Federal Court Cour fédérale

Date: 20211119

Docket: T-1663-17

Citation: 2021 FC 1260

Ottawa, Ontario, November 19, 2021

PRESENT: Mr. Justice Gascon

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] This is a motion brought under Rules 334.29 and 334.4 of the *Federal Courts Rules*, SOR/98-106 [Rules], for judicial approval of: i) a class action settlement [Settlement Agreement], including the appointment of an administrator of the claims to be filed [Claims Administrator]; ii) the legal fees sought by class counsel Evolink Law Group and Champlain

Avocats [Class Counsel Fees]; and iii) the payment of an honorarium to the representative Plaintiff, Mr. Arthur Lin [Honorarium].

[2] The Settlement Agreement, a copy of which is attached as Schedule "A" to this Order, was concluded on August 27, 2021 between Mr. Lin and the defendants Airbnb, Inc., Airbnb Canada Inc., Airbnb Ireland Unlimited Company and Airbnb Payments UK Limited [collectively, Airbnb], in the context of a class action proceeding [Class Action] filed by Mr. Lin in relation to the display of prices on Airbnb's websites and/or mobile applications [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.

[3] For the reasons that follow, I will approve the Settlement Agreement and the appointment of the Claims Administrator on the terms provided by the parties, but I will only approve in part the proposed Class Counsel Fees and Honorarium.

II. Background

A. *Procedural context*

[4] This Class Action was commenced on October 31, 2017. In his statement of claim, Mr. Lin alleged 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," by charging Guests, for the booking of an accommodation offered by Hosts on the Airbnb Platform, a final

price that was higher than the price displayed at the first stage of browsing on the Airbnb Platform. More specifically, Mr. Lin contested the fact that Airbnb added “service fees” to the final price charged for its accommodation booking services, although these fees were not included in the initial price per night displayed on the Airbnb Platform. The heart of Mr. Lin’s claim was that the inclusion of an additional service fee at a later stage of the sale process resulted in a higher price than the first price expressed to Guests, in contravention of section 54 of the *Competition Act*.

[5] For the purpose of the Settlement Agreement, the class members are defined as all individuals residing in Canada, other than Quebec, who, from October 31, 2015 to June 25, 2019: i) reserved an accommodation for non-business travel anywhere in the world using Airbnb; ii) whose reserved accommodation matched the parameters of a previous search made by the individual on the search results page of Airbnb; and iii) 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 [Class]. Mr. Lin claimed that the Class members having experienced this situation were entitled to the benefit of the lower price, and sought damages equal to the difference between the first price and the final price displayed on the Airbnb Platform.

[6] Following a contested hearing, I certified the proceeding as a class action in a judgment issued on December 5, 2019 (*Lin v Airbnb, Inc*, 2019 FC 1563 [Certification Judgment]).

[7] As of June 27, 2019, prior to the issuance of the Certification Judgment, Airbnb adjusted the Airbnb Platform so that Airbnb now displays an all-inclusive price for all accommodation bookings, excluding applicable taxes, at every step of the search and booking process.

[8] On December 16, 2019, Airbnb filed a Notice of Appeal of the Certification Judgment at the Federal Court of Appeal [FCA]. The appeal was heard on March 4, 2021 by way of Zoom. After the hearing, the FCA reserved its judgment, and the decision on the appeal was under deliberation when the Settlement Agreement was reached by the parties. The FCA is holding the appeal in abeyance pending the completion of the settlement process.

[9] A few weeks before Mr. Lin launched his class action proceeding before this Court in late October 2017, Mr. Preisler-Banoon had filed a similar class action before the Superior Court of Quebec in the matter *Preisler-Banoon c Airbnb Ireland*, 500-06-000884-177 [Quebec Action]. On September 13, 2019, prior to the hearing of the "authorization" (as the certification process is known in Quebec) of the Quebec Action, Airbnb and the Quebec plaintiff executed a settlement agreement. On February 3, 2020, the Superior Court of Quebec rendered a judgment approving the settlement of the Quebec Action (*Preisler-Banoon c Airbnb Ireland*, 2020 QCCS 270 [Quebec Settlement]). The Quebec Settlement has a gross value of $3,000,000 and provides to the Quebec class members (as they are defined in the Quebec Settlement) a credit of up to $45 on their next booking with Airbnb after confirming their eligibility.

B. ***Overview of Settlement Agreement***

[10] The parties have entered into the Settlement Agreement on August 27, 2021, subject to this Court's approval. Mr. Lin's legal counsel, Evolink Law Group and Champlain Avocats [Class Counsel], have concluded that the Settlement Agreement is fair, reasonable, and in the best interests of Mr. Lin and the Class.

[11] The material terms of the proposed Settlement Agreement include:

- the settlement is valued at $6,000,000 [Settlement Amount], which includes any claims administration expenses [Administration Expenses], Class Counsel Fees, any Honorarium, and the applicable sales taxes;

- Airbnb will receive a full and final release in respect of the subject matter of this Class Action, namely, the display of prices on the Airbnb Platform [Release];

- the notification to eligible Class members and the claims procedure will be fully electronic, and managed by the Claims Administrator, Deloitte LLP [Deloitte];

- after the Court approves the Settlement Agreement, and before the claims deadline, eligible Class members can make a claim for a pro-rata share of up to $45 from the settlement funds that will remain after deduction of the Administration Expenses, Class Counsel Fees, Honorarium and applicable sales taxes from the Settlement Amount [Net Settlement Funds];

- distribution of the Net Settlement Funds to the eligible Class members that make a claim will be by way of a non-cash-convertible credit on the Airbnb Platform [Credit], to be redeemed on the next accommodation booking within 24 months of issuance; and

- the individuals covered by the Quebec Settlement are excluded from the Settlement Agreement, and claims relating to those individuals will be dismissed from this Class Action.

[12] Once the Settlement Agreement is approved, a hyperlink will be sent to Class members to make a claim. The Credit to be issued by Airbnb will be a one-time-use only, non-transferable, non-refundable, non-cash-convertible credit of up to $45 in value to each eligible Class member who submits a claim. The Credit's ultimate value will depend on the total number of approved claims and on the amount the Court approves for Administration Expenses, Class Counsel Fees, Honorarium and applicable sales taxes – which will all be deducted from the Settlement Amount. The Credit cannot be combined with any other offer discount, or coupon, and must be redeemed within 24 months after issuance, on the next Airbnb accommodation booking in any location worldwide. The Credit will be in the same amount for each Class member. In order to be able to redeem a Credit, the eligible Class members 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).

[13] In exchange, Class members will acknowledge that the Credit is in full and complete settlement of their claims and 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.

[14] With respect to Class Counsel Fees, Section 11.3 of the Settlement Agreement provides that Class Counsel will seek approval of the Court for the payment, by Airbnb, of Class Counsel Fees in the amount of $2,000,000, plus applicable taxes. The Settlement Agreement further states

that Class Counsel will not seek additional payments for disbursements. In October 2017, prior to the filing of the Class Action, Class Counsel had entered into a fee agreement with Mr. Lin [Retainer Agreement], which provides for a contingency fee not exceeding 33% of the total amounts recovered by the Class. I pause to observe that, surprisingly, the Class Counsel Fees mentioned in the Settlement Agreement are slightly above what is provided for in the Retainer Agreement concluded with Mr. Lin: they amount to one third of the Settlement Amount (i.e., 33.33%) as opposed to a maximum of 33% set out in the Retainer Agreement, representing a difference of $20,000.

[15] As far as the Honorarium is concerned, the Settlement Agreement provides that Class Counsel may ask the Court for the approval of an Honorarium of $5,000 to Mr. Lin.

[16] Airbnb does not oppose the terms of the Settlement Agreement relating to Class Counsel Fees and to the request made for an Honorarium to Mr. Lin, and has agreed to pay the Class Counsel Fees, Mr. Lin's Honorarium and applicable taxes that are approved by the Court. As indicated above, all of these amounts will be deducted from the Settlement Amount.

C. ***Notices to Class members***

[17] On September 16, 2021, the Court issued an order for the distribution of short-form and long-form notices of settlement approval [together, Notices] to the affected Class members, in accordance with Rule 334.34 [Notice Order]. The Notice Order also fixed the settlement approval hearing before this Court on November 1, 2021.

[18] The Notices have been broadly distributed to all persons residing in Canada who were Airbnb customers between October 31, 2015 and June 25, 2019. Through these Notices, Class Counsel advised the Airbnb customers of the settlement of the Class Action and of the settlement approval hearing, and summarized certain elements of the Settlement Agreement. This summary notably referred to the maximum value of $45 for the Credit and explained the redemption process to be followed, as well as the procedure to opt out or object to the proposed settlement. The Notices further informed the potential Class members that the Notices were just a summary, indicated that the Settlement Agreement itself and other court documents were available through a link to the Class Counsel's website (i.e., https://evolinklaw.com/airbnb-service-fees-national-class-action), and mentioned that the Settlement Agreement shall prevail in case of any discrepancy between the Notices and the Settlement Agreement.

[19] The Notices were sent to the Airbnb customers at the end of September 2021. The Claims Administrator has provided its report on the results of the e-mail distribution of the Notices. They are as follows: i) 2,539,475 e-mails were sent; ii) 494,002 e-mails bounced or were undeliverable; iii) 765,736 e-mails were opened, with 412,934 unique opens to the e-mails. In total, 14 individuals contacted Class Counsel indicating a desire to opt out of the Class Action, and 4 individuals submitted a written objection to the proposed Settlement Agreement.

III. Analysis

[20] This motion is seeking the Court's approval for the Settlement Agreement, Class Counsel Fees and Mr. Lin's Honorarium. Each of these three requests will be dealt with in turn.

A. ***Settlement Agreement***

(1) The law relating to approval of class action settlements

[21] Rule 334.29 provides that a class proceeding settlement must be approved by the Court. The legal test to be applied is whether the proposed settlement is "fair, reasonable and in the best interests of the class as a whole" (*Bernlohr v Former Employees of Aveos Fleet Performance Inc*, 2021 FC 113 [*Bernlohr*] at para 12; *Wenham v Canada (Attorney General)*, 2020 FC 588 [*Wenham 1*] at para 48; *McLean v Canada*, 2019 FC 1075 [*McLean 1*] at paras 64-65).

[22] The factors to be considered in the analysis have been reiterated by the Court on several occasions (*Bernlohr* at para 13; *Wenham 1* at para 50; *McLean 1* at paras 64-66; *Condon v Canada*, 2018 FC 522 [*Condon*] at para 19). They are similar to the factors retained by the courts across Canada. These factors are non-exhaustive, and their weight will vary according to the circumstances and to the factual matrix of each proceeding. I summarize them as follows, in what I view as their order of relative importance:

1) The terms and conditions of the settlement;
2) The likelihood of recovery or success;
3) The expressions of support, and the number and nature of objections;
4) The degree and nature of communications between class counsel and class members;
5) The amount and nature of pre-trial activities including investigation, assessment of evidence and discovery;
6) The future expense and likely duration of litigation;

7) The presence of arm's length bargaining between the parties and the absence of collusion during negotiations;
8) The recommendation and experience of class counsel; and
9) Any other relevant factor or circumstance.

[23] A proposed settlement must be considered as a whole and in context. Settlements require trade-offs on both sides and are rarely perfect, but they must nevertheless fall within a "zone or range of reasonableness" (*Bernlohr* at para 14; *McLean 1* at para 76; *Condon* at para 18). Reasonableness allows for a spectrum of possible resolutions and is an objective standard that can vary depending upon the subject matter of the litigation and the nature of the damages for which the settlement is to provide compensation to class members. However, not every disposition of a proposed settlement agreement must be reasonable, and it is not open to the Court to rewrite the substantive terms of a proposed agreement (*Wenham 1* at para 51). The function of the Court in reviewing a proposed class action settlement is not to reopen and enter into negotiations with litigants in the hope of improving the terms of the agreement (*Condon* at para 44). In the end, the proposed settlement is a "take it or leave it" proposition.

[24] I make one other observation, which relates to the interaction between the approval of proposed class action settlements and the approval of class counsel fees. In mandating that both the class action settlements and the payment of class counsel fees be subject to the Court's approval (i.e., Rules 334.29 and 334.4), the Rules place an onerous responsibility on the Court to ensure that the class members' interests are not being sacrificed to the interests of class counsel, who have typically taken on a substantial risk and who have a great deal to gain not only in removing that risk but in recovering a significant reward from their contingency fee arrangement

(*Shah v LG Chem, Ltd*, 2021 ONSC 396 [*LG Chem*] at para 40).[1] The incentives and the interests of class counsel may not always align with the best interests of the class members. It thus falls on the Court to scrutinize both the proposed settlement agreement and the proposed class counsel fees, as they will typically be interrelated. This is the case here since the Net Settlement Funds available to Class members are equal to the Settlement Amount after deduction of the Class Counsel Fees and other expenses.

(2) Application to this case

(a) *Terms and conditions of the settlement*

[25] Under the terms and conditions of the settlement, the question to be determined is whether the proposed Settlement Agreement, when considered in its overall context, provides significant advantages to the Class members, compared to what would have been an expected result of litigation on the merits.

[26] The key terms of the Settlement Agreement, as seen by the parties, include: a Settlement Amount valued at $6,000,000; distribution of the Settlement Amount by way of a non-cash-convertible Credit issued on the Airbnb Platform; a maximum Credit of $45 per Class member, redeemable within 24 months on the next accommodation booking; and the dismissal of the claims for the Quebec-based members due to potential overlaps with the Quebec Settlement. In his submissions, Mr. Lin also refers to the fact that Airbnb has modified its behaviour and

[1] The certification criteria applicable in this Court are akin to those applied by the courts in Ontario and British Columbia (*Canada (Attorney General) v Jost*, 2020 FCA 212 at para 23; *Canada v John Doe*, 2016 FCA 191 at para 22; Certification Judgment at para 23). It is therefore not uncommon to see this Court and the FCA refer to case law arising from these provinces in matters relating to class actions, as such case law is instructive in this Court.

changed its pricing display, though this is not, as such, a term and condition of the Settlement Agreement.

[27] In his written and oral submissions to the Court, Mr. Lin focused on five particular aspects of the Settlement Agreement, namely, the non-cash nature of the Credit, the Release granted to Airbnb, the exclusion of Quebec members, the identity of the Claims Administrator, and the scope of eligible Class members. I will briefly look at each element.

(i) Non-cash nature of the Credit

[28] In the current case, the monetary benefit of the Settlement Agreement for the Class members will take the form of a non-cash distribution to the eligible Class members, namely, the Credit. I acknowledge that courts in Canada and in the United States have often expressed concerns about class action settlements – generally referred to as "coupon settlements" – in which class counsel are awarded large fees while leaving class members with coupons or other non-cash awards of little or no value. However, I agree with Mr. Lin that, while the Credit available to Class members in this case is a non-cash settlement, it does not bear the problematic attributes generally associated with "coupon settlements."

[29] First, the Credit granted to Class members will have a wide range of applications. The Class members will be able to use it towards accommodation bookings anywhere in the world, including local staycations or short road-trips, for both the service fees (paid to Airbnb) and the listing fees (paid to the Hosts) that are part of a booking on the Airbnb Platform. Second, the ultimate value of the Settlement Amount (i.e., $6,000,000) is known at the outset, and will not be

dependent on the number of individual Class members who actually redeem the Credit. Third, the claims procedure will be simplified, as eligible Class members will not be required to submit proof of their claims and will be entitled to share in the settlement upon acknowledging that they meet the requirements for a claim. Fourth, the redemption period is long enough, extending to a maximum of 24 months. Fifth, based on inquiries received from potential Class members after the Notices were distributed, Airbnb appears to have a number of repeat customers for its Airbnb Platform. There is therefore a good likelihood that Class members will do business with Airbnb again, and will effectively use the Credit.

[30] In sum, after scrutiny, I am satisfied that the Credit does not fit among those "coupon settlements" that the Court should be reluctant to approve. Rather, the Credit will be distributed in a way that is more akin to a gift card or a bill credit. In addition, based on the evidence before me, it is expected that the take-up rate will be significant among the Class members. Finally, in the circumstances, the distribution of the Net Settlement Funds in the form of Credits through the Claims Administrator is more practical and economical, compared to what a cash distribution would have entailed.

(ii) Release to Airbnb

[31] Turning to the Release clause, the Court has to review the scope of releases granted in class action settlement agreements to ensure that defendants do not unfairly obtain a broad release (or even a release for future claims), beyond the claims that are or could have been raised in the action. Here, I agree with Mr. Lin that there are no concerns relating to the scope of the Release granted to Airbnb in the Settlement Agreement. The Release is qualified by the words

"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," which was the subject matter of Mr. Lin's Class Action. The Release is thus circumscribed to those price-related practices at the source of the Class Action. While the Release extends to all forms of price "display," including arguably false or misleading pricing representations, I am satisfied that it is not overbroad in the context of what was alleged by Mr. Lin in his Class Action.

(iii) Dismissal of the claims for Quebec members

[32] As stated above, the Quebec Settlement provides for the settlement of similar claims made by the class members in the Quebec Action, based on Airbnb's display of prices on the Airbnb Platform. I agree with Mr. Lin that it is fair and reasonable to exclude those claims from the Settlement Agreement as amounts received by the Quebec members under the Quebec Settlement would overlap with the Settlement Agreement and would create a potential of double indemnity for the class members residing in Quebec.

(iv) Use of Deloitte as Claims Administrator

[33] The estimated Administration Expenses primarily consist of the fees for the Claims Administrator, Deloitte, and amount to an all-inclusive total of $320,500. I agree with Mr. Lin that this amount is justified in the circumstances and I am satisfied that Deloitte is well qualified to act as Claims Administrator.

(v) Eligible Class members

[34] The Settlement Agreement provides for an additional requirement to be eligible to claim a Credit, which results in a slight reduction of the number of eligible Class members entitled to receive compensation. Eligible Class members will be limited to those individuals that used the Airbnb Platform for the first time between October 31, 2015 and June 25, 2019. Therefore, Class members that already had an account and had used the Airbnb Platform prior to October 31, 2015 will not be eligible for a Credit. Airbnb estimates that the difference between Class members who will be eligible for a Credit and the total of Class members who used the Airbnb Platform during the relevant period represents approximately 194,000 individuals.

[35] I am satisfied that this reduced distribution of the Settlement Amount to a more limited number of Class members is a reasonable compromise in light of Airbnb's position that those Guests who had experienced the impugned pricing practice more than once are on a different legal footing.

(vi) Other elements

[36] In assessing the terms and conditions of a proposed class action settlement and determining whether they are fair, reasonable and in the best interests of the class members, the Court should also consider the expected take-up rate by the class members, particularly where there is a fixed settlement fund as is the case here (*Condon* at para 48), or where the quantum of the compensation to be received by each claimant depends on the number of eligible claimants who submit a claim. The Court may therefore take into account evidence on the expected

participation in the settlement by class members when it assesses the sufficiency of available settlement funds or the effective monetary compensation of class members (*Bodnar v The Cash Store Inc*, 2010 BCSC 145 at para 21).

[37] In this case, based on the evidence provided by Mr. Lin (through the affidavit sworn by Class Counsel Simon Lin [Counsel Affidavit]), it is reasonable to estimate that approximately 30% of the Class members will apply for a Credit and participate in the claims process. The evidence reveals that, in the Quebec Settlement, the take-up rate ended up being effectively about 30%, translating into a credit of approximately $9.50 per individual Quebec class member. According to the Counsel Affidavit (at paragraphs 108-110), Class Counsel expects that, in the current case, the take-up rate will be “reasonably high” and “similar” to the Quebec Settlement, although it could be affected by some other factors, in particular the pandemic. Based on the evidence before me, I therefore agree that 30% is a reasonable rough estimation of the proportion of eligible Class members who are expected to file a claim to the Net Settlement Funds.

(vii) Conclusion

[38] In summary, when considered in their overall context, I am satisfied that the terms and conditions of the Settlement Agreement provide significant advantages to the Class members which might not have been achieved with the continued litigation, and are a positive factor supporting the approval of the Settlement Agreement.

(b) *Likelihood of recovery or success*

[39] The next factor to consider is the likelihood of recovery or success. This factor refers to the likelihood of success of Mr. Lin's Class Action if it were to proceed on the merits. This factor of likelihood of recovery or success must be assessed at the time when the parties choose between proceeding with the litigation or settling the matter. Under this factor, the Court must determine whether the proposed Settlement Agreement is an attractive viable alternative to continued litigation.

[40] Here, I am satisfied that the Settlement Agreement is a reasonable and attractive viable alternative to litigation for Mr. Lin and the Class, because litigating the Class Action could have led to unforeseen conclusions. The ultimate success of Mr. Lin in his Class Action was uncertain for three main reasons, namely, the pending appeal before the FCA, the risk involved at the merits trial, and the difficulties linked to enforcing a judgment from this Court in foreign jurisdictions.

[41] First, the pending appeal before the FCA focused on three important issues, for which the outcome is fairly difficult to predict: i) whether a section 36 claim based on section 54 of the *Competition Act* requires pleading and proving "reliance"; ii) whether it was sufficient for Mr. Lin to plead the simple difference between the two prices posted by Airbnb as damages under section 36 of the *Competition Act*; and iii) whether the Class description met the appropriate standard for certification. Since many of these issues are novel, the risk of an adverse decision from the FCA is a real possibility for the Class members.

[42] Second, the success of Mr. Lin at a merits trial faces several hurdles. In my reasons delivered in the Certification Judgment, I commented on the challenges in litigating this Class Action to a successful conclusion on the merits. I notably indicated that the application of the "double ticketing" provision to this case was not free from doubt (Certification Judgment at para 7), and that Airbnb had raised numerous valid points regarding the legal interpretation of sections 36 and 54 of the *Competition Act* and their application to this case (Certification Judgment at para 34). I further recognized that, in light of the paucity of "double ticketing" cases, Mr. Lin certainly appeared to be stretching the potential interpretation and application of section 54 of the *Competition Act*, and that he was extending it into unchartered territory (Certification Judgment at para 56). I noted that, in its submissions, Airbnb had raised valid and relevant points regarding the nature and identity of the product or products effectively supplied by Airbnb through the Airbnb Platform, and that it was certainly open to Airbnb to submit and argue that section 54 of the *Competition Act* could not apply to its situation because what is effectively supplied through the Airbnb Platform are two different products by two different persons at two different prices (Certification Judgment at para 53). In other words, there were solid factual and legal 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 (Certification Judgment at para 54). I also pointed out that it may look like a strange proposition to plead and argue that loss or damage could 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 (Certification Judgment at

para 83). I finally acknowledged 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 (Certification Judgment at para 83).

[43] All of these observations reflect the fact that the likelihood of success of Mr. Lin at the common issues trial was difficult to predict at the time of certification, and it remains so today. There is little to no jurisprudence on section 54 of the *Competition Act*, as well as considerable uncertainty in the law as to whether a trial judge would award damages in the context of this Class Action. It is also clear that the legal questions advanced by Mr. Lin were novel with no appellate jurisprudence, suggesting a strong likelihood of multiple levels of appeals after a decision at the merits trial.

[44] Third, there is also a risk with having to enforce a judgment against non-Canadian defendants, as is the case for some of the Airbnb entities.

[45] In sum, when the parties decided to conclude the Settlement Agreement, it was uncertain and questionable whether Mr. Lin's Class Action could be litigated successfully on the merits, given the state of the law on "double ticketing." Most of those factors are still relevant today. This, again, is a positive factor supporting the approval of the Settlement Agreement.

(c) *Expressions of support, and number and nature of objections*

[46] Turning to the expressions of support or objections to the proposed Settlement Agreement, Class Counsel has received a total of 84 correspondence from potential Class

members, further to the Notices sent by the Claims Administrator after the Notice Order. These responses can be categorized as follows: 43 were general inquiries; 23 members voiced their support for the Settlement Agreement; 14 expressed a wish to opt out; and 4 objected to the proposed settlement. I observe that the deadline for opting out or objecting to the Settlement Agreement – as set out in the Notices – has now passed. The opt-outs and objections were included as exhibits to the Counsel Affidavit.

[47] I agree with Mr. Lin that the number of opt-outs is small compared to the size of the Class. Furthermore, some of the opt-outs appear to have been sent due to confusion as to whether these Airbnb customers were included or not in the Class definition. With respect to the four objections, two complaints regarded the type of remedy available (i.e., a non-cash-convertible Credit to be used on the Airbnb Platform) and two objectors found the maximum amount of the Credit (i.e., $45) too low. One of the complainants who initially objected to the non-cash nature of the Credit distribution voiced some support after Class Counsel explained to him the rationale for the non-cash structure of the settlement. I note that none of the objectors attended the settlement approval hearing before this Court.

[48] I also agree with Mr. Lin that the few objections received do not detract from the fact that the proposed Settlement Agreement, for the Class as a whole, is fair and reasonable and in their best interests. Having considered all of the objections received, I am of the view that they are not sufficient to conclude that the Settlement Agreement should not be approved. The fact that a settlement is less than ideal for any particular class member is not a bar to approval for the Class as a whole (*Condon* at para 69).

(d) *Degree and nature of communications between Class Counsel and Class members*

[49] The degree and nature of communications between Class Counsel and Class members is another important factor to consider for the approval of the Settlement Agreement. As will be discussed below in section III.B, it is also, in my view, a factor having an impact on the approval of Class Counsel Fees.

[50] In this case, there is no doubt that Class Counsel and Mr. Lin have evidently communicated well. With regard to the communications between Class Counsel and Class members more generally, since the commencement of this Class Action, Class Counsel has maintained and updated a website to publish basic information regarding the case, including a mailing list that allows interested individuals to subscribe for updates. Court documents and other records have been posted on this website for Class members' review. Prior to the publication of the Notices, there were 70 individuals subscribed to that mailing list, and that number increased to 673 individuals after the Notices announcing the settlement approval hearing were distributed.

[51] After the conclusion of the Settlement Agreement, the Notices were sent by e-mail to all the Class members who registered with Class Counsel and provided valid e-mail addresses. Class Counsel also posted the Notices and the Settlement Agreement on their dedicated website for the Class members. As indicated above, the Claims Administrator provided a report detailing the delivery of the Notices, which showed that the Notices were widely disseminated to Airbnb

customers. I agree with Mr. Lin that, in light of the foregoing, sufficient steps were taken to provide notice of the Settlement Agreement to the Class members.

[52] However, in determining the approval of a proposed class action settlement, the Court's analysis must not look solely at the existence of communications to class members and at the efforts deployed by class counsel to distribute such communications in an adequate way. In the exercise of its role, the Court must also review and consider the actual contents of the communications with class members, in light of the proposed settlement agreement and of the evidence provided at the settlement approval motion, and assess whether sufficient information has effectively been provided to the class members to allow them to make an informed decision about the proposed settlement.

[53] In this case, further to my review of the evidence provided by Mr. Lin on this motion, I must conclude that Class Counsel's communications with Class members fall short of the mark to meet the requirements of an adequate, full and frank disclosure of the contemplated Settlement Agreement. In other words, there were some important shortcomings in the informative value of the Notices sent to the Class members. I understand that Class members could have access to the Class Counsel's website and to the Settlement Agreement itself, and that they were invited to do so at the end of the Notices. However, the actual text of both the short-form and long-form Notices were short on details regarding several key features of the proposed Settlement Agreement. More specifically:

- the Notices did not specify that the total Settlement Amount was $6,000,000;

- the Notices did not provide information on the actual amount or on the percentage base of Class Counsel Fees;

- while they mentioned that the Credit of $45 was a maximum amount which could be lowered depending on the number of claimants, the Notices did not provide any additional detail on the likely or expected take-up rate or on the amount of the effective Credit likely or expected to be received by the Class members.

[54] To the extent that the purpose of the Notices was to properly inform the Class members of the Settlement Agreement in order to give them the means to decide to accept it, opt out or voice an objection, I find that, in light of the evidence now before me, the Notices sent to the Class members did not provide a sufficiently transparent, informative and adequate disclosure to the Class members. Of course, I cannot change the Notices retroactively. But, in class actions involving consumer-related issues such as this one, which involve thousands of ordinary consumers affected by pricing or marketing practices or other business conduct, communications of a proposed settlement agreement to the potential class members ought to be much more transparent and forthcoming for the class members than what has been done by Class Counsel in this case.

[55] In my view, in such class action settlement agreements, the notices to the class members should always at least disclose, in clear terms and in both the short-form and long-form versions of the notices, the following basic information about the proposed settlement agreement: i) the quantum of the total settlement amount; ii) the precise list of deductions from the total settlement amount (such as class counsel fees or administration expenses) when these impact the net settlement amount to be received by the class members; iii) the quantum of these various deductions (including the quantum of the class counsel fees); iv) the percentage of the total

settlement amount to be received by class counsel as legal fees; v) the maximum compensation amount to be received by each class member, if any; and vi) the likely or expected effective compensation amount, or range of compensation amounts, to be received by the class members, when class counsel has information or is able to estimate the expected take-up rate and/or the likely or expected net compensation amount to be received. Generally speaking, having access to such minimal information is needed by the class members in order for them to be able to make a well-informed decision about what a proposed settlement agreement actually offers, and on whether they shall support it, opt out or object to it. In the current case, most of these basic elements were not included in the Notices to Class members, though some of them could be gleaned from the actual Settlement Agreement made indirectly available to Class Counsel through the Class Counsel's website. In my opinion, to simply provide a link to a 27-page Settlement Agreement as was done in this case does not amount to a satisfactory disclosure of the above-mentioned information to the Class members, and can hardly be considered fair, reasonable, and in the best interests of the Class.

[56] Though it is impossible to measure what would have been the effect of the disclosure of the above-listed information in the Notices, it is fair to say that it would likely have had a certain impact on the reactions, expressions of support or objections of the Class members to the proposed Settlement Agreement.

[57] For those reasons, I conclude that the degree and nature of communications between Class Counsel and Class members is at best a neutral factor for the approval of the Settlement Agreement.

(e) *Amount and nature of pre-trial activities, including investigation, assessment of evidence and discovery*

[58] At the time the Settlement Agreement was executed, very limited investigation, discovery, evidence gathering and pre-hearing work had been completed by the parties, meaning that the amount and nature of pre-trial activities necessary to take the case to trial remained high. Moreover, Airbnb's evidence showed that Airbnb does not have precise records of Class members that reserved an accommodation matching the parameters of a previous search made by the individual on the Airbnb Platform, as the Class was defined in this Class Action.

[59] Therefore, an important amount of necessary pre-trial work still had to be completed, and the evidence before me indicates that the parties had a good sense of the extent of this significant remaining pre-trial work. In the circumstances, I am satisfied that the parties were properly positioned to understand the amount and nature of pre-trial activities linked to continued litigation at the time of choosing to settle. This factor thus supports the approval of the Settlement Agreement.

(f) *Arm's length bargaining between the parties and absence of collusion during negotiations*

[60] There is a strong presumption of fairness when a proposed class action settlement, which was negotiated at arm's-length by experienced counsel for the class, is presented for Court approval. Here, I am satisfied that the negotiations leading to the Settlement Agreement were arm's length and adversarial in nature between Class Counsel and counsel for Airbnb, spanning several months. This, again, supports the approval of the Settlement Agreement.

(g) *Recommendation and experience of Class Counsel*

[61] Class Counsel are of the view that the proposed Settlement Agreement is fair, reasonable and in the best interests of the Class members. They recommend approval by the Court.

[62] Class Counsel and their firms are experienced, well-regarded plaintiffs' class action counsel. They have a wealth of experience in a substantial number of class actions to draw upon. I have no doubt that their decision to settle this case reflects their best exercise of judgment. Class counsel's recommendations are significant and are given substantial weight in the process of approving a class action settlement (*Condon* at para 76). This is the case here.

(h) *Future expense and likely duration of litigation*

[63] Courts have recognized that an immediate payment to class members through a settlement agreement is a factor in support of a proposed settlement. In this case, if there is no settlement now, counsel for the parties anticipate that a long time will be needed for a trial on the merits and for potential appeals, with the need for expert evidence. I am satisfied that this is another factor militating in favour of finding that the proposed Settlement Agreement is fair and reasonable and in the best interests of the Class.

(i) *Any other relevant factor or circumstance*

[64] Mr. Lin submits that the Court should also take into account that all three goals of class actions will likely be achieved by way of this Settlement Agreement, namely, access to justice, judicial economy and behavioural modification. I agree.

[65] In terms of access to justice, eligible Class members will obtain some monetary compensation from Airbnb by way of the Credit though, as I will discuss in more detail in section III.B.2.b below, the evidence suggests that this compensation is expected to be extremely modest.

[66] Judicial economy will also be achieved, as a long litigation with potential appeals will be avoided and the procedure for the payment of the Credit to the Class members will be simple, with limited Court supervision being required.

[67] Finally, behavioural modification has already been accomplished due to the combination of this Class Action and the Quebec Action, as Airbnb modified its pricing display across Canada in June 2019 whilst Mr. Lin's Class Action was underway. Counsel for Mr. Lin also rightly points out that the Class Action also has an impact for actual and potential wrongdoers throughout the Canadian economy since, in the Certification Judgment, the Court released a comprehensive decision giving teeth to the dormant section 54 of the *Competition Act*, thereby also contributing to potential behaviour modification of other "drip-pricing" practices, to the benefit of Canadian consumers.

(3) Conclusion on the Settlement Agreement

[68] After considering all of the above-mentioned factors, I am satisfied that I was presented with sufficient evidence to allow me to make an objective, impartial and independent assessment of the fairness and reasonableness of the proposed Settlement Agreement (*Condon* at para 38). A settlement is never perfect, and the Court needs to keep in mind that a settlement is always the result of a compromise, but that it puts an end to the dispute between the parties and provides certainty and finality. In this case, I find that the Settlement Agreement is fair, reasonable, and in the best interests of the Class and ought to be approved, including the appointment of the Claims Administrator.

B. ***Class Counsel Fees***

[69] I now turn to the Class Counsel Fees. Here, Class Counsel request that the Court award them an amount of $1,980,000 plus applicable taxes for Class Counsel Fees, representing 33% of the Settlement Amount, to be paid from the Settlement Amount. Airbnb does not oppose this request. Rightly so, Class Counsel are not asking the Court to approve the fees payment of $2,000,000 referred to in the Settlement Agreement, an amount that, in any event, they would not have been entitled to receive under the Retainer Agreement.

(1) The law relating to approval of class counsel fees

[70] Rule 334.4 provides that all payments to counsel flowing from a class proceeding must be approved by the Court. The overarching test applicable to class counsel fees is that they have

to be “fair and reasonable in all of the circumstances” (*Condon* at para 81; *Manuge v Canada*, 2013 FC 341 [*Manuge*] at para 28).

[71] The Court has established a non-exhaustive list of factors to assist in the determination of whether the class counsel fees are fair and reasonable (*Wenham v Canada (Attorney General)*, 2020 FC 590 [*Wenham 2*] at para 33; *McLean v Canada*, 2019 FC 1077 [*McLean 2*] at para 25; *McCrea v Canada*, 2019 FC 122 at para 98; *Condon* at para 82; *Manuge* at para 28). Again, these factors are similar to the factors retained by the courts across Canada. They include, in what I view as their order of relative importance:

1) risk undertaken by class counsel;
2) results achieved;
3) time and effort expended by class counsel;
4) complexity and difficulty of the matter;
5) degree of responsibility assumed by class counsel;
6) fees in similar cases;
7) expectations of the class;
8) experience and expertise of class counsel;
9) ability of the class to pay; and
10) importance of the litigation to the plaintiff.

[72] As is the case for the factors governing the approval of settlement agreements, these factors are non-exhaustive, and their weight will vary according to the particular circumstances of each class action. However, the risk that class counsel undertook in conducting the litigation and the degree of success or results achieved for the class members through the proposed

settlement remain the two critical factors in assessing the fairness and reasonableness of a contingency fee request by class counsel (*Condon* at para 83). The risk undertaken by class counsel includes the risk of non-payment but also the risk of facing a contentious case and a difficult opposing party (*Wenham 2* at para 34).

[73] It has long been recognized by the courts that, for class proceedings legislation to achieve its policy goals, class counsel must be well rewarded for their efforts, and the contingency agreements they negotiate with plaintiffs should generally be respected. The percentage-based fee contained in a retainer agreement is presumed to be fair and should only be rebutted or reduced "in clear cases based on principled reasons" (*Condon* at para 85, citing *Cannon v Funds for Canada Foundation*, 2013 ONSC 7686 [*Cannon*] at para 8).

[74] That being said, it is also the Court's role to protect the class, and there may be circumstances where the Court has to substitute its view for that of class counsel, in the interest of the class. The Court must consider all the relevant factors and then ask, as a matter of judgment, whether the class counsel fees fixed by the proposed agreement are fair and reasonable and maintain the integrity of the profession (*LG Chem* at para 46). This is especially true where, as in this case, the amount of class counsel fees comes out of the global settlement amount available to class members. Here, it is clear that the Net Settlement Funds available for distribution to Class members represents the difference between the Settlement Amount and the sum of Administration Expenses, Class Counsel Fees, Honorarium and applicable taxes.

[75] In the same vein, where the fee arrangement with class counsel is part of the settlement agreement, the Court must decide on the fairness and reasonableness of the proposed fee arrangements in light of what class counsel has actually accomplished for the benefit of the class members. The class counsel fees must not leave the impression or bring about conditions of settlement that appear to be in the interests of the lawyers, but not in the best interests of the class members as a whole. Stated differently, there has to be some proportionality between the fees awarded to class counsel and the degree of success obtained for the class members.

[76] In this case, Class Counsel apply to this Court for fees in an amount representing 33% of the value of the Settlement Amount, or $1,980,000, plus applicable taxes. Class Counsel submit that this is "consistent with" the terms of the Retainer Agreement. I pause to observe that, in the Retainer Agreement signed by Mr. Lin and Class Counsel in October 2017, Section 10 provides that Class Counsel's legal fees "shall not exceed **thirty-three percent (33%)**" [both emphases in original] of the total amounts recovered by the Class. Two mathematical examples are given at Section 12 of the Retainer Agreement, where the words "shall not exceed" are again used and repeated for each example. In other words, while it is not incorrect to state that the Class Counsel Fees amount presented to the Court for approval is "consistent" with the Retainer Agreement, I must underline that it nonetheless represents the upper maximum limit of what was expressly contemplated in the Retainer Agreement signed by Class Counsel and Mr. Lin.

(2) Application to this case

(a) *Risk undertaken by Class Counsel*

[77] The risk factor refers to the risk undertaken by Class Counsel when the class proceeding is commenced. It is measured from the commencement of the action, not with the benefit of hindsight when the result looks inevitable. This risk includes all of the risks facing class counsel, such as the liability risk, recovery risk, and the risk that the action will not be certified as a class action or will not succeed on the merits (*Condon* at para 83). The litigation risk assumed by class counsel is a function of the probability of success, the complexity of the proceedings, and the time and resources expended to pursue the litigation.

[78] There is no doubt in this case that a significant risk was undertaken by Class Counsel. Class Counsel did not seek any third-party litigation funding and bore 100% of the litigation risk. Class Counsel also provided a full indemnification to Mr. Lin in the event of any adverse cost awards. More importantly, there were real risks related to the fact that Mr. Lin's Class Action could not be certified at all, considering the extremely limited history of section 54 and the novelty of the interpretation and approach proposed by Class Counsel in this proceeding.

[79] Class Counsel certainly deserves credit and recognition for having brought a recourse based on sections 36 and 54 of the *Competition Act* and for having developed an innovative interpretation of section 54 on "double ticketing," something that had never been done in a competition class action. Innovation is what took human beings from caves to computers, and it

certainly merits to be rewarded, given the risks that are always inherent to any form of innovation.

[80] In light of the foregoing, the risk undertaken by Class Counsel in this case is, of course, a positive factor supporting the approval of the Class Counsel Fees.

(b) *Results achieved*

[81] In terms of the results achieved for the Class members, I find that they are mixed. Here, the Court has to distinguish between the non-monetary results stemming from the Settlement Agreement, and the monetary results. I accept that, broadly speaking, the results captured in the Settlement Agreement, both monetary and non-monetary, somehow improved the situation for Class members. However, there is a huge difference in the relative gains for Class members in terms of non-monetary and monetary benefits.

(i) Non-monetary benefits

[82] In this case, I agree that there are significant non-monetary benefits to the Class members, to the Airbnb customers in general, and to Canadian consumers. The most significant benefit consists in the behavioural modification of Airbnb, as Airbnb adjusted the Airbnb Platform throughout Canada in June 2019. Airbnb now displays an all-inclusive price for all accommodation bookings, excluding applicable taxes, at every step of the search and booking process. In other words, the pricing display practice that prompted Mr. Lin's Class Action has now ceased. This is likely the most significant aftermath of Mr. Lin's Class Action, and it

reverberates from the Class members to all existent and future Airbnb customers. I point out, however, that this result cannot be said to be an immediate effect of the Settlement Agreement itself, as Airbnb's behavioural modification preceded it and was even implemented before the Certification Judgment in this case. I further observe that the Quebec Action was also an instrumental factor leading up to Airbnb's behavioural modification in June 2019. Nevertheless, I am satisfied that Mr. Lin's Class Action was certainly one of the contributing elements having led to Airbnb's behavioural modification. Such behavioural modification is one of the three well-entrenched objectives of class actions (*L'Oratoire Saint-Joseph du Mont-Royal v JJ*, 2019 SCC 35 at para 6, citing *Hollick v Toronto (City)*, 2001 SCC 68 at para 15, *Western Canadian Shopping Centres Inc v Dutton*, 2001 SCC 46 at paras 27-29, and *Vivendi Canada Inc v Dell'Aniello*, 2014 SCC 1 at para 1).

[83] In weighing the non-monetary results achieved by Class Counsel's work, it is also appropriate for the Court to consider to what extent the two other main objectives of class actions – namely, access to justice and judicial economy – have been met by the proposed Settlement Agreement. Mr. Lin's Class Action provided access to justice for hundreds of thousands of Class members where, absent the Class Action, the scope of the individual claims would not justify litigation. The class action regime in the Rules was designed to encourage class counsel to advance actions like this one, where the individual claims are relatively small because, on an aggregate basis, entrepreneurial class counsel can earn a fee that justifies the risks associated with advancing the class action and the time invested (*Condon* at paras 101-102).

[84] There are also non-monetary benefits that do not solely benefit the Class members but have positive repercussions on a larger scale, for all Canadian consumers. It is well accepted that a change in a business conduct (such as pricing or marketing practices) is a recognized objective of class actions. Here, Mr. Lin's Class Action will serve as a legal precedent and authority in "drip-pricing" practices more generally, bearing in mind that the Certification Judgment was issued in the context of the low-hurdle test at the certification stage, and that the determination of the merits of the legal arguments on section 54 of the *Competition Act* still remains uncertain. I also agree with Class Counsel that this matter will indirectly serve as a deterrent for potential wrongdoers in the Canadian marketplace, who will now have a better knowledge that "drip-pricing" is a practice that can run afoul of applicable laws in Canada.

[85] I further agree that Mr. Lin's Class Action has successfully revived and resurrected section 54 of the *Competition Act*, which had been dormant for several decades. Now, the Canadian public, including merchants and consumers, has guidance on how best to comply with this *Competition Act* provision on "double ticketing," even in the digital economy. As I indicated at the hearing before this Court, we do not know yet whether section 54 is simply on life support further to the Certification Judgment and whether it will be able to survive a test on the merits, but Mr. Lin's Class Action has certainly awakened a sleepy section 54.

[86] I am therefore satisfied that the non-monetary results reached in this case are a positive factor for the approval of the Class Counsel Fees.

(ii) Monetary benefits

[87] Moving to the monetary front, the results achieved by the Settlement Agreement for the Class members are much more humble. In fact, based on the evidence before me, the monetary success for Class members is expected to be somewhat anemic. This, in my view, is the Achilles' heel hampering the Class Counsel Fees' request in this case.

[88] True, the Settlement Agreement and the Notices refer to a Credit of "up to" $45 in value for each eligible Class member. However, the evidence on the record (mostly contained in the Counsel Affidavit) reveals that what Class members are likely to receive from the settlement will not be very substantial, and far lower than the publicized $45. First, the evidence on the Quebec Settlement indicates that the take-up rate in that matter was effectively about 30%, and translated into an actual credit of approximately $9.50 per individual Quebec class member, well below the maximum of $45 that was also set out in the Quebec Settlement. Class Counsel expects that the take-up rate will be similar in this Settlement Agreement, although it could be affected by some other factors, in particular the pandemic.

[89] Second, the evidence on the record of this motion allows the Court to calculate the likely Credit expected to be effectively received by each Class member. This approximate assessment goes as follows. Airbnb estimates that there will be approximately 1,473,952 eligible claimants in this matter. Assuming a take-up rate of 30% similar to the Quebec Settlement (which is what Class Counsel expects), that would translate into approximately 442,200 Class members exercising their right to claim a Credit. As to the Net Settlement Funds available to be distributed

among Class members, they can be estimated to revolve around $3,420,500 (i.e., the Settlement Amount of $6,000,000, less the requested $1,980,000 for Class Counsel Fees, $322,500 for Administration Expenses, and some $277,000 for applicable taxes). This would result in an effective Credit of just above $8 for each Class member (i.e. $3,420,500 divided by 442,200 Class members), far less than the maximum of $45 referred to in the Notices to the Class members. I acknowledge that this back-of-the-envelope calculation is only a rough estimate but, even if I factor in a sizeable margin of error, the evidence on the record certainly allows the Court to infer that the expected Credit to be distributed to eligible Class members is more likely to gravitate around $10 than the publicized maximum of $45.

[90] I make another observation. The success or result achieved in any class action settlement is not an absolute figure but rather a relative one. It always needs to be assessed in relation to what was the anticipated full recovery of the damages alleged to have been suffered by the class members in the class action. This is what allows the Court to determine the fairness and reasonableness of the expected compensation brought about by a settlement agreement. In the current case, the Court is in a difficult position to do so since Mr. Lin and Class Counsel have not provided any estimate of what would have been the expected full recovery of the damages claimed in the Class Action. There is no measure of what the alleged price difference between the first price and the final price posted on the Airbnb Platform during the Class period would amount to, for all Class members affected. Or even an indication of what was the average price difference for the Class members. In other words, the Court has no information on the expected full recovery for Class members. Broadly speaking, the Court always needs to know what would have been the estimated full recovery of a class action in order to assess the recovery rate of a

proposed settlement and to figure out the relative success achieved by the settlement. In this case, the only benchmark available to the Court is Mr. Lin's own example: based on Mr. Lin's personal situation as outlined in the Certification Judgment, his claim against Airbnb represented an amount of approximately $92. The maximum Credit of $45 would thus represent a recovery rate slightly below 50% for Mr. Lin, and the likely or expected compensation amount of less than $10 estimated above would represent a much paler recovery rate of about 10%.

[91] In sum, the evidence before me on this motion indicates that, no matter what metric is being used, the monetary compensation likely or expected to be received by the Class members through the Credit will be extremely modest, and will likely lie at the low end of the spectrum for Class members. For all those reasons, I am not satisfied that the monetary results achieved by the Settlement Agreement are a positive factor for the approval of the Class Counsel Fees. Quite the contrary.

(c) *Time expended by class counsel*

[92] The time expended by class counsel can also be a helpful factor in the approval of class counsel fees, even in cases where the class counsel fees are contingency fees.

[93] Over the years, the courts have expressed a preference for utilizing percentage-based fees in class actions (see, e.g., *Mancinelli v Royal Bank of Canada*, 2017 ONSC 2324 at para 52). A percentage-based fee is paid based on a percentage of the amounts recovered and should be awarded at a level that appropriately incentivizes and rewards class counsel (*Condon* at para 84). Contingency fees help to promote access to justice in that they allow class counsel, rather than

the plaintiff, to finance the litigation. Contingency fees also promote judicial economy, encourage efficiency in the litigation, discourage unnecessary work that might otherwise be done simply to increase the lawyers' fees based on time incurred, properly emphasize the quality of the representation and the results achieved, ensure that counsel are not penalized for efficiency, and reflect the considerable costs and risks undertaken by class counsel (*Condon* at paras 90-91). This Court and the courts across Canada have recognized that the viability of class actions depends on entrepreneurial lawyers who are willing to take on these cases, and that class counsel's compensation consequently must reflect this reality (*Condon* at paras 90-91).

[94] The percentage-based fee set out in a contingency fee retainer agreement is therefore presumed to be fair and "should only be rebutted in clear cases based on principled reasons" (*Condon* at para 85, citing *Cannon* at para 8). Examples of "principled reasons" where a court may rebut the presumption that a percentage-based fee is fair include situations where: i) there is a lack of full understanding or true acceptance on the part of the representative plaintiff; ii) the agreed-to contingency amount is excessive; or iii) the presumptively valid contingency fee would result in a fee award so large as to be unseemly (*Condon* at para 85).

[95] I would add that situations where the class counsel fees are not commensurate with the gains of class members or are not aligned with the terms of the underlying retainer agreement with the representative plaintiff also qualify as other "principled reasons" where the courts may be justified to revisit a percentage-based contingency fee agreement. Importantly, the proposed class counsel fees need to be considered in relation to the actual result achieved for the Class

members, especially when the retainer agreement provides for the possibility of a range or margin of appreciation for the effective percentage-based fees to be paid.

[96] The main alternative to a percentage-based fee is applying a "multiplier" to class counsel's time spent in a matter. However, the use of a multiplier approach as the basis for approving class counsel fees has been criticized for, *inter alia*, encouraging inefficiency and duplication and discouraging early settlement (*Condon* at para 86). Nevertheless, it can serve as a "useful check" (*McLean 2* at para 37). According to Class Counsel, the range of multipliers generally accepted by the Canadian courts in class action settlements is approximately 1.5 to 3.5.

[97] Here, it is clear that Class Counsel have done extensive work over the past four years to reach the Settlement Agreement, including litigating certification through hearings before this Court and the FCA, and devising the settlement for the Class members. The evidence on this motion reveals that Class Counsel have collectively expended 1,628 hours in total up to the filing of the motion, with their services valued at $723,357.50. Class Counsel also expect that they will be required to spend a material number of additional hours to finalize the settlement, if the Settlement Agreement is approved. Class Counsel will notably have to oversee the publication and distribution of the notices of settlement approval; continue to implement and oversee the administration of this Class Action until the settlement distribution is complete; and liaise with the Class members who may have questions about the Settlement Agreement. There is nothing unreasonable in the details examined by the Court and I accept Class Counsel's evidence as an accurate reflection of the time value of the necessary professional services they rendered.

[98] Based on the requested Class Counsel Fees of $1,980,000, this would mean a multiplier varying between 2.3 and 2.7, depending on the additional work needed to implement the Settlement Agreement. Overall, I conclude that the time expended by Class Counsel is a positive factor supporting the approval of the Class Counsel Fees.

(d) *Complexity of issues*

[99] For the reasons discussed above, there is no question that this class action proceeding raised complex and difficult issues surrounding sections 36 and 54 of the *Competition Act*. To reiterate, in his Class Action, Mr. Lin brought forward an innovative argument on section 54 and the treatment of fragmented pricing or "drip-pricing" in the digital economy. Section 54 on "double ticketing" was created before the arrival of the digital economy and the emergence of online commerce, and the question of how the provision could extend and apply to current technologies and commercial practices is far from being simple and free from doubt. This is a positive factor for the Class Counsel Fees.

(e) *Degree of responsibility assumed by Class Counsel*

[100] Class Counsel, consisting of two small firms, took on full responsibility for this case, and bore 100% of the risk of the litigation. This, again, is a positive factor.

(f) *Fees in similar cases*

[101] Looking at the issue of fees in comparable cases, Class Counsel submit that, at 33%, the percentage of the Settlement Amount claimed as Class Counsel Fees is "comparable" to

percentages in settled class actions in the Canadian common law jurisdictions. With respect, I believe that this qualification deserves to be nuanced. I am instead of the view that a 33% contingency fee, while perhaps not unusual, nonetheless sits at the high end of the generally accepted range of court-approved fees for class counsel.

[102] The typical range for contingency fees has been recently described as being "15% to 33% of the award or settlement" in British Columbia (*Kett v Kobe Steel, Ltd*, 2020 BCSC 1977 [*Kobe Steel*] at para 54). In the precedent of this Court cited by Class Counsel in support of their claimed 33% contingency fees (i.e., *Condon*), the Court referred to a range of "up to 30%" and in fact affirmed a 30% contingency fee in that case, not 33% (*Condon* at paras 92, 111). I do not dispute that some cases confirmed the reasonableness of percentage-based fees of 33% (see, e.g., *McLean v Cathay Pacific Airways Limited*, 2021 BCSC 1456; *Cannon*; *Dwor et al v Car2Go et al*, VLC-S-S-205424, unreported settlement approved on September 20, 2021), but these matters appear to be the exception rather than the rule. Class Counsel also referred to precedents where the accepted contingency fee was at 30% or less in *Zouzout c Canada Dry Mott's Inc*, 2021 QCCS 1815, at about 31.5% in *Hurst c Air Canada*, 2019 QCCS 4614, and between 15% to 25% in *Abihsira c Stubhub inc*, 2020 QCCS 2593. Moreover, in the Quebec Settlement, the court-approved contingency fee was 25%. I am mindful of the fact that the Quebec Settlement was a pre-certification settlement with no contested certification hearing, and that it involved a different theory of liability based on legislations other than sections 36 and 54 of the *Competition Act*. Nonetheless, it remains the closest precedent to the current Class Action.

[103] As rightly pointed out by Class Counsel, the issue to be determined is whether the requested Class Counsel Fees are fair and reasonable in the circumstances. In this case, despite significant positive results in terms of behavioural modification, the Settlement Agreement brings about a fairly limited success for the Class members on the monetary front, with a large discrepancy between the Class Counsel Fees sought and the likely or expected recovery rate of the Class members. This is an important factor to take into account. In the circumstances of this case, I am therefore not convinced that the low expected monetary return to Class members through the Credit can justify and support a percentage-based contingency fee of 33% that would reside at the high end of the spectrum observed in comparable cases.

(g) *Expectation of the Class*

[104] Another factor to consider is the expectation of the Class members as to the amount of counsel fees. The fact that the representative plaintiff, Mr. Lin, supports the Class Counsel Fees request is no indicator of the Class members' expectations. Based on the limited evidence before me, I cannot tell what is the expectation of the Class on the legal fees front, as the Class members were not truly aware of the Class Counsel Fees claimed.

[105] As mentioned above, the Notices provided no details on Class Counsel Fees. It is true that there was no opposition from Class members on Class Counsel Fees, but it may well be because the Class members were kept in the dark with respect to this issue. I again acknowledge that the Class members could have accessed the Settlement Agreement itself, where the amount of the Class Counsel Fees were precisely laid out; but this is a 27-page document that the average Class member is unlikely to read. Providing a link to the full text of a 27-page

Settlement Agreement is not an acceptable substitute to an adequate, full and frank disclosure on the Class Counsel Fees in the Notices themselves. As indicated above at paragraph 55 of these Reasons, notices to class members need to be transparent on the key terms of proposed class action settlement agreements, including on the issue of class counsel fees, in order to allow the Court to properly assess the fairness and reasonableness of proposed settlements and class counsel fees. In this case, I do not know what would have happened if the proposed Class Counsel Fees had been openly disclosed to the Class members in the Notices. But, given that – even with the existing Notices – there were some objections to the low level of the publicized $45 Credit, it may well have triggered more objections from Class members had they been properly informed about the real magnitude of the Net Settlement Funds, the percentage fees of Class Counsel and the likely or expected monetary amount to be distributed to the Class members.

[106] In my view, in situations like this one, where the likely or expected recovery to class members is limited and resides at the low end of the spectrum, notices to class members should clearly set out the total amount of the class counsel fees and the percentage that class counsel are seeking to receive from a settlement agreement, so that class members can have a full understanding of the agreement presented to them for approval. Communications between class counsel and class members need to be transparent, including on class counsel fees, so that class members can be in a position to make a well-informed decision on their approval and support of both the proposed settlement agreement and class counsel fees. Especially in situations where, as here, Class Counsel Fees eat up an important portion of the Net Settlement Funds available to Class members.

[107] Therefore, I am not persuaded that the Class members could fairly weigh this issue of Class Counsel Fees when deciding whether to opt out or to participate in the lawsuit going forward (*Condon* at para 107). This is a neutral factor in assessing the fairness and reasonableness of the Class Counsel Fees.

(h) *Quality and experience of Class Counsel*

[108] There is no doubt as to Class Counsel's standing in the class action legal community and in the areas of law relevant to this litigation. Evidence was provided that Class Counsel have practised in class actions for many years. They have a breadth of experience in litigating class actions, and have collectively negotiated settlements of several class actions. This is, of course, a positive factor favouring the approval of the Class Counsel Fees.

(i) *Ability of the Class to pay*

[109] It is also obvious that Class members did not and do not have the ability to pay for the services of Class Counsel. This, once again, is a positive factor in the Court's assessment of the Class Counsel Fees.

(j) *Importance of litigation to the plaintiff*

[110] Finally, I find that this Class Action is of limited importance to Mr. Lin and is a neutral factor in the determination of the fairness and reasonableness of Class Counsel Fees. This case is of no outstanding importance to Mr. Lin or to the Class members, in the sense that it does not involve human rights violation or personal injury. It has an impact for consumer protection and

the deterrence of potential anti-competitive behaviour, but nothing allows me to conclude that this matter would qualify as being a “litigation of importance” to Mr. Lin or the Class members.

(3) Conclusion on the Class Counsel Fees

[111] Looking at all the above-mentioned factors cumulatively, I am not satisfied that the Class Counsel Fees requested to be approved by Class Counsel in this case can be qualified as fair and reasonable in the circumstances, when considered in light of the modest results achieved for the Class members on the monetary front. In other words, in the particular circumstances of this case, the requested 33% percentage-based fees cross too many redlines to be approved as such.

[112] Important “principled reasons” lead me to this conclusion. I cannot help but note that the proposed 33% contingency fee is not entirely “consistent” with the Retainer Agreement concluded at the commencement of the Class Action. The Retainer Agreement provided, in underlined and bolded terms, that the Class Counsel legal fees “shall not exceed” 33% of the recovered sums. Nevertheless, the Class Counsel Fees sought in this motion are at the extreme high end of what the Retainer Agreement envisaged. In addition, the requested 33% fee also sits at the top of the range of percentage-based fees awarded by the courts in comparable cases. In sum, the legal fees sought by Class Counsel on this motion are at the maximum contemplated by the Retainer Agreement and in comparable cases, in a context where the likely or expected monetary result for the Class members sits at the totally opposite end of the spectrum as far as their anticipated recovery is concerned. This is not fair and reasonable.

[113] I find it unjustifiable, in light of the highly modest success likely or expected to be achieved for the Class members on the monetary front, that Class Counsel could be entitled to receive what they themselves recognized as being the top end of the spectrum for their contingency fees in the Retainer Agreement. When class counsel agree to fees up to a certain amount in the context of class actions, it has to mean something, and it goes without saying that achieving a low or short result for the class members does not sound like a situation where it is fair and reasonable to be granted the maximum of contemplated fees.

[114] In view of the significant contrast between the Class Counsel Fees sought, which are at the very top of the range contemplated in the Retainer Agreement and in comparable cases, and the expected monetary benefit to Class members, which will likely grant them a very low rate of recovery, I find that the requested Class Counsel Fees are disproportionate in relation to the overall results achieved for the Class, notwithstanding the commendable success in terms of Airbnb's behavioural modification. Put differently, while the success achieved for Class members is at best modest, the fees requested by Class Counsel are anything but modest. This does not fit the definition of being "fair and reasonable in the circumstances."

[115] There is no magic formula to determine what should be the appropriate percentage-based fees of class counsel in a class action settlement. It is a matter of judgment, based on the particular circumstances of any given case and the interests of the class, bearing in mind – in the current case – the material non-monetary benefits in terms of behavioural modification and the need to adequately reward entrepreneurial Class Counsel who were willing to undertake important risks and spent significant resources on this litigation. In the circumstances, I will

therefore slightly reduce the Class Counsel Fees to 30% or $1,800,000, which will remain in the upper part of the range and close to the maximum set out in the Retainer Agreement. By any measure, Class Counsel will still be very well compensated for their efforts. I am mindful of the fact that this reduction in Class Counsel Fees will bring diminutive material benefit to each Class member in terms of an increase in the likely or expected average Credit to Class members. But, in my judgment, this reduction will at least bring the Class Counsel Fees within fair and reasonable territory.

[116] As the British Columbia Supreme Court recently stated in *Kobe Steel*, "[t]he integrity of the profession is a consideration when approving legal fees in the class action context" (*Kobe Steel* at para 58, referring to *Plimmer v Google, Inc*, 2013 BCSC 681 and *Endean v The Canadian Red Cross Society*; *Mitchell v CRCS*, 2000 BCSC 971, aff'd 2000 BCCA 638, leave to appeal dismissed, [2001] SCCA No 27). Sometimes, substantial rewards to class counsel can create the wrong impression or perception that the ultimate beneficiaries of class actions are class counsel, rather than the class members. Where, as here, the settlement amount likely or expected to be received by class members is minimal – and in fact abysmal when compared to the legal fees claimed by Class Counsel –, there could be such a perception. In such cases, it is the Court's duty to attempt to rectify this perception and to ensure that counsel do not leave the impression that the class action process serves "to obtain a result in which [class counsel] are the only or major beneficiaries" (*Pro-Sys Consultants Ltd v Microsoft Corporation*, 2018 BCSC 2091 at para 53). As the court reminded in *Kobe Steel*, "[t]he ultimate purpose of the class action vehicle is to benefit the class, not their lawyers. The payment to the lawyers is simply a way to achieve

the benefits for the class, not the other way around" (*Kobe Steel* at para 58, citing *Cardoso v Canada Dry Mott's Inc*, 2020 BCSC 1569 [*Cardoso*] at para 37).

C. ***Honorarium***

[117] Class Counsel finally request that the Court award a $5,000 Honorarium to Mr. Lin, the representative plaintiff, to be paid from the Settlement Amount. Airbnb has indicated that it is prepared to make that payment if ordered by the Court.

(1) Law relating to the approval of an honorarium

[118] No specific Rule provides for the payment of an honorarium to a representative plaintiff in class actions. However, this Court has the discretion to award honoraria to representative plaintiffs, and it has indeed done so on numerous occasions (see, e.g., *Wenham 1*; *McLean 2*; *Condon*; *Manuge*). Honoraria to representative plaintiffs are to be awarded sparingly, "as representative plaintiffs are not to benefit from the class proceeding more than other class members" (*McLean 2* at para 57, referring to *Eidoo v Infineon Technologies AG*, 2015 ONSC 2675 at paras 13-22). In Ontario, the predominant view is that an honorarium is exceptional and that courts should only rarely approve an award of compensation to a representative plaintiff (*Park v Nongshim Co, Ltd*, 2019 ONSC 1997 at paras 84-86; *Markson v MBNA Canada Bank*, 2012 ONSC 5891 at paras 55-71). It requires an exceptional contribution that has resulted in success for the class.

[119] In other words, an honorarium is not to be awarded as a routine matter but is rather "a recognition that the representative plaintiffs meaningfully contributed to the class members' pursuit of access to justice" (*Condon* at para 115). "Honorariums [*sic*] are given when the representative plaintiff(s) contribute more than the normal effort of such a position – for example, forfeiting their privacy to a high profile class litigation and participating in extensive community outreach" (*McLean 2* at para 57). It is only where representative plaintiffs can demonstrate "a level of involvement and effort that goes beyond what is normally expected and is truly extraordinary, or where there is evidence that they were financially harmed because they agreed to be a class representative that an honorarium will be justified" (*Casseres v Takeda Pharmaceutical Company*, 2021 ONSC 2846 at para 10). Representative plaintiffs are not entitled to receive additional compensation for simply doing their job as class representatives (see, e.g., *Cardoso* at paras 42-51).

[120] In determining whether the circumstances are exceptional, the Court may consider several factors, including: i) active involvement in the initiation of the litigation and retainer of counsel; ii) exposure to a real risk of costs; iii) significant personal hardship or inconvenience in connection with the prosecution of the litigation; iv) time spent and activities undertaken in advancing the litigation; v) communication and interaction with other class members; and vi) participation at various stages in the litigation, including discovery, settlement negotiations and trial (*LG Chem* at para 50). A review of the case law also indicates that the courts have approved the payment of an honorarium to a representative plaintiff when he or she rendered active and necessary assistance in the preparation or presentation of the case, and such assistance resulted in monetary success for the class.

[121] In addition, the Court must also ensure that "the amount of any separate payment to the representative plaintiff is not disproportionate to the benefit derived by the class members, the effort of the representative plaintiff, and the risks assumed by the representative plaintiff" (*Parsons v Coast Capital Savings Credit Union*, 2010 BCCA 311 at para 19).

(2) Application to this case

[122] For the reasons that follow, I am not persuaded that the payment of the requested $5,000 Honorarium to Mr. Lin is justified in this case.

[123] I first note that, contrary to the situation in *Condon* (expressly referred to by counsel for Mr. Lin in his submissions to the Court), the affidavit of Mr. Lin is virtually silent on details of his involvement in this case, and does not state or even suggest that he expended a significant amount of time carrying out his duties as representative plaintiff. On his work as representative plaintiff, the affidavit of Mr. Lin is limited to a meagre two-line paragraph (paragraph 5), which reads as follows: "I assisted Class Counsel throughout this litigation, including providing information, offering my opinion and instructions, and keeping updated on developments." This provides no helpful evidence to the Court. I acknowledge that a slightly more elaborate statement is provided in the Counsel Affidavit (at paragraph 140), but it does not emanate from Mr. Lin himself and it essentially offers generic descriptions with limited particulars regarding the actual work done by Mr. Lin in this matter. In fact, the list of tasks described in the Counsel Affidavit boils down to a recitation of the usual tasks expected to be undertaken by any representative plaintiff.

[124] It is not sufficient for class counsel to simply argue the exceptional work done by a representative plaintiff. There needs to be evidence, from the representative plaintiff, at a convincing level of particularity, allowing the Court to assess and measure the nature and the involvement of the class representative. No matter how eloquent arguments from counsel may be, they cannot replace the need for the representative plaintiff to provide clear, convincing and non-speculative evidence supporting the extent and exceptional nature of his or her involvement (*Jensen v Samsung Electronics Co, Ltd*, 2019 FC 373 at paras 41-43).

[125] Here, there is no evidence that Mr. Lin was intimately involved in the Class Action, that he initiated the action himself, or that he was a driving force behind it. Furthermore, this is not a high profile litigation or a situation where Mr. Lin's name was widely publicized, where he had exposure to the media, or where his privacy was invaded through the recitation of his personal story to advance the case. There is also no evidence of any community outreach and of public representations made by Mr. Lin about the case. Moreover, Mr. Lin did not have to prepare for or attend a cross-examination on his affidavit filed in support of the certification motion.

[126] I do not question Mr. Lin's contribution or commitment to the Class Action, and Mr. Lin certainly deserves acknowledgement for his role in the conduct of the proceeding. However, representative plaintiffs do not receive additional compensation for simply doing their job as class representatives. In this case, I find no clear and convincing evidence of exceptional or extraordinary circumstances to support the payment of the substantial Honorarium requested by Mr. Lin. In short, I cannot conclude, based on the evidence before me, that Mr. Lin's contribution, while laudatory, had any exceptional or extraordinary value.

[127] I further underline that the monetary compensation expected to be received by the Class members in this case will likely be excessively modest, in the form of a Credit which may not exceed $10. In these circumstances, to grant Mr. Lin an Honorarium of $5,000 would mean compensating him in an amount that would be more than 500 times the average benefit of each Class member. This would be preposterous and plainly unreasonable in the circumstances. What is more, an Honorarium of $5,000 would represent over 50 times the actual loss that Mr. Lin claimed to have suffered on his booking accommodation at the source of this Class Action. Again, nothing would justify such a massive Honorarium in a context where the benefits likely or expected to be received by the Class members are minuscule, and the evidence of any exceptional work done by Mr. Lin is absent.

(3) Conclusion on the Honorarium

[128] Having regard to the Credit awarded to the Class members from the Settlement Amount, the relevant authorities and the scant evidence on Mr. Lin's actual involvement in this proceeding, I find that the $5,000 Honorarium sought by Mr. Lin is unreasonable and unjustified in the circumstances. I instead determine that a nominal Honorarium of $1,000 is more appropriate and more commensurate with the Net Settlement Funds and the expected Credit and with the work done by Mr. Lin in this matter.

D. ***Rule 60***

[129] I take a moment to make a short remark on Rule 60, invoked by counsel for Mr. Lin in the form of an epilogue at the end of their written and oral submissions before the Court. It left

the impression that counsel was referring to this Rule to suggest that the Court might have some duty or obligation to inform Mr. Lin of gaps in his evidence or in his motion, and to provide him with an opportunity to correct any shortcomings. With respect, I do not agree that this is the purpose of Rule 60.

[130] Rule 60 provides that "[a]t any time before judgment is given in a proceeding, the Court may draw the attention of a party to any gap in the proof of its case or to any non-compliance with these Rules and permit the party to remedy it on such conditions as the Court considers just." Rule 60 does not create some sort of obligation on the part of the Court to point out how a party's case is incomplete or insufficient in terms of contents or evidence. It is well established that it is not the role of the courts to provide legal or tactical advice to litigants (*SNC-Lavalin Group Inc v Canada (Public Prosecution Service)*, 2019 FCA 108 at para 9). Rather, Rule 60 is part of a group of provisions, namely, Rules 56 to 60, which address the consequences of a party's failure to comply with the Rules, and articulate a series of actions that may be taken by a party, or the Court, in such situations. As I indicated in *Lessard-Gauvin v Canada (Attorney General)*, 2020 FC 730 at paragraphs 116-119, the objective of these Rules is to ensure that procedural irregularities can be rectified without necessarily resulting in the dismissal of a proceeding.

[131] Rule 60 is not a tool available to parties to obtain free legal advice from the Court or to ask the Court to do work that the parties themselves, or their counsel, may have failed to do.

IV. Conclusion

[132] For the reasons detailed above, I find that the Settlement Agreement is fair, reasonable and in the best interests of the Class as a whole, and that it shall be approved, along with the appointment of the Class Administrator.

[133] I find that the requested Class Counsel Fees are not fair and reasonable, and that they shall be adjusted downward to $1,800,000 plus applicable taxes.

[134] I find that the requested Honorarium for Mr. Lin is not fair, reasonable and justified, and that it shall be reduced to $1,000.

[135] An order will issue giving effect to these findings and substantially incorporating the language proposed by both parties in the draft orders submitted to the Court as part of the motion materials.

[136] No costs will be awarded.

ORDER in T-1663-17

THIS COURT ORDERS that:

A. General Terms

1. In addition to the definitions used elsewhere in these Reasons, for the purposes of this Order, the definitions set out in the Settlement Agreement attached as Schedule "A" to this Order 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.

B. Settlement Agreement

3. The Settlement Agreement is fair, reasonable, and in the best interests of the Settlement Class.

4. The Settlement Agreement is hereby approved pursuant to Rule 334.29 and shall be implemented and enforced in accordance with its terms.

5. 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 are dispensed with.

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 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 shall be dismissed against the Defendants, with prejudice and without costs to the Defendants, Plaintiff, or Releasees, and that such dismissal shall be a defence to any subsequent action in respect of the subject matter hereof.

C. Appointment of Claims Administrator

12. Deloitte is hereby appointed as Claims Administrator pursuant to the Settlement Agreement and the duties and obligations are as set out in the Settlement Agreement, and are binding on the Claims Administrator.

13. The Claims Administrator's estimated fees, disbursements and other costs are $320,500, all-inclusive, and these Administration Expenses will be paid by Airbnb Ireland Unlimited Company, and will be deducted from the Settlement Amount in accordance with Sections 10.1(6) and 10.1(7) of the Settlement Agreement.

14. Unless ordered by a court of competent jurisdiction, no documents or information received by the Claims Administrator by reason of the settlement or its administration and implementation, whether received directly or indirectly and whether received before or after this Order was made, are producible in any civil or criminal proceeding, administrative proceeding, grievance, or arbitration.

15. Unless ordered by a court of competent jurisdiction, neither the Claims Administrator nor its employees, agents, partners, or associates can be compelled to be a witness in any civil or criminal proceeding, administrative proceeding, grievance, or arbitration where the information sought relates, directly or indirectly, to information obtained

by the Claims Administrator by reason of the settlement or its administration and implementation.

16. No person may bring an action or take any proceeding against the Claims Administrator or its employees, agents, partners, associates, or successors for any matter in any way relating to the settlement or its implementation and administration, except with leave of this Court on notice to all affected parties.

D. Class Counsel Fees

17. The Retainer Agreement between the plaintiff and Class Counsel is approved.

18. Class Counsel Fees in the amount of $1,800,000 plus applicable taxes is approved under Rule 334.4.

19. Other than Class Counsel Fees, Class Counsel shall not claim any other payments for this Proceeding, including disbursements.

20. The defendants shall pay the aforementioned Class Counsel Fees in accordance with the Settlement Agreement.

E. Honorarium

21. An Honorarium in the amount of $1,000 is awarded to the plaintiff.

22. The Defendants shall pay the aforementioned Honorarium in accordance with the Settlement Agreement.

23. No costs are awarded on this motion.

"Denis Gascon"

Judge

Schedule A

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

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.

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.

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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.

(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
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4388 Still Creek Drive, Suite 237
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Tel: 604.620.2666
Email: simonlin@evolinklaw.com

Jérémie John Martin and Sébastien A. Paquette
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Tel: 514.944.7344
Email: jmartin@champlainavocats.com
spaquette@champlainavocats.com

For the Settling Defendants:

Sylvie Rodrigue and James Gotowiec
Torys LLP
79 Wellington St. West, 30th Floor
Toronto, ON M5K 1N2
Tel: 416.865.0040
Email: srodrigue@torys.com
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: DocuSigned by: 07B936CBE9084D7...

AIRBNB CANADA INC.

Name of Authorized Signatory: David Bernstein
President

Signature of Authorized Signatory: DocuSigned by: 07B936CBE9084D7...

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AIRBNB IRELAND UNLIMITED COMPANY

Name of Authorized Signatory: Killian Pattwell
Director, EMEA Tax

Signature of Authorized Signatory: DocuSigned by: Killian Pattwell A1F8CFB1F4F047C...

AIRBNB PAYMENTS UK LIMITED

Name of Authorized Signatory: David Bernstein
Director

Signature of Authorized Signatory: DocuSigned by: 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:

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Email: simonlin@evolinklaw.com

Jérémie John Martin and Sébastien A. Paquette
Champlain Avocats
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Montreal, Quebec H3G 1R4
Tel: 514.944.7344
Email: jmartin@champlainavocats.com
spaquette@champlainavocats.com

For the Settling Defendants:

Sylvie Rodrigue and James Gotowiec
Torys LLP
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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: _____

ALSL

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: Simon Lin

Name: Simon Lin
I have authority to bind the Corporation

JÉRÉMIE JOHN MARTIN

Per: Jérémie J. Martin

Name: Jérémie John Martin

SÉBASTIEN A. PAQUETTE

Per: _____

Name: Sébastien A. Paquette

ALSL

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:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	NOVEMBER 1, 2021
ORDER AND REASONS:	GASCON J.
DATED:	NOVEMBER 19, 2021

APPEARANCES:

Simon Lin	FOR THE PLAINTIFF
Jérémie John Martin Sébastien A. Paquette	FOR THE PLAINTIFF
Sylvie Rodrigue James Gotowiec Joelle Gott	FOR THE DEFENDANTS

SOLICITORS OF RECORD:

Evolink Law Group Burnaby, British Columbia	FOR THE PLAINTIFF
Champlain Avocats Montréal, Quebec	FOR THE PLAINTIFF
Torys LLP Toronto, Ontario	FOR THE DEFENDANTS