

CANADA

PROVINCE OF QUEBEC  
DISTRICT DE MONTRÉAL

**SUPERIOR COURT**  
(CLASS ACTIONS CHAMBER)

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No: 500-06-001041-207

**CHAFIK MIHOUBI**

**Plaintiff**

v.

**BENJAMIN & BROTHERS, L.L.C.**  
**(RESERVATIONS.COM)**

**Defendant**

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**SETTLEMENT AGREEMENT**  
**October 19, 2022**  
**Between the Plaintiff and Benjamin & Brothers**

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**RECITALS**

- A. WHEREAS on January 27, 2020, Chafik Mihoubi (“**Plaintiff**”) filed an *Application for Authorization to Institute a Class Action and to Obtain the Status of Representative* in the Superior Court of Quebec and modified it subsequently on or about July 14, 2021 (“**Class Action Application**”);
- B. WHEREAS on January 11, 2022, the Court authorized the Class Action and appointed Mr. Mihoubi as representative plaintiff for the persons included in three classes defined as follows:

Consumers within the meaning of the *Consumer Protection Act*, residing in the province of Quebec at the time of their reservation, who, between January 27, 2017, and May 13, 2022 (“**Class no. 1 Period**”), booked accommodation on the internet with the Defendants, Priceline.com L.L.C., Hotwire, Inc., KAYAK Software Corporation, Benjamin & Brothers L.L.C., Accor, S.A., Hilton Worldwide Holdings, Inc., Six Continents Hotels, Inc., Hyatt Corporation or Wyndham Hotels Group, L.L.C. and who paid a price higher than the price initially advertised, with the exception

of fees payable under a federal or provincial law when, under this law, these fees must be collected directly from the consumer to be remitted to a public authority (“**Class no. 1**”).

Consumers within the meaning of the *Consumer Protection Act*, residing in the province of Quebec at the time of their reservation, who, between January 27, 2017, and September 28, 2020 (“**Class no. 2 Period**”), booked accommodation on the internet with the Defendants Homeaway.com, Inc., Bedandbreakfast.com, Inc. or Canadastays (1760335 Ontario, Inc.), and who paid a price higher than the price initially advertised, with the exception of fees payable under a federal or provincial law when, under this law, these fees must be collected directly from the consumer to be remitted to a public authority (“**Class no. 2**”).

Consumers within the meaning of the *Consumer Protection Act*, residing in the province of Quebec at the time of their reservation, who, between January 27, 2017, and June 4, 2020 (“**Class no. 3 Period**”), booked accommodation on the internet with the Defendant Orbitz Worldwide, L.L.C., and who paid a price higher than the price initially advertised, with the exception of fees payable under a federal or provincial law when, under this law, these fees must be collected directly from the consumer to be remitted to a public authority (“**Class no. 3**”).

- C. WHEREAS Benjamin & Brothers L.L.C. (“**BB**” or “**Settling Defendant**”) is one of the Defendants identified in the Class Action, and WHEREAS the Plaintiff has alleged that the Settling Defendant charged a higher price than that advertised for accommodations on their website, Reservations.com, in the Province of Quebec during the Class no. 1 Period;
- D. WHEREAS the Settling Defendant changed how it advertises their prices on their website on November 20, 2021, in order to advertise the charged price at the first step of the reservation process, and on September 19, 2022, updated on October 17, 2022, resort fees due at property were included in the advertised price;
- E. WHEREAS, in good faith, the Settling Defendant has provided evidence to Class Counsel, including: information regarding the total number of class members and the total amounts at issue; the amounts collected in the form of “reservation fees”; the amount of taxes and fees it has either retained or passed through to third

- parties; and the fees advertised on its website as “due at property” (this final category in the form of an estimate and to the best of its knowledge), during the Class Period;
- F. WHEREAS the Settling Parties have a list of all Class Members who have booked accommodation on the internet with BB between January 27, 2017, and November 20, 2021 (hereinafter “**BB Class Members**”);
- G. WHEREAS the interests of the parties and the public interest, including the administration of justice, and the economy of judicial resources in relation to the proportion of the disputed amount, favour the settlement agreement;
- H. WHEREAS the parties wish to avoid the costs and mitigate the risks associated with a trial to determine the outcome of the Class Action;
- I. WHEREAS this Agreement is entered into without any admission of fault or liability.
- J. WHEREAS the parties believe that this Settlement Agreement contains mutual concessions and that they wish to resolve the dispute without admission of liability;
- K. WHEREAS the Plaintiff and Class Counsel believe that this Agreement is fair, reasonable and in the best interests of Class Members and, more specifically, BB Class Members;
- L. WHEREAS the Plaintiff and Class Counsel wish to implement a simple and efficient claims process for BB Class Members;
- M. WHEREAS the Parties wish to settle this Class Action and in consequence thereof, wish that a full and final release be granted to the Settling Defendant, without any admission of liability, by way of mutual concessions, pursuant to the terms hereof.

**SUBJECT TO COURT APPROVAL, THE PARTIES AGREE AS FOLLOWS:**

**II. DEFINITIONS**

1. The following terms are defined for the purposes of this Settlement Agreement only, including the Recitals:
  - (a) “**BB Class Period**” refers to the period between January 27, 2017, and November 20, 2021;

- (b) **“BB Class Members”** means all member of the Class Action that have booked accommodation on the internet with BB during the BB Class Period and who have not exercised their right to opt-out of the Class Action in accordance with article 580 of the *Code of Civil Procedure of Quebec* (“**C.C.P.**”);
- (c) **“BB Agreement”** or **“Settlement Agreement”** means this agreement and all of its Schedules;
- (d) **“Class Action”** means all proceedings in file bearing number 500-06-001041-207 of the archives of the Superior Court of Quebec for the judicial district of Montreal, and includes any appeal proceedings relating to same;
- (e) **“Class Counsel”** refers to the law firms Trudel Johnston & Lespérance S.E.N.C. (“**TJL**”), Grenier Verbauwheide Avocats inc. and Hadekel Shams S.E.N.C.R.L;
- (f) **“Class Counsel Fees”** means Class Counsel fees, disbursements, and applicable taxes to be authorized by the Court;
- (g) **“Class Members”** means all members of the Class Action that have not exercised their right to opt-out of the Class Action in accordance with article 580 of the *Code of Civil Procedure of Quebec* (“**C.C.P.**”);
- (h) **“Court”** means the Superior Court of Quebec or, as the case may be, the Court of Appeal of Quebec or the Supreme Court of Canada in case a judgment of the Superior Court of Quebec in this Class Action is brought on appeal;
- (i) **“Distribution Costs”** means the distribution costs incurred by the Administrator or Class Counsel and the costs of notices to Class Members under this Settlement Agreement, including the Pre-Approval Notice;
- (j) **“Non-Settling Defendants”** means all the Defendants named in the Authorized Class Action excluding the Settling Defendant;
- (k) **“Party”** means either the Plaintiff or the Settling Defendant and **“Parties”** or **“Settling Parties”** means, collectively, the Plaintiff, all Class Members, and the Settling Defendant;

- (l) "**Pre-Approval Notice**" means the notice to Class Members informing them that an out-of-court settlement agreement has been reached and of the hearing where it will be submitted for approval to the Court;
- (m) "**Releasing Parties**" means the Plaintiff and any Class Member, and each of those individuals' successors, predecessors, beneficiaries, executors, trustees, administrators, subrogees, agents, representatives, insurers, partners, heirs, and assigns;
- (n) "**Settlement Amount**" means a payment of USD \$ 825,000;
- (o) "**Settling Defendant Counsel**" means the law firm **McMILLAN LLP**;

## **RECITALS AND DEFINITIONS**

- 2. The Recitals and Definitions form an integral part of this Settlement Agreement.

## **NO ADMISSION OF LIABILITY**

- 3. The Settling Defendant denies the factual allegations and legal claims asserted in the Class Action. Neither the Settlement Agreement, nor anything contained herein, shall be interpreted as a concession or admission of any wrongdoing or liability by the Settling Defendant.

## **PAYMENT OF SETTLEMENT AMOUNT**

- 4. The Settling defendant will pay the lump sum of USD \$ 825,000 into the trust account of TJJ as follows:
  - (a) Within 30 days of the Court's approval of this Settlement Agreement, the Settling Defendant shall make an initial payment of USD \$ 275,000 ("**Initial Payment**") of the total Settlement Amount by wire transfer into TJJ's trust account ("**Trust Account**").
  - (b) Payment of the remaining USD \$ 550,000 of the Settlement Amount will be paid over the following 12 months by 12 monthly wire transfers of USD \$ 45,833 ("**Monthly Payments**") into the Trust Account. The exact dates of said Monthly Payments will be agreed between the parties following the Initial Payment.

(collectively the "**Payments**")

5. In addition to the Settlement Amount, the Settling Defendant shall pay the Distribution Costs.
6. The Payments shall be made by wire transfer by the Settling Defendant or its counsel. Class Counsel will provide to Settling Defendant Counsel the information necessary to complete the wire transfers in writing.
7. The Settling Defendant will automatically be considered in default under the present Settlement Agreement should it fail to adhere to the agreed upon payment schedule. Should the Settling Defendant be in default, Plaintiff and the Class members can seek a judgment for the outstanding amount owed under this Settling Agreement after five (5) business days following such a default.
8. The BB Agreement shall be presented to the Court within 30 days of the signature of the Settlement Agreement and shall be scheduled at the earliest convenience of the Court for approval.
9. The full Payments of Settlement Amount shall constitute the full, complete, and final amount payable by the Settling Defendant under this Settlement Agreement, in capital, interest, additional indemnity, attorney fees and costs of all kinds.
10. Class Counsel shall maintain the Trust Account as provided for in this Settlement Agreement and shall not pay out all or any part of the monies in the Trust Account, except in accordance with an order of the Court following the approval of the Settlement Agreement.
11. Class Counsel will submit an application to the Court for approval of the payment of their fees, disbursements, and applicable taxes thereon. For a dispute settled after the authorization but before the trial on the merits, the fee agreement signed by the Plaintiff provides for a payment to counsel representing 25% of the sum recovered for the Class members, in addition to applicable taxes and the reimbursement of disbursements incurred. If this application is approved by the Court, Class Counsel shall deduct the authorized sum of their disbursements and fees, plus taxes ("**Class Counsel Fees**"), from the Settlement Amount.
12. The Settling Defendant will not be liable to pay any costs or fees to the Plaintiff, to the Class Members, or to Class Counsel, other than the Settlement Amount and the Distribution Costs as provided for in this Settlement Agreement.

## COMPENSATION OF CLASS MEMBERS AND DISTRIBUTION

13. The parties have agreed to distribute compensation to BB Class Members as follow and to submit to the Court a more detailed distribution protocol after retaining and consulting the Administrator.
14. The Settling Defendant shall take all reasonable steps to provide information and to help Class Counsel and the Administrator to achieve an efficient and successful compensation to eligible claimants, including the list of all potential BB Class Members.
15. The parties shall solicit submissions from at least two firms that can administer the claims process. The Parties and the Settling Defendant shall present to the Court the administrator they wish to be appointed based on the submissions received ("**Administrator**").
16. The balance of the Settlement Amount, after deduction of Class Counsel Fees ("**Distribution Fund**"), shall be distributed among the eligible BB Class Members.
17. In order to be eligible to a compensation, the BB Class Member must:
  - a) Have made a reservation on the BB website between January 27, 2017, and November 20, 2021;
  - b) Have resided in Quebec at the time of the reservation;
  - c) Be a natural person who did not reserved for the purposes of his business;
  - d) Complete and submit a claim form, provided in annex of the Protocol, online on the administrator's website within two months of the date of the last publication of the notice of judgment ("**Claim Period**");
18. The Distribution Funds shall be distributed as follow:
  - a) If the Distribution Funds are sufficient:
    - i. Each eligible claimant will receive CAD \$20 per reservation;
    - ii. If there is a remaining balance after this distribution, the compensation paid for each reservation shall be increased on a pro rata basis to a total maximum of CAD \$40 per reservation.

- b) If the Distribution Funds are insufficient to pay the compensation set out in the previous paragraph, an equal share of the Distribution Funds will be paid for each reservation.
- 19. If 50% or more of the Distribution Funds remains after a distribution as set out in 18.a) ii., a second claim period of 60 days shall be held. New notices will be issued, in a manner to be determined in consideration of the results of the first distribution. The second distribution will be conducted in accordance with paragraph 18 of this Agreement.
- 20. Any remaining balance of the Distribution Funds following the second claim period will be distributed in accordance with article 596 paragraph 3 of the *Code of Civil Procedure* and article 42 of the *Act respecting the Fonds d'aide aux actions collectives*.

#### **COMPLIANCE WITH THE LAW AND CEASE OF OPERATION IN QUEBEC**

- 21. Within 30 days of the signature of the Agreement, the Settling Defendant shall either include in the first advertised price all fees charged to their Quebec customers, including resort fees due at property, or cease to operate their site in Quebec, prohibit access to their site from Quebec and make no advertisement to Quebec residents.

#### **NULLITY OF SETTLEMENT AGREEMENT**

- 22. This Settlement Agreement is conditional upon the Court approving it in its entirety, failing which it shall be deemed null and void and shall not give rise to any rights or obligations in favour of or against the parties and the Class members.
- 23. This Settlement Approval is in no way conditional upon the approval of any Class Counsel Fees by the Court.

#### **PRE-APPROVAL AND APPROVAL PROCEDURES OF THE AGREEMENT**

- 24. The Settling Parties agree to cooperate and to use their best efforts to give effect to and to implement this Settlement Agreement, and to obtain the settlement approval order and a discontinuance of the Class Action as against the Settling Defendant.
- 25. As soon as is reasonably possible, Class Counsel shall file with the Court an application for the pre-approval:



- (a) approving the form and content of the notice to Class Members informing them that an out-of-court settlement agreement has been reached (“**Pre-Approval Notice**”);
  - (b) authorizing the Plaintiff to notify and publish the Pre-Approval Notice to the Class Members according to the provisions of paragraph 26;
  - (c) scheduling the presentation of an application for the approval of the Agreement at the date, time and place to be determined by the Court (“**Approval Hearing**”); and
  - (d) declaring that the BB Class Members who wish to object to the Court approval of the Settlement Agreement must notify Class Counsel in writing and Class Counsel will then forward a copy of the objection to the Settling Defendant Counsel and the Court within five (5) days of receiving it.
26. The Pre-Approval Notices will be disseminated in the following manner:
- (a) The Settling Defendant will send an email to the last available contact information of all BB Class Members;
  - (b) Class Counsel will post the Pre-Approval Notice on the Class Action Registry and on TJL’s website, and
  - (c) Class Counsel will disseminate the Notice to Members through a Facebook ad campaign.
27. The Parties acknowledge that the Court may modify the text of the Pre-Approval Notices and the manner in which it will be disseminated, which shall not constitute grounds for invalidity or termination of the Agreement.
28. At the Approval Hearing, the Class Counsel will present an application for approval of the Agreement including the following:
- (a) Approving the Agreement and the Protocol;
  - (b) Approving the form and content of notice for approval of the Agreement and the dissemination of it as for the Pre-Approval Notices; and
  - (c) Approving Class Counsel Fees.

## **RELEASES**

29. Once the judgment approving this Agreement becomes final, the Plaintiff on behalf of the Class members and on behalf of their mandataries, representatives and successors, if any, gives a full, general and final release in favour of the Settling Defendant, their respective past and present companies, affiliates, subsidiaries and predecessors, successors, assigns, mandataries, representatives, insurers, affiliated companies, employees, officers, directors, owns and shareholders for any claims, obligations, actions or causes of action of any kind whatsoever, including expert fees and Class Counsel Fees, whether known or unknown, present or contingent, suspected or unsuspected, or asserted or unasserted, that the Plaintiff and Class members may have, directly or indirectly, in connection with the alleged facts of the proceedings in the Class Action, and the exhibits in support thereof, for the BB Class Period.

## **FURTHER LAWSUITS AND NON-DISPARAGEMENT**

30. The Plaintiff and Class Counsel agree that they will not institute any further lawsuits against the Settling Defendant relating to the Class Action.
31. The Parties agree that no Party shall, directly or indirectly, disparage or make any statements, whether written or oral, or commit any acts that are critical of, derogatory to, or otherwise present in a negative light, the other Party (or its products) including that Party's parent, subsidiary, affiliate, employees, directors, officers, principals, or owners.

## **NEGOTIATED AGREEMENT**

32. The Parties intend the Agreement to be a final and complete resolution of all disputes between them with respect to the Class Action. The Parties agree that the consideration provided to the BB Class Members and the other terms of the Settlement Agreement were negotiated at arm's length and in good faith by the Parties and reflect a settlement that was reached voluntarily after consultation with competent legal counsel.

## **NOT ADMISSIBLE AS EVIDENCE**

33. Neither the Settlement Agreement, nor anything contained herein or attached hereto, nor any of the negotiations or proceedings connected with it, nor any related document, nor any other action taken to carry out the Settlement Agreement shall be referred to, offered as evidence or received in evidence in the Class Action or

any other pending or future civil, criminal, regulatory or administrative action or proceeding against the Settling Defendant in any jurisdiction.

34. Notwithstanding the above, the Settlement Agreement may be referred to or offered as evidence in a proceeding to approve or enforce the Settlement Agreement, to defend against the assertion of released claims, and as otherwise required by law

## NOTIFICATIONS

35. Any notification, request, instruction or other document to be given by one Party to the other (other than class-wide notification) shall be in writing (including email) and transmitted to:

- (a) If to the Plaintiff:

c/o Mtres Lex Gill and Mathieu Charest-Beaudry

**Trudel Johnston & Lespérance**

750 Côte de la Place d'Armes, Suite 90

Montréal, Quebec H2Y 2X8

Email: [lex@tjl.quebec](mailto:lex@tjl.quebec) and [mathieu@tjl.quebec](mailto:mathieu@tjl.quebec)

c/o Mtres Cory Verbauwhede and Bruno Grenier

**Grenier Verbauwhede Avocats inc.**

5215, rue Berri, bureau 102

Montréal, Quebec H2J 2S4

Email: [cverbauwhede@grenierverbauwhede.ca](mailto:cverbauwhede@grenierverbauwhede.ca) and  
[bgrenier@grenierverbauwhede.ca](mailto:bgrenier@grenierverbauwhede.ca)

c/o Mtre Peter Shams

**Hadkel Shams S.E.N.C.R.L**

305–6560 Av. De L'Esplanade

Montréal, Quebec H2V 4L5

Email : [peter@hadkelshams.ca](mailto:peter@hadkelshams.ca)

- (b) If to the Settling Defendant:

c/o David S. Oliver

**Gray Robinson**

301, East Pine Street, Suite 1400

Orlando, Florida 32801

Email: [david.oliver@gray-robinson.com](mailto:david.oliver@gray-robinson.com)

c/o Mtre Jos ane Chr tien  
**McMillan LLP**  
1000 Rue Sherbrooke O, Suite 2700  
Montr al, Quebec H3A 3G4  
Email: joseane.chretien@mcmillan.ca

## **JURISDICTION AND GOVERNING LAW**

36. The Superior Court of Quebec will retain jurisdiction with respect to the implementation and enforcement of the terms of this Settlement Agreement and all Parties hereto submit to the jurisdiction of the Court for such purposes.
37. This Agreement is a transaction pursuant to articles 2631 and following of the *Civil Code of Quebec* and will be construed and enforced in accordance with and governed by the laws applicable in the Province of Quebec.

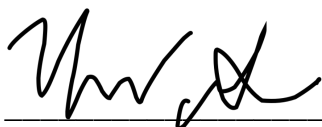
## **MISCELLANEOUS**

38. The Agreement constitute the complete and entire Agreement between the parties.
39. The plural of any defined term in this Settlement Agreement includes the singular and the singular includes the plural, as the case may be.
40. Upon the final judgment approving this Agreement, this Agreement shall be binding on all Class members.
41. The Parties shall continue to collaborate for the implementation of this Agreement.
42. All the Schedules to this Agreement are material and integral parts hereof and are fully incorporated by this reference.
43. This Settlement Agreement may be modified only by a written instrument signed by or on behalf of all Parties.
44. The Parties agree that this document may be signed electronically and that each signed page may be added to the document, forming a whole, which shall then be deemed the original;

45. The Parties agree and acknowledge that the Agreement is signed in English and French. Both versions have equal legal weight, but in case of inconsistency or ambiguity, the English text shall prevail/*Les parties conviennent et reconnaissent que l'Entente est signée en anglais et en français. Les deux versions ont une valeur juridique équivalente, mais en cas d'incohérence ou d'ambiguïté, le texte anglais aura préséance.*

**EXECUTED IN COUNTERPARTS AS OF THE DATE OF EXECUTION:**

SIGNED on October 20th 2022




**BENJAMIN AND BROTHERS, L.L.C**  
(Reservations.com)

SIGNED on October 25 2022




**CHAFIK MIHOUBI**  
(Personally and on behalf of the class members)

SIGNED on October 24 2022



**McMILLAN LLP, COUNSEL FOR THE DEFENDANT**

SIGNED on October 25 2022



**Trudel Johnston & Lespérance, COUNSEL FOR THE PLAINTIFF**

SIGNED on October 25 2022



**Grenier Verbauwhe Avocats inc., COUNSEL FOR THE PLAINTIFF**

SIGNED on October 25 2022



**Hadekel Shams S.E.N.C.R.L., COUNSEL FOR THE PLAINTIFF**