

SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL

No.: 500-06-001153-218

DATE: December 7, 2022

PRESIDING THE HONOURABLE PIERRE NOLLET, J.S.C.

STEVE ABIHSIRA
Plaintiff

v.

**TICKETMASTER CANADA LP
TICKETMASTER CANADA HOLDINGS ULC
ICKETMASTER CANADA ULC
TICKETMASTER LLC**
Defendants

**JUDGMENT ON THE APPROVAL OF A CLASS ACTION SETTLEMENT
AND CLASS COUNSEL FEES**

[1] On January 25, 2022, the Court authorized the bringing of a Class action for the following group:¹

¹ *Abihsira c. Ticketmaster Canada*, 2022 QCCS 164.

<p>Every natural person and every merchant (natural or legal person), present on the territory of Québec at the time of purchasing a resale ticket for an event, on the website or the mobile application of Ticketmaster, at a price higher than the one announced for the ticket on the primary market.</p> <p>The resale ticket must have been sold between June 6, 2018, and May 4, 2022.</p>	<p>Toute personne physique et tout commerçant (personne physique ou personne morale), présent sur le territoire du Québec au moment d’acheter un billet de revente pour un spectacle, sur le site internet ou l’application mobile de Ticketmaster, à un prix supérieur à celui annoncé pour le billet sur le marché primaire.</p> <p>Le billet de revente doit avoir été vendu entre le 6 juin 2018 et le 4 mai 2022.</p>
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[the **Authorized Class**]

[2] The parties reached an agreement to settle the entire Class action [the **Settlement Agreement**].²

[3] With a view to proceed with the approval of the Settlement Agreement, the parties requested the Court to modify the Authorized Class and pre-approve the Settlement Agreement.³

[4] On October 24, 2022, the Court approved the dissemination plan for the notice of authorization and of the Settlement approval hearing (**Settlement Hearing**), including the opt-out and objection deadlines, and scheduled the Settlement Hearing for December 6, 2022 (the “**Pre-Approval Judgment**”). The Court, however, refrained from modifying the Class at that stage as the notice of the authorization to bring a Class action had not been published at the time.

[5] The Court is now seized with the *Application to Approve a Class Action Settlement and for Approval of Class Counsel’s Fees* (the “**Application for Approval**”).

MODIFYING THE CLASS DEFINITION AUTHORIZED BY THE COURT;

[6] The proposed Class would now be defined as follows:

<p>Toute personne physique et tout commerçant (personne physique ou personne morale) qui ont acheté un billet de revente sur le marché secondaire pour un</p>	<p>Every natural person and every merchant (natural or legal person) who purchased a ticket that was posted for resale on the secondary market for an event in the</p>
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² Exhibit T-1.

³ Application for Approval of Notices to Class Members of a Settlement Approval Hearing, to Modify the Class Definition and to Appoint the Settlement Administrator dated August 15, 2022.

<p>événement au Québec sur le site internet ou l'application mobile des Défenderesses entre le 6 juin 2018 et le 4 mai 2022 et qui ont fourni une adresse de facturation au Québec lors de cet achat;</p>	<p>Province of Quebec on the Defendants' websites or mobile apps between June 6, 2018 and May 4, 2022 and who provided a billing address in the Province of Quebec when they made that purchase;</p>
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[7] With a view to assist the members of the Authorized Class to appreciate the changes, a notice was sent to the Authorized Class indicating the changes to the Class as follows:

Every natural person and every merchant (natural or legal person), who purchased a ticket that was posted for resale on the secondary market present on the territory of Québec at the time of purchasing a resale ticket for an event in the Province of Québec, on the Defendant's website or mobile apps ~~the mobile application of Ticketmaster~~, between June 6, 2018 and May 4, 2022 and who provided a billing address in the Province of Quebec when they made the purchase at a price higher than the one announced for the ticket on the primary market.

~~The resale ticket must have been sold between June 6, 2018 and May 4, 2022~~

[**By the Court:** The double underlined portions show the additions while the double struck lines show the deletions from the authorized version]

[The **Settlement Class**]

[8] The proposed Settlement Class is quite different from the Authorized Class approved by Gagnon J..

[9] Amongst the major differences, the Court notes that the Authorized Class (in the notice already approved by Gagnon J.) included members who purchased a ticket for an event in Quebec irrespective of the address of invoicing and members who purchased a ticket, irrespective of where the event was held provided, they had a billing address in Quebec.

[10] The Settlement Class is now limited to those having purchased a ticket for attending a show in the province of Quebec and having provided a billing address in Quebec.

[11] The reference to the "price paid being higher than the price announced" is deleted. Instead, the proposed definition refers to the "resale on the secondary market".

[12] According to Counsels, the Settlement Class is included within the larger definition of the Authorized Class.

[13] Notices of the class action having been authorized were never sent nor published.

[14] Notices of the Settlement Hearing were therefore sent to the Authorized Class members including the Settlement Class members so that Class members be apprised of both the authorization of the Class action as well as the modalities of the Settlement.

[15] Settlement Class members and Authorized Class members had the opportunity to opt out until December 5, 2022. Eleven (11) members opted out⁴. It is, however, unclear as to whether all of them were part of the Settlement Class as the invoicing address was not the sole criteria under the Authorized Class.

[16] More importantly, no objection was presented at the Settlement Hearing.

SUMMARY OF THE LITIGATION

[17] Ticketmaster is active in Quebec on the primary market for show tickets. Thus, the producer of shows delegates to Ticketmaster the sale of seats, at an "advertised price", in the sense used in article 236.1 of the *Consumer Protection Act*.⁵

[18] Ticketmaster is also present on the secondary market for show tickets. Article 236.1 LPC applies to it as well when it acts as an intermediary between the initial purchaser of the ticket and another person agreeing to buy it in turn.

[19] The resale price of a ticket on the secondary market can be equal to the price paid by the initial purchaser, be considerably increased or be significantly reduced.

[20] According to Representative Plaintiff, the initial ticket price on the primary market (or the face value) was not clearly displayed on the electronic sites used in Quebec for the resale of show tickets on the secondary market.

[21] The Representative Plaintiff alleged that Ticketmaster violated consumer protection laws by not displaying the original face value of resale tickets prominently.

[22] Ticketmaster has always denied any wrongdoing or having any liability as such original face value was advertised or communicated prior to the purchase being completed.

EXPLANATION OF THE SETTLEMENT REACHED

[23] The Settlement Agreement was signed respectively by the parties as of September 30, 2022.⁶

⁴ Exhibit T-3.

⁵ RLRQ, c. P-40.1.

⁶ Exhibit T-1.

[24] The final Report of the Settlement Administrator, Velvet Payments Inc., confirms that 86,725 Notices of Authorization of a Class action and of a Settlement Hearing were sent, 85,632 were delivered and 56,008 were opened.⁷

[25] The “Settlement Class” (and “**Settlement Class Members**”) is defined as :

Every natural person and every merchant (natural or legal person) who purchased a Resale Ticket for an event in the Province of Quebec on the Defendants’ websites and mobile apps between June 6, 2018 and May 4, 2022 and who provided a billing address in the Province of Quebec when they made that purchase (section 1c);

[26] The Settlement Agreement provides for the following benefits :

- 26.1. The total value of the Settlement, including Class Counsel Fees and administration costs is approximately \$500,000 (preamble, page 5).
- 26.2. Compensation in the amount of a \$10.00 credit will be issued directly to each Settlement Class Member to the email address they provided when purchasing their ticket on Ticketmaster’s platform (the “**Credit**”) (Sec. 24 and ff.), which is the email address at which they received their tickets.
- 26.3. The aggregate value of the \$10 credits which will be sent to each of the Settlement Class Members is approximately \$378,770.00 based upon Ticketmaster’s estimate that there are about 37,877 members of the “Settlement Class”.
- 26.4. Only the Settlement Class Members will receive a credit, and only the Settlement Class Members are providing a release pursuant to the Settlement Agreement. Other members of the Class will be free to pursue their individual claims if they choose to do so after modification of the definition of the authorized Class pursuant to this judgment.
- 26.5. Ticketmaster will recognize the residence of the Settlement Class Members as it appears from the billing address they entered when they made their purchase(s).
- 26.6. Ticketmaster has agreed to consider (for purposes of settlement) that the Settlement Class Members were physically located in Quebec when their purchases were made. As a result, the parties will avoid a complex debate concerning the application of Quebec law to the Authorized Class Members’ claims, and the Settlement Class Members will not have to provide individual proof of their place of residence and physical location at the time of making their purchase(s) (whether or not this would have been required

⁷ Exhibit T-2.

remains a question that would have been debated at the merits).

- 26.7. The \$10.00 credit will be available for use towards purchase of a future primary-sale ticket to an event in Canada or the United States (other than tickets to Major League Baseball Games), parking, VIP packages and certain merchandise on Ticketmaster's website or mobile application.
- 26.8. The Credit will have no expiration date (section 29 a)).
- 26.9. There is no need for any of the Settlement Class Members to produce invoices or a proof of purchase, or to do anything at all in order to receive the compensation.
- 26.10. The Credit can be transferred or sold, because a Class Member can transfer, gift or sell their Credit to another person if they wish;
- 26.11. Ticketmaster has now implemented a business practice change to its mobile and desktop transaction process, consisting of displaying the original ticket price to users at an earlier stage of the process, all as detailed and described in Schedule C of the Settlement Agreement (section 39);
- 26.12. Ticketmaster will be solely responsible for managing the distribution of the Credits and assuming the costs of the dissemination of notices.

[27] Ian Toye, Head of Finance – Canada, of Ticketmaster, confirmed through a sworn declaration dated December 2, 2022, that 38,952 persons (natural or legal) would be members of the Settlement Class, that billing addresses are generally reliable and are captured for all resale transactions, that the business practices changes described in Schedule C of the Settlement Agreement were implemented starting in August 2022.

ANALYSIS

[28] The Representative Plaintiff now brings before this Court the Application for Approval.

[29] Any litigation involves some level of risk.

[30] One of these serious risks to such litigation was recently confirmed on the merits of a class action in *Union des consommateurs c. Air Canada*⁸, where the Court, after concluding that Air Canada committed a violation of the *Consumer Protection Act*, dismissed the class action because it concluded that consumers would have paid the final price regardless and, as such, did not suffer any prejudice. Even if this judgment is

⁸ 2022 QCCS 4254. paras. 38-45, 140, 154, 156, 158, 160, 186.

eventually under appeal, it illustrates the serious risks faced by the Representative Plaintiff and the Class members.

[31] The risk that the Class action be unsuccessful on the merits, after many years of litigation, is always present.

[32] Accordingly, the parties reached the Settlement Agreement in September 2022.

[33] This risk referred to above is abated through the Settlement Agreement, which guarantees compensation to Settlement Class members, as well as a modification to Ticketmaster's business practices (section 39 and following of the Settlement Agreement under the heading "Practice Changes").

[34] This Court has previously approved credit-based settlements when appropriate⁹;

[35] As stated in *Holcman* by Sheehan J. the guiding principles for determining whether a credit-based transaction should be approved are as follows¹⁰:

1. The individual value of the settlement.
2. The possibility to choose other compensation or to transfer the voucher.
3. The value of the coupon in proportion to the cost of redeeming it.
4. The likelihood that the coupons will be redeemed.
5. Restrictions or conditions that apply.
6. A change of practice.
7. The obligation to provide a report on the implementation of the settlement
8. Financial means of the defendant

[36] The Court considered the following as well:

- 36.1. The legal arguments on whether Ticketmaster committed a fault and the consequences thereof, if any, are uncertain;
- 36.2. The legal arguments on whether Ticketmaster is liable towards any of the Class Members are uncertain;
- 36.3. The legal arguments on whether Class Members have compensable

⁹ *Picard v. Ironman Canada inc.*, 2022 QCCS 2218, at para. 56; *Holcman v. Restaurant Brands International Inc.*, 2022 QCCS 3428; *Abihira v. Stubhub inc.*, 2019 QCCS 5659.

¹⁰ *Halfon v. Moose International Inc.*, 2017 QCCS 4300, at para. 22.

damages are uncertain, even if a fault was committed;

- 36.4. The fact that it is a tripartite relationship between the buyer, the seller and Ticketmaster, as Ticketmaster does not own the resale tickets it advertises on its online platform which, according to Ticketmaster, complexifies the matter;
- 36.5. Ticketmaster denies any liability or wrongdoing. Therefore, the parties would have entered into a contradictory and costly debate which might have involved experts;
- 36.6. The Settlement was reached by experienced fully informed Counsel after arm's length negotiations following the authorization of the Class action;
- 36.7. Following the dissemination and publication of the authorization to bring the Class action and the Settlement Hearing notices, no Class members have registered any objections to the Settlement Agreement, and eleven (11) Authorized Class Members have filed a valid notice to be excluded¹¹ from the Class action;
- 36.8. There is no reason to believe that the parties did not act in good faith or that they colluded;
- 36.9. The compensation to each eligible Settlement Class Member in the amount of a \$10.00 Credit (net) is beneficial and guaranteed;
- 36.10. The Credit will be automatically issued directly to each Settlement Class Member by email to the address they used to purchase the tickets from Ticketmaster, Settlement Class Members having no form or claim to file;
- 36.11. Settlement Class Members can redeem the Credit against a purchase for price as low as \$10.00 or sell such credit to a third party.

[37] The jurisprudence teaches us that in analyzing a transaction, the Court should not demand perfection but decide whether the benefits to the members outweigh the disadvantages, considering that a settlement is the result of compromises on both sides. In accordance with the *Code of Civil Procedure*, the Court should encourage out-of-court settlements that avoid lengthy and costly trials for the parties and the judicial system.¹²

¹¹ Exhibit T-3.

¹² *Holcman c. Restaurant Brands International Inc.*, [2022 QCCS 3428](#), para. 24.

[38] In particular, the Court must examine the transaction from the perspective of the three (3) main objectives of class actions (see *Western Canadian Shopping Centres*¹³), namely judicial economy, access to justice, and deterrence.¹⁴

[39] A fair and reasonable outcome (which in this case includes direct compensation to Settlement Class Members and a practice change) is often better than turning down anything less than perfection.¹⁵

[40] The Court finds that the advantages of the Settlement Agreement outweigh its disadvantages and that the Settlement is in the best interest of the Settlement Class Members and of justice and respects the principle of proportionality.

APPROVAL OF CLASS COUNSEL FEES AND DISBURSEMENTS

[41] Class Counsel is asking the Court to approve the amount of \$106,000 plus taxes in fees (inclusive of extrajudicial fees and disbursements) (**Class Counsel Fees**).

[42] The Class Counsel Fees represent 21.2% of the value of the settlement (\$500 000).

[43] This amount is less than the amount provided for in the Class Counsel mandate agreement which provided for 30% of the value of any settlement.¹⁶

[44] The following criteria have been developed by the jurisprudence in order to determine whether Class Counsel's fees are fair and reasonable:

- Time and effort expended by the attorneys on the litigation;
- The importance of the Class action;
- The degree of difficulty of the Class action;
- Class Counsel's experience and expertise in a specific field;
- The risks and responsibilities assumed by Class Counsel;
- The result obtained;
- Fees are not contested;

[45] There is a stable jurisprudence finding the 21% fee to be fair and reasonable.¹⁷

[46] The case law also uses a multiplier of the value of the time invested in the matter to cross-check the reasonableness of the percentage amount.¹⁸ Here the multiplier

¹³ *Western Canadian Shopping Centres Inc. v. Dutton*, 2001 SCC 46, paras. 27-29.

¹⁴ *Abihsira c. Stubhub inc.*, 2019 QCCS 5659, para. 21.

¹⁵ *M.G. c. Association Selwyn House*, 2009 QCCS 989

¹⁶ Exhibit T-4.

¹⁷ *Abihsira c. Stubhub inc.*, 2019 QCCS 5659

¹⁸ *Option Consommateurs c. Banque Amex du Canada*, 2018 QCCA 305, paras. 36, 66 & 73.

corresponds to 1.0 and it reflects the time invested by Class Counsel at an hourly rate of \$400.

[47] No Class Members have opposed the agreed-upon amount of Class Counsel Fees claimed pursuant to sections 1n and 43 of the Settlement Agreement.¹⁹

[48] Donald Bisson, J., recently emphasized the importance of rewarding the risk taken by Class Counsel in approving the *Herron* settlement.²⁰ To quote Bisson J.:

[57] Les enjeux en matière d'actions collectives sont très importants sur le plan financier et le cabinet qui accepte d'œuvrer en demande accepte d'assumer la totalité des frais du recours et de n'être payé qu'en cas de succès.

[58] Pour assurer la viabilité du véhicule procédural qu'est l'action collective, il est essentiel que des avocats compétents acceptent de prendre de tels risques. Or, sans une compensation en cas de succès qui tient compte du risque assumé, aucun avocat n'aurait d'intérêt à accepter de tels risques.

[59] Lorsque les procureurs du groupe ont accepté d'agir en l'espèce, ils ne se fiaient pas sur la possibilité qu'une entente à l'amiable soit conclue; ils étaient plutôt prêts à aller jusqu'au bout et à investir tout le temps, les efforts et les ressources financières nécessaires pour mener à terme l'action collective, ne sachant pas si le dossier sera gagné ou perdu au mérite.

[49] The Court's role consists of determining the reasonableness of the fees claimed by Class Counsel.²¹

[50] In the present matter, based on the above-mentioned criteria, the fees and disbursements requested by Class Counsel are fair and reasonable.

FOR THESE REASONS, THE COURT:

<p>[51] ACCUEILLE la demande du Représentant en approbation de l'Entente de Règlement et pour l'approbation d'honoraires;</p>	<p>[51] GRANTS the Application to approve a Class Action Settlement and for Approval of Class Counsel Fees;</p>
<p>[52] DÉCLARE que les définitions contenues dans l'Entente de Règlement s'appliquent et sont incorporées au présent jugement, et en conséquence en font partie</p>	<p>[52] DECLARES that the definitions set forth in the Settlement Agreement apply to and are incorporated into this judgment, and as a consequence shall form an integral part thereof, being understood that</p>

¹⁹ *Option Consommateurs c. Banque Royale du Canada*, 2014 QCCS 2540, par. 24, 51 and 55.

²⁰ *Schneider (Succession de Schneider) c. Centre d'hébergement et de soins de longue durée Herron inc.*, 2021 QCCS 1808

²¹ *Pellemans v. Lacroix*, 2011 QCCS 1345, at paras. 50-54.

intégrante, étant entendu que les définitions lient les parties à la transaction;	the definitions are binding on the parties to the Settlement Agreement;
[53] APPROUVE l'Entente de Règlement conformément à l'article 590 du <i>Code de procédure civile du Québec</i> , et ORDONNE aux parties de s'y conformer, une copie de ladite Entente de Règlement demeurant annexée au jugement du 24 octobre 2022;	[53] APPROVES the Settlement Agreement pursuant to article 590 of the <i>Code of Civil Procedure</i> , and ORDERS the parties to abide by it; a copy of such Settlement Agreement having been annexed to the October 24, 2022, judgment;
[54] MODIFIE la définition du groupe autorisé, pour les fins du règlement seulement, au Groupe du Règlement suivant : Toute personne physique et tout commerçant (personne physique ou personne morale) qui ont acheté un billet de revente sur le marché secondaire pour un évènement au Québec sur le site internet ou l'application mobile des Défenderesses entre le 6 juin 2018 et le 4 mai 2022 et qui ont fourni une adresse de facturation au Québec lors de cet achat;	[54] MODIFIES the definition of the authorized class, for settlement purposes only, to the following Settlement Class: Every natural person and every merchant (natural or legal person) who purchased a ticket that was posted for resale on the secondary market for an event in the Province of Quebec on the Defendants' websites or mobile apps between June 6, 2018, and May 4, 2022, and who provided a billing address in the Province of Quebec when they made that purchase;
[55] DÉCLARE que l'Entente de Règlement (incluant son préambule et ses annexes) est juste, raisonnable et qu'elle est dans le meilleur intérêt des Membres du Groupe et qu'elle constitue une transaction en vertu de l'article 2631 du <i>Code civil du Québec</i> , qui lie toutes les parties et tous les Membres du Groupe du Règlement tel qu'énoncé aux présentes;	[55] DECLARES that the Settlement Agreement (including its Preamble and its Schedules) is fair, reasonable and in the best interest of the Class Members and constitutes a transaction pursuant to article 2631 of the <i>Civil Code of Quebec</i> , which is binding upon all parties and all Settlement Class Members as set forth herein;
[56] ORDONNE et DÉCLARE que le présent jugement, incluant l'Entente de Règlement, lie chaque Membre du Groupe du Règlement;	[56] ORDERS and DECLARES that this judgment, including the Settlement Agreement, shall be binding on every Settlement Class Member;
[57] APPROUVE le paiement aux Avocats du Groupe de leurs honoraires extrajudiciaires et débours comme prévu	[57] APPROVES the payment to Class Counsel of its extrajudicial fees and disbursements as provided for at section 43 of the Settlement Agreement;

au paragraphe 43 de l'Entente de Règlement;	
[58] ORDONNE aux parties de faire rapport de l'exécution du jugement dans les 60 jours suivant l'expiration du délai prévu au paragraphe 24 de l'Entente de Règlement;	[58] ORDERS the Parties to render account of the execution of the judgment within 60 days following the expiry of the time specified at section 24 of the Settlement Agreement;
[59] DÉCLARE qu'il n'y a pas de prélèvement à payer au Fonds d'aide aux actions collectives;	[59] DECLARES that there is no levy payable to the Fonds d'aide aux actions collectives;
[60] SANS FRAIS DE JUSTICE.	[60] WITHOUT LEGAL COSTS.

 PIERRE NOLLET, J.S.C.

Me Joey Zukran
LPC AVOCAT INC
Plaintiff's Counsel

Me Christopher Richter
Me Karl Boulanger
TORYS
Defendants' Counsels

Hearing date: December 6, 2022.