provision was meant to prevent the display of two price tags on a single product. The House of Commons and Senate debates indicate that, at the time of its adoption, the “double ticketing” prohibition stemmed from concerns about high food prices (*House of Commons Debates*, 29th Parl, 2nd Sess, vol 1 (13, 20, and 27 March 1974) at 489, 708 and 918; *House of Commons Debates*, 30th Parl, 1st Sess, vol 1 (22 October 1974) at 624-625 and 627; *House of Commons Debates*, 30th Parl, 1st Sess, vol 8 (21 October 1975) at 8419; *Senate Debates*, 30th Parl, 1st Sess, vol 2 (13 November 1974) at 1295). In essence, consumers were complaining about the food industry’s practice of increasing the price of existing inventory in response to increased procurement costs,

and about how certain grocery stores would put new price stickers on their products beside the previous, lower price.

[39] Even though the “double ticketing” provision has now been part of the *Competition Act* and its predecessors for over 40 years, very limited jurisprudence on this provision is available. Airbnb referred to one case, *The Consumers’ Association of Canada et al. v Coca-Cola Bottling Company et al.*, 2006 BCSC 863 [*Coca-Cola*], aff’d 2007 BCCA 356, where recycling fees for bottled drinks were excluded in the price displayed on the shelf for these products, but were added at the cashier and charged to the consumer in the final price. The court found that this did not constitute “double ticketing” and did not breach section 54 (*Coca-Cola* at paras 69, 93). In his submissions, Mr. Lin did not refer the Court to any precedent on that provision. The Court has identified two other cases mentioning section 54, namely *Apotex Inc. v Hoffman La-Roche Limited*, 195 DLR (4th) 244, 2000 CanLII 16984 (Ont CA) at para 20 and a small claims case from Quebec, *Massé c Sears Canada Inc.*, 2012 QCCQ 15181 at paras 5, 16. However, none of these cases discussed the interpretation of the “double ticketing” provision to any extent.

(2) Section 36 of the *Competition Act*

[40] For its part, section 36 of the *Competition Act* provides:

**Recovery of damages**

**36** (1) Any person who has suffered loss or damage as a result of

(a) conduct that is contrary to any provision of Part VI, or

**Recouvrement de dommages-intérêts**

**36** (1) Toute personne qui a subi une perte ou des dommages par suite :

a) soit d’un comportement allant à l’encontre d’une

	disposition de la partie VI;
[...]	[...]
may, in any court of competent jurisdiction, sue for and recover from the person who engaged in the conduct or failed to comply with the order an amount equal to the loss or damage proved to have been suffered by him, together with any additional amount that the court may allow not exceeding the full cost to him of any investigation in connection with the matter and of proceedings under this section.	peut, devant tout tribunal compétent, réclamer et recouvrer de la personne qui a eu un tel comportement ou n'a pas obtempéré à l'ordonnance une somme égale au montant de la perte ou des dommages qu'elle est reconnue avoir subis, ainsi que toute somme supplémentaire que le tribunal peut fixer et qui n'excède pas le coût total, pour elle, de toute enquête relativement à l'affaire et des procédures engagées en vertu du présent article.

[41] To establish a claim under paragraph 36(1)(a), the plaintiff must plead that the defendants breached a provision of Part VI of the *Competition Act* on “Offences in Relation to Competition” and that he or she suffered loss or damage as a result of the impugned criminal conduct. The right to pursue an action in damages and to seek recovery of certain investigation costs is subject to some important limits, including a limit to pursuing compensatory damages (i.e., no punitive damages or injunctive relief).

[42] I agree with Airbnb that section 36 is the provision effectively creating Mr. Lin’s cause of action, of which damages caused by the alleged violation of the *Competition Act* are an essential component (*Godfrey* at para 76; *Murphy v Compagnie Amway Canada*, 2015 FC 958 [*Murphy*] at paras 83-85; *Singer v Shering-Plough Canada Inc.*, 2010 ONSC 42 [*Singer*] at paras 107-108). The combined features of paragraph 36(1)(a) and section 54 of the *Competition Act* limit the availability of this cause of action to claimants who can demonstrate that the defendants’ conduct

satisfies all elements of section 54, as well as a causal link between the loss or damage suffered and the “double ticketing” conduct.

(3) The “product” issue

[43] Airbnb first submits that it is plain and obvious that section 54 cannot apply to this case since there are two prices for two different products. Airbnb submits that Mr. Lin’s Statement of Claim does not expressly define the “product” at issue, but that the pleadings imply that it is the accommodation reserved and booked by Mr. Lin. Airbnb also states that Mr. Lin’s Memorandum of Fact and Law expressly identifies a “product”, namely the use of the Airbnb Platform. Airbnb maintains that, when Mr. Lin’s pleadings are taken as a whole, there are two products at issue in this case, supplied through the Airbnb Platform: (i) accommodations offered by Hosts to Guests; and (ii) the use of the platform offered by Airbnb to both Hosts and Guests. Airbnb contends that Mr. Lin conflated the two products and alleged that bundling the two products together in the Second Price amounted to a price increase for a single product.

[44] I am not persuaded by Airbnb’s interpretation and do not find that this is an adequate reading of Mr. Lin’s Statement of Claim.

[45] In his Statement of Claim, Mr. Lin notably alleges the following facts:

10. Airbnb is the operator of an online marketplace and hospitality service, enabling people anywhere in the world to lease or rent short-term lodging from any other person in the world who is offering accommodation for lease and/or rental.

11. At all materials [sic] times, Airbnb conducted its online marketplace and hospitality services primarily via various Internet platforms including websites (such as <http://www.airbnb.com> and

<http://www.airbnb.ca>) and mobile applications on the Apple and Android operating systems (collectively the “Booking Platform(s)”).

[...]

17. On or about March 20, 2016, the Plaintiff contracted with Airbnb for accommodations for his vacation to Japan, including an accommodation in Shibuya, Japan under the following terms (the “Reservation”) [...].

[...]

29. When a Class member completes any reservation for accommodations through Airbnb (including “Request to Book” and “Instant Book”), regardless of the Booking Platform used, Airbnb charges the Class member the Second Price, not the First Price.

[Emphasis added.]

[46] I concede that the pleadings could have been drafted with much more clarity and details regarding the actual product involved in Mr. Lin’s claim. Especially in a context where, in section 54 invoked by Mr. Lin to underlay his cause of action, the notion of “product” is a central element. However, at this certification stage, I must adopt a generous reading of the pleadings. The pleadings should be read as a whole and be given a liberal interpretation, with a view to accommodating any inadequacies in the allegations and without fastening onto matters of form (*Operation Dismantle v The Queen*, [1985] 1 SCR 441 at para 14; *Wenham* at para 34; *John Doe FCA* at para 51; *Shah v LG Chem Ltd.*, 2018 ONCA 819 [*Shah*] at paras 74, 76; *Finkel v Coast Capital Savings Credit Union*, 2017 BCCA 361 [*Finkel*] at para 17).

[47] In his Statement of Claim, Mr. Lin refers to Airbnb’s online marketplace and hospitality service or services and to the fact that what Mr. Lin and the Class members contracted for and

purchased is a reservation for accommodation through Airbnb. I am satisfied that, when read in context, Mr. Lin's Statement of Claim identifies one "product" supplied by Airbnb, namely the accommodation booking services offered and supplied by Airbnb through its platform. Put differently, I do not find it plain and obvious that, as argued by Airbnb, the pleadings relate to two prices for two different products.

[48] Though I acknowledge that this is not part of the pleadings, I pause to note that, in his Memorandum of Fact and Law, Mr. Lin repeatedly and expressly refers to Airbnb's "accommodation booking service" or "accommodation booking services" when he describes the product being supplied by Airbnb, and for which he claims Airbnb violated the "double ticketing" provision. These accommodation booking services relate to the use of the Airbnb Platform to find and book accommodations.

[49] My understanding of Mr. Lin's allegations is that the product effectively offered and supplied by Airbnb is a specific service: the access to and use of the Airbnb Platform in order to find a pool of accommodations and to eventually book one. Mr. Lin acknowledges that Airbnb does not own the accommodations offered by the Host, but the fact that Airbnb does not own the accommodations displayed through its service does not mean that Airbnb is not supplying a service for the booking of such accommodations.

[50] According to Mr. Lin's pleadings, the product supplied by Airbnb (i.e., its booking service) does not change between the search results phase, where the First Price is expressed, and the booking phase, where the Second Price is expressed. The product is always the access to and

use of the Airbnb Platform in order to find and book accommodations on Airbnb's digital marketplace. In my view, the pleadings made by Mr. Lin do not suggest that a new service element is "added" by Airbnb at the booking stage, or that Airbnb performs an additional service at the booking stage, as opposed to the search results stage. The service of providing a booking platform, where Hosts and Guests can transact, is the "product" supplied by Airbnb as soon as a person enters the Airbnb Platform (where the Guests and Hosts have access to the relevant information and presentation of that information). According to Mr. Lin, what does change between the search results and booking phases is the price at which Airbnb's accommodation booking service is supplied.

[51] Again, I am mindful of the fact that Mr. Lin's pleadings are not a model of clarity on this point, far from it. But, at the certification stage, the approach has to be generous and the pleadings can be sufficient, even if the product is not described with perfect precision, as long as they are sufficiently precise to allow the reader to identify the product being the subject of the claim (*Watson v Bank of America Corporation*, 2015 BCCA 362 [*Watson CA*] at paras 85-87). Here, I am of the view that the pleadings are sufficiently detailed to understand that Mr. Lin refers to one product, namely Airbnb's accommodation booking services. His written submissions clearly confirm this.

[52] I observe that, in its submissions, Airbnb itself states that the Airbnb Platform connects Guests seeking accommodations with Hosts offering accommodations, and allows them to transact. Furthermore, Airbnb's own Terms of Service describe its "Services" in a similar



manner. These statements echo the “accommodation booking services” referred to by Mr. Lin in his materials, and which he claims are supplied by Airbnb.

[53] I do not dispute that, in its submissions, Airbnb raises a valid and very relevant point regarding the nature and identity of the product or products effectively supplied by Airbnb through the Airbnb Platform. It is certainly open to Airbnb to submit and argue that section 54 of the *Competition Act* does not apply in this case because what is effectively supplied through the Airbnb Platform are two different products by two different persons at two different prices. However, I cannot accept these arguments at the certification stage. What I have to determine is whether, based on Mr. Lin’s Statement of Claim (which is the only pleading), it is plain and obvious that section 54 cannot apply. I cannot conclude that it is the case, in light of Mr. Lin’s alleged facts regarding the accommodation booking services provided through the Airbnb Platform.

[54] The arguments advanced by Airbnb on the presence of two products, on whether what is supplied by Airbnb could be characterized as a bundle of different articles and services, and on whether the product at issue is the bundle or its components, as opposed to the accommodation booking services put forward by Mr. Lin, require factual assessments to be determined at the trial on the merits, with the benefit of a complete evidentiary record. In other words, it is not plain and obvious that the First Price (or Listing Fee) and the Second Price (or Total Fees) alleged by Mr. Lin relate to separate products for, respectively, the accommodation and the use of the Airbnb Platform.

(4) The elements of section 54

[55] As stated above, the required elements of the section 54 offence are: (i) the supply of a product by a person; (ii) at a price that exceeds the lowest of two or more prices; (iii) which are clearly expressed on the product, on anything attached to or accompanying the product, or on any point-of-purchase display or advertisement. Here, I am satisfied that Mr. Lin pleaded all the elements of the section 54 offence, namely the supply of accommodation booking services by Airbnb, the existence of a First Price and a Second Price and the fact that the service was supplied at the higher price, and the fact that the prices were clearly expressed at the point-of-purchase display on Airbnb Platform. I note that Mr. Lin has not expressly pleaded the *mens rea* element of this criminal offence. However, some required elements of a cause of action, such as *mens rea*, may be implied from the alleged facts by common sense and do not always need to be specifically pleaded (*Watson CA* at para 101). In my view, the required mental element of Airbnb's conduct is implied in Mr. Lin's pleadings, and Airbnb has indeed not raised any objection on this point (*Watson v Bank of America Corporation*, 2014 BCSC 532 [*Watson SC*] at paras 101-102).

[56] I recognize that, in light of the paucity of "double ticketing" cases, Mr. Lin certainly appears to be stretching the potential interpretation and application of section 54 of the *Competition Act*, and that he is extending it into uncharted territory. In fact, Airbnb argues that his claim will ultimately fail. However, at the certification stage, this is not enough to conclude to an absence of a reasonable cause of action. On the contrary, when a case raises novel or difficult questions of statutory interpretation, such questions should not be decided at the

certification stage (*John Doe FCA* at para 53; *Jiang v Peoples Trust Company*, 2017 BCCA 119 [*Jiang*] at para 64; *Finkel* at para 17). Doing so would eliminate common issues based on these questions, and could prevent the judge on the merits from considering these questions with the benefit of a complete evidentiary record (*Jiang* at paras 64, 67). As the SCC reminded, “where a statement of claim reveals a difficult and important point of law, it may well be critical that the action be allowed to proceed” (*Hunt* at p 990; *Arsenault v Canada*, 2008 FC 299 [*Arsenault*] at paras 25-26). As such, the reasonable cause of action criterion can be met despite the length and complexity of the issues, the novelty of the cause of action, or the potential for the defendant to present a strong defence (*Murphy* at para 38). It is not determinative that the law has not yet recognized a particular claim (*Imperial Tobacco* at para 21). The Court must rather ask whether, assuming the facts pleaded are true, the claim is doomed to fail. The approach must be a generous one and err on the side of permitting a novel but arguable claim to proceed to trial.

[57] To further underscore the need for a liberal approach, I would add that the purpose clause of the *Competition Act* (section 1.1) expressly provides that the protection of consumers is one of its underlying purposes, and this legislation has been recognized as a consumer protection legislation (*Finkel* at para 61). This is notably true for the *Competition Act*’s criminal and civil provisions dealing with marketing practices (to which the “double ticketing” provision belongs), which often mirror comparable provisions contained in provincial consumer protection laws. As pointed out by Mr. Lin, the SCC stated that consumer protection laws are to be interpreted generously in favour of the consumers (*Seidel v TELUS Communications Inc.*, 2011 SCC 15 at para 37).

[58] I also agree with Mr. Lin that the law is always speaking and must be interpreted to apply to today's circumstances, even though a provision may have been adopted a long time ago (*Interpretation Act*, RSC 1985, c I-21, s 10; *R. v 974649 Ontario Inc.*, 2001 SCC 81 at para 38). While section 54 on "double ticketing" was created before the digital economy and the emergence of online commerce, the provision can extend and apply to current technologies and commercial practices. Digital marketplaces and online platforms offering digital commerce transactions, allowing sellers and buyers to connect and exchange, and charging for such service are now frequent in the digital economy. Airbnb is an example in accommodation booking services, but other examples exist in transportation booking services (such as Uber) or in ticket booking services (see *Nicolas c Vivid Seats*, 2018 QCCS 3938). The issue of the interpretation of section 54 of the *Competition Act*, and whether the provision effectively applies to a platform like Airbnb, goes to the merits of the claim.

[59] Lastly, as mentioned above, there is very limited jurisprudence on section 54 and none of the cases I am aware of is binding on this Court. In addition, those decisions do not contain any meaningful analysis of the provision and how it should be interpreted. In its submissions, Airbnb pointed to the *Coca-Cola* case, where the Supreme Court of British Columbia found that charging recycling fees for bottled drinks in the final price to consumers, although the fees were not included in the price displayed on the shelf, was not in breach of the "double ticketing" provision (*Coca-Cola* at paras 69, 93). However, I observe that this case occurred in a different jurisdiction, and that the discussion of section 54 was very succinct. The case focused on how the deposits were held and whether recycling fees were an illegal levy. The section 54 claim was analysed and dismissed by the court in a single paragraph (*Coca-Cola* at para 93). In these

circumstances, I do not consider it a very compelling authority to support rejecting Mr. Lin's claim at this early stage. In order to find that it is "plain and obvious" that no claim exists, there must be "a decided case directly on point, from the same jurisdiction, demonstrating that the very issue has been squarely dealt with and rejected" (*Arsenault* at para 27, citing *Dalex Co. v Schwartz Levitsky Feldman* (1994), 19 OR (3d) 463, 1994 CanLII 7290 (SC); see also *Finkel* at para 17). This is not the situation here.

[60] Mr. Lin may ultimately fail on the merits of his proposed interpretation of section 54 and its application to Airbnb. I acknowledge that, depending on the factual evidence to be presented at the common issues trial, the judge on the merits could for instance find that Guests concluded one transaction with Hosts for the accommodation, and a different one with Airbnb for the service of using its platform; or that Guests concluded two separate transactions with Airbnb for two different products, one for the accommodation and one for the use of the Airbnb Platform. However, this is not a sufficient basis, at this stage, to conclude that there is no reasonably viable cause of action. For all these reasons, I find that it is not plain and obvious that Airbnb did not engage in "double ticketing" and that section 54 of the *Competition Act* does not apply to Airbnb's conduct. It will be up to the judge on the merits, with a complete record and full legal submissions, to determine whether Airbnb's conduct is sufficient to satisfy the provision's requirements.

[61] If Airbnb can demonstrate, at the common issues trial, that what is effectively supplied through the Airbnb Platform are two products at two different prices, this would be sufficient to

conclude that section 54 on “double ticketing” does not apply, to terminate the litigation and to dismiss the claim for damages.

(5) Section 60 of the *Competition Act*

[62] Airbnb also submits that it is plain and obvious that section 60 of the *Competition Act* is fatal to Mr. Lin’s claim. I disagree.

[63] The section 60 “defence” exempts from section 54, on certain conditions, “a person who prints or publishes or otherwise distributes a representation or an advertisement on behalf of another person”. It reads as follows:

**Defence**

**60** Section 54 does not apply to a person who prints or publishes or otherwise distributes a representation or an advertisement on behalf of another person in Canada if he or she establishes that he or she obtained and recorded the name and address of that other person and accepted the representation or advertisement in good faith for printing, publishing or other distribution in the ordinary course of his or her business.

**Moyen de défense**

**60** L’article 54 ne s’applique pas à la personne qui diffuse, notamment en les imprimant ou en les publiant, des indications ou de la publicité pour le compte d’une autre personne se trouvant au Canada, si elle établit qu’elle a obtenu et consigné le nom et l’adresse de cette autre personne et qu’elle a accepté de bonne foi d’imprimer, de publier ou de diffuser de quelque autre façon ces indications ou cette publicité dans le cadre habituel de son entreprise.

[64] Airbnb has not cited any cases on the interpretation of section 60, and the Court is aware of none. However, the provision’s wording makes it clear that it refers to the passive role of mere advertisers or publishers of advertisements who have conducted a minimum level of due

diligence. As pointed out by Mr. Lin, section 60 is similar to subsection 74.07(1) of the *Competition Act*, which has been described by the Competition Bureau as a publisher's defence available to those who do not have decision-making authority over the content of what is being displayed, published or represented (Competition Bureau, *Application of the Competition Act to Representations on the Internet*, February 2003, at 6). In other words, the provision intends to exempt publishers and advertisers (such as newspapers, media or other innocent bystanders) who are only displaying the prices of others, and not their own prices.

[65] In this case, the pleadings establish that Airbnb is providing comprehensive accommodation booking services and has a direct stake in the accommodation booking services it supplies on the Airbnb Platform, notably in the offering and display of the Second Price or Total Price, which includes its Service Fees. To the extent that the pleadings refer to two different prices being offered and displayed for Airbnb's accommodation booking services, it is therefore not plain and obvious that section 54 does not apply to Airbnb because of section 60. Airbnb indeed acknowledges in its Memorandum of Fact and Law that section 60 may not apply to Airbnb's operation of the Airbnb Platform. As stated above, a generous reading of the pleadings leads me to conclude that the product at issue in Mr. Lin's claim is Airbnb's accommodation booking services.

[66] Once again, the interpretation and application of this section 60 defence should not be weighted at the certification stage. Rather, this defence should be considered with the benefit of a complete evidentiary record, at the merits stage, considering the debate on whether Airbnb is

merely an advertiser of the Hosts' accommodations (as argued by Airbnb) or provides comprehensive accommodation booking services (as submitted by Mr. Lin).

(6) Section 36 of the *Competition Act*

[67] Airbnb finally submits that Mr. Lin has not properly pleaded loss or damage as required by section 36 of the *Competition Act*. More specifically, Airbnb maintains that Mr. Lin has failed to plead and prove causation, and to plead that he or anyone else was misled by Airbnb's display of prices. Airbnb argues that Mr. Lin had to plead (and ultimately prove) (i) that he and the proposed Class members believed they were paying only the First Price, and (ii) that they would not have booked accommodation on the Airbnb Platform had they realized that they had to pay the Second Price. Again, I do not agree with Airbnb.

[68] First, keeping in mind the generous interpretation that pleadings ought to receive, I am satisfied that Mr. Lin has pleaded the necessary elements to claim the relief he seeks under section 36. More specifically, paragraphs 30, 32 (b) and (c) and 33 of the Statement of Claim (which correspond to paragraphs 31, 34(b) and (c) and 35 of the Amended Statement of Claim) read as follows:

30. Airbnb charging the Plaintiff (and each of the Class members) the Second Price, instead of the First Price caused the Plaintiff (and each of the Class members) to suffer loss and/or damage.

[...]

32. The Plaintiff seeks, on his own behalf and on behalf of the Class, a declaration that:

a. Airbnb supplied, or offered to supply, a product that exceeds the lowest of two clearly expressed prices at the time which the



product is so supplied, in contravention of section 54 of the *Competition Act*;

b. The Plaintiff and all Class members were entitled to pay to Airbnb only the First Price for each night of their respective reservation(s) through Airbnb in accordance with section 54 of the *Competition Act*; and

c. The Plaintiff and all Class members, having paid the Second Price for each night of their respective reservation(s), suffered loss and/or damage equivalent to the monetary difference between the Second Price and First Price, less the Taxes.

33. The Plaintiff says that he, and the Class, have suffered damages as a result of the Defendants' breach of section 54 of the *Competition Act* and as a result seek damages pursuant to section 36 of the *Competition Act* [...]

[Emphasis added.]

[69] These paragraphs contain allegations of facts referring to all elements of section 36. To establish a claim under section 36, a plaintiff must demonstrate that he or she suffered a loss or damage as a result of the defendant's conduct. To have a reasonable cause of action under section 36, the plaintiff has to suffer a loss resulting from the violation of the impugned criminal provision, and must allege damages resulting from the violation (*Sun-Rype Products Ltd. v Archer Daniels Midland Company*, 2013 SCC 58 [*Sun - Rype*] at paras 74-75; *Godfrey v Sony Corporation*, 2017 BCCA 302 [*Godfrey CA*] at para 231; *Murphy* at para 83; *Watson SC* at para 106; *Axiom Plastics Inc. v EI Dupont Canada Company*, 87 OR (3d) 352, 2007 CanLII 36817 (SC) [*Axiom*] at paras 25, 35). As such, the cause of action under section 36 requires the plaintiff to prove that he or she suffered loss or damage in the actual world as compared to the "but for" world, namely the world without the violation of the criminal provision (*Eli Lilly and Company v Apotex Inc.*, 2009 FC 991 at para 849).

[70] Here, the cause of action under section 36 has three components: a violation of section 54 by Airbnb, a loss or damage suffered by Mr. Lin, and a causal link between the two. The paragraphs referred to above expressly refer to the alleged violation by Airbnb, to the exact nature of the damages claimed and to the causation element of section 36. They specifically state that the loss and/or damage claimed is the monetary difference between the two prices displayed by Airbnb (which amounts to the Service Fees), and that these damages were suffered as a result of Airbnb's breach of section 54.

[71] In my view, this is not a situation like in *Sandhu v HSBC Finance Mortgages Inc.*, 2016 BCCA 301 [*Sandhu*], *Wakelam v Wyeth Consumer Healthcare/Wyeth Soins de Sante Inc.*, 2014 BCCA 36 [*Wakelam*] or *Singer*, where the courts dealt with matters of misleading representation and notably found that the essentials of the cause of action were not adequately pleaded for claims under sections 36 and 52 of the *Competition Act*. The “double ticketing” pricing conduct cannot be simply assimilated to instances of misleading representations. The courts repeatedly affirmed that, when the impugned criminal conduct takes the form of a misleading representation under section 52, a claimant must demonstrate, in order to sustain a claim under section 36 for a breach of that provision, that he or she relied on the misrepresentation to his or her detriment (*Murphy* at paras 79-85; *Wakelam* at paras 74, 91; *Singer* at paras 107-108). Evidence that the claimant acted, to his or her detriment, on the strength of the alleged false representations and suffered loss or damage because of such reliance is one of the necessary ingredients for an action against the person who made the representations. In my view, the situation differs for a prohibited pricing conduct. I am aware of no precedent where an element of reliance to the

person's detriment was required to support a cause of action under section 36 for the breach of a pricing conduct such as "double ticketing".

[72] Section 36 must receive a broad application and a generous approach must be taken when assessing the adequacy of the pleadings of loss or damage at the certification stage (*Shah* at para 74). In previously certified proposed class actions dealing with price-related offences, it was found sufficient to describe damages in the pleadings as the price differential with the "but for" world, and to deal with causality by writing that damages resulted from the violation (*Shah* at para 75; *Pro-Sys* at para 69; *Axiom* at paras 25, 35; *Godfrey CA* at para 14). This is what Mr. Lin has done here, pleading that the damages amount to the difference between the two prices expressed by Airbnb, and that he suffered such damages by having to pay the higher price.

[73] Furthermore, I note that the words "loss" and "damage" in section 36 have been liberally interpreted at the pre-trial motion stage (*Apotex Inc. v Eli Lilly and Company*, 2005 FCA 361 [*Apotex*] at paras 58-59; *Bédard v Canada (Attorney General)*, 2007 FC 516 at paras 48-50, 52, 84). In *Apotex*, the plaintiff claimed that, for the purpose of section 36, the damages suffered were any amount it would have to pay to the defendant in an infringement action (*Apotex* at para 58). Even if this was found to be a "strange proposition in law", the motion for summary judgement was nevertheless dismissed since it was not clear that the claim could not succeed (*Apotex* at para 59).

[74] In *Godfrey*, in the context of a litigation involving a price-fixing conspiracy, the SCC recently observed that, over time, section 36 emerged as a powerful remedy for consumers and

an important deterrent of anti-competitive conduct, and that it deserves a broad interpretation, such that anyone who suffers a loss from prohibited anti-competitive behaviour could bring a private action (*Godfrey* at para 68). Section 1.1 of the *Competition Act* provides that the purpose of the legislation is to “maintain and encourage competition in Canada” with a view to providing consumers with “competitive prices and product choices” (*Godfrey* at para 65). Monetary sanctions for criminal anti-competitive conduct therefore further the *Competition Act*’s purpose. The courts have also recognized that deterrence of anti-competitive behaviour and compensation for the victims of such behaviour are two other objectives of the *Competition Act* of particular relevance (*Infineon* at para 111; *Sun-Rype* at paras 24-27; *Shah* at para 37).

[75] I further note that, as far as damages are concerned, Rule 182 provides that the statement of claim shall specify “the nature of any damages claimed”. A general description of the nature of the damages claimed is sufficient (*Condon* at para 20; *John Doe FCA* at paras 50-51). Here, the Statement of Claim specifically describes the claimed damages as the price differential equal to the Service Fees.

[76] For all these reasons, I find that Mr. Lin’s pleadings on loss or damage are sufficient at this stage.

[77] With regard to the allegation of loss or damage, Airbnb further submits that Mr. Lin had to plead (and eventually prove) that (i) he and the proposed Class members believed they were paying only the First Price and that (ii) they would not have booked an accommodation if they

had realized that they had to pay the Second Price. Since Mr. Lin omitted to do so, Airbnb argues that it is plain and obvious that this action will fail. Again, I do not agree.

[78] The statutory language of sections 36 and 54 of the *Competition Act* does not contain the requirements laid out by Airbnb and I am not persuaded that it is plain and obvious that loss or damage resulting from a “double ticketing” offence could not be established without such requirements.

[79] Airbnb points to no binding decision establishing that, in order to suffer loss or damage under section 36 for a breach of section 54, an element of deception or of being misled is a necessary ingredient. The same is true for the submission that no loss or damage could be sustained if the customer does not allege that he or she would not have purchased the product at the higher price.

[80] Section 54 creates a strict liability offence, pursuant to which charging a price higher than the lowest of two or more expressed prices is a violation of the *Competition Act*. This is an offence strictly based on the supplier’s conduct, more specifically on what the supplier expressed and on the price at which the product is supplied. It simply states that, if the supplier expresses two prices for a product, the supplier cannot charge the higher price. It arguably implies that the purchaser is entitled to have the benefit of the lower price. In light of the statutory language, such a pricing provision is to be analyzed from the perspective of the supplier, like similar provisions on fragmented pricing (*Union des consommateurs c Air Canada*, 2014 QCCA 523 at paras 70-73). Whether section 54 was violated must therefore be addressed objectively, and there is an

arguable case that there is no requirement to assess whether the customers were misled or whether they would have purchased the product at the higher price or not.

[81] Section 54 prohibits a supplier to clearly express two different prices for a product, and then to charge the higher price. The prohibited conduct appears to give the purchasers of such product a legal entitlement to the lower price, and it is arguable that, as a result of such “double ticketing” conduct, the customer suffers loss or damage equal to the difference between the two prices. I pause to observe that, in *Murphy*, the Court contrasted section 36 claims based on misrepresentations with those based on pyramid selling, noting that the latter provision involved questions of “structure” that “require different treatment” (*Murphy* at paras 91, 93). In light of his other conclusions, the judge did not elaborate on this point in *Murphy*. But the same can arguably be said about the “double ticketing” provision, in contrast to the misleading representation offences.

[82] It is therefore not plain or obvious that, in order to prove loss or damage resulting from an alleged violation of the “double ticketing” provision, there is a requirement that the purchaser has been misled or that the purchaser’s choice or decision to buy would have been affected by a difference in price. Stated differently, based on the provision’s wording, it is not plain and obvious that, in order to support his claim of loss or damage, Mr. Lin needed to plead and allege that he believed he would pay only the First Price shown on Airbnb’s search results page, and that he would not have paid the Second Price or would not have bought Airbnb’s accommodation booking services at the Second Price.

[83] I agree that it may look as a strange proposition to plead and argue that loss or damage can be established by a customer, based simply on a price differential between the lower and the higher price of a product, when the customer knew about both prices and nevertheless decided to accept the higher price and to proceed with the transaction. I also acknowledge that demonstrating and proving the existence of an actual loss or damage in these circumstances may present additional challenges for Mr. Lin and the Class members. I further understand that, in this context, Airbnb may have strong reserves about Mr. Lin's ultimate ability to demonstrate a loss or damage automatically equal to the full price differential. However, in light of section 54's wording and the lack of jurisprudence interpreting the provision, I am not persuaded that Mr. Lin's cause of action based on sections 36 and 54 is doomed to fail in the absence of pleadings addressing the two alleged requirements identified by Airbnb.

[84] Again, it may well be that, further to a more comprehensive analysis of the provisions with a full evidentiary record and full legal submissions, the trial judge agrees with Airbnb and finds that establishing loss or damage under section 36 for a breach of section 54 requires demonstrating that the customer was misled or would not have proceeded to purchase the product at the higher price had it been shown to him or her in the first place, and that simply invoking the price differential does not suffice. However, this is a matter of interpretation and application of the two provisions to be debated on the merits. If Airbnb was able to demonstrate, at the common issues trial, that a loss or damage cannot be solely established by the price differential associated with a "double ticketing" conduct, this could be sufficient to conclude that no damages have been suffered by Mr. Lin and the Class members.

(7) Conclusion

[85] In conclusion on this first criterion, it will be up to Mr. Lin, at the merits stage, to prove that Airbnb conducted itself in a manner contrary to section 54 of the *Competition Act* and that he is entitled to damages equal to the Service Fees under section 36. But, for the time being, I am satisfied that it is not plain and obvious that, if the alleged facts are assumed to be true, Mr. Lin's action based on those provisions is certain to fail, and that the pleadings disclose no reasonable cause of action. In my opinion, Airbnb's arguments, as attractive as they may seem at first glance, require debate of the facts and law and a foray into the merits of the case. This case raises many novel issues regarding the interpretation and application of a rarely used pricing provision of the *Competition Act*, and on its interface with section 36, and it would be inappropriate to decide them at the certification stage. Certification serves to decide which form the action will take, and Rule 334.16(1)(a) is only meant as a screen to filter out actions that are bound to fail at the merits stage. I am not persuaded that this is the case here.

**B. Rule 334.16(1)(b): Identifiable class of two or more persons**

[86] I now turn to the four other requirements to certify a class proceedings, for which Mr. Lin has the burden of adducing evidence to show "some basis in fact" that they have been met. Having an identifiable class of two or more persons is the first one.

[87] Mr. Lin asks the Court to certify the following Class: "All individuals residing in Canada who, on or after October 31, 2015, reserved an accommodation for anywhere in the world using Airbnb, excluding individuals reserving an accommodation primarily for business purposes". He



submits that this is an identifiable class, as the fact that a person made a booking with Airbnb is by itself an objective criterion that will allow Class members to self-identify. Mr. Lin also warns the Court to be careful in narrowing the Class and excluding Class members at this early stage, especially given the informational imbalance between Airbnb and him.

[88] I pause to underline that Mr. Lin's proposed Class definition covers all individuals having booked an accommodation with Airbnb, with no further distinction or exclusion (save for the reservations for business purposes). The definition is totally detached from the impugned pricing conduct at issue and contains no direct or indirect reference to a requirement that the Class members be individuals who paid a price higher than another price expressed by Airbnb, which is the essence of section 54 on "double ticketing" and the central thrust of Mr. Lin's claim for damages.

[89] Airbnb does not contest that the proposed Class is comprised of two or more persons: approximately 2.2 million Canadian residents booked an accommodation on the Airbnb Platform from October 31, 2015 to August 2018, according to the second affidavit of Mr. Miller. Airbnb however contends that the proposed Class definition is too broad and that it should be limited in two ways. First, it should only include Guests "who saw two prices" by booking an accommodation exactly matching the parameters of a previous search they ran on the search results page of the Airbnb Platform. Second, it should only cover Guests who (i) believed they would pay only the First Price shown on the search results page, and (ii) would not have made a booking had they been aware that they would be charged the Service Fees in the Second Price. However, Airbnb explains that such amendments to the proposed Class definition would be

inappropriate, since they would require relying on individuals' memories to determine who is part of the Class.

[90] For the following reasons, I partly agree with Airbnb and conclude that the proposed Class definition must be amended to be a properly defined and acceptable identifiable class. As defined by Mr. Lin, the proposed Class is not sufficiently narrow and is overly broad because the definition contains no reference to the need for individuals to have been exposed to two different prices for Airbnb's accommodation booking services. The evidence shows that some Guests can access Airbnb's accommodation booking services without going to the search results page on the Airbnb Platform, where Airbnb's First Price is displayed. Airbnb therefore does not express two prices to these individuals. The definition of the identifiable class will have to be amended to exclude those individuals.

[91] Three criteria must be met to find an identifiable class: (i) the class must be defined by objective criteria; (ii) the class must be defined without reference to the merits of the actions; and (iii) there must be a rational connection between the common issues and the proposed class definition (*Hollick* at para 17; *Dutton* at para 38; *Wenham* at para 69). Though the SCC instructed courts to generously interpret class action legislation, the burden lies on the proposed representative plaintiff to show that the defined class is sufficiently narrow, thereby meeting the criteria (*Hollick* at paras 14, 20). Still, the burden is not unduly onerous: the representative does not need to show that "everyone in the class shares the same interest in the resolution of the asserted common issue[s]", only that the class is not "unnecessarily broad" (emphasis added) (*Hollick* at para 21; *Paradis Honey Ltd. v Canada*, 2017 FC 199 [*Paradis Honey*] at para 24). As

such, over-inclusion and under-inclusion are not fatal to certification, as long as they are not illogical or arbitrary (*Rae* at para 56). If the class can be defined more narrowly without arbitrarily excluding people sharing the same interest in the resolution of the common issues, the Court can allow certification on condition that the class definition be amended (*Hollick* at para 21).

[92] In *Dutton*, the SCC explained the underlying rationales for proceeding with a clearly identifiable class at the outset of the litigation. The Court must be in a position to identify: (i) who is entitled to notice, (ii) who is entitled to relief, and (iii) who is bound by the judgment (*Dutton* at para 38; *Paradis Honey* at para 22). However, despite having to proceed with an identifiable class at the preliminary stages of the class action proceedings, the Court must remain flexible and open to amendments to the class definition during the post-certification stages “because of the complex and dynamic nature of class proceedings” which calls for active case management (*Buffalo FCA* at para 12; *Paradis Honey* at para 26).

[93] I first briefly deal with the second argument raised by Airbnb on the overbreadth of the Class proposed by Mr. Lin, regarding the Guests who were not misled. Airbnb submits that the Class definition should be limited to Guests who (i) believed they were paying only the First Price displayed on the search results page, and (ii) would not have made a booking had they known they would be charged the Service Fees in the Second Price. This essentially echoes what Airbnb submitted with respect to the requirement to establish loss or damage, discussed above in the section on the reasonable cause of action.

[94] For the reasons detailed above, I do not agree that this argument can be accepted at this stage and that the Class needs to be limited to those “Guests who were misled” to establish a rational connection with the common issues at stake. I am not persuaded at this stage that these are necessarily requirements to establish loss or damage under section 36 for a breach of the “double ticketing” provision; and it would be premature to import them in the definition of the identifiable class. It will be up to the common issues trial judge to decide whether a deception or misleading element is required to recover loss or damage under section 36, or whether proof that a purchaser would not have bought the product at the higher price is required. Mr. Lin argues that the existence of the price differential under section 54 is sufficient to establish loss or damage under section 36 in the circumstances, and this is how he has defined the actual damages suffered by the Class members in his common issues. If it was eventually determined that customers effectively do not need to have been misled or deceived to be entitled to damages, the individuals that Airbnb asks to exclude from the Class definition based on the two additional requirements described above would be left with no relief, and would have to start a new action. This would be contrary to the class actions objectives of access to justice and judicial economy.

[95] At the certification stage, one should exercise caution before limiting the dimension of the class as stated by a plaintiff. The consequences of excluding members of the class at this early stage can be serious, and an overly strict approach to the class definition would undermine the liberal approach that the SCC advised, in *Vivendi* and *Infineon*, for interpreting the requirements for class actions certification. While I cannot exclude the possibility that the class may need to be reconfigured later in these proceedings, agreeing to the second narrowing of the

Class submitted by Airbnb would arbitrarily exclude people who share the same interest in the resolution of the common issues.

[96] In my view, the situation is however quite different for Airbnb's first argument on the overbreadth of the Class definition proposed by Mr. Lin, regarding the Guests who did not "see" two prices.

[97] According to Mr. Lin's Statement of Claim and submissions, the First Price expressed by Airbnb is solely displayed on the search results page of the Airbnb Platform. The first and second affidavits of Mr. Miller provide evidence about at least two types of situations where Guests booking accommodations on the Airbnb Platform are not exposed to the First Price described by Mr. Lin. First, Guests may directly access the listing page of a specific accommodation on the Airbnb Platform without having to visit the search results page and running a search. This is notably the case when Guests book accommodations that they previously booked, and which they can access directly without a search. Second, when Guests change the search parameters of their booking (such as the dates of their stay or the party size) once they are on the listing page of a specific accommodation – thus modifying the parameters they initially used on the search results page –, new prices are displayed to them for that accommodation on the listing page. However, such Guests are not informed of the corresponding price of the accommodation on a search results page. In those circumstances, says Airbnb, the Guests do not visit the search results page for their revised booking, and there is no First Price for that particular transaction concluded by the Guests.

[98] This evidence submitted by Mr. Miller was not contradicted. Mr. Miller estimates in his second affidavit that these instances could reflect the situation of approximately 25% of the total bookings made by Canadian-resident Guests on the Airbnb Platform. This is not insignificant.

[99] Airbnb presents this argument in terms of Guests who did not “see” two prices and, notably, never saw the First Price described by Mr. Lin, which excludes the Service Fees. Mr. Lin responds that section 54 of the *Competition Act* does not require customers to “actually see” the price before the supplier violates the provision, as the “double ticketing” offence focuses on whether the supplier displays two different prices and charges the higher price.

[100] With respect, the overbreadth argument raised by Airbnb on the “two prices” issue should not be crafted in terms of whether the Guests “see” two prices or not. What matters is whether Airbnb expressed a price or not. A fundamental element required for the “double ticketing” offence is that the supplier clearly expresses two or more prices for the same product, and charges higher than the lowest expressed price. In the situations described by Mr. Miller, Airbnb does not express a First Price to the Guests; instead, for those transactions where the Guests did not go through or go back to the search results page, only a Second Price was expressed to the customer, at the booking phase of the transaction. More specifically, if a Guest books an accommodation without first going through the search results page, it implies that Airbnb does not express a First Price to the Guest, but only a Second Price at the booking phase. Similarly, if a Guest modifies his or her search parameters in the booking phase, a Second Price will be expressed by Airbnb for that particular transaction, for which no First Price will have been or will be expressed at the search results phase.

[101] According to the evidence, these are not situations where Guests are not “seeing” a First Price that might be displayed somewhere on the Airbnb Platform for the transaction, as the only place where a First Price can be displayed is on the search results page related to a particular booking. These are instead situations where a First Price is never expressed for the transaction, and simply does not exist. Clearly, if Airbnb only expresses a Second Price to a Guest for a transaction, and no First Price, there cannot be a violation of section 54 of the *Competition Act*, and Guests having booked accommodations in that context cannot logically and properly belong in the identifiable class. On the evidence before me, Airbnb expresses two prices for a transaction only when a Guest books an accommodation that matches the parameters of a previous search he or she made on the search results page of the Airbnb Platform. A Guest is not exposed to a First Price if he or she does not visit Airbnb’s search results page for a booking transaction.

[102] Guests who book an accommodation by directly accessing the listing page without going through the search results page must therefore be excluded from the Class as no proposed common issues can be relevant or have any rational connection to them. The same is true for Guests who modify the parameters of their booking on the listing page after running a search, as they are not exposed to a First Price on the search results page. These are not potential Class members, and they are individuals who are clearly not entitled to notice or relief for a claim anchored to the “double ticketing” provision.

[103] A proposed class definition will be overly broad if it binds persons who ought not to be bound, and if there is no rational connection between some of the proposed class members and

the alleged impugned conduct to which the common issues relate (*Harrison v Alexa Life Sciences Inc.*, 2018 BCCA 165 [*Harrison*] at para 39). This is the case here. Section 54 can only apply where two prices are expressed for the same product supplied at the same time and in the same quantity. The current proposed Class definition includes individuals with no claims under section 54 because they were never exposed to a First Price. As defined, the proposed Class is insufficiently related to the impugned “double ticketing” conduct (i.e., the requirement of a supplier having expressed two prices) and to the specific claims advanced by Mr. Lin against Airbnb. The definition does not tailor the Class to individuals exposed to two prices, despite this being the central thrust of Mr. Lin’s claim against Airbnb. In that sense, the Class definition proposed by Mr. Lin is unnecessarily broad as the Class could be narrowed without arbitrarily excluding people who share the same interest in the resolution of the common issues (*Hollick* at para 21).

[104] Without an amendment excluding the Guests who have not been exposed to a First Price by booking an accommodation through visiting Airbnb’s search results page, the Class proposed by Mr. Lin captures individuals who do not share the same interest in the resolution of the common issues. Narrowing the class definition along those lines will not arbitrarily exclude individuals with potential valid claims. It will only exclude individuals without such claims.

[105] I therefore agree with Airbnb that the identifiable class can only include Guests who booked accommodations that matched the parameters of a previous search they ran on the search results page of the Airbnb Platform, as it is only in those situations that Airbnb will have expressed both a First Price and a Second Price for a booking transaction. There cannot be a



properly defined and acceptable identifiable class without such change. Mr. Lin therefore must appropriately reword the Class definition to only include individuals who reserved an accommodation that matched the parameters of a previous search made by the individual on the search results page of the Airbnb Platform and for which a First Price or Listing Fee was displayed. I pause to note that this is not a situation where the Court is resolving conflicts in the evidence to reach that conclusion. The evidence is simply insufficient to establish some basis in fact for the existence of an identifiable class which would include Guests to whom Airbnb has not expressed a First Price.

[106] That being said, I am not convinced, contrary to Airbnb's submissions, that an amendment to the Class definition could not solve the problem. Limiting the Class definition to exclude the situations described in Mr. Miller's affidavits is based on an objective criterion regarding the search parameters and the visit of Airbnb's search results page. It defines the Class without reference to the merits of the action, and ensures a rational connection between the common issues and the proposed class. My understanding of the evidence provided by Mr. Miller in his second affidavit is that Airbnb further has the ability to identify and determine the bookings made by Canadian-resident Guests on the Airbnb Platform which can be matched to a previous search ran by the Guests with the same parameters, even though this may require enormous time and resources, and even though Airbnb says it currently has no efficient way to do it.

[107] In my view, this situation differs from *Harrison*, referred to by Airbnb, where the class was found to be unnecessarily broad but could not be narrowed as it would have required relying

on individuals' memories of specific misrepresentations to determine whether they were part of the class or not. In *Harrison*, a case on misleading representation, the class was found overbroad because it was not tailored to those who relied on the misrepresentations to purchase the product. Instead, the class covered all purchasers of the product although they were not exposed to a common, uniform set of misrepresentations. In that case, the court found that the class definition could not be amended and tailored because the class members would likely be unable to recall the precise representations on the packaging to determine whether they belong to the class or not, and would have to rely on their memories regarding the nature of the misrepresentation.

[108] Here, the criterion relates to search parameters and the visit of the search results page on the Airbnb Platform for potential Class members who will claim having paid a price higher for their accommodation booking. I am not persuaded that individuals will be highly unlikely to recall having gone to a search results page where a First Price was expressed by Airbnb, or to have records that will allow them to determine it. To self-identify as potential class members, they will need to determine two elements: that they booked an accommodation with Airbnb after being exposed to two prices which included a First Price on the search results page, and that they ended up paying the higher price. The existence of a First Price or Listing Fee refers to a basic element of booking transactions made by the Guests on the Airbnb Platform. Potential class members will therefore have the ability to self-identify by applying an objective criterion regarding their own usage of Airbnb's accommodation booking services. Here, in my view, there exists a realistic possibility that a substantial number of potential Class members will be able to determine with a degree of certainty whether they fall within or outside of the amended Class

definition. The connection can be established objectively by referring to a visit on Airbnb's search results page.

[109] For many individuals, this determination will be straightforward, while for some it may be more complicated. The fact that there can be difficulties in objectively determining whether an individual booked an accommodation after visiting Airbnb's search results page does not mean it is impossible. Moreover, the evidence indicates that Airbnb has some ability to match bookings made by Guests to specific search parameters.

[110] It is sufficient that the class definition states objective criteria by which class members can later be identified (*Sun-Rype* at para 57). Justice Rothstein's reasons in *Sun-Rype* clarifies that the identifiable class requires evidence establishing some basis in fact that sufficient information is available to class members to permit them to determine whether they belong to the class. Whether a particular individual may, as a matter of fact, be found to be within the class definition may require further inquiry in the administration phase of this class proceeding. But, it can be managed and does not pose an insurmountable hurdle. In addition, Airbnb has records which can be of assistance. The fact that individual inquiries may be required does not take away from the fact that a class may be properly defined and identifiable.

[111] I am therefore satisfied that some basis in fact supports the conclusion that, as amended, the Class proposed by Mr. Lin meets the criteria to constitute a properly identifiable class of two or more persons. The amended Class will allow objective identification on the basis of whether or not the member made a booking on the Airbnb Platform after having been through the search

results page and being exposed to two prices. The amended Class is defined without reference to the merits of the claims asserted and, with the amendment, a rational connection exists between the common issues regarding liability and damages and the proposed Class. In addition, there is some basis in fact that a class of two or more people meeting the amended definition exists.

**C. Rule 334.16(1)(c): Common question of law or fact**

[112] The next requirement is for Mr. Lin to demonstrate some basis in fact for the claims of the Class members raising common questions of law or fact, regardless of whether those common questions predominate over questions affecting only individual members. Mr. Lin argues that there are common questions of fact and law with respect to liability and remedies.

The common questions proposed by Mr. Lin are as follows:

*“Liability to the Class under the Competition Act*

1. Did the Defendants clearly display a “first price” in the search results to each of the Class Members in the search result screen?
2. Did the Defendants display a “second price” immediately prior to each Class Member confirming and/or submitting their accommodation reservation?
3. Is the “second price” higher than the “first price” for all Class Members?
4. Were the Defendants only entitled to charge the “first price” under section 54 of the *Competition Act*?
5. Were the Class members entitled to pay to Airbnb the “first price” under section 54 of the *Competition Act*?
6. Are the Class Members individuals acting primarily for non-business purposes?

*Recovery for the Class under Section 36 of the Competition Act*

7. Have the Class Members suffered actual damages equivalent to the “second price” minus the “first price”, less any applicable taxes?

8. Are the Class Members entitled to claim the damages in question #7 pursuant to section 36 of the *Competition Act*?

9. Are the Defendants jointly and severally liable for their own conduct and that of each other?

10. Are the Class Members entitled to recovery of investigation costs and costs of this proceeding, including counsel fees and disbursements on a full indemnity basis?

*Miscellaneous*

11. Should the Court grant a permanent injunction enjoining the Defendants from:

a. charging a price higher than the lowest clearly displayed price or otherwise displaying two or more different prices; and

b. displaying two or more different prices for the same product/service of the same quantity?

12. Are the Defendants liable to pay punitive or exemplary damages having regard to the nature of their conduct? If so, what amount and to whom?

13. Are the Defendants liable to pay court-ordered interest?

14. Can an aggregate assessment of damages be made pursuant to Rule 334.28(1)?”

[113] As indicated above, at the hearing before this Court, Mr. Lin abandoned his claims for permanent injunction and punitive damages, so the proposed common issues 11 and 12 are no longer in play.

[114] Airbnb submits that none of the proposed issues are common. Airbnb's principal submission is that the proposed common issues cannot be answered without first making findings of fact with respect to each individual claimant.

[115] For the reasons that follow, I find that, with the amended definition of the identifiable Class, Mr. Lin meets the requirement to demonstrate some basis in fact that the claims of the Class members raise certain common issues on liability and recovery of damages. I am satisfied that these issues must be settled to resolve each Class member's claim. However, some of the proposed questions require clarification.

[116] The task of the Court at this stage is not to precisely determine the common issues, but rather to "assess whether the resolution of the issue is necessary to the resolution of each class member's claim" (*Wenham* at para 72). In assessing the commonality of issues, the emphasis is not on the differences between the class members but on the identical, similar or related issues of law or fact. The judge must simply assess whether common questions stemming from facts relevant to all class members exist. If the fact is significant enough to advance the resolution of every class member's claim, the condition is met.

[117] In *Pro-Sys*, Justice Rothstein summarized the SCC's instructions for ascertaining the commonality requirement previously stated in *Dutton*. Underpinning the commonality question, as well as the overarching class action framework, is an inquiry into "whether allowing the suit to proceed as a [class action] will avoid duplication of fact-finding or legal analysis" (*Pro-Sys* at para 108, citing *Dutton* at para 39). In light of these considerations, the Court must determine the

existence of a common question while applying the following principles: (i) the commonality question should be approached purposively; (ii) an issue will be “common” only where its resolution is necessary to the resolution of each class member’s claim; (iii) it is not essential that the class members be identically situated vis-à-vis the opposing party; (iv) it is not necessary that common questions predominate over non-common issues, though the class members’ claims must share a substantial common ingredient to justify a class action, as the Court will examine the significance of the common issues in relation to individual issues; and (v) success for one class member must mean success for all, since all class members must benefit from the successful prosecution of the action, albeit not necessarily to the same extent (*Pro-Sys* at para 108; *Rae* at para 58; *Paradis Honey* at paras 68-69).

[118] In *Vivendi*, the SCC further underlined that the common success requirement should not be applied “inflexibly” (*Vivendi* at para 45). Thus, a common question can exist even if the answer may vary from one class member to another; success for one member does not necessarily entail success for all members, though success for one must not mean failure for another (*Vivendi* at para 45). In interpreting the principles laid down in *Dutton and Rumley v British Columbia*, 2001 SCC 69, the SCC reiterated that a question will be considered common if it can serve to advance the resolution of every class member’s claim, which may require nuanced and varied answers based on the situation of individual members (*Vivendi* at para 46; *Paradis Honey* at para 77). In other words, the commonality requirement does not call for identical answers for all class members or even that each member must benefit to the same extent. Rather, it is “enough that the answer to the question does not give rise to conflicting interests among members” (*Vivendi* at para 46).

[119] Concerning the substantiality of the common issues, the FCA clarified that the commonality requirement can be met even if many issues, such as causation and damages, remain to be decided individually after the trial on common issues (*John Doe* at paras 62-63).

[120] Common issues are at the heart of the class action process because resolving common issues is what allows a class action to efficiently provide access to justice, resulting in economic use of judicial resources and behaviour modification. That said, the threshold to meet the commonality requirement is low: it suffices to establish a rational connection between the class and the proposed common issues, and the determination of each common issue must contribute to advance the litigation for (or against) the class. Conversely, an issue is not common if its resolution is dependent upon individual findings of fact that would have to be made for each class member.

[121] I am satisfied that, subject to the comments below and a few changes in the wording, the questions identified by Mr. Lin need to be established for all Class members, as defined in the amended Class definition. They are central to the litigation and do not require individualized evidence from Class members. The claims under sections 54 and 36 raise common issues that predominate over questions affecting individual members, such that the criterion in Rule 334.16(1) is satisfied. The proposed common issues focus on Airbnb's pricing conduct and I am satisfied that resolution of these issues will advance the action on behalf of all Class members. They will also avoid duplication of fact-finding or legal analysis. This is not to say that individual assessments may not be necessary – they probably will be. However, the legal and factual foundation of the claims will be common to all Class members.



[122] The first set of issues (proposed common questions 1 to 6) are questions relating to Airbnb's liability. The first three issues relate to Airbnb's pricing practices, and there is some basis in fact regarding Airbnb's uniform practice of charging the Service Fees and the Second Price at the booking stage and of expressing a First Price on the search results page of the Airbnb Platform. As to proposed issues 4 and 5, they are essentially legal questions directed at the interpretation of section 54 of the *Competition Act* and its application to Airbnb.

[123] With the Class redefined to ensure that it only covers the Guests to whom Airbnb expressed two prices, I am satisfied that the proposed common issues 1 to 5 can be resolved on a common basis and are suitable for collective adjudication. They constitute common questions of law or fact which fulfills the requirements of Rule 334.16(1)(c). Questions 1 and 2 will also allow the trial judge to assess and determine the "product" issue at the core of the debate between the parties, the applicability of section 54 to this case, as well as the availability of the section 60 defence. The trial judge's findings on these liability issues can be applied to each Class member.

[124] Airbnb objected to these questions as common issues, arguing that the proposed identifiable Class included Guests to whom a First Price might not have been expressed. This is no longer relevant with the amended Class definition being limited to Guests having booked an accommodation matching the parameters of a previous search made by the Guest on the search results page of the Airbnb Platform and for which a First Price was expressed on the search results page.

[125] When certifying an action, the Court has the discretion to redefine the common issues proposed by the representative plaintiff. Because of the key issue surrounding the “product” or “products” at stake in assessing Airbnb’s pricing conduct, the wording of section 54 and the determinative role of the product notion in the “double ticketing” provision, proposed common questions 1 and 2 should be reformulated and clarified as follows:

1. Did the Defendants clearly express a “first price” for a product to each of the Class Members in the search results screen?
2. Did the Defendants clearly express a “second price” for the same product immediately prior to each Class Member confirming and/or submitting their accommodation reservation?

[126] With regard to proposed common question 6, I agree with Airbnb that it is redundant and not common. The Class definition already excludes an individual who booked an accommodation for business purposes, as the class is only composed of people who booked an accommodation for non-business purposes. There is no point in asking if these people acted for non-business purposes. Question 6 will therefore not be part of the certified common issues.

[127] The second group of proposed common questions (7 to 10) deals with remedies and recovery of monetary damages under section 36 of the *Competition Act*. Airbnb argues that they are not common if the Class is not limited to Guests who (i) believed they would pay only the price shown on the search results page, and (ii) would not have made a booking had they known they would be charged the Service Fees in the Second Price. This again goes back to Airbnb’s arguments regarding the additional requirements allegedly needed to establish loss or damage under section 36 for a breach of section 54.

[128] As discussed above, whether these requirements are necessary under the provision underlying Mr. Lin's cause of action is open for debate and the proposed common questions 7 and 8 on damages will address that. They will serve to establish what is the loss or damage resulting from an alleged violation of section 54, and whether Mr. Lin's position, to the effect that it can boil down to the simple price differential between the First Price and the Second Price without more on deception or intent to make a booking, is sufficient. Proposed common question 7 refers to the Class members having suffered "actual damages equivalent to the "second price" minus the "first price"", and proposed common question 8 asks whether Class members are entitled to claim such damages under section 36. Mr. Lin contends that the Class members only need to show the price differential to meet the requirements of section 36 in cases of an alleged breach of the "double ticketing" provision, and the common issues trial judge will be tasked with determining whether Mr. Lin is right. The damages as they are defined by Mr. Lin in question 7 are expressly limited to the price differential. Determining whether the price differential can constitute "actual damages" without proof that the Class members (i) believed they would pay only the price shown on the search results page, and (ii) would not have made a booking had they been aware that they would also be charged the Service Fees – which Mr. Lin says he does not need to prove –, will advance the action on behalf of all Class members, and will also avoid duplication of fact-finding or legal analysis.

[129] These questions on remedies contested by Airbnb will therefore move the litigation forward for every Class member, even if the common issues trial judge eventually decides that section 36 also requires proof that individuals have been misled or that they had no intention of purchasing the product at the higher price.

[130] I agree that questions 7 and 8 should be combined and I would reformulate them as follows:

7. Have the Class Members suffered actual damages equivalent to the “second price” minus the “first price”, less any applicable taxes, entitling them to claim such damages pursuant to section 36 of the *Competition Act*?

[131] Answering this common issue will move the litigation forward even though damages would vary between each Class member, as the price differential equal to the Service Fees would be different for each transaction. However, this is not a bar to certification pursuant to Rule 334.18(a). With the answer to proposed common questions 7 and 8, proposed questions 9 and 10 can be answered and can be certified.

[132] The last group of proposed common issues (questions 13 and 14) relates to other remedies. Regarding the proposed common issue 13 on whether Airbnb can be liable to pay court-ordered interest, the resolution of this issue will not advance the litigation. In addition, it falls within the inherent jurisdiction of the trial judge, whether certified or not. I am not satisfied that the question is appropriate for certification.

[133] Turning to common issue 14 on aggregate damages, a court can make an aggregate assessment of damages as part of the common issues trial, in the event the defendant is found at the said trial to have breached an applicable obligation or duty. Indeed, in *Pro-Sys* at paragraphs 132-134, while observing that aggregate damages are applicable only once liability has been established, Justice Rothstein held that the question of whether aggregate damages are an appropriate remedy can be certified as a common issue and be determined at the common issues

trial, once a finding of liability has been made. However, aggregate damages are not available unless liability and entitlement to damages can be determined on a class wide basis, with no questions of fact or law remaining. The availability of aggregate damages has been certified as a common issue if there is a reasonable likelihood of such remedy being granted (*Sankar v Bell Mobility Inc.*, 2013 ONSC 5916 at para 86).

[134] Here, a number of common issues must first be determined before concluding to Airbnb's liability under sections 36 and 54 of the *Competition Act*, and the issue of the availability of aggregate damages can only be dealt with after all these complex issues will be decided. There is some basis in fact that aggregate damages could be awarded after the common issues trial. Here, monetary relief is claimed and the common issues will be dispositive of liability and entitlement to damages for the Class. In addition, the aggregate liability of Airbnb can be determined by Airbnb's records of all Service Fees collected from the Class members. In these circumstances, I am satisfied that the proposed common issue on aggregate damages is appropriate for certification.

**D. *Rule 334.16(1)(d): The preferable procedure for the just and efficient resolution of the common questions of law or fact***

[135] The next criterion is the preferable procedure criterion, set out in Rule 314.16(1)(d). According to the test outlined by the SCC, in order to meet the preferable procedure criterion, the representative plaintiff must show (i) that a class proceeding would be a fair, efficient and manageable method of advancing the claim and determining the common issues which arise from the claims of multiple plaintiffs, and (ii) that it would be preferable to any other reasonably

available means of resolving the class members' claims (*Fischer* at para 48; *Hollick* at para 28; *Wenham* at para 77). Determining whether a class proceeding is preferable must be "conducted through the lens of the three principal goals of class action, namely judicial economy, behaviour modification and access to justice" (*Fischer* at para 22).

[136] A number of principles need to be considered when determining whether a class action is the preferable procedure (*Wenham* at paras 77-78; *John Doe FCA* at para 26). First, the preferable procedure requirement is broad enough to encompass all available means of resolving the class members' claims, including avenues of redress other than court actions (*Fischer* at paras 19-20; *Hollick* at para 31). Second, the common issues must be examined in their context, taking into account the importance of the common issues in relation to the claim as a whole (*Hollick* at paras 29-30). As such, when comparing possible alternatives with the proposed class proceeding, a practical, cost-benefit approach must be adopted to consider the impact of the class proceeding on the class members, defendants and courts (*Fischer* at para 21). Third, the preferable procedure analysis is concerned with the extent to which the proposed class action serves the overarching goals of class proceedings (*Hollick* at para 27). This involves a comparative exercise ultimately questioning whether other available means of resolving the common issues are preferable, not whether a class action would fully achieve those goals (*Fischer* at paras 22-23). Fourth, the preferable procedure requirement can be met even where substantial individual issues exist (*Hollick* at para 30).

[137] A plaintiff is expected to show some basis in fact for concluding that a class action would be preferable to any other litigation options. However, he or she cannot be expected to

address every single conceivable non-litigation option; in fact, “[w]here the defendant relies on a specific non-litigation alternative, he or she has an evidentiary burden to raise it” (*Fischer* at para 49). Yet, once some of the adduced evidence proves that such an alternative exists, the burden of satisfying the preferable procedure criterion remains on the plaintiff (*Fischer* at para 49).

[138] Moreover, Rule 334.16(2) provides a list of factors to be considered by the Court in the analysis, including: (i) the extent to which common questions predominate over individual questions; (ii) whether a significant number of class members have an interest in individually controlling the proceedings; (iii) whether the same claims have been the subject of other proceedings; (iv) whether other means of resolving the claims are less practical or efficient; and (v) whether the administration of the class proceeding would create greater difficulties than those likely to be experienced, if relief were sought by other means.

[139] Mr. Lin submits that a class proceeding is the preferable procedure in this case, since it favors access to justice, judicial economy and behaviour modification. Furthermore, he maintains that he meets all the factors set out in Rule 334.16(2): common questions predominate over individual ones; there is no evidence of Class members having an interest in controlling individual actions; there are no individual proceedings, and only one class proceeding has been filed in a provincial court, on the basis of a different cause of action; there is no viable alternative to resolve the claims; and the class proceeding will not create greater difficulties than any other alternative.

[140] Airbnb responds that a class proceeding is not the preferable proceeding, as the difficulties in identifying Class members will overwhelm the resolution of the common issues. Airbnb's argument is once again anchored on its submissions that the Class should be limited to Guests who "saw two prices" and who "were misled". Those concerns were addressed earlier and, for the reasons discussed above and with the amended Class definition, I am not persuaded that this action will be dominated by individual issues which would be far more time-consuming than the common issues, thus rendering the action unmanageable. On the contrary, the numerous common questions to be resolved do predominate.

[141] I find little in Airbnb's submissions to convince me that Mr. Lin failed to demonstrate that a class proceeding is the preferable procedure for resolving the common issues identified above, in the context where the Class definition is amended as discussed. After reviewing the jurisprudence on the principles relating to the preferable procedure analysis, I am satisfied that a class action is the preferable procedure in the circumstances.

[142] Because of the likely modest claims of each individual Class member, individual Class members have no interest to pursue their own separate claims and to bring separate proceedings against Airbnb. In this case, both access to justice and judicial economy make a class proceeding preferable over thousands of individual proceedings. Given the cost of individual proceedings in relation to the likely value of the claims, there does not appear to be any other means of resolving the claims of the Class members than by a class proceeding. Airbnb failed to identify any viable alternative remedy with better efficiency or providing equivalent relief. Mr. Lin mentions having approached the Competition Bureau, which possesses the power to take



enforcement action leading to possible criminal prosecution under section 54, but there is no indication that it will take any such action. Furthermore, an enforcement action under the criminal provision could not lead to recovery of damages for the Class members.

[143] In this case, a class proceeding is preferable to any other reasonably available means of resolving the Class members' claims, in light of the overarching goals of class proceedings. Compared to individual actions, a class proceeding favors access to justice because the pooling of financial resources makes the litigation possible for claims of relatively small amounts of money; the no-cost regime in this Court shield the parties from costs if they lose; and the notification requirements ensure that individuals know if they are entitled to a claim (*Wenham* at paras 86-89). Judicial economy is also favored here since a class proceeding will entail one single review of the numerous legal and factual issues raised by Mr. Lin's claim regarding the interpretation and application of the "double ticketing" provision and of section 36.

[144] I conclude that the preferable procedure criterion is satisfied in this case.

**E. *Rule 334.16(1)(e): Appropriateness of the representative plaintiff***

[145] The fifth and final criterion for certification as a class action concerns the ability of Mr. Lin to act as a representative plaintiff who would adequately represent the interests of the Class without conflict of interest.

[146] According to Rule 334.16(1)(e), the requirements for establishing that the proposed representative plaintiff is appropriate are that he or she: (i) would fairly and adequately represent

the interests of the class; (ii) has prepared a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the class and of notifying class members as to how the proceeding is progressing; (iii) does not have, on the common questions of law or fact, an interest that is in conflict with the interests of other class members; and (iv) provides a summary of any agreements respecting fees and disbursements between the representative plaintiff or applicant and the solicitor of record. In *Dutton*, the SCC noted that the proposed representative need not be typical of the class or the best possible representative, but the court assessing this criterion should “be satisfied, however, that the proposed representative will vigorously and capably prosecute the interests of the class” (*Dutton* at para 41).

[147] Though a litigation plan “is not to be scrutinized in great detail” at the certification stage because it will “likely be amended during the course of the proceeding”, the plan must nevertheless demonstrate that the plaintiff (and their counsel) have thought the process through, having considered the complexities of the case and procedures (*Buffalo FC* at para 148; *Rae* at paras 79, 80). There are no “fixed rules or requirements” for a litigation plan, and the appropriate content of a litigation plan will depend on the “nature, scope and complexity” of the particular litigation (*Buffalo FC* at para 150; *Rae* at para 80). As such, the jurisprudence established the following non-exhaustive list of topics to be addressed in a litigation plan: (i) the steps to be taken to identify and locate necessary witnesses and to gather their evidence; (ii) the collection of relevant documents from members of the class, as well as from others; (iii) the exchange and management of documents produced by all parties; (iv) ongoing reporting to the class; (v) mechanisms for responding to inquiries from class members; (vi) whether the discovery of individual class members is likely and, if so, the intended process for conducting those

discoveries; (vii) the need for experts and, if needed, how those experts are going to be identified and retained; (viii) if individual issues remain after the termination of the common issues, what plan is proposed for resolving those individual issues; and (ix) a plan to address how damages or any other forms of relief are to be assessed or determined after the common issues have been decided (*Buffalo FC* at para 151; *Rae* at para 79).

[148] Regarding conflicts of interest, a mere possibility of conflict is not enough to deny certification (*Infineon* at paras 150-151). Furthermore, a representative plaintiff should only be excluded if the conflict of interest “is such that the case could not possibly proceed fairly” (*Infineon* at para 149).

[149] Mr. Lin submits that he is an appropriate representative plaintiff. He claims that he is familiar with the substance of the issues, understands the role of a representative plaintiff, has proposed a detailed litigation plan taking into account the complexities of the case, has no conflict of interest, and has provided a summary of its retainer agreement with counsel. I am satisfied that there is some basis in fact in Mr. Lin’s affidavits to support all of these elements. This evidence was not challenged or contradicted.

[150] Airbnb responds that Mr. Lin cannot be the representative plaintiff since no evidence shows that he meets the elements that, according to Airbnb, should allegedly be added to the Class definition. In the alternative, Airbnb pleads that a sub-class should be created for Guests like Mr. Lin who have also been Hosts, to avoid conflicts of interest. More specifically, Airbnb

submits that a conflict could develop, considering that some Guests may not have booked an accommodation if the Service Fees would have been displayed on the search results page.

[151] I am not persuaded by Airbnb's arguments on this last criterion for certification. First, Airbnb's submissions on the additional requirements for an appropriate class definition have been addressed above. Mr. Lin's claim is for Guests who made a booking on the Airbnb Platform, regardless of whether the individual would not have booked because of the additional Service Fees. It is Mr. Lin's position that the "double ticketing" offence entitles the Class members to the lower price, irrespective of their willingness to pay the higher price. Second, regarding conflicts of interest, the possibility of a conflict is not enough to prevent someone from being a representative plaintiff and to deny certification (*Infineon* at paras 150-151). A representative plaintiff should only be excluded if the conflict of interest "is such that the case could not possibly proceed fairly" (*Infineon* at para 149). Third, on the record before me, I find no factual support for Airbnb's submissions about a potential conflict of interest due to Mr. Lin being also a Host on the Airbnb Platform. Moreover, if needed, it will remain open to the common issues trial judge to create a subclass later in the proceedings, based upon the evidence at trial (*Daniells v McLellan*, 2017 ONSC 3466 at para 40).

[152] I see no serious challenge to Mr. Lin's ability to fairly and adequately represent the Class or to fulfill the role demanded of him in instructing counsel and pursuing the action diligently. He fits within the definition of the amended Class, appears to fully understand the issues and the responsibility he is taking on, and has retained experienced counsel to represent the Class. The litigation plan contained in the motion record proposes an efficient procedure for the balance of

the litigation. No evidence indicates or suggests that the case cannot proceed fairly with Mr. Lin as the representative plaintiff.

[153] In my opinion, Mr. Lin satisfies the fifth criterion for certification.

#### **IV. Conclusion**

[154] In conclusion, I find that, on the condition that the Class definition be amended as discussed above, Mr. Lin successfully meets the legal requirements for the certification of this class action. Therefore, I will grant the motion to certify this action as a class proceeding, conditional on the amendment of the Class definition. The Order issued with these Reasons will address the points contemplated by Rule 334.17(1), in a manner consistent with the conclusions in these Reasons.

[155] I will also grant the motion to add Airbnb Payments as a defendant.

[156] Pursuant to Rule 334.39, no costs are typically awarded on a motion for certification. Neither party has sought costs, and there is no basis to depart from the principle established by Rule 334.39 and to award costs in the present motion.

**ORDER in T-1663-17**

**THIS COURT ORDERS that:**

1. This action is hereby certified as a class proceeding, conditional upon the amendment to be made to the definition of the Class, described below.

2. Arthur Lin is appointed as the representative Plaintiff.

3. The definition of the Class proposed by the Plaintiff, described as “All individuals residing in Canada who, on or after October 31, 2015, reserved an accommodation for anywhere in the world using Airbnb, excluding individuals reserving an accommodation primarily for business purposes”, shall be amended by the Plaintiff to be limited to individuals who reserved an accommodation that matched the parameters of a previous search made by the individual on the search results page of the Airbnb Platform and for which a First Price or Listing Fee was displayed.

4. The nature of the claim made on behalf of the Class is as follows:

The claim asserts a breach of section 54 of the *Competition Act*.

5. The relief claimed by the Class is as follows:

The claim seeks damages and costs pursuant to section 36 of the *Competition Act*.

6. The questions to be certified as common issues are as follows:

*Liability to the Class under Section 54 of the Competition Act*

1. Did the Defendants clearly express a “first price” for a product to each of the Class Members in the search results screen?

2. Did the Defendants clearly express a “second price” for the same product immediately prior to each Class Member confirming and/or submitting their accommodation reservation?

3. Is the “second price” higher than the “first price” for all Class Members?

4. Were the Defendants only entitled to charge the “first price” under section 54 of the *Competition Act*?

5. Were the Class members entitled to pay to the Defendants the “first price” under section 54 of the *Competition Act*?

*Recovery for the Class under Section 36 of the Competition Act*

6. Have the Class Members suffered actual damages equivalent to the “second price” minus the “first price”, less any applicable taxes, entitling them to claim such damages pursuant to section 36 of the *Competition Act*?

7. Are the Defendants jointly and severally liable for their own conduct and that of each other?

8. Are the Class Members entitled to recovery of investigation costs and costs of this proceeding, including counsel fees and disbursements on a full indemnity basis?

9. Can an aggregate assessment of damages be made pursuant to Rule 334.28(1)?

7. The time and manner for Class members to opt out of the class proceeding are reserved to be addressed through the case management process.

8. The style of cause is modified to add Airbnb Payments UK Limited as a Defendant.

9. No costs are awarded.

“Denis Gascon”

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Judge

**ANNEX A**

Rules 334.16(1) and (2), and 334.18 read as follows:

<b>Certification</b>	<b>Autorisation</b>
<b>Conditions</b>	<b>Conditions</b>
<b>334.16</b> (1) Subject to subsection (3), a judge shall, by order, certify a proceeding as a class proceeding if	<b>334.16</b> (1) Sous réserve du paragraphe (3), le juge autorise une instance comme recours collectif si les conditions suivantes sont réunies :
(a) the pleadings disclose a reasonable cause of action;	a) les actes de procédure révèlent une cause d'action valable;
(b) there is an identifiable class of two or more persons;	b) il existe un groupe identifiable formé d'au moins deux personnes;
(c) the claims of the class members raise common questions of law or fact, whether or not those common questions predominate over questions affecting only individual members;	c) les réclamations des membres du groupe soulèvent des points de droit ou de fait communs, que ceux-ci prédominent ou non sur ceux qui ne concernent qu'un membre;
(d) a class proceeding is the preferable procedure for the just and efficient resolution of the common questions of law or fact; and	d) le recours collectif est le meilleur moyen de régler, de façon juste et efficace, les points de droit ou de fait communs;
(e) there is a representative plaintiff or applicant who	e) il existe un représentant demandeur qui :
(i) would fairly and adequately represent the interests of the class,	(i) représenterait de façon équitable et adéquate les intérêts du groupe,
(ii) has prepared a plan for the proceeding that sets out a workable method of advancing	(ii) a élaboré un plan qui propose une méthode efficace pour poursuivre l'instance au



the proceeding on behalf of the class and of notifying class members as to how the proceeding is progressing,

(iii) does not have, on the common questions of law or fact, an interest that is in conflict with the interests of other class members, and

(iv) provides a summary of any agreements respecting fees and disbursements between the representative plaintiff or applicant and the solicitor of record.

#### **Matters to be considered**

(2) All relevant matters shall be considered in a determination of whether a class proceeding is the preferable procedure for the just and efficient resolution of the common questions of law or fact, including whether

(a) the questions of law or fact common to the class members predominate over any questions affecting only individual members;

(b) a significant number of the members of the class have a valid interest in individually controlling the prosecution of separate proceedings;

(c) the class proceeding would involve claims that are or have been the subject of any other proceeding;

(d) other means of resolving the claims are less practical or

nom du groupe et tenir les membres du groupe informés de son déroulement,

(iii) n'a pas de conflit d'intérêts avec d'autres membres du groupe en ce qui concerne les points de droit ou de fait communs,

(iv) communique un sommaire des conventions relatives aux honoraires et débours qui sont intervenues entre lui et l'avocat inscrit au dossier.

#### **Facteurs pris en compte**

(2) Pour décider si le recours collectif est le meilleur moyen de régler les points de droit ou de fait communs de façon juste et efficace, tous les facteurs pertinents sont pris en compte, notamment les suivants :

a) la prédominance des points de droit ou de fait communs sur ceux qui ne concernent que certains membres;

b) la proportion de membres du groupe qui ont un intérêt légitime à poursuivre des instances séparées;

c) le fait que le recours collectif porte ou non sur des réclamations qui ont fait ou qui font l'objet d'autres instances;

d) l'aspect pratique ou l'efficacité moindres des autres

less efficient; and

moyens de régler les  
réclamations;

(e) the administration of the class proceeding would create greater difficulties than those likely to be experienced if relief were sought by other means.

e) les difficultés accrues engendrées par la gestion du recours collectif par rapport à celles associées à la gestion d'autres mesures de redressement.

[...]

[...]

**Grounds that may not be  
relied on**

**Motifs ne pouvant être  
invoqués**

**334.18** A judge shall not refuse to certify a proceeding as a class proceeding solely on one or more of the following grounds:

**334.18** Le juge ne peut invoquer uniquement un ou plusieurs des motifs ci-après pour refuser d'autoriser une instance comme recours collectif:

(a) the relief claimed includes a claim for damages that would require an individual assessment after a determination of the common questions of law or fact;

a) les réparations demandées comprennent une réclamation de dommages-intérêts qui exigerait, une fois les points de droit ou de fait communs tranchés, une évaluation individuelle;

(b) the relief claimed relates to separate contracts involving different class members;

b) les réparations demandées portent sur des contrats distincts concernant différents membres du groupe;

(c) different remedies are sought for different class members;

c) les réparations demandées ne sont pas les mêmes pour tous les membres du groupe;

(d) the precise number of class members or the identity of each class member is not known; or

d) le nombre exact de membres du groupe ou l'identité de chacun est inconnu;

(e) the class includes a subclass whose members have claims that raise common questions of law or fact not shared by all of the class members.

e) il existe au sein du groupe un sous-groupe dont les réclamations soulèvent des points de droit ou de fait communs que ne partagent pas tous les membres du groupe.

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1663-17

**STYLE OF CAUSE:** ARTHUR LIN v. AIRBNB, INC., AIRBNB CANADA INC., AIRBNB IRELAND UNLIMITED COMPANY, AIRBNB PAYMENTS UK LIMITED

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA

**DATE OF HEARING:** DECEMBER 4-5, 2018

**ORDER AND REASONS:** GASCON J.

**DATED:** DECEMBER 5, 2019

**APPEARANCES:**

Simon Lin, Co-counsel  
Jérémie John Martin and  
Sébastien A. Paquette, Co-counsel

FOR THE PLAINTIFF

Jill Yates  
Patrick Williams

FOR THE DEFENDANTS

**SOLICITORS OF RECORD:**

Evolink Law Group  
Burnaby, British Columbia  
and  
Champlain Avocats  
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FOR THE PLAINTIFF

McCarthy Tétrault LLP  
Vancouver, British Columbia

FOR THE DEFENDANTS

Federal Court



Cour fédérale

Ottawa, Ontario  
K1A 0H9

January 6, 2020

**VIA EMAIL**

**Mr. Simon Lin  
Me Jeremie John Martin  
Me Sebastien A. Paquette**

**Ms. Jill Yates  
Mr. Patrick Williams**

Solicitors for the Plaintiff

Solicitors for the Defendants

Dear parties:

**RE: ARTHUR LIN v. AIRBNB, INC. ET AL  
Court File No: T-1663-17**

This will confirm the oral direction on the Court (Mr. Justice Gascon) dated January 6<sup>th</sup>, 2020:

**“Further to the December 16, 2019 letter from counsel for the Plaintiff, and to the December 20, 2019 letter from counsel for the Defendants, and in light of the Court’s Order and Reasons on the certification motion issued on December 5, 2019, the Court directs as follows:**

- 1. On the issue of the amendment to the class definition, the Court considers that, in order to reflect the contents of the Court’s Order and Reasons (notably paragraph 105) and the third conclusion of the Order, the amended class definition should read as follows:**

***“All individuals residing in Canada who, from October 31, 2015 to June 25, 2019:***

- a. reserved an accommodation for anywhere in the world using Airbnb;***
- b. whose reserved accommodation matched the parameters of a previous search made by the individual on the search results page of Airbnb; and***
- c. paid, for the reserved accommodation, a price (excluding applicable sales and/or accommodation taxes) that is higher than the price (or “Listing Fee”) displayed by Airbnb on the said search results page for this accommodation.***

***Individuals who reserved an accommodation primarily for business travel are excluded.”***

Pursuant to section 20 of the *Official Languages Act* all final decisions, orders and judgments, including any reasons given therefore, issued by the Court are issued in both official languages. In the event that such documents are issued in the first instance in only one of the official languages, a copy of the version in the other official language will be forwarded on request when it is available.

Conformément à l’article 20 de la *Loi sur les langues officielles*, les décisions, ordonnances et jugements définitifs avec les motifs y afférents, sont émis dans les deux langues officielles. Au cas où ces documents ne seraient émis, en premier lieu, que dans l’une des deux langues officielles, une copie de la version dans l’autre langue officielle sera transmise, sur demande, dès qu’elle sera disponible.

2. A case management conference (“CMC”) will be held by telephone on Monday January 20, 2020 at 1:00 pm EST / 10 :00 am PST to address case management issues and next steps in this proceeding.
3. Prior to the CMC, counsel for both parties are to have exchanges among themselves and to discuss the list of case management issues to be addressed at the CMC with a view of reaching an agreement on a proposed list of issues and on a proposed timetable for the next steps in this proceeding, including (without limitation) filing of pleadings, exchange of submissions, time and manner of opt-out, distribution of notices, possible motions if any, and discovery. Counsel shall file with the Court, by Friday January 17, 2020 at 4:00 pm EST / 1:00 pm PST, their agreed upon proposed list of issues and timetable to be discussed at the CMC or, if no agreement can be reached, their respective proposed lists of issues and timetables. If counsel cannot agree, they shall serve their respective materials on each other at the same time they file it with the Court.”

Yours truly,

A handwritten signature in blue ink, appearing to read 'Kassandra', with a stylized flourish at the end.

Kassandra Cormier  
Registry Officer

**CLASS PROCEEDING  
FEDERAL COURT**

BETWEEN:

**Arthur Lin**

Plaintiff

AND:

**Airbnb, Inc.**

**Airbnb Canada Inc.**

**Airbnb Ireland Unlimited Company**

**Airbnb Payments UK Limited**

Defendants

**NOTICE OF MOTION**

*(Motion in Writing – Rule 369 and Approval of Notice of Settlement – Rule 334.34)*

**TAKE NOTICE THAT** the Plaintiff will make a motion in writing to the Court before Mr. Justice Gascon.

**THE MOTION IS FOR ORDERS THAT:**

1. The Court dispense with the requirements of separate written representations for this motion, and accept this Notice of Motion in lieu of written representations;
2. The Court issue an order, in the form of the accompanying proposed order, for notifying the affected class members of the proposed settlement and the approval hearing; and
3. Such further and other relief as this Honourable Court deems just.

**THE GROUNDS FOR THIS MOTION ARE:**

1. The Defendants have reviewed a draft of this motion and consent to the granting of this motion.
2. On March 4, 2021, the Federal Court of Appeal heard the appeal of this Court's order certifying this action as a class proceeding.
3. While the Federal Court of Appeal decision was under reserve, the parties reached a formal agreement to settle this action, subject to this Court's approval.

4. The material terms of the proposed settlement agreement include:
- a. a settlement valued at \$6,000,000, including any claims administration expenses, lawyers' fees, any honorarium, and applicable taxes;
  - b. after the Court approves the settlement, and before the claims deadline, class members can make a claim for a *pro rata* share of the settlement amount;
  - c. the Defendants will receive a full and final release in respect of the subject-matter of this action, namely the display of prices on Airbnb's platforms;
  - d. a proposed honorarium of \$5,000 for the representative plaintiff;
  - e. the notification of class members and the claims procedure will be fully electronic, and managed by a reputable claims administrator, Deloitte LLP;
  - f. distribution of the settlement amount to the class members will be by way of a non-cash-convertible credit issued on the Airbnb platform, to be redeemed within 24 months on the next accommodation booking;
  - g. the individuals that are covered by the *Preisler-Bandoon v. Airbnb Ireland* (500-06-000884-177, Montreal Registry) settlement that involved a similar subject-matter are excluded from this settlement agreement, and claims relating to those individuals will be dismissed from this action.
5. Rule 334.34 requires that notice be given to class members when an offer to settle has been made.

[\*Wenham v. Canada \(Attorney General\)\*](#), 2019 FC 1539

6. The parties submit that the notice procedure and contents in the proposed order are appropriate. The class members previously transacted with the Defendants electronically, and provided email addresses to the Defendants. Sending notices by way of email has the greatest prospect of reaching the class members.
7. The Plaintiff will be filing a further motion for approval of the settlement agreement, in accordance with Rule 334.29, which will be heard at the approval hearing. The Plaintiff will submit to the Court that the settlement agreement is fair, reasonable, and in the best interest of the class members.
8. It is the usual practice for class counsel to file an affidavit in support of the settlement approval motion and the fees approval motion.

[\*McCrea v. Canada\*](#), 2019 FC 122 at paras. 5, 42, 78 and 115  
[\*Urlin Rent A Car v Furukawa Electric et al\*](#), 2016 ONSC 5736 at paras. 9-10



9. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING EVIDENCE** will be relied upon at the hearing of the motion:

1. The Affidavit of Arthur Lin affirmed on September 10, 2021;
2. The pleadings filed herein; and
3. Such further and other material as counsel may advise and this Honourable Court may permit.

Dated: September 11, 2021

per



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Me. Jérémie John Martin  
Me. Sébastien A. Paquette  
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Federal Court



Cour fédérale

**Date: 2021XXXX**

**Docket: T-1663-17**

**Vancouver, British Columbia, XXXXXX, 2021**

**PRESENT: The Honourable Mr. Justice Gascon**

**BETWEEN:**

ARTHUR LIN

**Plaintiff**

**AND:**

AIRBNB, INC.  
AIRBNB CANADA INC.  
AIRBNB IRELAND UNLIMITED COMPANY  
AIRBNB PAYMENTS UK LIMITED

**Defendants**

## **ORDER**

**UPON MOTION** made by the Plaintiff for an Order approving the short-form and long-form notices of settlement approval hearing for a settlement with Airbnb Inc., Airbnb Canada Inc., Airbnb Ireland Unlimited Company, and Airbnb Payments UK Limited (collectively, the “**Settling Defendants**”), and the method of dissemination of said notices;

**AND ON READING** the materials filed, including the settlement agreement with the Settling Defendants dated as of August 27, 2021, attached to this Order as **Schedule**

**“A”** (the **“Settlement Agreement”**), and on hearing the submissions of counsel for the Plaintiff and Counsel for the Settling Defendants;

**AND ON BEING ADVISED** that all parties consent to this Order;

**THIS COURT ORDERS that:**

1. For purposes of the settlement approval hearing, the parties are granted leave under Rule 82 to file solicitor’s affidavit(s) in support of the settlement approval.
2. For the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
3. The short-form and long-form notices of settlement approval hearing are hereby approved substantially in the forms attached respectively hereto as **Schedule “B”** and **Schedule “C”**.
4. The plan of dissemination for the short-form and long-form notices of settlement approval hearing (the **“Plan of Dissemination”**) is hereby approved in the form attached hereto as **Schedule “D”**, and the notices of settlement approval hearing shall be disseminated in accordance with the Plan of Dissemination.
5. Paragraph 3 of the Court’s December 5, 2019 order in this action is revoked and the Class is defined as follows:

All individuals residing in Canada, other than Quebec, who, from October 31, 2015 to June 25, 2019: (a) reserved an accommodation for anywhere in the world using Airbnb; (b) whose reserved accommodation matched the parameters of a previous search made by the individual on the search results page of Airbnb; and (c) paid, for the reserved accommodation, a price (excluding applicable sales and/or accommodation taxes) that is higher than the price displayed by Airbnb on the said search results page for this accommodation. Individuals who reserved an accommodation primarily for business travel are excluded.

6. With respect to the Settling Defendants’ motion dated August 28, 2020 to exclude the Quebec Class from this action, the motion is granted on the following terms:

- (a) the claims of the Quebec Class that are before this Court are dismissed with prejudice and without costs.
- 7. In the event that the Settlement Agreement is terminated in accordance with its terms or the settlement is not approved, this Order shall be declared null and void and of no force and effect on subsequent motion made on notice.

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Judge

**AIRBNB SERVICE FEES CLASS ACTION  
NATIONAL SETTLEMENT AGREEMENT**

Made as of August 27, 2021

Between

**ARTHUR LIN**

(the “**Plaintiff**”)

and

**AIRBNB INC., AIRBNB CANADA INC.,  
AIRBNB IRELAND UNLIMITED COMPANY, and AIRBNB PAYMENTS UK LIMITED**

(the “**Settling Defendants**”)

**AIRBNB SERVICE FEES CLASS ACTION  
NATIONAL SETTLEMENT AGREEMENT**

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**AIRBNB SERVICE FEES CLASS ACTION  
NATIONAL SETTLEMENT AGREEMENT**

**RECITALS**

A. WHEREAS the Proceeding was commenced by the Plaintiff in the Federal Court of Canada and the Plaintiff claims class-wide damages allegedly caused as a result of the conduct alleged therein;

B. WHEREAS the Proceeding alleges that some or all of the Releasees' booking platforms displayed prices to Settlement Class Members during the Class Period in a manner that was contrary to Part VI of the *Competition Act*, RSC 1985, c C-34;

C. WHEREAS the Proceeding was certified as a class action by the Court on December 5, 2019, following a contested hearing and the Plaintiff was appointed representative plaintiff of the Class, but notice of the certification and an opportunity to opt out of the Proceeding have not yet been provided;

D. WHEREAS the Releasees do not admit, through the execution of this Settlement Agreement or otherwise, any allegation of unlawful conduct alleged in the Proceeding, and otherwise deny all liability and assert that they have complete defences in respect of the merits of the Proceeding or otherwise;

E. WHEREAS the Plaintiff, Class Counsel and the Settling Defendants agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by or evidence against the Releasees or evidence of the truth of any of the Plaintiff's allegations, which allegations are expressly denied by the Settling Defendants;

F. WHEREAS the Settling Defendants are entering into this Settlement Agreement in order to achieve a final and nation-wide resolution of all claims asserted or which could have been asserted against the Releasees by the Plaintiff and the Settlement Class in the Proceeding, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;

G. WHEREAS the Settling Defendants do not hereby attorn to the jurisdiction of the Court or any other court or tribunal in respect of any civil, criminal or administrative process except to the extent they have previously done so in the Proceeding or as expressly provided in this Settlement Agreement with respect to the Proceeding;



H. WHEREAS Counsel for the Settling Defendants and Class Counsel have engaged in arm's-length settlement discussions and negotiations, resulting in this Settlement Agreement relating to Canada;

I. WHEREAS, on or around June 27, 2019, the Settling Defendants have adjusted the Airbnb Platform to display an all-inclusive price to Guests for the booking of Accommodations, at every step of the search and booking process;

J. WHEREAS as a result of these settlement discussions and negotiations, the Settling Defendants and the Plaintiff have entered into this Settlement Agreement, which embodies all of the terms and conditions of the settlement between the Settling Defendants and the Plaintiff, both individually and on behalf of the Settlement Class the Plaintiff represents, subject to approval of the Court;

K. WHEREAS the Quebec Action was commenced against certain of the Releasees by the Quebec Plaintiff, on behalf of the Quebec Class, and which action was settled in 2019 and finally approved by the Quebec Court in February 2020;

L. WHEREAS there is a pending motion before the Court where the Parties are in dispute as to the validity and/or enforceability of the settlement in the Quebec Action;

M. WHEREAS the Parties do not intend for any member of the Quebec Class to be eligible for benefits under this Settlement Agreement;

N. WHEREAS Class Counsel, on their own behalf and on behalf of the Plaintiff and the Settlement Class Members, have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiff's claims, having regard to the burdens and expense associated with prosecuting the Proceeding, including the risks and uncertainties associated with trials and appeals, and having regard to the value of the Settlement Agreement, have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiff and the Settlement Class he represents;

O. WHEREAS the Parties therefore wish to and hereby finally resolve on a national basis, without admission of liability, the Proceeding as against the Releasees, provided that members of the Quebec Class are not entitled to obtain recovery from this settlement; and

P. WHEREAS the Parties agree to proceed to obtain approvals from the Court as provided for in this Settlement Agreement, on the express understanding that such agreement shall not derogate from the respective rights of the Parties in the event that this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Proceeding be settled and dismissed with prejudice as to the Settling Defendants, all without costs as to the Plaintiff, the Settlement Class Members, and the Settling Defendants, subject to the approval of the Court, on the following terms and conditions:

### SECTION 1 – DEFINITIONS

For the purposes of this Settlement Agreement, including the recitals and schedules hereto:

- (1) ***Accommodation*** means the offering by third parties of vacation or other properties for use on the Airbnb Platform.
- (2) ***Account*** means the Airbnb account of a Settlement Class Member, which is linked to such Member's email address.
- (3) ***Administration Expenses*** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiff, Class Counsel, the Settling Defendants, or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of notices, but excluding Class Counsel Fees and Class Counsel Disbursements.
- (4) ***Airbnb Platform*** means collectively the Site, Application, and Airbnb Services.
- (5) ***Airbnb Services*** means all services associated with the Site and the Application.
- (6) ***Application*** means, collectively, the Airbnb mobile, tablet, and other smart device applications, and application program interfaces.
- (7) ***Booking*** means a contract entered into directly between Hosts and Guests.

- (8) ***Bounce Back*** means an email that is returned to the sender because it cannot be delivered for some reason.
- (9) ***Claim*** means any and all requests for a Redeemable Credit submitted by a Credit Eligible Class Member in accordance with this Settlement Agreement.
- (10) ***Claims Administrator*** means Deloitte LLP.
- (11) ***Claims Deadline*** means forty-five (45) days from the publication and dissemination of the notice of an approved settlement to Settlement Class Members described in Section 9.1.
- (12) ***Class Counsel*** means Evolink Law Group, Sébastien A. Paquette and Jérémie John Martin.
- (13) ***Class Counsel Disbursements*** include the disbursements and applicable taxes incurred by Class Counsel in the prosecution of the Proceeding.
- (14) ***Class Counsel Fees*** means the legal fees of Class Counsel, and any applicable taxes or charges thereon, including any amounts payable as a result of the Settlement Agreement by Class Counsel or the Settlement Class Members to any other body or Person.
- (15) ***Class Period*** means October 31, 2015 to June 25, 2019.
- (16) ***Counsel for the Settling Defendants*** means Torys LLP.
- (17) ***Court*** means the Federal Court of Canada.
- (18) ***Credit*** means a credit-voucher to be used to make a Booking for Accommodation on the Airbnb Platform in the form of a single, one-time-use only, non-transferable, non-refundable and non-cash convertible credit of a value in Canadian dollars to be determined in accordance with Section 7.1(6).
- (19) ***Credit Claiming Class Members*** means a Credit Eligible Class Member who claims a benefit under this Settlement Agreement in accordance with the procedure described in Section 7.1.
- (20) ***Credit Eligible Class Members*** means a Settlement Class Member who meets all of the following criteria: (a) a resident of Canada but not a member of the Quebec Class; (b) used the

Airbnb Platform during the Class Period for the first time, for a purpose other than business travel; (c) was located in Canada (but not Quebec) at the time of the booking; and (d) has an active account at the time the credit is issued that has not been suspended or removed from the Airbnb Platform due to a violation of Airbnb's Terms of Service, policies or standards.

(21) ***Date of Execution*** means the date on the cover page as of which the Parties have executed this Settlement Agreement.

(22) ***Effective Date*** means the date when a Final Order has been received from the Court approving this Settlement Agreement.

(23) ***Final Order*** means a final order, judgment or equivalent decree entered by the Court approving this Settlement Agreement in accordance with its terms, once the time to appeal such order has expired without any appeal being taken, if an appeal lies, or if the order is appealed, once there has been affirmation of the order upon a final disposition of all appeals.

(24) ***Guests*** means third-party travelers seeking to book Accommodations.

(25) ***Hosts*** means third parties who offer Accommodations on the Airbnb Platform.

(26) ***Net Settlement Amount*** means the amount available for distribution to Credit Claiming Class Members as Credits, calculated by subtracting from the Settlement Amount the total of the amounts described in Section 3.1(2).

(27) ***Opt-Out Deadline*** means thirty (30) calendar days after the notices in Section 9.2 have been emailed to the Settlement Class Members.

(28) ***Party and Parties*** means the Settling Defendants, the Plaintiff, and, where necessary, the Settlement Class Members.

(29) ***Person*** means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, trustee, executor, beneficiary, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity and their heirs, predecessors, successors, representatives, or assignees.

(30) **Plaintiff** means Arthur Lin.

(31) **Proceeding** means the action commenced by the Plaintiff against the Settling Defendants in the Court, bearing Court File No. T-1663-17.

(32) **Quebec Action** means *Martin Preisler-Banoon v. AirBnb Ireland UC et al.* commenced in the Quebec Court, District of Montreal, bearing Court File No. 500-06-000884-177.

(33) **Quebec Class** means, in respect of the Quebec Action, every person residing in Quebec, who between August 22, 2014 and June 26, 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).

(34) **Quebec Court** means the Superior Court of Quebec.

(35) **Quebec Plaintiff** means Martin Preisler-Banoon.

(36) **Redeemable Credit** has the same meaning as Credit.

(37) **Released Claims** means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages, known or unknown, suspected or unsuspected, actual or contingent, liquidated or unliquidated, in law, under statute or in equity, that any of the Releasors ever had or now has, relating in any way to the display of prices on the Airbnb Platform, including conduct alleged (or which could have been alleged) in the Proceeding.

(38) **Releasees** means, jointly and severally, individually and collectively, the Settling Defendants and all of their present and former direct and indirect parents, owners, subsidiaries, divisions, affiliates, associates (as defined in the *Canada Business Corporations Act*, RSC 1985, c C-44), partners, joint ventures, franchisees, dealers, insurers, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and all of their respective past, present and future officers, directors, employees, agents, mandataries, shareholders, attorneys, trustees, servants and representatives, members, managers and the

predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing.

(39) ***Releasors*** means, jointly and severally, individually and collectively, the Plaintiff and the Settlement Class Members, on behalf of themselves and any Person or entity claiming by or through them as a parent, subsidiary, affiliate, predecessor, successor, shareholder, partner, director, owner of any kind, agent, principal, employee, contractor, attorney heir, executor, administrator, insurer, devisee, assignee, or representative of any kind, other than Persons who validly and timely opted out of the Proceeding in accordance with the orders of the Court.

(40) ***Settlement Agreement*** means this agreement, including the recitals and schedules.

(41) ***Settlement Amount*** means CAD\$6,000,000.

(42) ***Settlement Class*** means all individuals residing in Canada, other than Quebec, who, from October 31, 2015 to June 25, 2019: (a) reserved an accommodation for anywhere in the world using Airbnb; (b) whose reserved accommodation matched the parameters of a previous search made by the individual on the search results page of Airbnb; and (c) paid, for the reserved accommodation, a price (excluding applicable sales and/or accommodation taxes) that is higher than the price displayed by Airbnb on the said search results page for this accommodation. Individuals who reserved an accommodation primarily for business travel are excluded.

(43) ***Settlement Class Member*** means a member of the Settlement Class who has not opted out of the Proceeding.

(44) ***Settling Defendants*** means Airbnb, Inc., Airbnb Canada Inc., Airbnb Ireland Unlimited Company, and Airbnb Payments UK Limited.

(45) ***Site*** means the Airbnb website, including any subdomains thereof, and any other websites through which Airbnb makes its services available.

## **SECTION 2 – SETTLEMENT APPROVAL**

### **2.1 Best Efforts**

(1) The Parties shall use their best efforts and act in good faith to implement this Settlement Agreement and to secure the prompt, complete and final dismissal with prejudice of the Proceeding as against the Settling Defendants.

### **2.2 Motions Seeking Approval of Notice and Certification**

(1) The Plaintiff shall file a motion before the Court, as soon as practicable after the Date of Execution, for orders approving the notices described in Section 9.1(1).

(2) The order approving the notices described in Section 9.1(1) shall be substantially in the form attached as Schedule A.

### **2.3 Motions Seeking Approval of the Settlement Agreement**

(1) The Plaintiff shall make best efforts to file a motion before the Court for an order approving this Settlement Agreement as soon as practicable after the expiry of the opt-out period in Section 4.1(5) and within the timelines permitted under the *Federal Courts Rules*

(2) The order approving this Settlement Agreement shall be substantially in the form attached as Schedule B.

### **2.4 Pre-Motion Confidentiality**

(1) Until the first of the motions required by Section 2.2(1) is brought, the Parties shall keep all of the terms of the Settlement Agreement confidential and shall not disclose them without the prior consent of Counsel for the Settling Defendants and Class Counsel, as the case may be, except as required for the purposes of financial reporting, the preparation of financial records (including tax returns and financial statements), as necessary to give effect to its terms, or as otherwise required by law.

### **2.5 Settlement Agreement Effective**

(1) This Settlement Agreement shall only become final on the Effective Date.

### **SECTION 3 – SETTLEMENT BENEFITS**

#### **3.1 Redeemable Credits**

(1) The Settling Defendants shall offer to compensate Credit Eligible Class Members by offering credits of a total gross value equal to the Settlement Amount to be used on the Airbnb Platform, subject to the deductions and conditions set out in this Settlement Agreement.

(2) The following fees and costs shall be paid from the Settlement Amount and will be deducted from the gross value of the credits:

- (a) Administration Expenses;
- (b) The cost of publication of any notices to Settlement Class Members that the Court may require;
- (c) The plaintiff's honorarium as described in Section 11.4, to the extent approved by the Court; and
- (d) Class Counsel Fees and Class Counsel Disbursements, plus any applicable sales taxes, to the extent approved by the Court and as provided in Section 11.3 below.

(3) The value of each Redeemable Credit to be distributed to Credit Claiming Class Members shall be determined at the expiry of the Claims Deadline in accordance with Section 7.1(6).

(4) The Settlement Amount and other consideration to be provided in accordance with the terms of this Settlement Agreement shall be provided in full satisfaction of the Released Claims against the Releasees.

(5) For greater certainty, the Settlement Amount shall be all-inclusive of all amounts, including interest, costs, any honorarium paid to the Plaintiff, Administration Expenses, Class Counsel Fees, Class Counsel Disbursements, and taxes.

(6) The Releasees shall have no obligation to pay any amount in addition to the Settlement Amount, for any reason, pursuant to or in furtherance of this Settlement Agreement or the Proceeding. In particular, after the Settlement Agreement has been implemented and executed, there shall be no surplus amount remaining for remittance, reparation or compensation to any



Settlement Class Member, Class Counsel or Plaintiff other than the Redeemable Credits, and the payment of Class Counsel Fees.

## **SECTION 4 – OPTING OUT AND OBJECTIONS**

### **4.1 Opt-Out and Objection Procedure**

(1) Potential Settlement Class Members seeking to opt out of the Proceeding or object to the settlement must do so by sending a written notice, personally signed by the potential Settlement Class Member (or the potential Settlement Class Member's parent or guardian if he/she is legally incapable), by pre-paid mail, courier, fax or email to Class Counsel at an address to be identified in the notice described in Section 9.1(1).

(2) Any potential Settlement Class Member who validly opts out of the Proceedings shall not be able to participate in the Proceeding and no further right to opt out of the Proceedings will be provided.

(3) An election to opt out or notice of objection will only be valid if it is received on or before the Opt-Out Deadline to the designated address in the notice described in Section 9.1(1).

(4) The written election to opt out or notice of objection must contain the following information in order to be valid:

- (a) the potential Settlement Class Member's full name, current address, telephone number, and the e-mail address for which they received the notice in Section 9;
- (b) an acknowledgment that the Potential Settlement Class Member is a resident of Canada (except Quebec) and aware that he/she will no longer be entitled to participate in any benefits from this settlement; and
- (c) in the case of a written election to opt out:
  - (i) a statement to the effect that the Person wishes to be excluded from the Proceedings; and
  - (ii) the reasons for opting out; or
- (d) in the case of a notice of objection:

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- (i) the grounds for the objection; and
  - (ii) whether the potential Settlement Class Member intends to appear at the approval hearing himself/herself, or through his/her lawyer (at the potential Settlement Class Member's own expense);
- (5) Class Counsel may request potential Settlement Class Members that submit an election to opt out or notice of objection to provide their proof of residency and/or other proof that they are a potential Settlement Class Member.
- (6) Within thirty (30) days of the Opt-Out Deadline, Class Counsel shall provide to the Settling Defendants a list containing the names, contact information, and reason provided for opting out for each individual who has submitted an opt-out request in accordance with Section 4.1(4) above.
- (7) With respect to any potential Settlement Class Member who validly opts out from the Proceedings, the Settling Defendants reserve all of their legal rights and defences.
- (8) The Plaintiff through Class Counsel expressly waives his right to opt-out of the Proceeding.

## **SECTION 5 – TERMINATION OF SETTLEMENT AGREEMENT**

### **5.1 Right of Termination**

- (1) In the event that the Court:
  - (a) declines to dismiss the Proceeding as against the Settling Defendants as provided in Section 6.3(1);
  - (b) declines to approve this Settlement Agreement or any material part, or approves this Settlement Agreement in a materially modified form; or
  - (c) issues a settlement approval order that is materially inconsistent with the terms of the Settlement Agreement or not substantially in the form attached to this Settlement Agreement as Schedule B;

or in the event any order approving this Settlement Agreement does not become a Final Order, the Plaintiff and the Settling Defendants shall each have the right to terminate this Settlement

Agreement by delivering a written notice pursuant to Section 12.15, within ten (10) days following an event described above.

(2) In addition, if the Credits are not provided to Credit Claiming Class Members in accordance with Sections 3.1(1) and 7.1, the Plaintiff shall have the right to terminate this Settlement Agreement by delivering a written notice pursuant to Section 12.15 or move before the Courts to enforce the terms of this Settlement Agreement.

(3) If more than 100 Settlement Class Members validly exercise their right to opt out in accordance with Section 4, the Settling Defendants shall have the right to terminate this Settlement Agreement by delivering a written notice pursuant to Section 12.15, within five (5) days of being provided with the opt out report described in Section 4.1(5).

(4) Except as provided for in Section 5.4, if the Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason, the Settlement Agreement shall be null and void and have no further force or effect, and shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation or in any other way for any reason.

(5) Any order, ruling or determination made or rejected by the Court with respect to Class Counsel Fees shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.

## **5.2 If Settlement Agreement is Terminated**

(1) If this Settlement Agreement is not approved, is terminated in accordance with its terms, or otherwise fails to take effect for any reason:

- (a) no motion to approve this Settlement Agreement that has not been decided shall proceed;
- (b) the Parties will cooperate in seeking to have all issued order(s), in the Court or the Federal Court of Appeal, on the basis of the Settlement Agreement or approving this Settlement Agreement set aside and declared null and void and of no force or effect, and any Person shall be estopped from asserting otherwise;

- (c) within ten (10) days of such termination having occurred, Class Counsel shall make reasonable efforts to destroy all documents or other materials provided by the Settling Defendants and/or Counsel for the Settling Defendants under this Settlement Agreement or containing or reflecting information derived from such documents or other materials received from the Settling Defendants and/or Counsel for the Settling Defendants and, to the extent Class Counsel has disclosed any documents or information provided by the Settling Defendants and/or Counsel for the Settling Defendants to any other Person, shall make reasonable efforts to recover and destroy such documents or information. Class Counsel shall provide Counsel for the Settling Defendants with a written certification by Class Counsel of such destruction. Nothing contained in this Section 5.2 shall be construed to require Class Counsel to destroy any of their work product. However, any documents or information provided by the Settling Defendants and/or Counsel for the Settling Defendants, or received from the Settling Defendants and/or Counsel for the Settling Defendants in connection with this Settlement Agreement, may not be disclosed to any Person in any manner or used, directly or indirectly, by Class Counsel or any other Person in any way for any reason, without the express prior written permission of the relevant Settling Defendants. Class Counsel shall take appropriate steps and precautions to ensure and maintain the confidentiality of such documents, information and any work product of Class Counsel derived from such documents or information; and
- (d) With respect to the Settling Defendants' motion to exclude the Quebec Class from this Action, the Plaintiff and the Quebec Class reserve all of their legal rights and defences.

### **5.3 Payments Following Termination**

- (1) If the Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the Settling Defendants shall be under no obligation to make any Credits available to Credit Eligible Class Members or make any other payments under this Settlement Agreement.

#### **5.4 Survival of Provisions After Termination**

(1) If this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the provisions of Sections 5.1(4), 5.2, 5.3, 5.4, 8.1, and 8.2 and the definitions and Schedules applicable thereto shall survive the termination and continue in full force and effect. The definitions and Schedules shall survive only for the limited purpose of the interpretation of Sections 5.1(4), 5.2, 5.3, 5.4, 8.1, and 8.2 within the meaning of this Settlement Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

### **SECTION 6 – RELEASES AND DISMISSALS**

#### **6.1 Release of Releasees**

(1) Upon the Effective Date, subject to Section 6.2, and in consideration of making available the Redeemable Credits and for other valuable consideration set forth in the Settlement Agreement, the Releasors forever and absolutely release and forever discharge the Releasees from the Released Claims that any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, or now have.

(2) The Plaintiff and Settlement Class Members acknowledge that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true regarding the subject matter of the Settlement Agreement, and it is their intention to release fully, finally and forever all Released Claims and, in furtherance of such intention, this release shall be and remain in effect notwithstanding the discovery or existence of additional or different facts.

#### **6.2 No Further Claims**

(1) Upon the Effective Date, each Releasor shall not now or hereafter institute, continue, maintain, intervene in or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any proceeding, cause of action, claim or demand against any Releasee, or any other Person who may claim contribution or indemnity, or other claims over relief, from any Releasee, whether pursuant to legislation or at common law or equity in respect of any Released Claim. For greater certainty and without limiting the generality of the foregoing, the Releasors shall not assert or pursue a Released Claim, against any Releasee under the laws of any foreign jurisdiction.

### **6.3 Dismissal of the Proceedings and Appeal**

- (1) Upon the Effective Date, the Proceeding shall be dismissed with prejudice and without costs as against any party.
- (2) Upon the Execution Date, the Parties shall inform the Federal Court of Appeal to hold the appeal A-464-19 in abeyance until the Court has heard and decided the approval of this settlement.
- (3) If the Court approves the settlement, and upon the Effective Date, the parties shall execute any necessary order(s) to dismiss the appeal in A-464-19.
- (4) If the Court does not approve the settlement, the Parties shall promptly inform the Federal Court of Appeal.

### **6.4 Material Term**

- (1) The releases, covenants, and dismissals contemplated in this Section shall be considered a material term of the Settlement Agreement and the failure of the Court to approve the releases, covenants, and dismissals contemplated herein shall give rise to a right of termination pursuant to Section 5.1 of the Settlement Agreement.

## **SECTION 7– DISTRIBUTION AND CONDITIONS OF CREDITS**

### **7.1 Distribution Process**

- (1) Credit Eligible Class Members will be able to obtain a Redeemable Credit through a claim process as further described in this Section 7.
- (2) Within ten (10) days of the Effective Date, a notice will be sent to Settlement Class Members notifying them that the settlement has been approved and containing a hyperlink for Credit Eligible Class Members to click on if they wish to claim a Redeemable Credit. The online claims process shall allow for the identification of each Credit Eligible Class Member who clicks on said hyperlink as a Credit Claiming Class Member. The Credit Eligible Class Members shall not be required to provide any further information or take any further action. Should any email sent to a Settlement Class Member or Credit Eligible Class Member result in a Bounce Back, no additional steps will be required from the Parties to communicate with the relevant class member.

(3) All Claims by Credit Eligible Class Members must be submitted and received by the Claims Deadline. The Claims Deadline shall be clearly set forth in the notice and on the website of Class Counsel. As part of the claims process, the relevant Credit Eligible Class Member shall acknowledge that they fit the criteria for being a Credit Eligible Class Member.

(4) Credit Eligible Class Members who do not submit a Claim by the Claims Deadline shall no longer be eligible to receive benefits under this Settlement Agreement but will be bound by the remaining terms.

(5) Within ten (10) days of the Claims Deadline, the Claims Administrator shall provide a list of Credit Claiming Class Members along with the information collected through the automated process described above to Counsel for the Settling Defendants.

(6) Within sixty (60) days of the Claims Deadline, the Settling Defendants shall deliver to each Credit Claiming Class Member a Redeemable Credit to his or her Account, available to be redeemed automatically at the next check-out, of a value in Canadian Dollars equivalent to a *pro rata* share of the Net Settlement Amount. By way of illustrative example only, if there are 100,000 Credit Claiming Class Members, and the total fees, expenses, and taxes in Section 3.1(2) is CAD\$2,500,000, then the Net Settlement Amount would be CAD\$3,500,000 (i.e., \$6,000,000 minus \$2,500,000), and each Credit Claiming Class Member would receive a credit of CAD\$35.

(7) For greater certainty, in the event that a Credit Claiming Class Member has made more than one booking during the Class Period, he or she will only be entitled to one Redeemable Credit.

(8) The Redeemable Credits may be used on the Airbnb Platform, within twenty-four (24) months from the date of issuance, for making Bookings of Accommodations in any location worldwide, after which period the Redeemable Credit will expire. The Redeemable Credits are one-time use only (and any amount not used on the transaction is extinguished), non-transferable, non-cash convertible, non-refundable, and cannot be combined with any other offer, discount, credit or coupon. It is also understood that a Credit Claiming Class Member must agree to the most recent version of the Terms of Service in order to meet the criteria to make a Booking of an Accommodation offered on the Airbnb Platform.

(9) Notwithstanding anything in this Section 7.1, in no event shall any Credit Claiming Class Member be entitled to a Redeemable Credit in an amount greater than CAD\$45.

(10) If the CAD \$45 cap described in Section 7.1(9) is triggered and as a result a portion of the Net Settlement Amount remains undistributed, the Settling Defendants shall pay in the form of cash or cheque, on a *cy pres* basis, to an organization agreed to by the Parties and approved by the Court.

(11) It is expressly agreed and understood by the Parties that unused, unredeemed or unclaimed Redeemable Credits shall not constitute, nor may they under any circumstances give rise to, a remaining balance for any purpose, including for a claim for reparation or compensation by Settlement Class Members or for the payment of a charge, levy or toll by any third party, including a charge, levy or toll contemplated by any regulation. For greater certainty and without limitation, the Settling Defendants may terminate this Settlement Agreement in the event any court recognizes the existence of a remaining balance.

## **7.2 Responsibility for Administration or Fees**

(1) Except as otherwise provided for in this Settlement Agreement, the Settling Defendants shall not have any responsibility, financial obligations or liability whatsoever with respect to the administration of the Settlement Agreement including, but not limited to, Administration Expenses.

## **SECTION 8 – EFFECT OF SETTLEMENT**

### **8.1 No Admission of Liability**

(1) The Plaintiff and the Releasees expressly reserve all of their rights if the Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason. Further, whether or not the Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by the Releasees, or of the truth of any of the claims or allegations contained in the Proceedings, any Other Actions, or any other pleading filed by the Plaintiffs.



## **8.2 Agreement Not Evidence**

(1) The Parties agree that, whether or not it is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to approve and/or enforce this Settlement Agreement, to defend against the assertion of Released Claims, as necessary in any insurance-related proceeding, or as otherwise required by law.

## **8.3 Confidentiality of Settlement Negotiations**

(1) Class Counsel or anyone currently or hereafter employed by or a partner with Class Counsel may not divulge to anyone for any purpose any information obtained in the course of the Proceeding on a confidential basis or the negotiation and preparation of this Settlement Agreement, except to the extent such information was, is or becomes otherwise publicly available or unless ordered to do so by a court.

# **SECTION 9 – NOTICE TO SETTLEMENT CLASS**

## **9.1 Notices Required**

(1) The Settlement Class Members shall be given notice of: (i) the hearing at which the Court will be asked to approve the Settlement Agreement and/or Class Counsel Fees, including the procedure for opting out or commenting on the proposed settlement; (ii) the Court's approval of the settlement; and (iii) if the proposed settlement is not approved or otherwise fails to take effect, notice that the proposed settlement was not approved and the litigation shall continue.

## **9.2 Form and Distribution of Notices**

(1) The notices shall be in a form agreed upon by the Parties and approved by the Court or, if the Parties cannot agree on the form of the notices, the notices shall be in a form ordered by the Court.

(2) The notices shall be disseminated by a method agreed upon by the Parties and approved by the Courts or, if the Parties cannot agree on a method for disseminating the notices, the notices shall be disseminated by a method ordered by the Courts.

## **SECTION 10 – ADMINISTRATION AND IMPLEMENTATION**

### **10.1 Mechanics of Administration**

(1) Except to the extent provided for in this Settlement Agreement, the mechanics of the implementation and administration of this Settlement Agreement shall be determined by the Court on motions brought by Class Counsel.

(2) The Parties agree that any information provided by the Settling Defendants in accordance with this Section shall be kept confidential, shall be used only for purposes of administering the Settlement Agreement, and shall not be used for marketing or any other purposes.

(3) The Claims Administrator will be required to (i) go through Airbnb's security review process for third-party vendors (including completing a vendor intake form) and be approved by Airbnb, and (ii) sign Airbnb's standard Controller/Processor Data Privacy Addendum. Should these conditions not be met, the Parties agree to replace the Claims Administrator with another that meets these requirements.

(4) The Claims Administrator shall administer the terms of this Settlement Agreement in a cost-effective and timely manner.

(5) The Claims Administrator shall maintain records of all Claims submitted for two years after the Claims Deadline, and such records will be made available upon request to Counsel for the Parties. The Claims Administrator shall also provide such reports and such other information to the Court as it or the Parties may require.

(6) The Administration Expenses will be paid out of the Settlement Amount, as directed by the Court. Should the Settlement Agreement not be approved by the Court or otherwise becomes null and void, no Administration Expenses shall be owed.

(7) The Parties anticipate that no sales taxes will be payable in respect of Administration Expenses. To the extent any such taxes are payable, they will be paid from the Settlement Amount in accordance with Section 3.1.

## **10.2 Information and Assistance**

(1) The Settling Defendants will provide to the Claims Administrator a list of the names and email addresses of Persons located in Canada, other than Quebec, who had Airbnb accounts during the Class Period.

(2) It is acknowledged that the Settling Defendants cannot precisely identify Settlement Class Members, any account lists provided under this Section 10.2 for the purpose of providing notice are overinclusive, and the fact a Person is included on such a list does not indicate he or she is a Settlement Class Member or Credit Eligible Class Member.

(3) The name and address information required by Section 10.2 shall be delivered to the Claims Administrator no later than ten (10) days after the orders required by Section 2.2(1) have been obtained, or at a time mutually agreed upon by the Parties.

(4) The Claims Administrator shall be bound by the same confidentiality obligations set out in Section 10.1(2). If this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason, all information provided by the Settling Defendants pursuant to Section 10.2(1) shall be dealt with in accordance with Section 5.2(1)(c) and no record of the information so provided shall be retained by Class Counsel, any Court-appointed notice-provider and/or the Claims Administrator in any form whatsoever.

(5) The Settling Defendants will make themselves reasonably available to respond to questions respecting the information provided pursuant to Section 10.2(1) from the Claims Administrator. The Settling Defendants' obligations to make themselves reasonably available to respond to questions as particularized in this Section shall not be affected by the release provisions contained in Section 6 of this Settlement Agreement. Unless this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the Settling Defendants' obligations to cooperate pursuant to this Section 10.2 shall cease when all settlement funds or court awards have been distributed.

(6) The Settling Defendants shall bear no liability with respect to the completeness or accuracy of the information provided pursuant to this Section 10.2.

## **SECTION 11 – CLASS COUNSEL FEES AND PLAINTIFF’S HONORARIUM**

### **11.1 Responsibility for Fees and Taxes and Plaintiff’s Honorarium**

(1) The Settling Defendants, jointly and severally, agree to pay from the Settlement Amount the Class Counsel Fees, Class Counsel Disbursements, the Plaintiff’s Honorarium, and applicable taxes, that are approved by the Court.

### **11.2 Responsibility for Costs of Notices**

(1) The Settling Defendants shall be responsible for distribution of notices, which is part of the Administration Expenses and payable from the Settlement Amount. The Releasees shall not have any responsibility for the costs of the notices.

### **11.3 Court Approval for Class Counsel Fees and Disbursements**

(1) Class Counsel Fees represent any and all claimable fees by Class Counsel that are to be approved by the Court. It is understood by the Parties that Class Counsel will seek approval of the Court for the Settling Defendants’ payment of Class Counsel Fees in the amount of CAD\$2 million, plus applicable taxes.

(2) The Settling Defendants will represent to the Court that they do not oppose approval of the Class Counsel Fees described in Section 11.3(1).

(3) Class Counsel will not seek approval for any additional payments (including any Class Counsel Disbursements).

(4) Class Counsel may seek the Court’s approval to pay Class Counsel Fees contemporaneous with seeking approval of this Settlement Agreement. The Settling Defendants shall pay the Class Counsel Fees out of the Settlement Amount within ten (10) days of the Effective Date, by way of cheque and/or wire transfer, at Class Counsel’s option.

### **11.4 Court Approval for Plaintiff’s Honorarium**

(1) Class Counsel may seek Court approval of an honorarium for the Plaintiff not exceeding five-thousand (\$5,000) dollars CAD.

(2) The Settling Defendants will represent to the Court that they do not oppose approval of the honorarium described in Section 11.4(1).

(3) The Settling Defendants shall pay Plaintiff's Court-approved honorarium out of the Settlement Amount within ten (10) days of the Effective Date, by way of cheque payable to the Plaintiff, and delivered to Class Counsel's office.

## **SECTION 12 – MISCELLANEOUS**

### **12.1 Motions for Directions**

(1) Class Counsel or the Settling Defendants may apply to the Court as may be required for directions in respect of the interpretation, implementation and administration of this Settlement Agreement.

(2) All motions contemplated by this Settlement Agreement shall be on notice to the Parties, except for those applications concerned solely with the implementation and administration of the Distribution Protocol.

### **12.2 Headings, etc.**

(1) In this Settlement Agreement:

- (a) the division of the Settlement Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and
- (b) the terms "this Settlement Agreement," "hereof," "hereunder," "herein," and similar expressions refer to this Settlement Agreement and not to any particular section or other portion of this Settlement Agreement.

### **12.3 Computation of Time**

(1) In the computation of time in this Settlement Agreement, except where a contrary intention appears,

- (a) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and

including the day on which the second event happens, including all calendar days;  
and

- (b) only in the case where the time for doing an act expires on a holiday as “holiday” is defined in the *Interpretation Act*, RSC 1985, c. I-21, the act may be done on the next day that is not a holiday.

#### **12.4 Governing Law**

(1) This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

#### **12.5 Entire Agreement**

(1) This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

#### **12.6 Amendments**

(1) This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto, and any such modification or amendment must be approved by the Court.

#### **12.7 Binding Effect**

(1) This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiff, the Settlement Class Members, the Settling Defendants, the Releasors, the Releasees and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiff shall be binding upon all Releasors and each and every covenant and agreement made herein by the Settling Defendants shall be binding upon all of the Releasees.

**12.8 Counterparts**

(1) This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile or electronic signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

**12.9 Negotiated Agreement**

(1) This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

**12.10 Language**

(1) The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais.

**12.11 Recitals**

(1) The recitals to this Settlement Agreement are true and form part of the Settlement Agreement.

**12.12 Schedules**

(1) The schedules annexed hereto form part of this Settlement Agreement.

**12.13 Acknowledgements**

(1) Each of the Parties hereby affirms and acknowledges that:

- (a) he, she or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;

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- (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;
- (c) he, she or the Party's representative fully understands each term of the Settlement Agreement and its effect; and
- (d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of the Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.

#### **12.14 Authorized Signatures**

- (1) Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement on behalf of the Parties identified above their respective signatures and their law firms.

#### **12.15 Notice**

- (1) Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another Party, such notice, communication or document shall be provided by email, facsimile or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:



**For the Plaintiff and for Class Counsel in the Proceedings:**

Simon Lin  
Evolink Law Group  
4388 Still Creek Drive, Suite 237  
Burnaby, BC V5C 6C6  
Tel: 604.620.2666  
Email: [simonlin@evolinklaw.com](mailto:simonlin@evolinklaw.com)

J  r  mie John Martin and S  bastien A. Paquette  
Champlain Avocats  
1434 Sainte-Catherine Street West, Suite 200  
Montreal, Quebec H3G 1R4  
Tel: 514.944.7344  
Email: [jmartin@champlainavocats.com](mailto:jmartin@champlainavocats.com)  
[spaquette@champlainavocats.com](mailto:spaquette@champlainavocats.com)

**For the Settling Defendants:**

Sylvie Rodrigue and James Gotowiec  
Torys LLP  
79 Wellington St. West, 30<sup>th</sup> Floor  
Toronto, ON M5K 1N2  
Tel: 416.865.0040  
Email: [srodrigue@torys.com](mailto:srodrigue@torys.com)  
[jgotowiec@torys.com](mailto:jgotowiec@torys.com)

**12.16 Date of Execution**

- (1) The Parties have executed this Settlement Agreement as of the date on the cover page.

**ARTHUR LIN** on his own behalf and on behalf of the Settlement Class that he represents:

**AIRBNB INC.**

Name of Authorized Signatory:

David Bernstein

Chief Accounting Officer

Signature of Authorized Signatory:



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**AIRBNB CANADA INC.**

Name of Authorized Signatory:

David Bernstein

President

Signature of Authorized Signatory:



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- 27 -

**AIRBNB IRELAND UNLIMITED COMPANY**

Name of Authorized Signatory:

Killian PattwellDirector, EMEA Tax

DocuSigned by:

Signature of Authorized Signatory:



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**AIRBNB PAYMENTS UK LIMITED**

Name of Authorized Signatory:

David BernsteinDirector

DocuSigned by:

Signature of Authorized Signatory:



07B936CBE9084D7...

**SIMON LIN LAW CORPORATION**

Per: \_\_\_\_\_

Name: Simon LinI have authority to bind the Corporation**JÉRÉMIE JOHN MARTIN**

Per: \_\_\_\_\_

Name: Jérémie John Martin**SÉBASTIEN A. PAQUETTE**

Per: \_\_\_\_\_

Name: Sébastien A. Paquette

**For the Plaintiff and for Class Counsel in the Proceedings:**

Simon Lin  
 Evolink Law Group  
 4388 Still Creek Drive, Suite 237  
 Burnaby, BC V5C 6C6  
 Tel: 604.620.2666  
 Email: [simonlin@evolinklaw.com](mailto:simonlin@evolinklaw.com)

Jérémie John Martin and Sébastien A. Paquette  
 Champlain Avocats  
 1434 Sainte-Catherine Street West, Suite 200  
 Montreal, Quebec H3G 1R4  
 Tel: 514.944.7344  
 Email: [jmartin@champlainavocats.com](mailto:jmartin@champlainavocats.com)  
[spaquette@champlainavocats.com](mailto:spaquette@champlainavocats.com)

**For the Settling Defendants:**

Sylvie Rodrigue and James Gotowiec  
 Torys LLP  
 79 Wellington St. West, 30<sup>th</sup> Floor  
 Toronto, ON M5K 1N2  
 Tel: 416.865.0040  
 Email: [srodrigue@torys.com](mailto:srodrigue@torys.com)  
[jgotowiec@torys.com](mailto:jgotowiec@torys.com)

**12.16 Date of Execution**

- (1) The Parties have executed this Settlement Agreement as of the date on the cover page.

**ARTHUR LIN** on his own behalf and on behalf of the Settlement Class that he represents:


**AIRBNB INC.**

Name of Authorized Signatory:

David Bernstein  
 Chief Accounting Officer

Signature of Authorized Signatory:

**AIRBNB CANADA INC.**

Name of Authorized Signatory:

David Bernstein  
 President

Signature of Authorized Signatory:

**AIRBNB IRELAND UNLIMITED COMPANY**

Name of Authorized Signatory: Killian Pattwell  
Director, EMEA Tax

Signature of Authorized Signatory: \_\_\_\_\_

**AIRBNB PAYMENTS UK LIMITED**

Name of Authorized Signatory: David Bernstein  
Director

Signature of Authorized Signatory: \_\_\_\_\_

**SIMON LIN LAW CORPORATION**

Per: 

Name: Simon Lin  
I have authority to bind the Corporation

**JÉRÉMIE JOHN MARTIN**

Per: 

Name: Jérémie John Martin

**SÉBASTIEN A. PAQUETTE**

Per: 

Name: Sébastien A. Paquette

**SCHEDULE “A”**

Federal Court



Cour fédérale

**Date: 2021XXXX**

**Docket: T-1663-17**

**Vancouver, British Columbia, XXXXXX, 2021**

**PRESENT: The Honourable Mr. Justice Gascon**

**BETWEEN:**

ARTHUR LIN

**Plaintiff**

**AND:**

AIRBNB, INC.  
AIRBNB CANADA INC.  
AIRBNB IRELAND UNLIMITED COMPANY  
AIRBNB PAYMENTS UK LIMITED

**Defendants**

## **ORDER**

**UPON MOTION** made by the Plaintiff for an Order approving the short-form and long-form notices of settlement approval hearing for a settlement with Airbnb Inc., Airbnb Canada Inc., Airbnb Ireland Unlimited Company, and Airbnb Payments UK Limited (collectively, the “**Settling Defendants**”), the method of dissemination of said notices, and fixing an approval hearing date;

**AND ON READING** the materials filed, including the settlement agreement with the Settling Defendants dated as of ■, 2021 attached to this Order as **Schedule “A”** (the

**“Settlement Agreement”**), and on hearing the submissions of counsel for the Plaintiff and Counsel for the Settling Defendants;

**AND ON BEING ADVISED** that all parties consent to this Order;

**THIS COURT ORDERS that:**

1. The settlement approval hearing shall be at 10:30 AM PST on ■, 2021 by videoconference.
2. For purposes of the settlement approval hearing, the parties are granted leave under Rule 82 to file solicitor’s affidavit(s) in support of the settlement approval.
3. For the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
4. The short-form and long-form notices of settlement approval hearing are hereby approved substantially in the forms attached respectively hereto as **Schedule “B”** and **Schedule “C”**.
5. The plan of dissemination for the short-form and long-form notices of settlement approval hearing (the **“Plan of Dissemination”**) is hereby approved in the form attached hereto as **Schedule “D”**, and the notices of settlement approval hearing shall be disseminated in accordance with the Plan of Dissemination.
6. Paragraph 3 of the Court’s December 5, 2019 order in this action is revoked and the Class is defined as follows:

All individuals residing in Canada, other than Quebec, who, from October 31, 2015 to June 25, 2019: (a) reserved an accommodation for anywhere in the world using Airbnb; (b) whose reserved accommodation matched the parameters of a previous search made by the individual on the search results page of Airbnb; and (c) paid, for the reserved accommodation, a price (excluding applicable sales and/or accommodation taxes) that is higher than the price displayed by Airbnb on the said search results page for this accommodation. Individuals who reserved an accommodation primarily for business travel are excluded.

7. With respect to the Settling Defendants’ motion dated August 28, 2020 to exclude the Quebec Class from this action, the motion is granted on the following terms:

- (a) the claims of the Quebec Class that are before this Court are dismissed with prejudice and without costs.
- 8. In the event that the Settlement Agreement is terminated in accordance with its terms or the settlement is not approved, this Order shall be declared null and void and of no force and effect on subsequent motion made on notice.

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Judge



**SCHEDULE “B”**

Federal Court



Cour fédérale

**Date: 2021XXXX**

**Docket: T-1663-17**

**Vancouver, British Columbia, XXXXXX, 2021**

**PRESENT: The Honourable Mr. Justice Gascon**

**BETWEEN:**

ARTHUR LIN

**Plaintiff**

**AND:**

AIRBNB, INC.  
AIRBNB CANADA INC.  
AIRBNB IRELAND UNLIMITED COMPANY  
AIRBNB PAYMENTS UK LIMITED

**Defendants**

## **ORDER**

**THIS MOTION** made by the Plaintiff for an Order approving the settlement of this action with Airbnb Inc., Airbnb Canada Inc., Airbnb Ireland Unlimited Company, and Airbnb Payments UK Limited (collectively, the “**Settling Defendants**”) and dismissing this action as against the Settling Defendants, was heard this day.

**ON READING** the materials filed, including the settlement agreement with the Settling Defendants dated as of ■, 2021, attached to this Order as **Schedule “A”** (the “**Settlement Agreement**”), and on hearing the submissions of counsel for the Plaintiff and Counsel for the Settling Defendants;

**AND ON BEING ADVISED** that the deadline for objecting to the Settlement Agreement has passed and there have been ■ written objections to the Settlement Agreement;

**AND ON BEING ADVISED** that the deadline for opting out of the action has passed, ■ individuals validly exercised the right to opt out, and ■ individuals submitted comments regarding the settlement that have been duly considered by the Court;

**AND ON BEING ADVISED** that all parties consent to this Order;

**THIS COURT ORDERS that:**

1. In addition to the definitions used elsewhere in this Order, for the purposes of this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. In the event of a conflict between the terms of this Order and the Settlement Agreement, the terms of this Order shall prevail.
3. All provisions of the Settlement Agreement (including its Recitals and Definitions) are incorporated by reference into and form part of this Order, and this Order, including the Settlement Agreement, is binding upon each member of the Settlement Class, including those Persons who are minors or mentally incapable, and the requirements of Rule 115 of the *Federal Courts Rules* are dispensed with.
4. The Settlement Agreement is fair, reasonable, and in the best interests of the Settlement Class.
5. The Settlement Agreement is hereby approved pursuant to Rule 334.29 of the *Federal Courts Rules* and shall be implemented and enforced in accordance with its terms.
6. Upon the Effective Date, each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.
7. Upon the Effective Date, each Releasor shall not now or hereafter institute, continue, maintain, intervene in, or assert, either directly or indirectly, whether in

Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any proceeding, cause of action, claim, or demand against any Releasee, or any other Person who may claim contribution or indemnity, or other claims over relief, from any Releasee, whether pursuant to legislation or at common law or equity in respect of any Released Claim.

8. For purposes of administration and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role and the Settling Defendants attorn to the jurisdiction of this Court solely for the purpose of implementing, administering, and enforcing the Settlement Agreement and this Order, and subject to the terms and conditions set out in the Settlement Agreement and this Order.
9. No Releasee shall have any responsibility or liability whatsoever relating to the administration of the Settlement Agreement.
10. In the event that the Settlement Agreement is terminated in accordance with its terms, this Order shall be declared null and void and of no force and effect on subsequent motion made on notice.
11. Upon the Effective Date, the Proceeding be dismissed against the Settling Defendants, with prejudice and without costs to the Settling Defendants, Plaintiff, or Releasees, and that such dismissal shall be a defence to any subsequent action in respect of the subject matter hereof.

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Judge

## **NOTICE OF HEARING TO APPROVE AIRBNB CLASS ACTION SETTLEMENT**

***IF YOU RESIDE IN CANADA (EXCEPT QUEBEC) AND BOOKED AN ACCOMMODATION VIA AIRBNB FOR NON-BUSINESS TRAVEL BETWEEN OCTOBER 31, 2015 and JUNE 25, 2019, YOU MAY BE AFFECTED BY A CLASS ACTION SETTLEMENT***

### **NOTICE OF SETTLEMENT**

This notice advises you of a settlement of a class action brought in the Federal Court of Canada relating to the display of prices on Airbnb's websites and/or mobile applications. The Court file is *Lin v. Airbnb, Inc. et al.*, Federal Court, docket T-1663-17.

### **WHAT IS THE CLASS ACTION ABOUT?**

The plaintiff alleges that Airbnb contravened the federal *Competition Act* by charging, for the booking of an accommodation offered by a third-party host on the Airbnb Platform, a price above that displayed at the first stage of browsing on Airbnb's websites and/or mobile applications (excluding applicable sales and/or accommodation taxes). These allegations have not been proven in Court and are contested by Airbnb, whose position is that they have complied at all times with all applicable legislation.

### **AM I PART OF THE CLASS?**

All individuals in Canada (except Québec) who reserved an accommodation for non-business travel through Airbnb between October 31, 2015 and June 25, 2019 and paid a higher price than the price initially displayed to that individual on the Airbnb search results page are part of the class.

### **HAS THE SETTLEMENT TAKEN EFFECT?**

No. The settlement must first be approved by the Federal Court, through an approval hearing.

### **WHEN IS THE APPROVAL HEARING?**

The approval hearing will be held virtually on November 1, 2021 at 1:00 p.m. EST via Zoom.

### **WHAT CAN I RECEIVE FROM THE SETTLEMENT?**

If the settlement is approved, a hyperlink will be sent to class members to make a claim. Airbnb will issue a one-time-use only, non-transferable, non-refundable, non-cash-convertible credit of up to CAD \$45 in value to each eligible class member who submits a claim. The credit's value will depend on the total number of approved claims and the amount the Court approves for Class Counsel fees and disbursements, honorarium for the representative Plaintiff, claims administration expenses, and applicable sales taxes, which will be deducted from the settlement fund. The credit cannot be combined

with any other offer, discount, or coupon, and must be redeemed within 24 months after issuance, on your next Airbnb accommodation booking.

### **WHAT ARE MY OPTIONS?**

1. If you **want to participate in the settlement** and receive the benefits, no action is required. You will then be bound by the class action and the settlement, and will give up the right to take legal action against Airbnb relating in any way to the display of prices on Airbnb's websites and/or mobile applications.
2. If you **do not want to participate in the settlement**, you can opt out by submitting the written election as detailed in the long-form notice.
3. If you wish to **object to the settlement**, you can write to Class Counsel by **<<objection date>>** in accordance with the steps in the long-form notice. Any objections will be used by the Court to consider whether to approve the settlement. The Court cannot change the settlement terms.

### **WHO REPRESENTS THE CLASS MEMBERS?**

The Plaintiff and Class Members are represented by:

**Sébastien Paquette and Jérémie Martin**

Champlain Avocats

1434 Sainte-Catherine Street West, Suite 200

Montréal, Québec H3G 1R4

**Simon Lin**

Evolink Law Group

4388 Still Creek Drive, Suite 237

Burnaby, British Columbia V5C 6C6

### **WILL I BE CHARGED FOR LEGAL FEES?**

No, you will not be charged for legal fees. The settlement includes Class Counsel's legal fees and disbursements, the representative plaintiff's honorarium, claims administration expenses, and any applicable taxes, subject to Court approval.

**THIS NOTICE IS JUST A SUMMARY.** If there is any discrepancy between this notice and the settlement agreement, the settlement agreement shall prevail. Please go to <http://www.evolinklaw.com/airbnb-service-fees-national-class-action> for further information and to review the settlement agreement.

## **AVIS AUX MEMBRES DU GROUPE D'UNE PROPOSITION DE RÈGLEMENT** **SI VOUS RÉSIDEZ AU CANADA (SAUF AU QUÉBEC) ET AVEZ RÉSERVÉ UN HÉBERGEMENT** **VIA AIRBNB POUR UN VOYAGE SAUF D'AFFAIRES ENTRE LE 31 OCTOBRE 2015 ET LE 25** **JUIN 2019, VOUS POURRIEZ ÊTRE AFFECTÉ PAR UN RÈGLEMENT DE RECOURS COLLECTIF**

### **AVIS DE RÈGLEMENT**

Cet avis vous avise du règlement d'un recours collectif intenté devant la Cour fédérale du Canada concernant l'affichage des prix sur les sites Web et/ou les applications mobiles d'Airbnb. Le dossier de la Cour est *Lin v. Airbnb, Inc. et al.*, Cour fédérale, dossier T-1663-17.

### **QUE CONCERNE CE RECOURS COLLECTIF?**

Le représentant allègue qu'Airbnb a contrevenu à la Loi fédérale sur la concurrence en facturant, pour la réservation d'un hébergement proposé par un hôte tiers sur la Plateforme Airbnb, un prix supérieur à celui affiché lors de la première étape de navigation sur les sites Internet et/ou les applications mobiles d'Airbnb (hors taxes de vente et/ou d'hébergement applicables). Ces allégations n'ont pas été prouvées devant les tribunaux et sont contestées par Airbnb, dont la position est qu'ils se sont conformés à tout moment à toutes les lois applicables.

### **QUI EST VISÉ PAR LE RECOURS?**

Toutes les personnes au Canada (sauf au Québec) qui ont réservé un hébergement pour un voyage sauf d'affaires via Airbnb entre le 31 octobre 2015 et le 25 juin 2019 et ont payé un prix plus élevé que le prix initialement affiché à cette personne sur la page des résultats de recherche Airbnb font partie du recours.

### **LE RÈGLEMENT EST-IL DÉJÀ EN VIGUEUR?**

Non. Le règlement doit d'abord être approuvé par la Cour fédérale, dans le cadre d'une audience d'approbation.

### **QUAND AURA LIEU CETTE AUDIENCE?**

L'audience d'approbation se tiendra virtuellement le 1er novembre 2021 à 13 h HNE via Zoom.

### **QUE PUIS-JE RECEVOIR DU RÈGLEMENT ?**

Si le règlement est approuvé, un lien sera envoyé aux membres du groupe pour faire une réclamation. Airbnb émettra un crédit à usage unique, non transférable, non remboursable, non convertible en espèces d'une valeur maximale de 45 \$ CA à chaque membre du groupe admissible qui soumet une réclamation. La valeur du crédit dépendra du nombre total de réclamations approuvées et du montant que la Cour approuve pour les honoraires et débours des avocats du groupe, l'*honorarium* du représentant, les

frais d'administration des réclamations et les taxes de vente applicables, qui seront déduits du fonds de règlement. Le crédit ne peut être combiné à aucune autre offre, remise ou coupon, et doit être utilisé dans les 24 mois suivant son émission, sur votre prochaine réservation d'hébergement Airbnb.

### **QUELLES SONT MES OPTIONS?**

1. **Si vous souhaitez participer au règlement** et recevoir les avantages, aucune action n'est requise. Vous serez alors lié par le recours collectif et le règlement, et renoncerez au droit d'intenter une action en justice contre Airbnb portant de quelque manière que ce soit sur l'affichage des prix sur les sites Internet et/ou les applications mobiles d'Airbnb.
2. **Si vous ne souhaitez pas participer** au règlement, vous pouvez vous retirer en soumettant le choix écrit tel que décrit dans l'avis détaillé.
3. **Si vous souhaitez vous opposer** au règlement, vous pouvez écrire aux Avocats du Groupe avant la <<date d'opposition>> conformément aux étapes de l'avis détaillé. Toute objection sera utilisée par la Cour pour déterminer s'il convient d'approuver le règlement. La Cour ne peut pas modifier les conditions du règlement.

### **QUI REPRÉSENTE LES MEMBRES DU GROUPE?**

Le représentant et les membres du groupe sont représentés par:

**Sébastien Paquette et Jérémie Martin**, Champlain Avocats  
200-1434 Sainte-Catherine O, Montréal QC H3G 1R4

**Simon Lin**, Evolink Law Group, 4388 Still Creek Drive, Suite 237, Burnaby, British Columbia V5C 6C6

### **VAIS-JE ÊTRE FACTURÉ DES FRAIS D'AVOCATS?**

Non, les frais d'avocats ne vous seront pas facturés. Le règlement comprend les frais d'avocats et les débours des avocats du groupe, l'*honorarium* du représentant, les frais d'administration des réclamations et toutes les taxes applicables, sous réserve de l'approbation du tribunal.

**CET AVIS N'EST QU'UN RÉSUMÉ.** En cas de divergence entre le présent avis et l'entente de règlement, l'entente de règlement prévaudra. Veuillez vous rendre sur <http://www.evolinklaw.com/airbnb-service-fees-national-class-action> pour plus d'informations et pour consulter l'Entente de règlement.

# Schedule C to Proposed Order (English)

Motion Record P. 127

## NOTICE OF HEARING TO APPROVE CLASS ACTION SETTLEMENT

### Class Action Settlement Notice Regarding the Booking of Accommodations on the Airbnb Platform by Residents of Canada Other than Québec

*Lin v. Airbnb, Inc. et al.*, Federal Court of Canada, Docket T-1663-17

We are contacting you in connection with a Federal Court of Canada judgment dated December 5, 2019 (docket T-1663-17) certifying a class action against Airbnb, Inc., Airbnb Canada Inc., Airbnb Ireland Unlimited Company, and Airbnb Payments UK Limited (collectively, “**Airbnb**”).

A settlement has been reached, subject to approval of the Federal Court of Canada (the “**Settlement**”), between Arthur Lin (the “**Plaintiff**”) and Airbnb in the context of a class action lawsuit commenced by the Plaintiff against Airbnb (the “**Class Action**”).

This Settlement may affect your rights, whether you act or not. Please read this notice carefully.

#### WHY HAVE I RECEIVED THIS EMAIL?

You are receiving this email because you are a resident of Canada, other than Québec, and during the class period (between October 31, 2015 and June 25, 2019), you booked an accommodation offered by a third-party host on Airbnb’s online platform through its websites and/or mobile applications (the “**Airbnb Platform**”), for purposes other than business travel. Therefore, you could be eligible to receive benefits under the Settlement.

The purpose of this notice is to inform you that the Plaintiff and Airbnb have reached a Settlement, subject to Court approval, putting an end to the Class Action. All concerned parties believe that the Settlement is the best solution to dispose fairly and equitably of the dispute; they will ask the Federal Court of Canada to approve it.

The Federal Court of Canada will hold a hearing to determine whether it will approve the Settlement (the “**Approval Hearing**”). You may attend the hearing, which will take place virtually on November 1, 2021 at 1:00 p.m. (Eastern Time) via Zoom. If you wish to attend the virtual hearing and receive the Zoom link, you must provide the Court with advance notice of at least two (2) business days by sending an email to [hearings-audiences@fct-cf.ca](mailto:hearings-audiences@fct-cf.ca). The Court’s schedule of upcoming hearings is available here: <https://www.fct-cf.gc.ca/en/court-files-and-decisions/hearing-lists>.

#### WHAT WAS THE PURPOSE OF THE CLASS ACTION?

According to the Plaintiff, Airbnb allegedly contravened the federal *Competition Act* by charging, for the booking of an accommodation offered by a third-party host on the Airbnb Platform, a price above that displayed at the first stage of browsing on the Airbnb Platform (excluding applicable sales and/or accommodation taxes).

These allegations have not been proven in Court and are contested by Airbnb, whose position is that they have complied at all times with all applicable legislation.

As of June 2019, Airbnb displays an all-inclusive price for all accommodation bookings, excluding applicable taxes.

#### AM I PART OF THIS CLASS ACTION?

You are part of this Class Action if you are an individual residing in Canada, other than Québec, who, between October 31, 2015 and June 25, 2019: (a) reserved an accommodation for anywhere in the world using Airbnb; (b) whose reserved accommodation matched the parameters of a previous search made by the individual on the search results page of Airbnb; and (c) paid, for the reserved accommodation, a price (excluding applicable sales and/or accommodation taxes) that is higher than the price displayed by Airbnb on the said search results page for this accommodation. Individuals who reserved an accommodation primarily for business travel are excluded (the “**Class**” or “**Class Member(s)**”).

#### WHAT DOES THE SETTLEMENT PROVIDE?

Without any admission of liability, for the purpose of avoiding a trial and the additional costs and expenses related thereto, Airbnb agrees to remit to each eligible Class Member a single redeemable credit of a value of up to CAD \$45 each (a “**Redeemable Credit**”). The value of the Redeemable Credit will depend on the total number of approved claims and the amount the Court approves for Class Counsel’s fees and disbursements, any honorarium for the representative Plaintiff,

claims administration expenses, and applicable sales taxes, which will be deducted from the Settlement fund. The Redeemable Credit will be the same amount for each Class Member.

Redeemable Credits may be used to book an accommodation offered by a third-party host on the Airbnb Platform in any location worldwide. Redeemable Credits are one-time-use only, non-transferable, non-refundable, non-cash-convertible, and cannot be combined with any other offer, discount, or coupon. In order to be able to redeem a Redeemable Credit, an eligible Class Member must accept the most recent version of Airbnb's Terms of Service and not be prohibited from using the Airbnb Platform (in accordance with the Terms of Service). Once issued, a Redeemable Credit expires after twenty-four (24) months.

In exchange, Class Members (i) acknowledge that the foregoing is in full and complete settlement of the claims of the Class Members, and (ii) agree to give up any and all claims they may have against Airbnb relating in any way to the display of prices on the Airbnb Platform, including in respect of conduct alleged (or which could have been alleged) in the Class Action. Sections 1(37) and 6 of the Settlement Agreement specifically describe the released claims. Please read the descriptions carefully. If you have any questions, you may speak with Class Counsel (whose contact details are at the end of this notice), or you can consult your own lawyer at your own expense.

**The Settlement Agreement and other court documents are available at <https://evolinklaw.com/airbnb-service-fees-national-class-action/>.**

#### **AM I ELIGIBLE TO RECEIVE A REDEEMABLE CREDIT?**

You are eligible to receive a Redeemable Credit from Airbnb if you meet all of the following eligibility criteria:

1. You are Class Member, as defined above;
2. You are a resident of Canada, but not Québec;
3. You used the Airbnb Platform for the first time between October 31, 2015 and June 25, 2019, for a purpose other than business travel;
4. You were located in Canada, but not Québec, at the time of the booking; and
5. You have an active Airbnb account at the time the Redeemable Credit is issued that has not been suspended or removed from the Airbnb Platform due to a violation of Airbnb's Terms of Service, policies, or standards.

**Following the approval of the Settlement by the Federal Court of Canada, as the case may be, you will receive a notice which will invite you to click on a hyperlink in order to submit a claim for a Redeemable Credit. You will have to click on the hyperlink so that the Redeemable Credit will automatically be issued to your Airbnb account.** After the Claims Administrator processes all of the claims, the Redeemable Credit will automatically be applied to a future accommodation booking you make on the Airbnb Platform within twenty-four (24) months of issuance.

#### **WHAT HAPPENS IF I EXCLUDE MYSELF (OPT OUT)?**

If you do not wish to be bound by this Settlement for any reason whatsoever, you must take steps to exclude yourself from (opt out of) the Class, which will result in your exclusion from the Settlement.

If you exclude yourself:

1. You will not receive any benefits under the Settlement;
2. You will not be bound by the Class Action or the Settlement; and
3. You will not be able to object to the Settlement.

**Further details about opting out of the Class or objecting to the Settlement are set out below.**

#### **WHAT HAPPENS IF I DO NOT EXCLUDE MYSELF?**

If you do not exclude yourself:

1. You will be eligible to submit claim a for a Redeemable Credit under this Settlement;



2. You will be bound by the Class Action and the Settlement, if approved by the Court;
3. You will give up the right to take your own legal action against Airbnb; and
4. You will be able to object to the Settlement.

If you do not exclude yourself and the Settlement is approved, you give up the right to take legal action against Airbnb relating in any way to the display of prices on the Airbnb Platform, including in respect of conduct alleged (or which could have been alleged) in the Class Action.

#### HOW CAN I EXCLUDE MYSELF?

To exclude yourself from the Class and the Settlement, you must send a written election to the law firms Champlain Avocats and Evolink Law Group ("**Class Counsel**") in accordance with section 4.1 of the Settlement Agreement.

In order to be valid, your written election must be delivered to Class Counsel, at the contact information at the end of this notice, by no later than <<**opt-out deadline**>>, and must include all of the following information:

1. The name and Court docket number of this proceeding (*Lin v. Airbnb, Inc. et al.*, Federal Court of Canada, docket T-1663-17);
2. Your full name, current address, telephone number, and the email address at which you received the notice about this Class Action;
3. An acknowledgment that you are a resident of Canada (but not Québec) and are aware that you will no longer be entitled to participate in any benefits from the Settlement;
4. A clear statement that you wish to be excluded from this Class Action;
5. Your reasons for opting out; and
6. Your signature (or, if you are legally incapable, the signature of your parent or legal guardian).

The written election to opt out must be sent by pre-paid mail, courier, fax, or email to Class Counsel, at the contact information at the end of this notice.

#### WHAT IF I DISAGREE WITH THE SETTLEMENT?

If you disagree with the Settlement, you can object to it by sending a written objection in accordance with the procedure in section 4.1 of the Settlement Agreement.

In order to be valid, your written objection must be delivered to Class Counsel, at the contact information at the end of this notice, by no later than <<**objection deadline**>>, and must include all of the following information:

1. The name and Court docket number of this proceeding (*Lin v. Airbnb, Inc. et al.*, Federal Court of Canada, docket T-1663-17);
2. Your full name, current address, telephone number, and the email address at which you received the notice about this Class Action;
3. An acknowledgment that you are a resident of Canada (but not Québec);
4. The grounds for your objection;
5. Whether you intend to appear at the Approval Hearing yourself, or through your lawyer (at your own expense); and
6. Your signature (or, if you are legally incapable, the signature of your parent or legal guardian).

You can object to the Settlement without a lawyer. If you wish to be represented by a lawyer, you may hire one at your own expense. If, despite your objection, the Settlement is still approved, you can still receive a Redeemable Credit if you are eligible.

**Class Counsel will file copies of all objections with the Court. You cannot make an objection to the Settlement if you have excluded yourself (opted out) from the Class.**

#### HOW CAN I OBTAIN MORE INFORMATION?

For more information and to access the Settlement Agreement and other court documents, please go to <https://evolinklaw.com/airbnb-service-fees-national-class-action/> or contact Class Counsel at the information below.

#### WHO REPRESENTS ME?

The Plaintiff and Class Members are represented by Class Counsel:

Sébastien Paquette and Jérémie Martin  
Champlain Avocats  
1434 Sainte-Catherine Street West, Suite 200  
Montréal, Québec H3G 1R4  
Fax: 514-800-0677  
Email: [jmartin@champlainavocats.com](mailto:jmartin@champlainavocats.com)  
Email: [spaquette@champlainavocats.com](mailto:spaquette@champlainavocats.com)

Simon Lin  
Evolink Law Group  
4388 Still Creek Drive, Suite 237  
Burnaby, British Columbia V5C 6C6  
Fax: 888-509-8168  
Email: [simonlin@evolinklaw.com](mailto:simonlin@evolinklaw.com)

If the Settlement is approved by the Court, another notice will be emailed to you which will invite you to click on a hyperlink in order to submit a claim for a Redeemable Credit.

*In case of any discrepancy between the terms of this notice and the Settlement Agreement, the terms of the Settlement Agreement shall prevail. Any term not defined in this notice shall have the meaning ascribed in the Settlement Agreement.*

**THE PUBLICATION AND DISSEMINATION OF THIS NOTICE HAS BEEN APPROVED BY THE  
FEDERAL COURT OF CANADA.**

# Schedule C to Proposed Order (French)

Motion Record P. 131

## AVIS AUX MEMBRES DU GROUPE D'UNE PROPOSITION DE RÈGLEMENT

### Avis de règlement d'un recours collectif concernant la réservation d'hébergement sur la plateforme Airbnb par les résidents du Canada autre que du Québec

*Lin c. Airbnb, Inc. et al., Cour fédérale, #T-1663-17*

Nous vous contactons dans le cadre d'un jugement de la Cour fédérale du Canada daté du 5 décembre 2019 (dossier T-1663-17) autorisant un recours collectif contre Airbnb, Inc., Airbnb Canada Inc., Airbnb Ireland Unlimited Company et Airbnb Payments UK Limité (collectivement, « **Airbnb** »).

Un règlement a été conclu, sous réserve de l'approbation de la Cour fédérale du Canada (le « **Règlement** »), entre Arthur Lin (le « **demandeur** ») et Airbnb dans le cadre d'un recours collectif intenté par le demandeur contre Airbnb (le « **Recours collectif** »).

Ce Règlement peut affecter vos droits, que vous agissiez ou non. Veuillez lire attentivement cet avis.

#### POURQUOI EST-CE QUE JE REÇOIS CE COURRIEL?

Vous recevez ce courriel parce que vous êtes un résident du Canada, autre que du Québec, et pendant la période du recours (entre le 31 octobre 2015 et le 25 juin 2019), vous avez réservé un hébergement offert par un hôte tiers sur la plateforme en ligne d'Airbnb via ses sites Web et/ou applications mobiles (la « **Plateforme Airbnb** »), à des fins autres qu'un voyage d'affaires. Par conséquent, vous pourriez être admissible à recevoir un bénéfice en vertu du Règlement.

Le présent avis a pour but de vous informer que le demandeur et Airbnb sont parvenus à un règlement, sous réserve de l'approbation du tribunal, mettant fin au recours collectif. Toutes les parties concernées croient que le Règlement est la meilleure solution pour régler le différend de façon juste et équitable et ils demanderont à la Cour fédérale du Canada de l'approuver.

La Cour fédérale du Canada tiendra une audience pour déterminer si elle approuvera le Règlement (l'« **Audience d'approbation** »). Vous pouvez assister à cette audience qui aura lieu virtuellement le 1er novembre 2021 à 13h00. (heure de l'Est) via Zoom. Si vous souhaitez assister à l'audience virtuelle et recevoir le lien Zoom, vous devez fournir à la Cour un préavis d'au moins deux (2) jours ouvrables en envoyant un courriel à [audiences-audiences@fct-cf.ca](mailto:audiences-audiences@fct-cf.ca). Le calendrier des prochaines audiences de la Cour est disponible ici : <https://www.fct-cf.gc.ca/fr/court-files-and-decisions/hearing-lists>.

#### QUEL ÉTAIT L'OBJET DU RECOURS COLLECTIF?

Selon le Demandeur, Airbnb aurait contrevenu à la *Loi sur la concurrence* fédérale en facturant, pour la réservation d'un hébergement proposé par un hébergeur tiers sur la Plateforme Airbnb, un prix supérieur à celui affiché lors de la première étape de navigation sur la Plateforme Airbnb (hors taxes de vente et/ou d'hébergement applicables).

Ces allégations n'ont pas été prouvées devant les tribunaux et sont contestées par Airbnb, dont la position est qu'ils se sont conformés à tout moment à toutes les lois applicables.

Depuis juin 2019, Airbnb affiche un prix tout compris pour toutes les réservations d'hébergement, hors taxes applicables.

#### EST-CE QUE JE FAIS PARTIE DE CE RECOURS COLLECTIF?

Vous faites partie de ce recours collectif si vous êtes une personne physique résidant au Canada, autre qu'au Québec, qui, entre le 31 octobre 2015 et le 25 juin 2019 : (a) a réservé un hébergement pour n'importe où dans le monde en utilisant Airbnb ; (b) dont l'hébergement réservé correspondait aux paramètres d'une recherche précédente qu'il avait effectuée sur la page de résultats de recherche d'Airbnb ; et (c) payé, pour le logement réservé, un prix (hors taxes de vente et/ou d'hébergement applicables) supérieur au prix affiché par Airbnb sur ladite page de résultats de recherche pour ce logement. Les personnes qui ont réservé un hébergement principalement pour un voyage d'affaires sont exclues (le « **Groupe** » ou le(s) « **Membre(s) du groupe** »).

## EN QUOI CONSISTE LE RÈGLEMENT?

Sans aucune admission de responsabilité, dans le but d'éviter un procès et les coûts et dépenses supplémentaires qui y sont liés, Airbnb s'engage à remettre à chaque Membre du groupe admissible un seul crédit échangeable d'une valeur maximale de 45 \$ CAD chacun (un « **Crédit échangeable** »). La valeur du Crédit échangeable dépendra du nombre total de réclamations approuvées et du montant que la Cour approuve pour les honoraires et débours des Avocats du Groupe, l'*honorarium* du demandeur, les frais d'administration des réclamations et les taxes de vente applicables, qui seront déduits du Fonds de règlement. Le Crédit échangeable sera du même montant pour chaque Membre du Groupe.

Les Crédits échangeables peuvent être utilisés pour réserver un hébergement proposé par un hôte tiers sur la Plateforme Airbnb dans n'importe quel endroit dans le monde. Les Crédits échangeables sont à usage unique, non transférables, non remboursables, non convertibles en espèces et ne peuvent être combinés à aucune autre offre, remise ou coupon. Afin de pouvoir faire usage du Crédit échangeable, un Membre du groupe éligible doit accepter la version la plus récente des conditions d'utilisation d'Airbnb et ne pas se voir interdire d'utiliser la plate-forme Airbnb (conformément aux conditions d'utilisation). Une fois émis, un Crédit échangeable expire après vingt-quatre (24) mois.

En échange, les Membres du groupe (i) reconnaissent que ce qui précède constitue un règlement complet et final des réclamations des Membres du groupe, et (ii) conviennent de renoncer à toute réclamation qu'ils pourraient avoir contre Airbnb concernant de quelque manière que ce soit l'affichage des prix sur la Plateforme Airbnb, y compris en ce qui concerne la conduite alléguée (ou qui aurait pu être alléguée) dans le Recours collectif. Les articles 1(37) et 6 de l'Entente de règlement décrivent spécifiquement les réclamations libérées. Veuillez lire attentivement les descriptions. Si vous avez des questions, vous pouvez parler avec l'Avocat du Groupe (dont les coordonnées figurent à la fin de cet avis), ou vous pouvez consulter votre propre avocat à vos frais.

L'entente de règlement et d'autres documents judiciaires sont disponibles à l'adresse <https://evolinklaw.com/airbnb-service-fees-national-class-action/>

## SUIS-JE ÉLIGIBLE À RECEVOIR UN CRÉDIT ÉCHANGEABLE?

Vous êtes éligible pour recevoir un crédit échangeable d'Airbnb si vous remplissez tous les critères d'éligibilité suivants :

1. Vous êtes Membre du Groupe, tel que défini ci-dessus ;
2. Vous êtes un résident du Canada, mais pas du Québec;
3. Vous avez utilisé la Plateforme Airbnb pour la première fois entre le 31 octobre 2015 et le 25 juin 2019, à des fins autres qu'un voyage d'affaires ;
4. Vous étiez situé au Canada, mais pas au Québec, au moment de la réservation; et
5. Vous disposez d'un compte Airbnb actif au moment de l'émission du crédit échangeable qui n'a pas été suspendu ou supprimé de la plate-forme Airbnb en raison d'une violation des conditions d'utilisation, des politiques ou des normes d'Airbnb.

**Suite à l'approbation du Règlement par la Cour fédérale du Canada, le cas échéant, vous recevrez un avis qui vous invitera à cliquer sur un hyperlien afin de soumettre une demande de Crédit échangeable. Vous devrez cliquer sur le lien hypertexte pour que le Crédit échangeable soit automatiquement émis sur votre compte Airbnb.**

Une fois que l'Administrateur des réclamations aura traité toutes les réclamations, le Crédit échangeable sera automatiquement appliqué à une future réservation d'hébergement que vous effectuerez sur la Plateforme Airbnb dans les vingt-quatre (24) mois suivant son émission.

## QUE SE PASSE-T-IL SI JE M'EXCLUE DU RÈGLEMENT (OPT OUT)?

Si vous ne souhaitez pas être lié par ce Règlement pour quelque raison que ce soit, vous devez prendre des mesures

pour vous exclure (vous retirer) du Groupe, ce qui entraînera votre exclusion du Règlement.

Si vous vous excluez :

1. Vous ne recevrez aucun avantage en vertu du Règlement ;
2. Vous ne serez pas lié par le Recours collectif ou le Règlement ; et
3. Vous ne pourrez pas vous opposer au Règlement.

De plus amples détails sur l'exclusion du Groupe ou l'opposition au Règlement sont indiqués ci-dessous.

#### QUE SE PASSE-TIL SI JE NE M'EXCLUE PAS?

Si vous ne vous excluez **pas** :

1. Vous serez admissible à soumettre une demande de Crédit échangeable en vertu du présent règlement ;
2. Vous serez lié par le Recours collectif et le Règlement, s'ils sont approuvés par la Cour ;
3. Vous renoncerez au droit d'intenter votre propre action en justice contre Airbnb ; et
4. Vous pourrez vous opposer au Règlement.

Si vous ne vous excluez pas et que le Règlement est approuvé, vous renoncez au droit d'intenter une action en justice contre Airbnb concernant de quelque manière que ce soit l'affichage des prix sur la Plateforme Airbnb, y compris en ce qui concerne la conduite alléguée (ou qui aurait pu être alléguée) dans le recours collectif.

#### COMMENT PUIS-JE M'EXCLURE?

Pour vous exclure du Groupe et du Règlement, vous devez envoyer un choix écrit aux cabinets d'avocats Champlain Avocats et Evolink Law Group (« **Avocats du Groupe** ») conformément à l'article 4.1 de l'Entente de règlement.

Pour être valide, votre choix écrit doit être remis aux Avocats du Groupe, aux coordonnées figurant à la fin du présent avis, au plus tard le << **délai de désinscription**>>, et doit inclure toutes les informations suivantes :

1. Le nom et le numéro de dossier de la Cour (Lin c. Airbnb, Inc. et al., Cour fédérale du Canada, dossier T-1663-17);
2. Votre nom complet, votre adresse actuelle, votre numéro de téléphone et l'adresse e-mail à laquelle vous avez reçu l'avis concernant ce recours collectif ;
3. Une affirmation à l'effet que vous êtes un résident du Canada (mais pas du Québec) et que vous savez que vous n'aurez plus le droit de participer aux avantages du Règlement ;
4. Une déclaration claire que vous souhaitez être exclu de ce recours collectif ;
5. Vos raisons de vous exclure ; et
6. Votre signature (ou, si vous êtes légalement incapable, la signature de votre parent ou tuteur légal).

Le choix écrit de vous exclure doit être envoyé par courrier enregistré, service de messagerie, télécopieur ou courriel à l'avocat du groupe, aux coordonnées figurant à la fin de cet avis.

#### ET SI JE SUIS EN DÉSACCORD AVEC LE RÈGLEMENT?

Si vous n'êtes pas d'accord avec le Règlement, vous pouvez vous y opposer en envoyant une objection écrite conformément à la procédure prévue à l'article 4.1 de l'Entente de règlement.

Pour être valide, votre objection écrite doit être remise aux Avocats du Groupe, aux coordonnées figurant à la fin de cet avis, au plus tard le << **délai d'objection**>>, et doit inclure toutes les informations suivantes :

1. Le nom et le numéro de dossier de la Cour (Lin c. Airbnb, Inc. et al., Cour fédérale du Canada, dossier T-1663-17);

2. Votre nom complet, votre adresse actuelle, votre numéro de téléphone et l'adresse e-mail à laquelle vous avez reçu l'avis concernant ce recours collectif ;
3. Une affirmation que vous êtes résident du Canada (mais pas du Québec);
4. Les motifs de votre objection ;
5. Si vous avez l'intention de comparaître vous-même à l'audience d'approbation ou par l'intermédiaire de votre avocat (à vos frais) ; et
6. Votre signature (ou, si vous êtes légalement incapable, la signature de votre parent ou tuteur légal).

Vous pouvez vous opposer au Règlement sans avocat. Si vous souhaitez être représenté par un avocat, vous pouvez en engager un à vos frais.

Si, malgré votre objection, le Règlement est toujours approuvé, vous pouvez toujours recevoir un Crédit échangeable si vous êtes admissible.

**Les Avocats du Groupe déposeront des copies de toutes les objections auprès de la Cour. Vous ne pouvez pas vous opposer au Règlement si vous vous êtes exclu (retiré) du Groupe.**

#### COMMENT PUIS-JE AVOIR PLUS D'INFORMATIONS?

Pour plus d'informations et pour accéder à l'Entente de règlement et à d'autres documents judiciaires, veuillez vous rendre sur <https://evolinklaw.com/airbnb-service-fees-national-class-action/> ou contacter les Avocats du Groupe à l'aide des informations ci-dessous.

#### QUI ME REPRÉSENTE?

Le demandeur et les Membres du groupe sont représentés par les Avocats du groupe:

Sébastien Paquette et Jérémie John Martin  
 Champlain Avocats  
 1434 Sainte-Catherine O., Suite 200  
 Montréal, Québec H3G 1R4  
 Fax: 514 800-2286  
 Email: [jmartin@champlainavocats.com](mailto:jmartin@champlainavocats.com)  
 Email: [spaquette@champlainavocats.com](mailto:spaquette@champlainavocats.com)

Simon Lin  
 Evolink Law Group  
 4388 Still Creek Drive, Suite 237  
 Burnaby, British Columbia V5C 6C6  
 Fax: <<fax number>>  
 Email: [simonlin@evolinklaw.com](mailto:simonlin@evolinklaw.com)

Si le Règlement est approuvé par la Cour, un autre avis vous sera envoyé par courriel qui vous invitera à cliquer sur un hyperlien afin de soumettre une demande de Crédit échangeable.

***En cas de divergence entre les conditions du présent avis et l'Entente de règlement, les conditions de l'Entente de règlement prévaudront. Tout terme non défini dans le présent avis aura le sens qui lui est attribué dans l'Entente de règlement.***

**LA PUBLICATION ET LA DIFFUSION DE CET AVIS ONT ÉTÉ APPROUVÉES PAR LA COUR FÉDÉRALE DU CANADA.**

## **Schedule D to Proposed Order**

### **PLAN OF DISSEMINATION OF THE NOTICES TO SETTLEMENT CLASS MEMBERS**

#### **Claims Administrator**

1. The Claims Administrator will be Deloitte LLP.
2. The estimated costs and expenses for the Claims Administrator are \$290,500, which will be paid from the Settlement Amount.
3. The aforementioned costs and expenses include: issuing the notice of settlement approval hearing; issuing the notice of the Court's approval of the settlement; providing a dedicated hyperlink for each Settlement Class Member to submit their claim; and processing those claims for Airbnb to distribute.

#### **Translation of Notices**

4. The Court-approved notices will be in both French and English.
5. Class Counsel will be responsible for and will bear the costs of preparing the translations.

#### **Distribution of Notices Regarding the Proposed Settlement and Opt-Out Period**

6. Notice will be forthwith posted on Class Counsel's website for this class action (<https://evolinklaw.com/airbnb-service-fees-national-class-action/>).
7. The Claims Administrator will distribute the Court-approved notices (Schedules "B" and "C" of the Proposed Order) to the Settlement Class Members in accordance with section 9.1 of the Settlement Agreement within **ten (10) calendar days** of the Court's Order approving the notices.
8. The deadline for opting out of the class action or submitting a written objection to the settlement will be **thirty (30) calendar days** from the dissemination of the notice of settlement approval hearing.

**CLASS PROCEEDING  
FEDERAL COURT**

BETWEEN:

**Arthur Lin**

Plaintiff

AND:

**Airbnb, Inc.**

**Airbnb Canada Inc.**

**Airbnb Ireland Unlimited Company**

**Airbnb Payments UK Limited**

Defendants

**AFFIDAVIT OF ARTHUR LIN**

I, Arthur Lin, of Burnaby, British Columbia, AFFIRM AND SAY AS FOLLOWS.

1. I am the representative plaintiff for this class action. I have the knowledge deposed to below. Where that knowledge is based on information obtained from others, I have so indicated, and I believe that information to be true.
2. I am affirming this affidavit in support of the motions to approve the settlement reached with the defendants, including the motion to approve notice to class members, and the subsequent motion to approve the settlement and fees and disbursements for Class Counsel (defined below) (the "**Motion(s)**").

**Retainer**

3. I have retained Simon Lin of Evolink Law Group and Jeremie Martin and Sebastien Paquette of Champlain Avocats to act as my counsel in this Action (hereafter "**Class Counsel**"). I signed a retainer agreement with Class Counsel on or about October 24, 2017, a copy of the retainer agreement is attached as **Exhibit "A."** to this affidavit. It is a contingency fee arrangement. I would not have been able to retain counsel on an hourly fee basis for this case.

ALS



4. I am a class member within the class definition that was certified by this Court:

All individuals residing in Canada who, from October 31, 2015 to June 25, 2019:

(a) reserved an accommodation for anywhere in the world using Airbnb;

(b) whose reserved accommodation matched the parameters of a previous search made by the individual on the search results page of Airbnb; and

(c) paid, for the reserved accommodation, a price (excluding applicable sales and/or accommodation taxes) that is higher than the price (or “**Listing Fee**”) displayed by Airbnb on the said search results page for this accommodation.

Individuals who reserved an accommodation primarily for business travel are excluded (hereafter the “**Certified Class**” or “**Certified Class Member(s)**”)

5. I assisted Class Counsel throughout this litigation, including providing information, offering my opinion and instructions, and keeping updated on developments.

### **Settlement Approval**

6. On March 4, 2021, the Federal Court of Appeal heard the appeal of this Court’s order certifying this class action.
7. While the Federal Court of Appeal was deliberating the case, in or about April 2021, I was made aware by Mr. Lin that the defendants retained new counsel and offered to explore the possibility of resolving this class action.
8. I was advised by Mr. Lin that an agreement-in-principle was reached on or about June 29, 2021. I was consulted by Mr. Lin and provided instructions to Mr. Lin throughout the process of settlement negotiations.

9. I am advised by Mr. Lin that the settlement has been put into a formal written agreement with the defendants, which is attached as **Exhibit “B.”** to this affidavit. I have reviewed the terms of the settlement agreement with Mr. Lin.
10. I approve the terms of the settlement agreement, which seem reasonable from my point of view, given the novelty of the claims in this case and the uncertainty of the result following a trial, including any appeals, that may be known many years down the road.
11. I was advised by Mr. Lin that on or about May 6, 2020, the Superior Court of Quebec approved the settlement in *Preisler-Bandoon v. Airbnb Ireland* (500-06-000884-177, Montreal Registry), which involved a similar subject-matter as this case, namely the display of prices on the Airbnb platforms (hereafter the “**Quebec Settlement**”).
12. I was advised by Mr. Lin that on or about August 28, 2020, the defendants served a motion to exclude persons in the Quebec Settlement from this class action. I understand that this motion has not yet been heard.
13. I was advised by Mr. Lin that the settlement agreement in this case excludes persons that were covered by the Quebec Settlement, and the revised class definition will be:

All individuals residing in Canada, other than Quebec, who, from October 31, 2015 to June 25, 2019:

(a) reserved an accommodation for anywhere in the world using Airbnb;

(b) whose reserved accommodation matched the parameters of a previous search made by the individual on the search results page of Airbnb; and

(c) paid, for the reserved accommodation, a price (excluding applicable sales and/or accommodation taxes) that is higher than the price displayed by Airbnb on the said search results page for this

accommodation.

Individuals who reserved an accommodation primarily for business travel are excluded

(hereafter the “**Settlement Class**” or “**Settlement Class Member(s)**”)


14. From my review of the settlement terms, I understand that the defendants have agreed to a settlement valued at \$6,000,000 to compensate the Settlement Class, which includes claims administration expenses, payment of Class Counsel’s fees, applicable taxes and any honorarium that this Court may award to me.
15. I understand that the claims administration expenses, Class Counsel’s fees, applicable taxes and any honorarium will first be deducted from the settlement of \$6,000,000. Thereafter, the remaining funds will be distributed to the eligible Settlement Class Members who make a claim, on a *pro rata* basis.
16. I understand that the claims process will be initiated by way of an email to the Settlement Class Members, and those members could submit their claims by simply clicking a link and electronically acknowledging that they meet the criteria for receiving the benefits under the settlement agreement.
17. Once the claims deadline has passed, the claims administrator will provide to the defendants the list of Settlement Class Members who made a claim. Thereafter, the defendants will distribute the remaining funds, *pro rata*, directly to the Airbnb accounts of eligible Settlement Class Members in the form of a non-cash-convertible credit, to be redeemed within 24 months on their next accommodation booking.
18. The maximum credit that any Settlement Class Member may receive is \$45. If there are excess funds remaining after distributing a \$45 credit to every eligible Settlement Class Member who made a claim, then such remaining amount will be donated to a non-profit organization that will be approved by this Court.
19. I am advised by Mr. Lin that a cash distribution to the Settlement Class Members will be costly and impractical as there could be as many as 1,473,952 individuals.

20. In my opinion, the proposed claims procedure is straightforward and will require minimal effort by the Settlement Class Members to obtain a benefit under the settlement agreement.
21. I understand that the settlement agreement must be approved by this Court. I have instructed Class Counsel to seek approval of the settlement agreement.
22. I think this is settlement a good result because it provides a tangible benefit for the Settlement Class Members and will allow the Settlement Class Members to obtain some closure, by putting this behind them.
23. I also think the settlement is a good result because demand for domestic and/or local travel is recovering rapidly and the class members can easily redeem those credits for their upcoming trip in the next two years.
24. I am satisfied and note that the defendants now display their prices inclusive of service fees, which is the fair thing to do in my opinion and allows consumers to better compare prices in selecting between Airbnb or traditional hotels and make an informed decision for their accommodations.
25. To this end, I am advised by Mr. Lin that Airbnb has displayed an all-inclusive pricing since on or around June 25, 2019. It is my opinion that this change would not have occurred for all of Canada if it were not for this class action.

#### **Class Counsel Fees and Disbursements**

26. I further understand that this litigation was undertaken on a contingency basis and Class Counsel would not be paid legal fees and disbursements unless the class action obtained a favorable outcome. In accordance with the retainer agreement, I understand from Mr. Lin that Class Counsel will apply to this Court for fees in the amount of 33% of the value of the settlement plus applicable taxes.
27. I understand from Mr. Lin that Class Counsel will absorb all their disbursements incurred for this case, and will not be seeking reimbursement.

28. Class Counsel's fees request is consistent with the terms of the retainer agreement I signed, and I support the approval of this fee and disbursement request.
29. I was not physically present before the commissioner, but was linked with the commissioner utilizing video technology. The process described below for remote commissioning of affidavits was utilized.

AFFIRMED remotely by Arthur Lin )  
 at the City of Burnaby, British Columbia before )  
 me at the City of Coquitlam, British Columbia )  
 on September 10, 2021 in accordance with )  
 O. Reg. 431/20, *Administering Oath or* )  
*Declaration Remotely.* )  
 )  
 \_\_\_\_\_ )  
 Commissioner for Taking Affidavits )

  
 \_\_\_\_\_  
 Arthur Lin

Simon Pak Hei Lin (LSO #: 76433W)  
 Evolink Law Group  
 4388 Still Creek Drive, Suite 237  
 Burnaby, BC V5C 6C6

### CERTIFICATE OF COMMISSIONER FOR TAKING AFFIDAVITS

I, Simon Pak Hei Lin, a Commissioner for taking Affidavits in Ontario, certify that:

1. This certificate is provided in accordance with the *COVID-19 Notice No. 2* of the Supreme Court of British Columbia.
2. On September 10, 2021, I commissioned the Affidavit of Arthur Lin (the "**Deponent**") in this matter (the "**Affidavit**"). The Affidavit was commissioned remotely using video technology and a secure electronic signature platform, as permitted by the Law Society of Ontario and O. Reg. 431/20, *Administering Oath or Declaration Remotely*.
3. I was satisfied that the process was necessary because it was medically unsafe for reasons associated with COVID-19, for the Deponent and a commissioner to be physically present together.
4. The Affidavit was loaded in PDF format by the commissioner onto a secure electronic signature platform, which:
  - a. does not permit the Deponent to add or remove any of the pages;
  - b. required both the commissioner and Deponent to apply their initials on each page; and
  - c. required both the commissioner and Deponent to apply their electronic signatures where a signature is required.
5. The Deponent was emailed a link to the platform to securely sign the Affidavit, Thereafter, the following process was followed while the commissioner and Deponent was connected via video technology:
  - a. The Deponent showed me the front and back of the Deponent's current government-issued photo identification (the "**ID**"), which I have retained screenshots of.
  - b. I compared the video image of the Deponent and the information on the ID and was satisfied that it was the same person.
  - c. The copy of the Affidavit before the commissioner and Deponent were on the same electronic platform and are identical.
  - d. I administered the oath to the Deponent who affirmed/swore to the truth of the facts in the Affidavit and the Deponent applied their electronic signature.

Dated: September 10, 2021




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Signature of Simon Lin  
Commissioner for taking affidavits

This is **Exhibit "A."** referred to in the  
Affidavit of Arthur Lin  
affirmed remotely by Arthur Lin  
at the City of Burnaby, B.C.  
before me at the City of Coquitlam, B.C.  
on September 10, 2021 in accordance  
with *O. Reg. 431/20, Administering Oath or  
Declaration Remotely.*



---

A Commissioner for taking Affidavits

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**CLASS ACTION RETAINER AGREEMENT ("AGREEMENT")**

BETWEEN:

Arthur Lin

(THE "CLIENT")

AND

JÉRÉMIE JOHN MARTIN AND SÉBASTIEN A. PAQUETTE

("CHAMPLAIN AVOCATS")

AND

SIMON LIN LAW CORPORATION dba EVOLINK LAW GROUP

("EVOLINK LAW")

**Preamble**

1. Client is a consumer in the province of British Columbia and made reservations using AirBnB.
2. Champlain Avocats is a law firm in the province of Quebec.
3. Evolink Law is licensed by the State Bar of California and Law Society of British Columbia.
4. Client wishes to retain Champlain Avocats and Evolink Law (collectively the "Attorneys") in pursuing a Canadian national class action against AirBnB (and or its subsidiaries and affiliates) for violations of consumer laws.

**Terms of Engagement**

5. Client hereby retains the Attorneys to prosecute a class action lawsuit against AirBnB in relation to its business/sales practices (the "**Class Action**").
6. Subject to instructions from the Client from time to time, the Attorneys shall prosecute the Class Action and act as the Attorneys consider proper and in the best interest of the Class.
7. **This Agreement regarding fees and legal expenses are subject to the approval of the court.** The Attorneys shall seek approval of the court at such time as the Attorneys considers it appropriate and, in any event, upon the request of the Client. If the court(s) does not approve this Agreement, the Attorneys shall not be obliged to continue to act.
8. The Client also has the right within three months after either this Agreement was made or the retainer of the Attorneys is terminated to apply to the Registrar of the Supreme Court of British Columbia to have this Agreement examined.

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**Legal Fees - Contingency**

9. **Legal fees shall be paid only in the event that the Class Actions are successful in whole or in part.** The fees shall be paid by lump sum payment or payments out of the proceeds of any judgment, order, settlement that includes payments in favour of the Class, or as otherwise may be directed by the court.
10. The Attorneys' legal fees shall not exceed **thirty-three percent (33%)** of the total amounts recovered by the Class under any judgments, orders, or settlement, and is **subject to the approval by the court** (the "**Class Counsel Fees**").
11. Client hereby authorizes Attorneys to split the Class Counsel Fees with any co-counsel that the Attorneys may retain for this Class Action in such manner that takes into account the lawyer's class action experience and time/work spent on the Class Action.
12. The Attorneys and Client acknowledge it is difficult to estimate what the expected fee will be, as the amount of the fee will depend upon many factors. However, the following are examples:
- a) If the Class Action results in the recovery of \$500,000 for damages and interest, then Class Counsel Fees shall not exceed \$165,000; and
  - b) If the Class Action results in the recovery of \$1 million for damages and interest, then Class Counsel Fees shall not exceed \$330,000.
13. Class Counsel Fees are a first charge out of the proceeds of any order, judgment, or settlement, with simple interest at 5% per annum, accruing from the date of court approval.

**Legal Expenses/Disbursements**

14. Client has been advised that the provisions of this Agreement regarding disbursements are subject to the approval of the court.
15. **The Client shall not be obliged to fund any disbursements and/or litigation expenses.** The Attorneys will incur disbursements/litigation expenses to an aggregate of \$10,000 but shall not be obliged to incur any beyond that amount although they may do so in their discretion.
16. Disbursements are a first charge out of the proceeds of any order, judgment, or settlement, with interest at 10% per annum compounded, accruing from the date the disbursement was incurred.

**Client's Fees**

17. The Client acknowledges that the Client will not be entitled to any fees for acting as the representative plaintiff in the Class Actions. However, given that in the past representative plaintiffs have been given awards by the court in recognition of the time and expense involved in acting as the representative plaintiff, the Attorneys will make its best efforts to seek similar compensation from the court for the Client.

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**Legal Costs Indemnification for Benefit of Client**

18. Attorneys agree that the Class Action will be filed in a "no-costs" jurisdiction. In any event, **the Attorneys agrees to indemnify the Client against the legal costs of the defendant should the Class Action not succeed.** The Attorneys agrees to pay any and all orders where the court orders the Client to pay for the defendant(s) legal costs of the Class Action.
19. Client hereby authorizes the Attorneys to seek litigation insurance and/or funding in respect of the Class Action. Should any financial assistance be issued with respect to any legal costs payable to the defendant(s), any legal costs awarded to the defendant(s) shall firstly be paid from such financial assistance funds and the Attorneys shall then cover any shortfall.

**Change of Solicitors**

20. The Client acknowledges that the Attorneys is incurring a significant financial risk in agreeing to be paid only in the event the action is successful and The Attorneys is doing so on the basis that it will have carriage of the Class Action.
21. The Client may terminate the retainer of the Attorneys at any time, subject to the court's review for any improper considerations and whether such change will be in the best interest of the class.

**Withdrawal or Conflict**

22. The Client has the right to withdraw from the Class Action for any reason. Upon notice from the Client on an intention to withdraw, the Attorneys shall take such steps as are necessary to protect the interest of the Class and to remove the Client as a representative as soon as practicable. **Client agrees to assist the Attorneys until a suitable representative is substituted.**
23. If the Class Action is not certified, the Attorneys may withdraw as solicitors and will have no obligation to continue to pursue the Client's individual claim.

**Substitution or Addition of Representative Plaintiffs**

24. In the event that: (1) the Client withdraws, (2) the court orders the Class be sub-divided, **or** (3) the Attorneys considers it in the best interest of the Class; the Attorneys may be retained by another representative plaintiff. In such event, privileged communications between the Attorneys and the Client for the purpose of advancing the Class Action and the Attorneys' proprietary information created for the Class Action may be disclosed to the new Class representative.

**Negotiations and Settlement**

25. The Client hereby authorizes the Attorneys, in its discretion, to enter into negotiations with the defendant(s) or any other related persons or entities, for the purpose of reaching a

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settlement on behalf of the Class, not simply the Client's individual claim. The Client understands that any settlement is subject to approval by the court.

26. In the event that the Client does not consider a proposed settlement acceptable, the Client agrees and hereby authorizes the Attorneys to apply to the court for approval of the proposed settlement on the basis that the Attorneys shall place before the court for the court's consideration of the Client's position that the Client does not consider the proposed settlement to be acceptable.

### **Confidentiality**

27. The Client acknowledges that the communications between the Attorneys and the Client relating to the claims of the Class are legally privileged, but that such privilege may be lost if the Client was to disclose such information to third persons and that the interest of the Class could thereby be adversely affected. The Client agrees to protect the confidentiality of such information and to discuss the matter with the Attorneys prior to disclosing such information to any third-party.

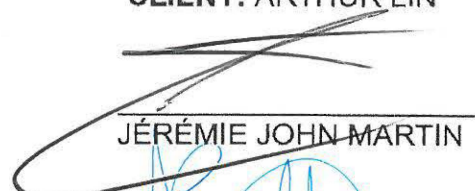
28. In the event that further representative plaintiffs are appointed to represent the Class or separate sub-classes, the Client hereby acknowledges that no information received from any of the representative plaintiffs relating to the Class Actions, including the Client, may be kept confidential from any of the other representative plaintiffs.

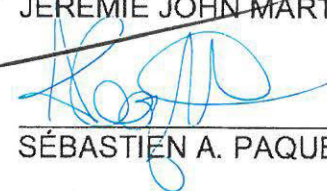
### **Client to Act in Best Interests of the Class**

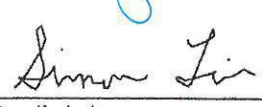
29. The Client acknowledges the obligation to act in the best interests of the Class and that The Attorneys is not obliged to follow instructions that are not in the best interests of the Class. In the event of a disagreement concerning whether certain instructions are in the best interests of the Class, the matter may be submitted to the court for directions.

DATED at Vancouver, British Columbia, this 24<sup>th</sup> day of October, 2017.

  
 CLIENT: ARTHUR LIN

  
 JÉRÉMIE JOHN MARTIN

  
 SÉBASTIEN A. PAQUETTE

  
 Evolink Law  
 Per Simon Lin, Barrister & Solicitor

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This is **Exhibit "B."** referred to in the  
Affidavit of Arthur Lin  
affirmed remotely by Arthur Lin  
at the City of Burnaby, B.C.  
before me at the City of Coquitlam, B.C.  
on September 10, 2021, in accordance  
with *O. Reg. 431/20, Administering Oath or  
Declaration Remotely.*



---

A Commissioner for taking Affidavits

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**AIRBNB SERVICE FEES CLASS ACTION  
NATIONAL SETTLEMENT AGREEMENT**

Made as of August 27, 2021

Between

**ARTHUR LIN**

(the “**Plaintiff**”)

and

**AIRBNB INC., AIRBNB CANADA INC.,  
AIRBNB IRELAND UNLIMITED COMPANY, and AIRBNB PAYMENTS UK LIMITED**

(the “**Settling Defendants**”)

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**AIRBNB SERVICE FEES CLASS ACTION  
NATIONAL SETTLEMENT AGREEMENT**

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**AIRBNB SERVICE FEES CLASS ACTION  
NATIONAL SETTLEMENT AGREEMENT**

**RECITALS**

A. WHEREAS the Proceeding was commenced by the Plaintiff in the Federal Court of Canada and the Plaintiff claims class-wide damages allegedly caused as a result of the conduct alleged therein;

B. WHEREAS the Proceeding alleges that some or all of the Releasees' booking platforms displayed prices to Settlement Class Members during the Class Period in a manner that was contrary to Part VI of the *Competition Act*, RSC 1985, c C-34;

C. WHEREAS the Proceeding was certified as a class action by the Court on December 5, 2019, following a contested hearing and the Plaintiff was appointed representative plaintiff of the Class, but notice of the certification and an opportunity to opt out of the Proceeding have not yet been provided;

D. WHEREAS the Releasees do not admit, through the execution of this Settlement Agreement or otherwise, any allegation of unlawful conduct alleged in the Proceeding, and otherwise deny all liability and assert that they have complete defences in respect of the merits of the Proceeding or otherwise;

E. WHEREAS the Plaintiff, Class Counsel and the Settling Defendants agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by or evidence against the Releasees or evidence of the truth of any of the Plaintiff's allegations, which allegations are expressly denied by the Settling Defendants;

F. WHEREAS the Settling Defendants are entering into this Settlement Agreement in order to achieve a final and nation-wide resolution of all claims asserted or which could have been asserted against the Releasees by the Plaintiff and the Settlement Class in the Proceeding, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;

G. WHEREAS the Settling Defendants do not hereby attorn to the jurisdiction of the Court or any other court or tribunal in respect of any civil, criminal or administrative process except to the extent they have previously done so in the Proceeding or as expressly provided in this Settlement Agreement with respect to the Proceeding;

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H. WHEREAS Counsel for the Settling Defendants and Class Counsel have engaged in arm's-length settlement discussions and negotiations, resulting in this Settlement Agreement relating to Canada;

I. WHEREAS, on or around June 27, 2019, the Settling Defendants have adjusted the Airbnb Platform to display an all-inclusive price to Guests for the booking of Accommodations, at every step of the search and booking process;

J. WHEREAS as a result of these settlement discussions and negotiations, the Settling Defendants and the Plaintiff have entered into this Settlement Agreement, which embodies all of the terms and conditions of the settlement between the Settling Defendants and the Plaintiff, both individually and on behalf of the Settlement Class the Plaintiff represents, subject to approval of the Court;

K. WHEREAS the Quebec Action was commenced against certain of the Releasees by the Quebec Plaintiff, on behalf of the Quebec Class, and which action was settled in 2019 and finally approved by the Quebec Court in February 2020;

L. WHEREAS there is a pending motion before the Court where the Parties are in dispute as to the validity and/or enforceability of the settlement in the Quebec Action;

M. WHEREAS the Parties do not intend for any member of the Quebec Class to be eligible for benefits under this Settlement Agreement;

N. WHEREAS Class Counsel, on their own behalf and on behalf of the Plaintiff and the Settlement Class Members, have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiff's claims, having regard to the burdens and expense associated with prosecuting the Proceeding, including the risks and uncertainties associated with trials and appeals, and having regard to the value of the Settlement Agreement, have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiff and the Settlement Class he represents;

O. WHEREAS the Parties therefore wish to and hereby finally resolve on a national basis, without admission of liability, the Proceeding as against the Releasees, provided that members of the Quebec Class are not entitled to obtain recovery from this settlement; and

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P. WHEREAS the Parties agree to proceed to obtain approvals from the Court as provided for in this Settlement Agreement, on the express understanding that such agreement shall not derogate from the respective rights of the Parties in the event that this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Proceeding be settled and dismissed with prejudice as to the Settling Defendants, all without costs as to the Plaintiff, the Settlement Class Members, and the Settling Defendants, subject to the approval of the Court, on the following terms and conditions:

### SECTION 1 – DEFINITIONS

For the purposes of this Settlement Agreement, including the recitals and schedules hereto:

- (1) **Accommodation** means the offering by third parties of vacation or other properties for use on the Airbnb Platform.
- (2) **Account** means the Airbnb account of a Settlement Class Member, which is linked to such Member's email address.
- (3) **Administration Expenses** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiff, Class Counsel, the Settling Defendants, or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of notices, but excluding Class Counsel Fees and Class Counsel Disbursements.
- (4) **Airbnb Platform** means collectively the Site, Application, and Airbnb Services.
- (5) **Airbnb Services** means all services associated with the Site and the Application.
- (6) **Application** means, collectively, the Airbnb mobile, tablet, and other smart device applications, and application program interfaces.
- (7) **Booking** means a contract entered into directly between Hosts and Guests.

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- (8) ***Bounce Back*** means an email that is returned to the sender because it cannot be delivered for some reason.
- (9) ***Claim*** means any and all requests for a Redeemable Credit submitted by a Credit Eligible Class Member in accordance with this Settlement Agreement.
- (10) ***Claims Administrator*** means Deloitte LLP.
- (11) ***Claims Deadline*** means forty-five (45) days from the publication and dissemination of the notice of an approved settlement to Settlement Class Members described in Section 9.1.
- (12) ***Class Counsel*** means Evolink Law Group, Sébastien A. Paquette and Jérémie John Martin.
- (13) ***Class Counsel Disbursements*** include the disbursements and applicable taxes incurred by Class Counsel in the prosecution of the Proceeding.
- (14) ***Class Counsel Fees*** means the legal fees of Class Counsel, and any applicable taxes or charges thereon, including any amounts payable as a result of the Settlement Agreement by Class Counsel or the Settlement Class Members to any other body or Person.
- (15) ***Class Period*** means October 31, 2015 to June 25, 2019.
- (16) ***Counsel for the Settling Defendants*** means Torys LLP.
- (17) ***Court*** means the Federal Court of Canada.
- (18) ***Credit*** means a credit-voucher to be used to make a Booking for Accommodation on the Airbnb Platform in the form of a single, one-time-use only, non-transferable, non-refundable and non-cash convertible credit of a value in Canadian dollars to be determined in accordance with Section 7.1(6).
- (19) ***Credit Claiming Class Members*** means a Credit Eligible Class Member who claims a benefit under this Settlement Agreement in accordance with the procedure described in Section 7.1.
- (20) ***Credit Eligible Class Members*** means a Settlement Class Member who meets all of the following criteria: (a) a resident of Canada but not a member of the Quebec Class; (b) used the

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Airbnb Platform during the Class Period for the first time, for a purpose other than business travel; (c) was located in Canada (but not Quebec) at the time of the booking; and (d) has an active account at the time the credit is issued that has not been suspended or removed from the Airbnb Platform due to a violation of Airbnb's Terms of Service, policies or standards.

(21) ***Date of Execution*** means the date on the cover page as of which the Parties have executed this Settlement Agreement.

(22) ***Effective Date*** means the date when a Final Order has been received from the Court approving this Settlement Agreement.

(23) ***Final Order*** means a final order, judgment or equivalent decree entered by the Court approving this Settlement Agreement in accordance with its terms, once the time to appeal such order has expired without any appeal being taken, if an appeal lies, or if the order is appealed, once there has been affirmation of the order upon a final disposition of all appeals.

(24) ***Guests*** means third-party travelers seeking to book Accommodations.

(25) ***Hosts*** means third parties who offer Accommodations on the Airbnb Platform.

(26) ***Net Settlement Amount*** means the amount available for distribution to Credit Claiming Class Members as Credits, calculated by subtracting from the Settlement Amount the total of the amounts described in Section 3.1(2).

(27) ***Opt-Out Deadline*** means thirty (30) calendar days after the notices in Section 9.2 have been emailed to the Settlement Class Members.

(28) ***Party and Parties*** means the Settling Defendants, the Plaintiff, and, where necessary, the Settlement Class Members.

(29) ***Person*** means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, trustee, executor, beneficiary, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity and their heirs, predecessors, successors, representatives, or assignees.

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(30) **Plaintiff** means Arthur Lin.

(31) **Proceeding** means the action commenced by the Plaintiff against the Settling Defendants in the Court, bearing Court File No. T-1663-17.

(32) **Quebec Action** means *Martin Preisler-Banoon v. AirBnb Ireland UC et al.* commenced in the Quebec Court, District of Montreal, bearing Court File No. 500-06-000884-177.

(33) **Quebec Class** means, in respect of the Quebec Action, every person residing in Quebec, who between August 22, 2014 and June 26, 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).

(34) **Quebec Court** means the Superior Court of Quebec.

(35) **Quebec Plaintiff** means Martin Preisler-Banoon.

(36) **Redeemable Credit** has the same meaning as Credit.

(37) **Released Claims** means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages, known or unknown, suspected or unsuspected, actual or contingent, liquidated or unliquidated, in law, under statute or in equity, that any of the Releasors ever had or now has, relating in any way to the display of prices on the Airbnb Platform, including conduct alleged (or which could have been alleged) in the Proceeding.

(38) **Releasees** means, jointly and severally, individually and collectively, the Settling Defendants and all of their present and former direct and indirect parents, owners, subsidiaries, divisions, affiliates, associates (as defined in the *Canada Business Corporations Act*, RSC 1985, c C-44), partners, joint ventures, franchisees, dealers, insurers, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and all of their respective past, present and future officers, directors, employees, agents, mandataries, shareholders, attorneys, trustees, servants and representatives, members, managers and the

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predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing.

(39) **Releasors** means, jointly and severally, individually and collectively, the Plaintiff and the Settlement Class Members, on behalf of themselves and any Person or entity claiming by or through them as a parent, subsidiary, affiliate, predecessor, successor, shareholder, partner, director, owner of any kind, agent, principal, employee, contractor, attorney heir, executor, administrator, insurer, devisee, assignee, or representative of any kind, other than Persons who validly and timely opted out of the Proceeding in accordance with the orders of the Court.

(40) **Settlement Agreement** means this agreement, including the recitals and schedules.

(41) **Settlement Amount** means CAD\$6,000,000.

(42) **Settlement Class** means all individuals residing in Canada, other than Quebec, who, from October 31, 2015 to June 25, 2019: (a) reserved an accommodation for anywhere in the world using Airbnb; (b) whose reserved accommodation matched the parameters of a previous search made by the individual on the search results page of Airbnb; and (c) paid, for the reserved accommodation, a price (excluding applicable sales and/or accommodation taxes) that is higher than the price displayed by Airbnb on the said search results page for this accommodation. Individuals who reserved an accommodation primarily for business travel are excluded.

(43) **Settlement Class Member** means a member of the Settlement Class who has not opted out of the Proceeding.

(44) **Settling Defendants** means Airbnb, Inc., Airbnb Canada Inc., Airbnb Ireland Unlimited Company, and Airbnb Payments UK Limited.

(45) **Site** means the Airbnb website, including any subdomains thereof, and any other websites through which Airbnb makes its services available.

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## SECTION 2 – SETTLEMENT APPROVAL

### 2.1 Best Efforts

(1) The Parties shall use their best efforts and act in good faith to implement this Settlement Agreement and to secure the prompt, complete and final dismissal with prejudice of the Proceeding as against the Settling Defendants.

### 2.2 Motions Seeking Approval of Notice and Certification

(1) The Plaintiff shall file a motion before the Court, as soon as practicable after the Date of Execution, for orders approving the notices described in Section 9.1(1).

(2) The order approving the notices described in Section 9.1(1) shall be substantially in the form attached as Schedule A.

### 2.3 Motions Seeking Approval of the Settlement Agreement

(1) The Plaintiff shall make best efforts to file a motion before the Court for an order approving this Settlement Agreement as soon as practicable after the expiry of the opt-out period in Section 4.1(5) and within the timelines permitted under the *Federal Courts Rules*

(2) The order approving this Settlement Agreement shall be substantially in the form attached as Schedule B.

### 2.4 Pre-Motion Confidentiality

(1) Until the first of the motions required by Section 2.2(1) is brought, the Parties shall keep all of the terms of the Settlement Agreement confidential and shall not disclose them without the prior consent of Counsel for the Settling Defendants and Class Counsel, as the case may be, except as required for the purposes of financial reporting, the preparation of financial records (including tax returns and financial statements), as necessary to give effect to its terms, or as otherwise required by law.

### 2.5 Settlement Agreement Effective

(1) This Settlement Agreement shall only become final on the Effective Date.

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### SECTION 3 – SETTLEMENT BENEFITS

#### 3.1 Redeemable Credits

(1) The Settling Defendants shall offer to compensate Credit Eligible Class Members by offering credits of a total gross value equal to the Settlement Amount to be used on the Airbnb Platform, subject to the deductions and conditions set out in this Settlement Agreement.

(2) The following fees and costs shall be paid from the Settlement Amount and will be deducted from the gross value of the credits:

- (a) Administration Expenses;
- (b) The cost of publication of any notices to Settlement Class Members that the Court may require;
- (c) The plaintiff's honorarium as described in Section 11.4, to the extent approved by the Court; and
- (d) Class Counsel Fees and Class Counsel Disbursements, plus any applicable sales taxes, to the extent approved by the Court and as provided in Section 11.3 below.

(3) The value of each Redeemable Credit to be distributed to Credit Claiming Class Members shall be determined at the expiry of the Claims Deadline in accordance with Section 7.1(6).

(4) The Settlement Amount and other consideration to be provided in accordance with the terms of this Settlement Agreement shall be provided in full satisfaction of the Released Claims against the Releasees.

(5) For greater certainty, the Settlement Amount shall be all-inclusive of all amounts, including interest, costs, any honorarium paid to the Plaintiff, Administration Expenses, Class Counsel Fees, Class Counsel Disbursements, and taxes.

(6) The Releasees shall have no obligation to pay any amount in addition to the Settlement Amount, for any reason, pursuant to or in furtherance of this Settlement Agreement or the Proceeding. In particular, after the Settlement Agreement has been implemented and executed, there shall be no surplus amount remaining for remittance, reparation or compensation to any

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Settlement Class Member, Class Counsel or Plaintiff other than the Redeemable Credits, and the payment of Class Counsel Fees.

## **SECTION 4 – OPTING OUT AND OBJECTIONS**

### **4.1 Opt-Out and Objection Procedure**

(1) Potential Settlement Class Members seeking to opt out of the Proceeding or object to the settlement must do so by sending a written notice, personally signed by the potential Settlement Class Member (or the potential Settlement Class Member's parent or guardian if he/she is legally incapable), by pre-paid mail, courier, fax or email to Class Counsel at an address to be identified in the notice described in Section 9.1(1).

(2) Any potential Settlement Class Member who validly opts out of the Proceedings shall not be able to participate in the Proceeding and no further right to opt out of the Proceedings will be provided.

(3) An election to opt out or notice of objection will only be valid if it is received on or before the Opt-Out Deadline to the designated address in the notice described in Section 9.1(1).

(4) The written election to opt out or notice of objection must contain the following information in order to be valid:

- (a) the potential Settlement Class Member's full name, current address, telephone number, and the e-mail address for which they received the notice in Section 9;
- (b) an acknowledgment that the Potential Settlement Class Member is a resident of Canada (except Quebec) and aware that he/she will no longer be entitled to participate in any benefits from this settlement; and
- (c) in the case of a written election to opt out:
  - (i) a statement to the effect that the Person wishes to be excluded from the Proceedings; and
  - (ii) the reasons for opting out; or
- (d) in the case of a notice of objection:

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- (i) the grounds for the objection; and
  - (ii) whether the potential Settlement Class Member intends to appear at the approval hearing himself/herself, or through his/her lawyer (at the potential Settlement Class Member's own expense);
- (5) Class Counsel may request potential Settlement Class Members that submit an election to opt out or notice of objection to provide their proof of residency and/or other proof that they are a potential Settlement Class Member.
- (6) Within thirty (30) days of the Opt-Out Deadline, Class Counsel shall provide to the Settling Defendants a list containing the names, contact information, and reason provided for opting out for each individual who has submitted an opt-out request in accordance with Section 4.1(4) above.
- (7) With respect to any potential Settlement Class Member who validly opts out from the Proceedings, the Settling Defendants reserve all of their legal rights and defences.
- (8) The Plaintiff through Class Counsel expressly waives his right to opt-out of the Proceeding.

## **SECTION 5 – TERMINATION OF SETTLEMENT AGREEMENT**

### **5.1 Right of Termination**

- (1) In the event that the Court:
  - (a) declines to dismiss the Proceeding as against the Settling Defendants as provided in Section 6.3(1);
  - (b) declines to approve this Settlement Agreement or any material part, or approves this Settlement Agreement in a materially modified form; or
  - (c) issues a settlement approval order that is materially inconsistent with the terms of the Settlement Agreement or not substantially in the form attached to this Settlement Agreement as Schedule B;

or in the event any order approving this Settlement Agreement does not become a Final Order, the Plaintiff and the Settling Defendants shall each have the right to terminate this Settlement

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Agreement by delivering a written notice pursuant to Section 12.15, within ten (10) days following an event described above.

(2) In addition, if the Credits are not provided to Credit Claiming Class Members in accordance with Sections 3.1(1) and 7.1, the Plaintiff shall have the right to terminate this Settlement Agreement by delivering a written notice pursuant to Section 12.15 or move before the Courts to enforce the terms of this Settlement Agreement.

(3) If more than 100 Settlement Class Members validly exercise their right to opt out in accordance with Section 4, the Settling Defendants shall have the right to terminate this Settlement Agreement by delivering a written notice pursuant to Section 12.15, within five (5) days of being provided with the opt out report described in Section 4.1(5).

(4) Except as provided for in Section 5.4, if the Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason, the Settlement Agreement shall be null and void and have no further force or effect, and shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation or in any other way for any reason.

(5) Any order, ruling or determination made or rejected by the Court with respect to Class Counsel Fees shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.

## **5.2 If Settlement Agreement is Terminated**

(1) If this Settlement Agreement is not approved, is terminated in accordance with its terms, or otherwise fails to take effect for any reason:

- (a) no motion to approve this Settlement Agreement that has not been decided shall proceed;
- (b) the Parties will cooperate in seeking to have all issued order(s), in the Court or the Federal Court of Appeal, on the basis of the Settlement Agreement or approving this Settlement Agreement set aside and declared null and void and of no force or effect, and any Person shall be estopped from asserting otherwise;

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- (c) within ten (10) days of such termination having occurred, Class Counsel shall make reasonable efforts to destroy all documents or other materials provided by the Settling Defendants and/or Counsel for the Settling Defendants under this Settlement Agreement or containing or reflecting information derived from such documents or other materials received from the Settling Defendants and/or Counsel for the Settling Defendants and, to the extent Class Counsel has disclosed any documents or information provided by the Settling Defendants and/or Counsel for the Settling Defendants to any other Person, shall make reasonable efforts to recover and destroy such documents or information. Class Counsel shall provide Counsel for the Settling Defendants with a written certification by Class Counsel of such destruction. Nothing contained in this Section 5.2 shall be construed to require Class Counsel to destroy any of their work product. However, any documents or information provided by the Settling Defendants and/or Counsel for the Settling Defendants, or received from the Settling Defendants and/or Counsel for the Settling Defendants in connection with this Settlement Agreement, may not be disclosed to any Person in any manner or used, directly or indirectly, by Class Counsel or any other Person in any way for any reason, without the express prior written permission of the relevant Settling Defendants. Class Counsel shall take appropriate steps and precautions to ensure and maintain the confidentiality of such documents, information and any work product of Class Counsel derived from such documents or information; and
- (d) With respect to the Settling Defendants' motion to exclude the Quebec Class from this Action, the Plaintiff and the Quebec Class reserve all of their legal rights and defences.

### **5.3 Payments Following Termination**

- (1) If the Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the Settling Defendants shall be under no obligation to make any Credits available to Credit Eligible Class Members or make any other payments under this Settlement Agreement.

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#### **5.4 Survival of Provisions After Termination**

(1) If this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the provisions of Sections 5.1(4), 5.2, 5.3, 5.4, 8.1, and 8.2 and the definitions and Schedules applicable thereto shall survive the termination and continue in full force and effect. The definitions and Schedules shall survive only for the limited purpose of the interpretation of Sections 5.1(4), 5.2, 5.3, 5.4, 8.1, and 8.2 within the meaning of this Settlement Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

### **SECTION 6 – RELEASES AND DISMISSALS**

#### **6.1 Release of Releasees**

(1) Upon the Effective Date, subject to Section 6.2, and in consideration of making available the Redeemable Credits and for other valuable consideration set forth in the Settlement Agreement, the Releasors forever and absolutely release and forever discharge the Releasees from the Released Claims that any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, or now have.

(2) The Plaintiff and Settlement Class Members acknowledge that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true regarding the subject matter of the Settlement Agreement, and it is their intention to release fully, finally and forever all Released Claims and, in furtherance of such intention, this release shall be and remain in effect notwithstanding the discovery or existence of additional or different facts.

#### **6.2 No Further Claims**

(1) Upon the Effective Date, each Releasor shall not now or hereafter institute, continue, maintain, intervene in or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any proceeding, cause of action, claim or demand against any Releasee, or any other Person who may claim contribution or indemnity, or other claims over relief, from any Releasee, whether pursuant to legislation or at common law or equity in respect of any Released Claim. For greater certainty and without limiting the generality of the foregoing, the Releasors shall not assert or pursue a Released Claim, against any Releasee under the laws of any foreign jurisdiction.

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### **6.3 Dismissal of the Proceedings and Appeal**

- (1) Upon the Effective Date, the Proceeding shall be dismissed with prejudice and without costs as against any party.
- (2) Upon the Execution Date, the Parties shall inform the Federal Court of Appeal to hold the appeal A-464-19 in abeyance until the Court has heard and decided the approval of this settlement.
- (3) If the Court approves the settlement, and upon the Effective Date, the parties shall execute any necessary order(s) to dismiss the appeal in A-464-19.
- (4) If the Court does not approve the settlement, the Parties shall promptly inform the Federal Court of Appeal.

### **6.4 Material Term**

- (1) The releases, covenants, and dismissals contemplated in this Section shall be considered a material term of the Settlement Agreement and the failure of the Court to approve the releases, covenants, and dismissals contemplated herein shall give rise to a right of termination pursuant to Section 5.1 of the Settlement Agreement.

## **SECTION 7– DISTRIBUTION AND CONDITIONS OF CREDITS**

### **7.1 Distribution Process**

- (1) Credit Eligible Class Members will be able to obtain a Redeemable Credit through a claim process as further described in this Section 7.
- (2) Within ten (10) days of the Effective Date, a notice will be sent to Settlement Class Members notifying them that the settlement has been approved and containing a hyperlink for Credit Eligible Class Members to click on if they wish to claim a Redeemable Credit. The online claims process shall allow for the identification of each Credit Eligible Class Member who clicks on said hyperlink as a Credit Claiming Class Member. The Credit Eligible Class Members shall not be required to provide any further information or take any further action. Should any email sent to a Settlement Class Member or Credit Eligible Class Member result in a Bounce Back, no additional steps will be required from the Parties to communicate with the relevant class member.

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(3) All Claims by Credit Eligible Class Members must be submitted and received by the Claims Deadline. The Claims Deadline shall be clearly set forth in the notice and on the website of Class Counsel. As part of the claims process, the relevant Credit Eligible Class Member shall acknowledge that they fit the criteria for being a Credit Eligible Class Member.

(4) Credit Eligible Class Members who do not submit a Claim by the Claims Deadline shall no longer be eligible to receive benefits under this Settlement Agreement but will be bound by the remaining terms.

(5) Within ten (10) days of the Claims Deadline, the Claims Administrator shall provide a list of Credit Claiming Class Members along with the information collected through the automated process described above to Counsel for the Settling Defendants.

(6) Within sixty (60) days of the Claims Deadline, the Settling Defendants shall deliver to each Credit Claiming Class Member a Redeemable Credit to his or her Account, available to be redeemed automatically at the next check-out, of a value in Canadian Dollars equivalent to a *pro rata* share of the Net Settlement Amount. By way of illustrative example only, if there are 100,000 Credit Claiming Class Members, and the total fees, expenses, and taxes in Section 3.1(2) is CAD\$2,500,000, then the Net Settlement Amount would be CAD\$3,500,000 (i.e., \$6,000,000 minus \$2,500,000), and each Credit Claiming Class Member would receive a credit of CAD\$35.

(7) For greater certainty, in the event that a Credit Claiming Class Member has made more than one booking during the Class Period, he or she will only be entitled to one Redeemable Credit.

(8) The Redeemable Credits may be used on the Airbnb Platform, within twenty-four (24) months from the date of issuance, for making Bookings of Accommodations in any location worldwide, after which period the Redeemable Credit will expire. The Redeemable Credits are one-time use only (and any amount not used on the transaction is extinguished), non-transferable, non-cash convertible, non-refundable, and cannot be combined with any other offer, discount, credit or coupon. It is also understood that a Credit Claiming Class Member must agree to the most recent version of the Terms of Service in order to meet the criteria to make a Booking of an Accommodation offered on the Airbnb Platform.

(9) Notwithstanding anything in this Section 7.1, in no event shall any Credit Claiming Class Member be entitled to a Redeemable Credit in an amount greater than CAD\$45.

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(10) If the CAD \$45 cap described in Section 7.1(9) is triggered and as a result a portion of the Net Settlement Amount remains undistributed, the Settling Defendants shall pay in the form of cash or cheque, on a *cy pres* basis, to an organization agreed to by the Parties and approved by the Court.

(11) It is expressly agreed and understood by the Parties that unused, unredeemed or unclaimed Redeemable Credits shall not constitute, nor may they under any circumstances give rise to, a remaining balance for any purpose, including for a claim for reparation or compensation by Settlement Class Members or for the payment of a charge, levy or toll by any third party, including a charge, levy or toll contemplated by any regulation. For greater certainty and without limitation, the Settling Defendants may terminate this Settlement Agreement in the event any court recognizes the existence of a remaining balance.

## **7.2 Responsibility for Administration or Fees**

(1) Except as otherwise provided for in this Settlement Agreement, the Settling Defendants shall not have any responsibility, financial obligations or liability whatsoever with respect to the administration of the Settlement Agreement including, but not limited to, Administration Expenses.

## **SECTION 8 – EFFECT OF SETTLEMENT**

### **8.1 No Admission of Liability**

(1) The Plaintiff and the Releasees expressly reserve all of their rights if the Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason. Further, whether or not the Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by the Releasees, or of the truth of any of the claims or allegations contained in the Proceedings, any Other Actions, or any other pleading filed by the Plaintiffs.

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## **8.2 Agreement Not Evidence**

(1) The Parties agree that, whether or not it is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to approve and/or enforce this Settlement Agreement, to defend against the assertion of Released Claims, as necessary in any insurance-related proceeding, or as otherwise required by law.

## **8.3 Confidentiality of Settlement Negotiations**

(1) Class Counsel or anyone currently or hereafter employed by or a partner with Class Counsel may not divulge to anyone for any purpose any information obtained in the course of the Proceeding on a confidential basis or the negotiation and preparation of this Settlement Agreement, except to the extent such information was, is or becomes otherwise publicly available or unless ordered to do so by a court.

# **SECTION 9 – NOTICE TO SETTLEMENT CLASS**

## **9.1 Notices Required**

(1) The Settlement Class Members shall be given notice of: (i) the hearing at which the Court will be asked to approve the Settlement Agreement and/or Class Counsel Fees, including the procedure for opting out or commenting on the proposed settlement; (ii) the Court's approval of the settlement; and (iii) if the proposed settlement is not approved or otherwise fails to take effect, notice that the proposed settlement was not approved and the litigation shall continue.

## **9.2 Form and Distribution of Notices**

(1) The notices shall be in a form agreed upon by the Parties and approved by the Court or, if the Parties cannot agree on the form of the notices, the notices shall be in a form ordered by the Court.

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(2) The notices shall be disseminated by a method agreed upon by the Parties and approved by the Courts or, if the Parties cannot agree on a method for disseminating the notices, the notices shall be disseminated by a method ordered by the Courts.

## **SECTION 10 – ADMINISTRATION AND IMPLEMENTATION**

### **10.1 Mechanics of Administration**

(1) Except to the extent provided for in this Settlement Agreement, the mechanics of the implementation and administration of this Settlement Agreement shall be determined by the Court on motions brought by Class Counsel.

(2) The Parties agree that any information provided by the Settling Defendants in accordance with this Section shall be kept confidential, shall be used only for purposes of administering the Settlement Agreement, and shall not be used for marketing or any other purposes.

(3) The Claims Administrator will be required to (i) go through Airbnb's security review process for third-party vendors (including completing a vendor intake form) and be approved by Airbnb, and (ii) sign Airbnb's standard Controller/Processor Data Privacy Addendum. Should these conditions not be met, the Parties agree to replace the Claims Administrator with another that meets these requirements.

(4) The Claims Administrator shall administer the terms of this Settlement Agreement in a cost-effective and timely manner.

(5) The Claims Administrator shall maintain records of all Claims submitted for two years after the Claims Deadline, and such records will be made available upon request to Counsel for the Parties. The Claims Administrator shall also provide such reports and such other information to the Court as it or the Parties may require.

(6) The Administration Expenses will be paid out of the Settlement Amount, as directed by the Court. Should the Settlement Agreement not be approved by the Court or otherwise becomes null and void, no Administration Expenses shall be owed.

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(7) The Parties anticipate that no sales taxes will be payable in respect of Administration Expenses. To the extent any such taxes are payable, they will be paid from the Settlement Amount in accordance with Section 3.1.

## **10.2 Information and Assistance**

(1) The Settling Defendants will provide to the Claims Administrator a list of the names and email addresses of Persons located in Canada, other than Quebec, who had Airbnb accounts during the Class Period.

(2) It is acknowledged that the Settling Defendants cannot precisely identify Settlement Class Members, any account lists provided under this Section 10.2 for the purpose of providing notice are overinclusive, and the fact a Person is included on such a list does not indicate he or she is a Settlement Class Member or Credit Eligible Class Member.

(3) The name and address information required by Section 10.2 shall be delivered to the Claims Administrator no later than ten (10) days after the orders required by Section 2.2(1) have been obtained, or at a time mutually agreed upon by the Parties.

(4) The Claims Administrator shall be bound by the same confidentiality obligations set out in Section 10.1(2). If this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason, all information provided by the Settling Defendants pursuant to Section 10.2(1) shall be dealt with in accordance with Section 5.2(1)(c) and no record of the information so provided shall be retained by Class Counsel, any Court-appointed notice-provider and/or the Claims Administrator in any form whatsoever.

(5) The Settling Defendants will make themselves reasonably available to respond to questions respecting the information provided pursuant to Section 10.2(1) from the Claims Administrator. The Settling Defendants' obligations to make themselves reasonably available to respond to questions as particularized in this Section shall not be affected by the release provisions contained in Section 6 of this Settlement Agreement. Unless this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the Settling Defendants' obligations to cooperate pursuant to this Section 10.2 shall cease when all settlement funds or court awards have been distributed.

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(6) The Settling Defendants shall bear no liability with respect to the completeness or accuracy of the information provided pursuant to this Section 10.2.

## **SECTION 11 – CLASS COUNSEL FEES AND PLAINTIFF’S HONORARIUM**

### **11.1 Responsibility for Fees and Taxes and Plaintiff’s Honorarium**

(1) The Settling Defendants, jointly and severally, agree to pay from the Settlement Amount the Class Counsel Fees, Class Counsel Disbursements, the Plaintiff’s Honorarium, and applicable taxes, that are approved by the Court.

### **11.2 Responsibility for Costs of Notices**

(1) The Settling Defendants shall be responsible for distribution of notices, which is part of the Administration Expenses and payable from the Settlement Amount. The Releasees shall not have any responsibility for the costs of the notices.

### **11.3 Court Approval for Class Counsel Fees and Disbursements**

(1) Class Counsel Fees represent any and all claimable fees by Class Counsel that are to be approved by the Court. It is understood by the Parties that Class Counsel will seek approval of the Court for the Settling Defendants’ payment of Class Counsel Fees in the amount of CAD\$2 million, plus applicable taxes.

(2) The Settling Defendants will represent to the Court that they do not oppose approval of the Class Counsel Fees described in Section 11.3(1).

(3) Class Counsel will not seek approval for any additional payments (including any Class Counsel Disbursements).

(4) Class Counsel may seek the Court’s approval to pay Class Counsel Fees contemporaneous with seeking approval of this Settlement Agreement. The Settling Defendants shall pay the Class Counsel Fees out of the Settlement Amount within ten (10) days of the Effective Date, by way of cheque and/or wire transfer, at Class Counsel’s option.

### **11.4 Court Approval for Plaintiff’s Honorarium**

(1) Class Counsel may seek Court approval of an honorarium for the Plaintiff not exceeding five-thousand (\$5,000) dollars CAD.

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(2) The Settling Defendants will represent to the Court that they do not oppose approval of the honorarium described in Section 11.4(1).

(3) The Settling Defendants shall pay Plaintiff's Court-approved honorarium out of the Settlement Amount within ten (10) days of the Effective Date, by way of cheque payable to the Plaintiff, and delivered to Class Counsel's office.

## **SECTION 12 – MISCELLANEOUS**

### **12.1 Motions for Directions**

(1) Class Counsel or the Settling Defendants may apply to the Court as may be required for directions in respect of the interpretation, implementation and administration of this Settlement Agreement.

(2) All motions contemplated by this Settlement Agreement shall be on notice to the Parties, except for those applications concerned solely with the implementation and administration of the Distribution Protocol.

### **12.2 Headings, etc.**

(1) In this Settlement Agreement:

- (a) the division of the Settlement Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and
- (b) the terms "this Settlement Agreement," "hereof," "hereunder," "herein," and similar expressions refer to this Settlement Agreement and not to any particular section or other portion of this Settlement Agreement.

### **12.3 Computation of Time**

(1) In the computation of time in this Settlement Agreement, except where a contrary intention appears,

- (a) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and

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including the day on which the second event happens, including all calendar days;  
and

- (b) only in the case where the time for doing an act expires on a holiday as “holiday” is defined in the *Interpretation Act*, RSC 1985, c. I-21, the act may be done on the next day that is not a holiday.

#### **12.4 Governing Law**

- (1) This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

#### **12.5 Entire Agreement**

- (1) This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

#### **12.6 Amendments**

- (1) This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto, and any such modification or amendment must be approved by the Court.

#### **12.7 Binding Effect**

- (1) This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiff, the Settlement Class Members, the Settling Defendants, the Releasors, the Releasees and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiff shall be binding upon all Releasors and each and every covenant and agreement made herein by the Settling Defendants shall be binding upon all of the Releasees.

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**12.8 Counterparts**

(1) This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile or electronic signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

**12.9 Negotiated Agreement**

(1) This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

**12.10 Language**

(1) The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais.

**12.11 Recitals**

(1) The recitals to this Settlement Agreement are true and form part of the Settlement Agreement.

**12.12 Schedules**

(1) The schedules annexed hereto form part of this Settlement Agreement.

**12.13 Acknowledgements**

(1) Each of the Parties hereby affirms and acknowledges that:

- (a) he, she or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;

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- (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;
- (c) he, she or the Party's representative fully understands each term of the Settlement Agreement and its effect; and
- (d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of the Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.

**12.14 Authorized Signatures**

- (1) Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement on behalf of the Parties identified above their respective signatures and their law firms.

**12.15 Notice**

- (1) Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another Party, such notice, communication or document shall be provided by email, facsimile or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

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**For the Plaintiff and for Class Counsel in the Proceedings:**

Simon Lin  
 Evolink Law Group  
 4388 Still Creek Drive, Suite 237  
 Burnaby, BC V5C 6C6  
 Tel: 604.620.2666  
 Email: [simonlin@evolinklaw.com](mailto:simonlin@evolinklaw.com)

Jérémie John Martin and Sébastien A. Paquette  
 Champlain Avocats  
 1434 Sainte-Catherine Street West, Suite 200  
 Montreal, Quebec H3G 1R4  
 Tel: 514.944.7344  
 Email: [jmartin@champlainavocats.com](mailto:jmartin@champlainavocats.com)  
[spaquette@champlainavocats.com](mailto:spaquette@champlainavocats.com)

**For the Settling Defendants:**

Sylvie Rodrigue and James Gotowiec  
 Torys LLP  
 79 Wellington St. West, 30<sup>th</sup> Floor  
 Toronto, ON M5K 1N2  
 Tel: 416.865.0040  
 Email: [srodrigue@torys.com](mailto:srodrigue@torys.com)  
[jgotowiec@torys.com](mailto:jgotowiec@torys.com)

**12.16 Date of Execution**

- (1) The Parties have executed this Settlement Agreement as of the date on the cover page.


**ARTHUR LIN** on his own behalf and on behalf of the Settlement Class that he represents:

**AIRBNB INC.**

Name of Authorized Signatory:

David Bernstein  
 Chief Accounting Officer

Signature of Authorized Signatory:


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**AIRBNB CANADA INC.**

Name of Authorized Signatory:

David Bernstein  
 President

Signature of Authorized Signatory:

DocuSigned by:  
  
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**AIRBNB IRELAND UNLIMITED COMPANY**

Name of Authorized Signatory:

Killian Pattwell

Director, EMEA Tax

DocuSigned by:

Signature of Authorized Signatory:

Killian Pattwell

A1F8CFB1F4F047C...

**AIRBNB PAYMENTS UK LIMITED**

Name of Authorized Signatory:

David Bernstein

Director

DocuSigned by:

Signature of Authorized Signatory:

David Bernstein

07B936CBE9084D7...

**SIMON LIN LAW CORPORATION**

Per: \_\_\_\_\_

Name: Simon Lin

I have authority to bind the Corporation

**JÉRÉMIE JOHN MARTIN**

Per: \_\_\_\_\_

Name: Jérémie John Martin

**SÉBASTIEN A. PAQUETTE**

Per: \_\_\_\_\_

Name: Sébastien A. Paquette

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**For the Plaintiff and for Class Counsel in the Proceedings:**

Simon Lin  
 Evolink Law Group  
 4388 Still Creek Drive, Suite 237  
 Burnaby, BC V5C 6C6  
 Tel: 604.620.2666  
 Email: [simonlin@evolinklaw.com](mailto:simonlin@evolinklaw.com)

Jérémie John Martin and Sébastien A. Paquette  
 Champlain Avocats  
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 Email: [jmartin@champlainavocats.com](mailto:jmartin@champlainavocats.com)  
[spaquette@champlainavocats.com](mailto:spaquette@champlainavocats.com)

**For the Settling Defendants:**

Sylvie Rodrigue and James Gotowiec  
 Torys LLP  
 79 Wellington St. West, 30<sup>th</sup> Floor  
 Toronto, ON M5K 1N2  
 Tel: 416.865.0040  
 Email: [srodrigue@torys.com](mailto:srodrigue@torys.com)  
[jgotowiec@torys.com](mailto:jgotowiec@torys.com)

**12.16 Date of Execution**

- (1) The Parties have executed this Settlement Agreement as of the date on the cover page.

**ARTHUR LIN** on his own behalf and on behalf of the Settlement Class that he represents:


**AIRBNB INC.**

Name of Authorized Signatory:

David Bernstein  
 Chief Accounting Officer

Signature of Authorized Signatory:

**AIRBNB CANADA INC.**

Name of Authorized Signatory:

David Bernstein  
 President

Signature of Authorized Signatory:



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**AIRBNB IRELAND UNLIMITED COMPANY**

Name of Authorized Signatory: Killian Pattwell  
 Director, EMEA Tax

Signature of Authorized Signatory: \_\_\_\_\_

**AIRBNB PAYMENTS UK LIMITED**

Name of Authorized Signatory: David Bernstein  
 Director

Signature of Authorized Signatory: \_\_\_\_\_

**SIMON LIN LAW CORPORATION**

Per: 

Name: Simon Lin  
 I have authority to bind the Corporation

**JÉRÉMIE JOHN MARTIN**

Per: 

Name: Jérémie John Martin

**SÉBASTIEN A. PAQUETTE**

Per: 

Name: Sébastien A. Paquette

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**SCHEDULE “A”**

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Federal Court



Cour fédérale

**Date: 2021XXXX**

**Docket: T-1663-17**

**Vancouver, British Columbia, XXXXXX, 2021**

**PRESENT: The Honourable Mr. Justice Gascon**

**BETWEEN:**

ARTHUR LIN

**Plaintiff**

**AND:**

AIRBNB, INC.  
AIRBNB CANADA INC.  
AIRBNB IRELAND UNLIMITED COMPANY  
AIRBNB PAYMENTS UK LIMITED

**Defendants**

## **ORDER**

**UPON MOTION** made by the Plaintiff for an Order approving the short-form and long-form notices of settlement approval hearing for a settlement with Airbnb Inc., Airbnb Canada Inc., Airbnb Ireland Unlimited Company, and Airbnb Payments UK Limited (collectively, the “**Settling Defendants**”), the method of dissemination of said notices, and fixing an approval hearing date;

**AND ON READING** the materials filed, including the settlement agreement with the Settling Defendants dated as of ■, 2021 attached to this Order as **Schedule “A”** (the

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**“Settlement Agreement”**), and on hearing the submissions of counsel for the Plaintiff and Counsel for the Settling Defendants;

**AND ON BEING ADVISED** that all parties consent to this Order;

**THIS COURT ORDERS that:**

1. The settlement approval hearing shall be at 10:30 AM PST on ■, 2021 by videoconference.
2. For purposes of the settlement approval hearing, the parties are granted leave under Rule 82 to file solicitor’s affidavit(s) in support of the settlement approval.
3. For the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
4. The short-form and long-form notices of settlement approval hearing are hereby approved substantially in the forms attached respectively hereto as **Schedule “B”** and **Schedule “C”**.
5. The plan of dissemination for the short-form and long-form notices of settlement approval hearing (the **“Plan of Dissemination”**) is hereby approved in the form attached hereto as **Schedule “D”**, and the notices of settlement approval hearing shall be disseminated in accordance with the Plan of Dissemination.
6. Paragraph 3 of the Court’s December 5, 2019 order in this action is revoked and the Class is defined as follows:

All individuals residing in Canada, other than Quebec, who, from October 31, 2015 to June 25, 2019: (a) reserved an accommodation for anywhere in the world using Airbnb; (b) whose reserved accommodation matched the parameters of a previous search made by the individual on the search results page of Airbnb; and (c) paid, for the reserved accommodation, a price (excluding applicable sales and/or accommodation taxes) that is higher than the price displayed by Airbnb on the said search results page for this accommodation. Individuals who reserved an accommodation primarily for business travel are excluded.

7. With respect to the Settling Defendants’ motion dated August 28, 2020 to exclude the Quebec Class from this action, the motion is granted on the following terms:

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- (a) the claims of the Quebec Class that are before this Court are dismissed with prejudice and without costs.
8. In the event that the Settlement Agreement is terminated in accordance with its terms or the settlement is not approved, this Order shall be declared null and void and of no force and effect on subsequent motion made on notice.

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Judge

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**SCHEDULE “B”**

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Federal Court



Cour fédérale

**Date: 2021XXXX**

**Docket: T-1663-17**

**Vancouver, British Columbia, XXXXXX, 2021**

**PRESENT: The Honourable Mr. Justice Gascon**

**BETWEEN:**

ARTHUR LIN

**Plaintiff**

**AND:**

AIRBNB, INC.  
AIRBNB CANADA INC.  
AIRBNB IRELAND UNLIMITED COMPANY  
AIRBNB PAYMENTS UK LIMITED

**Defendants**

## **ORDER**

**THIS MOTION** made by the Plaintiff for an Order approving the settlement of this action with Airbnb Inc., Airbnb Canada Inc., Airbnb Ireland Unlimited Company, and Airbnb Payments UK Limited (collectively, the “**Settling Defendants**”) and dismissing this action as against the Settling Defendants, was heard this day.

**ON READING** the materials filed, including the settlement agreement with the Settling Defendants dated as of ■, 2021, attached to this Order as **Schedule “A”** (the “**Settlement Agreement**”), and on hearing the submissions of counsel for the Plaintiff and Counsel for the Settling Defendants;

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**AND ON BEING ADVISED** that the deadline for objecting to the Settlement Agreement has passed and there have been ■ written objections to the Settlement Agreement;

**AND ON BEING ADVISED** that the deadline for opting out of the action has passed, ■ individuals validly exercised the right to opt out, and ■ individuals submitted comments regarding the settlement that have been duly considered by the Court;

**AND ON BEING ADVISED** that all parties consent to this Order;

**THIS COURT ORDERS that:**

1. In addition to the definitions used elsewhere in this Order, for the purposes of this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. In the event of a conflict between the terms of this Order and the Settlement Agreement, the terms of this Order shall prevail.
3. All provisions of the Settlement Agreement (including its Recitals and Definitions) are incorporated by reference into and form part of this Order, and this Order, including the Settlement Agreement, is binding upon each member of the Settlement Class, including those Persons who are minors or mentally incapable, and the requirements of Rule 115 of the *Federal Courts Rules* are dispensed with.
4. The Settlement Agreement is fair, reasonable, and in the best interests of the Settlement Class.
5. The Settlement Agreement is hereby approved pursuant to Rule 334.29 of the *Federal Courts Rules* and shall be implemented and enforced in accordance with its terms.
6. Upon the Effective Date, each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.
7. Upon the Effective Date, each Releasor shall not now or hereafter institute, continue, maintain, intervene in, or assert, either directly or indirectly, whether in

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Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any proceeding, cause of action, claim, or demand against any Releasee, or any other Person who may claim contribution or indemnity, or other claims over relief, from any Releasee, whether pursuant to legislation or at common law or equity in respect of any Released Claim.

8. For purposes of administration and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role and the Settling Defendants attorn to the jurisdiction of this Court solely for the purpose of implementing, administering, and enforcing the Settlement Agreement and this Order, and subject to the terms and conditions set out in the Settlement Agreement and this Order.
9. No Releasee shall have any responsibility or liability whatsoever relating to the administration of the Settlement Agreement.
10. In the event that the Settlement Agreement is terminated in accordance with its terms, this Order shall be declared null and void and of no force and effect on subsequent motion made on notice.
11. Upon the Effective Date, the Proceeding be dismissed against the Settling Defendants, with prejudice and without costs to the Settling Defendants, Plaintiff, or Releasees, and that such dismissal shall be a defence to any subsequent action in respect of the subject matter hereof.

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Judge

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