

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTREAL

CLASS ACTIONS DIVISION  
SUPERIOR COURT

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NO : 500-06-001041-207

**CHAFIK MIHOUBI**

Plaintiff

v.

**KAYAK SOFTWARE CORPORATION**

Defendant

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### SETTLEMENT AND TRANSACTION AGREEMENT

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- A. **WHEREAS** on January 11, 2022, the Superior Court of Québec (the Honourable Martin F. Sheehan, J.S.C.) authorized Mr. Chafik Mihoubi (“**Plaintiff**”) to institute a class action against KAYAK Software Corporation (“**KAYAK**”) and other defendants and appointed Plaintiff as representative plaintiff on behalf of the members of the following class, among others (the “**Original KAYAK Class**”):
- 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 [the date which will be retained for the publication of notices], 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.
- B. **WHEREAS** on April 11, 2022, Plaintiff filed an originating application against KAYAK and other defendants;
- C. **WHEREAS** notices regarding the authorization of the Class Action were published on May 13, 2022;
- D. **WHEREAS**, as a result, the authorized class period for purposes of the Original KAYAK Class is therefore January 27, 2017 through May 13, 2022;

- E. **WHEREAS** Plaintiff alleges that KAYAK charged higher prices for accommodations than those it advertised on the Website during the class period, and maintains that his claims and the Class Action are well-founded in fact and law;
- F. **WHEREAS** KAYAK denies any fault, wrongdoing or liability to members of the Original KAYAK Class;
- G. **WHEREAS** on December 16, 2020, without any admission of fault, wrongdoing or liability, KAYAK modified its advertising practices on the Website and on the Mobile Applications such that the total price of a reservation, including all mandatory taxes and fees, appears on the first screen displaying search results for users who are geo-located by KAYAK as accessing the Website or Mobile Applications from Canada;
- H. **WHEREAS** the Parties enter into this Agreement to achieve a full and final resolution of the Class Action as regards KAYAK, taking into account the uncertainty, risk, delay and costs inherent to litigation;
- I. **WHEREAS** this Agreement remains subject to the approval of the Court;
- J. **WHEREAS**, for settlement purposes, the Parties agree to amend the Original KAYAK Class in order to reduce the class period and add certain criteria to the class definition;
- K. **WHEREAS** Plaintiff and Class Counsel believe that this transaction is fair, reasonable, adequate, and in the best interests of the Eligible Members (as defined hereinafter).

**IN CONSIDERATION OF THE FOREGOING, THE PARTIES AGREE AS FOLLOWS:**

**I. PREAMBLE, DEFINITIONS AND SCHEDULE**

- 1. The preamble and the schedule form an integral part of this Agreement, as though recited at length herein.
- 2. The following definitions and those contained elsewhere in this Agreement shall apply to this Agreement. The plural of any defined term shall include the singular, and the singular of any defined term shall include the plural, as the case may be:
  - (a) **“Administrator”** means Concilia Services Inc., an entity chosen by KAYAK, approved by Plaintiff and Class Counsel, and appointed by the Court for purposes of this Agreement;
  - (b) **“Agreement”** means this Settlement and Transaction Agreement, and any written amendments thereto;
  - (c) **“Approval Hearing”** means the court hearing held for the purpose of determining whether the Approval Application is to be granted;
  - (d) **“Approval Order”** means, collectively, one or more orders of the Court approving this Agreement; approving (or otherwise determining) the amount of Class Counsel Fees;

- approving the form, content, and mode of publication of the Notice of Approval; and appointing the Administrator;
- (e) "**Class Action**" means all proceedings filed with the Superior Court of Québec, Judicial District of Montreal, in the court file bearing docket number 500-06-001041-207, and all proceedings in appeal in relation thereto;
  - (f) "**Class Counsel**" means the law firms Trudel Johnston & Lespérance S.E.N.C., Grenier Verbauwheide Avocats inc., and Hadekel Shams S.E.N.C.R.L.;
  - (g) "**Class Counsel Fees**" means the legal fees and disbursements of Class Counsel and applicable taxes thereon, to be approved (or otherwise determined) by the Court;
  - (h) "**Counsel for KAYAK**" means Davies Ward Phillips & Vineberg LLP;
  - (i) "**Court**" means the Superior Court of Québec or, if applicable, the Court of Appeal of Québec or the Supreme Court of Canada, sitting on appeal;
  - (j) "**Day**" means a calendar day;
  - (k) "**Effective Date**" means the date on which the Approval Order becomes final and non-appealable;
  - (l) "**Eligible Member**" means an individual who has made one or more Eligible Reservation(s). Each email address used to make one or more Eligible Reservation(s) shall be deemed to correspond to one (1) unique Eligible Member for purposes of this Agreement, and such Eligible Member's name shall be deemed to be the name provided to KAYAK in relation to the most recent Eligible Reservation;
  - (m) "**Eligible Reservation**" means a reservation that satisfies all of the following criteria:
    - i) The reservation is a booking for accommodation facilitated by KAYAK, made on the Website or Mobile Applications by a consumer within the meaning of the *Consumer Protection Act*, CQLR c. P-40.1 between January 27, 2017 and December 16, 2020, and powered by a third party;
    - ii) The consumer has not exercised his or her right to opt out of the Class Action in accordance with Article 580 of the *Code of Civil Procedure*, CQLR c. C-25.01;
    - iii) On the basis of the billing address collected by KAYAK at the time of booking, the consumer resided in Québec when the reservation was made;
    - iv) On the basis of the IP address used by the consumer and collected by KAYAK at the time of booking, the consumer was physically located in Québec when the reservation was made; and
    - v) The reservation was not cancelled.

- (n) “**Mobile Applications**” means the applications made available by KAYAK via the Canadian Apple App Store or Google Play store, through which KAYAK allows users to make reservations for accommodations, as accessible by users located within Canada who choose to share their location with KAYAK and are geo-located by KAYAK as accessing the Mobile Applications from Canada;
- (o) “**Notice and Distribution Costs**” means the costs of the Notice of Approval Hearing, the costs of the Notice of Approval, the costs of the Administrator’s services under this Agreement, and any costs internal to KAYAK with respect to the implementation of this Agreement;
- (p) “**Notice of Approval**” means a notice to the Eligible Members that this Agreement has been approved by the Court;
- (q) “**Notice of Approval Hearing**” means a notice notifying Eligible Members of the Approval Hearing, substantially in the form of schedule “A” hereto (in English and French), except as and to the extent amended by the Court;
- (r) “**Parties**” means, collectively, Plaintiff, all Eligible Members, and KAYAK;
- (s) “**Website**” means kayak.com, including any subdomains thereof, as accessible by users located within Québec who are geo-located by KAYAK as accessing the Website from Québec.

## **II. COMPENSATION OF ELIGIBLE MEMBERS**

- 3. This Agreement establishes a collective recovery process pursuant to which a distribution of compensation shall be made to each Eligible Member, in cash, in the aggregate amount owed to such Eligible Member for all such Eligible Member’s Eligible Reservations.
- 4. Each Eligible Member shall be entitled to be compensated a net amount for each Eligible Reservation (each, a “**Net Amount**”), in accordance with the terms of this Agreement.
- 5. The gross settlement amount payable by KAYAK (the “**Gross Settlement Amount**”) shall be \$40,527 CAD, and shall include both the sum total of all Net Amounts for all Eligible Reservations and the Class Counsel Fees approved by the Court.
- 6. The Class Counsel Fees approved by the Court shall be deducted from the Gross Settlement Amount.
- 7. The balance of the Gross Settlement Amount after deduction of the Class Counsel Fees approved by the Court shall be divided equally among all Eligible Reservations. The value of each Net Amount shall consequently correspond to the result of the division of the balance of the Gross Settlement Amount by the number of Eligible Reservations. Given that the Eligible Members completed 2,404 Eligible Reservations, the Parties’ best approximation of the value of each Net Amount is \$ 10,28 CAD, subject to the Court’s approval of the Class Counsel Fees sought by Class Counsel.

8. The Net Amounts distributed to Eligible Members under this Agreement are inclusive of all taxes and no interest shall accrue on such Net Amounts.

### **III. IMPLEMENTATION AND ADMINISTRATION**

9. Within 30 Days after the Effective Date, KAYAK shall pay to Class Counsel the Class Counsel Fees approved by the Court by wire transfer, and pay to the Administrator the balance of the Gross Settlement Amount by wire transfer. Subject to the Court's approval, the Class Counsel Fees shall equal 25% of the Gross Settlement Amount plus tax, in addition to disbursements incurred and applicable taxes. Class Counsel shall provide all necessary banking information to complete said wire transfer.
10. Within 30 Days after the Effective Date, the Parties shall agree on the final value of the Net Amount for each Eligible Reservation.
11. Within 90 Days after the Effective Date, the Notice of Approval shall be published in accordance with the terms of Section 24 of this Agreement (the "**Notice of Approval Publication Date**").
12. Within 15 Days after the Notice of Approval Publication Date, the Administrator shall pay to each Eligible Member the sum of the Net Amounts due for all such Eligible Member's Eligible Reservations. The payments shall be made by Interac e-transfer to the Eligible Member's email address, and the Eligible Member shall have 30 Days to accept the transfer (the "**Compensation Period**"). The uncashed Net Amounts shall thereafter constitute the remaining balance (*reliquat*).
13. Within 30 Days after the end of the Compensation Period, the Administrator and KAYAK shall provide Class Counsel with a report consisting of affidavits of one or more representatives of the Administrator and of KAYAK confirming (a) the date of payment of the Class Counsel Fees approved by the Court; (b) the Notice of Approval Publication Date; (c) the date of payment of the Net Amounts to the Eligible Members (whether subsequently cashed or not); and (d) the total amount of the remaining balance (*reliquat*) (the "**Administration Report**").
14. Within 30 Days after receipt of the Administration Report, Class Counsel shall file same with the Court as well as an application for the distribution of the remaining balance (*reliquat*) and for the closing of the Class Action as regards KAYAK (the "**Closing Application**"). The Closing Application and the Administration Report shall be notified to KAYAK and to the Fonds d'aide aux actions collectives (the "**Fund**").
15. Within 30 Days after the judgment of the Court on the Closing Application becomes final, the Administrator shall pay the remaining balance (*reliquat*) in accordance with the conclusions of the Court, notably in respect of the percentage owed to the Fund under Section 42 of the *Act respecting the Fonds d'aide aux actions collectives*, CQLR c. F-3.2.0.1.1 and Paragraph 1(1°) of the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives*, CQLR c. F-3.2.0.1.1, r. 2 (or any other provision then applicable, as the case may be).
16. KAYAK shall pay for the Notice and Distribution Costs.

17. The Gross Settlement Amount and the Notice and Distribution Costs shall constitute the total, full, complete and final amount payable by KAYAK in capital, interest, additional indemnity, fees, disbursements, taxes and costs of any kind. KAYAK shall not be required to pay any amount other than the Gross Settlement Amount and the Notice and Distribution Costs under this Agreement.

#### **IV. CLASS COUNSEL FEES**

18. For a dispute settled after the authorization of the Class Action but before the trial on the merits, the fee agreement entered into by Plaintiff and Class Counsel provides for a payment to Class Counsel representing 25% of the sum recovered for the class members plus tax, in addition to the reimbursement of disbursements incurred and applicable taxes. On the basis of this fee agreement, Class Counsel intends to seek Court approval of Class Counsel Fees representing 25% of the Gross Settlement Amount plus tax, in addition to disbursements incurred and applicable taxes.
19. This Agreement is in no way conditional on Court approval of the Class Counsel Fees sought by Class Counsel, and no modification made by the Court to such Class Counsel Fees shall cause the termination or nullity of this Agreement.

#### **V. PRE-APPROVAL AND APPROVAL PROCEDURES**

20. Promptly following the execution of this Agreement, Class Counsel shall file with the Court an application for:
- (a) the amendment of the Original KAYAK Class as underlined below, solely as regards KAYAK, to create a class constituted of Eligible Members only (the “**Settlement Class**”):

[...] Consumers within the meaning of the *Consumer Protection Act* [...] who (1) made a reservation for accommodation (facilitated by the Defendant KAYAK Software Corporation (“KAYAK”) and powered by a third party) on the website kayak.com or on KAYAK’s mobile applications available on the Google Play store or Apple App Store, between January 17, 2017 and December 16, 2020; (2) at the time of such reservation, resided in Québec and were located in Québec; (3) did not cancel their reservation; and (4) 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. [...]
  - (b) the approval of the form, content and mode of publication (as set out in Section 21 of this Agreement) of the Notice of Approval Hearing;
  - (c) the scheduling of the Approval Hearing; and
  - (d) an order that Eligible Members who wish to comment on this Agreement or intend to object to its approval comply with the Procedure for Comments and Objections.

21. Subject to the Court's approval, the Notice of Approval Hearing shall be published as follows:
  - (a) Within 30 Days after the judgment of the Court approving the form, content and mode of publication of the Notice of Approval Hearing, KAYAK shall provide the Administrator with a list setting out the name and email address of each Eligible Member and each Eligible Member's number of Eligible Reservations (the "**Detailed List**");
  - (b) The Administrator shall send the Notice of Approval Hearing by email to all Eligible Members, using the Detailed List; and
  - (c) Class Counsel shall post the Notice of Approval Hearing on the Class Action Registry and on the website of Trudel Johnston & Lespérance S.E.N.C.
22. Eligible Members can comment on this Agreement or object to its approval. Any objections or comments, including all briefs or other papers or evidence in support thereof, and including the notice of an Eligible Member's intention to be heard at the Approval Hearing, shall be sent to Class Counsel within 30 Days after the date of transmission of the Notice of Approval Hearing to the Eligible Members (the "**Procedure for Comments and Objections**"). Class Counsel shall transfer any written objection or comment to Counsel for KAYAK and to the Court within 5 Days following receipt.
23. In anticipation of the Approval Hearing, Class Counsel and Counsel for KAYAK shall agree on the form and content of the Notice of Approval and Class Counsel shall file with the Court an application for:
  - (a) the approval of this Agreement;
  - (b) the appointment of the Administrator;
  - (c) the approval of Class Counsel Fees; and
  - (d) the approval of the form, content and mode of publication (as set out in Section 24 of this Agreement) of the Notice of Approval;(the "**Approval Application**").
24. Subject to the Court's approval, the Notice of Approval shall be published as follows:
  - (a) Using the Detailed List, the Administrator shall send the Notice of Approval by email to all Eligible Members; and
  - (b) Class Counsel shall post the Notice of Approval on the Class Action Registry and on the website of Trudel Johnston & Lespérance S.E.N.C.
25. The Parties undertake to cooperate to justify this Agreement and to support and demonstrate its fairness and reasonableness, with a view to obtaining Court approval thereof.

26. The Parties acknowledge that the Court may amend the form, content or mode of publication of the Notice of Approval Hearing or of the Notice of Approval, or the Procedure for Comments and Objections, which shall in no case cause the termination or nullity of this Agreement, unless such amendment entails a substantive change to the terms of this Agreement or a substantial increase to the Notice and Distribution Costs.
27. On the Effective Date, this Agreement shall be binding on all Eligible Members.

**VI. RELEASE, DISCHARGE AND FURTHER LAWSUITS**

28. On the Effective Date, Plaintiff, in his own name and on behalf of all Eligible Members, and on behalf of their agents, mandataries, representatives, heirs, successors and assigns, hereby gives a full, general and final release and discharge to KAYAK, including its affiliates, related entities, subsidiaries, and their respective past or present directors, officers, shareholders, partners, employees, professionals, staff, agents, mandataries, representatives, insurers, heirs, successors and assigns (collectively, the “**KAYAK Parties**”), for any past, current or future claim or cause of action of any kind whatsoever, whether known or unknown, that Plaintiff or any of the Eligible Members had, have or may have, relating directly or indirectly to the facts alleged in the Class Action or the exhibits in support thereof, for the period defined in the Settlement Class.
29. Plaintiff, in his own name and on behalf of all Eligible Members, and Class Counsel agree not to institute any further lawsuits against the KAYAK Parties relating to the Class Action.
30. Plaintiff and Class Counsel agree not to disparage the KAYAK Parties or to 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 KAYAK Parties or their products and services in relation to the facts alleged in the Class Action and the class period as reduced.

**VII. TERMINATION AND NULLITY**

31. Except as set out in Sections 19 and 26, this Agreement is conditional upon the Court approving it in its entirety, failing which it shall terminate and be deemed null and void and shall not give rise to any right or obligation in favour of or against the Parties (except this Section and Sections 37, 41, 44, 45 and 46 of this Agreement, which shall survive). The Parties shall be restored to their respective positions in the Class Action prior to the execution of this Agreement.
32. This Agreement is in no way conditional upon Court approval of any transaction between Plaintiff and Priceline.com, L.L.C.

**VIII. MISCELLANEOUS PROVISIONS**

33. Plaintiff and KAYAK agree to cooperate in the implementation of this Agreement.
34. Plaintiff and KAYAK may jointly agree to reasonable extensions of time to carry out any of the provisions of this Agreement, unless ordered otherwise by the Court.



35. The Court has exclusive jurisdiction regarding the implementation, execution, interpretation, management and application of this Agreement, and any litigation that may arise therefrom. This Agreement shall be governed by and construed in accordance with the laws in force in the Province of Québec and the Parties submit to the exclusive jurisdiction of the Superior Court of Québec, Judicial District of Montreal in this regard.
36. Class Counsel, on behalf of all Eligible Members, are expressly authorized by Plaintiff to take all appropriate actions required or permitted to be taken pursuant to this Agreement, and are expressly authorized on Plaintiff and the Eligible Members' behalves to enter into any modifications to this Agreement which Class Counsel deem appropriate.
37. Regardless of whether this Agreement is approved, terminated or deemed null and void, this Agreement and anything it contains, and any and all negotiations, documents, discussions and proceedings associated with this Agreement, and any action taken to carry out this Agreement:
- (a) shall not constitute an admission by KAYAK of any fault, wrongdoing or liability, of any violation of any statute or law, or of the truth or validity of any of the claims or causes of action arising out of the facts alleged in the Class Action;
  - (b) shall not constitute a waiver by KAYAK of any right or defence in relation to any claim or cause of action of a member of the Original KAYAK Class who is not a member of the Settlement Class or of a member of the Settlement Class who has opted out of the Class Action;
  - (c) shall not constitute a waiver by KAYAK of any right or defence in relation to any claim or cause of action of a member of the Settlement Class or a waiver by KAYAK of any right or defence in contesting the Class Action should this Agreement not be approved or otherwise be terminated and deemed null and void;
  - (d) shall not constitute a waiver by Plaintiff and the Eligible Members of any claim or cause of action against KAYAK should this Agreement not be approved or otherwise be terminated and deemed null and void; and
  - (e) shall not be referred to, offered as evidence or received in evidence in any pending or future action or proceeding, except in a proceeding referred to herein or to enforce this Agreement, to defend against the reassertion of discharged claims or causes of action, or as otherwise required by law.
38. This Agreement constitutes the full and entire agreement between the Parties. It supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements and agreements in principle in connection herewith. None of the Parties shall be bound by any prior obligations, conditions or representations with respect to the subject matter of this Agreement, unless expressly incorporated herein.
39. This Agreement may only be modified by a written instrument signed by or on behalf of all Parties.

40. This Agreement constitutes a transaction within the meaning of Articles 2631 and following of the *Civil Code of Québec*, CQLR c. CCQ-1991.
41. Plaintiff and KAYAK agree that the terms of this Agreement were negotiated in good faith and reflect an agreement that was reached voluntarily after consultation with competent legal counsel. Neither Plaintiff or KAYAK, nor their counsel, shall be deemed the drafter of this Agreement for the purposes of construing the provisions thereof. This Agreement shall be interpreted according to its fair meaning and shall not be interpreted for or against any of the Parties as the drafter thereof.
42. In the event of a discrepancy between the wording of the notices to Eligible Members and this Agreement, the wording of this Agreement shall take precedence.
43. Any notification, request, instruction or other document to be given under this Agreement shall be in writing (including email) and shall be addressed as follows:

(a) If to the attention of Plaintiff or Class Counsel:

M<sup>tres</sup> Lex Gill and Mathieu Charest-Beaudry  
**Trudel Johnston & Lespérance S.E.N.C.**  
750 Côte de la Place d'Armes, Suite 90  
Montreal, Québec H2Y 2X8  
Email : [lex@tjl.quebec](mailto:lex@tjl.quebec) and [mathieu@tjl.quebec](mailto:mathieu@tjl.quebec)

-and-

M<sup>tres</sup> Cory Verbauwhede and Bruno Grenier  
**Grenier Verbauwhede Avocats inc.**  
5215, Berri Street, Suite 102  
Montreal, Québec H2J 2S4  
Email : [cverbauwhede@grenierverbauwhede.ca](mailto:cverbauwhede@grenierverbauwhede.ca) and  
[bgrenier@grenierverbauwhede.ca](mailto:bgrenier@grenierverbauwhede.ca)

-and-

M<sup>re</sup> Peter Shams  
**Hadkel Shams S.E.N.C.R.L.**  
6560 De L'Esplanade Avenue, Suite 305  
Montreal, Québec H2V 4L5  
Email : [peter@hadkelshams.ca](mailto:peter@hadkelshams.ca)

(b) If to the attention of KAYAK or Counsel for KAYAK:

**KAYAK Software Corporation**  
7 Market Street  
Stamford, CT 06902  
U.S.A.

Email: [legal@kayak.com](mailto:legal@kayak.com)

M<sup>tres</sup> Corey Omer and Guillaume Charlebois

**Davies Ward Phillips & Vineberg LLP**

1501 McGill College Avenue, Suite 2600

Montreal, Québec H3A 3N9

Email : [comer@dwpv.com](mailto:comer@dwpv.com) and [gcharlebois@dwpv.com](mailto:gcharlebois@dwpv.com)

44. Each counsel or other person executing this Agreement in his or her name or on behalf of any of the Parties hereby warrants that he or she has the full authority to do so.
45. The Parties have expressly agreed that this Agreement be drafted in the English language. *Les Parties ont expressément convenu que cette Entente soit rédigée en langue anglaise.*
46. This Agreement may be signed in one or more counterparts, including via electronic signature, each of which shall be deemed to be valid and binding, and that such separate counterparts shall constitute together one and the same instrument, and such counterparts may be transmitted in pdf format by electronic mail.

*(The remainder of this page is intentionally left blank; signature page follows.)*

**IN WITNESS WHEREOF, PLAINTIFF AND KAYAK AND THEIR RESPECTIVE COUNSEL HAVE SIGNED:**

Signed on 31/05/2024



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**CHAFIK MIHOUBI** (in his own name and on behalf of all Eligible Members)

Signed on 03/06/2024



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**TRUDEL JOHNSTON & LESPERANCE S.E.N.C.**  
Class Counsel and Counsel for Plaintiff

Signed on 03/06/2024



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**GRENIER VERBAUWHEDE AVOCATS INC.**  
Class Counsel and Counsel for Plaintiff

Signed on 03/06/2024



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**HADEKEL SHAMS S.E.N.C.R.L.**  
Class Counsel and Counsel for Plaintiff

Signed on May <sup>30.00</sup>\_\_, 2024

DocuSigned by:



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**KAYAK SOFTWARE CORPORATION**

Name: Andra Mazur

Title: General Counsel

Signed on May <sup>31</sup>\_\_, 2024

DocuSigned by:



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**DAVIES WARD PHILLIPS & VINEBERG LLP**  
Counsel for KAYAK

# Schedule

**NOTICE OF HEARING FOR THE APPROVAL OF A SETTLEMENT AGREEMENT WITH  
KAYAK SOFTWARE CORPORATION**

**Chafik Mihoubi v. KAYAK Software Corporation et al.  
N° 500-06-001041-207**

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**PLEASE READ THIS NOTICE CAREFULLY, AS IT MAY AFFECT YOUR RIGHTS.**

***Settlement Agreement***

Plaintiff entered into a Settlement and Transaction Agreement (the "**Agreement**") with Defendant KAYAK Software Corporation ("**KAYAK**").

The Agreement applies to the members of the class defined as follows (the "**Class**"):

Consumers within the meaning of the *Consumer Protection Act* who:

- (1) made a reservation for accommodation (facilitated by the Defendant KAYAK Software Corporation ("**KAYAK**") and powered by a third party) on the website kayak.com or on KAYAK's mobile applications available on the Google Play store or Apple App Store, between January 17, 2017 and December 16, 2020;
- (2) at the time of such reservation, resided in Québec and were located in Québec;
- (3) did not cancel their reservation; and
- (4) 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.

The Agreement provides for an indemnity to be distributed to each member of the Class. This indemnity will be distributed in cash (by Interac e-transfer).

The Agreement provides that the total amount payable by KAYAK will be CA\$ 40,527. This amount includes Class counsel's fees and disbursements and applicable taxes. Class counsel will ask the Court to approve fees of 25% of the total amount payable by KAYAK, plus applicable taxes.

After deduction of Class counsel fees of 25% (if approved by the Court), disbursements of Class counsel, and applicable taxes, the indemnities per member should be of approximately CA\$ 10,28 per reservation.

The above is a summary of the highlights of the Agreement. The full text of the Agreement is available on the website of Class counsel Trudel Johnston & Lespérance ("**TJL**"): <https://tjl.quebec/recours-collectifs/reservation-dhebergement-en-ligne/>.

***Court approval of the Agreement***

For the Agreement to be valid, it must be approved by the Court. An application for approval of the Agreement will be presented before the Honourable Mr. Justice Martin F. Sheehan of the Superior Court on [insert date] in room \_\_\_\_ of the Montréal Courthouse. It will be possible to attend

the hearing virtually at the following link: [\[insert link\]](#). The date and time of the hearing may be modified by the Court. In this case, an update will be posted on the TJL website: <https://tjl.quebec/recours-collectifs/reservation-dhebergement-en-ligne/>.

### ***Objection to the Agreement and comments***

Group members have the right to object to and comment on the Agreement. Subject to the above-mentioned right of exclusion, a Class member will remain a Class member whether or not he or she objects to the Agreement. If the Agreement is approved by the Court, all Class members who receive compensation under the Agreement will lose any right to sue KAYAK regarding the advertisement of the price for reservations for accommodation on its website or mobile application between the dates indicated above in the description of the Class.

If you wish to object to or comment on the Agreement, you must send your objection or comment in writing no later than [\[insert date\]](#) by e-mail to TJL at [info@tjl.quebec](mailto:info@tjl.quebec) or by fax to 514-871-8800. Your written submission must include:

- your name, address, e-mail address and telephone number;
- a brief statement of the reasons for your objection or comments; and
- whether you intend to attend the hearing in person or through a lawyer. In the latter case, you must provide the lawyer's name, address, e-mail address and telephone number.

TJL will provide KAYAK and the Court with a copy of the objections and comments received by [\[insert date\]](#).

Class members who do not oppose the Agreement and do not wish to comment on it are not required to attend the hearing for approval of the Agreement or to take any other action at this time.

If the Honourable Justice Martin F. Sheehan approves the Agreement, another notice will be published to inform you of the procedure and deadlines for choosing the method of distribution of your compensation.

You can contact the lawyers of Mr. Chafik Mihoubi, the representative plaintiff, at the following coordinates:



TRUDEL JOHNSTON & LESPÉRANCE  
750 Côte de la Place d'Armes, Suite 90  
Montréal (Québec) H2Y 2X8  
Toll-free: 1 844-588-8385  
Fax: 514-871-8800  
E-mail: [info@tjl.quebec](mailto:info@tjl.quebec)

GRENIER VERBAUWHEDE |  **AVOCATS INC.**  
5215 Berri Street, Suite 102  
Montréal (Québec) H2J 2S4  
Telephone: 514-866-5599  
E-mail: [info@grenierverbauwhede.ca](mailto:info@grenierverbauwhede.ca)

**AVIS D'AUDITION POUR L'APPROBATION D'UNE ENTENTE DE RÉGLEMENT AVEC  
KAYAK SOFTWARE CORPORATION**

**Chafik Mihoubi c. KAYAK Software Corporation et al.  
N° 500-06-001041-207**

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**VEUILLEZ LIRE CET AVIS ATTENTIVEMENT, CAR IL POURRAIT AVOIR UN IMPACT SUR VOS DROITS.**

***Entente de règlement***

Le demandeur a conclu une Entente de règlement (l'« **Entente** ») avec la défenderesse KAYAK Software Corporation (« **KAYAK** »).

L'Entente s'applique aux membres du groupe défini comme suit (le « **Groupe** ») :

Tout consommateur au sens de la *Loi sur la protection du consommateur* qui :

(1) a fait une réservation pour un hébergement (facilitée par la défenderesse KAYAK Software Corporation (« **KAYAK** ») et mise en œuvre par une tierce partie) sur le site web kayak.com ou sur les applications mobiles de KAYAK disponibles sur le magasin Google Play ou l'App Store d'Apple, entre le 27 janvier 2017 et le 16 décembre 2020;

(2) au moment de cette réservation, résidait au Québec et était situé au Québec;

(3) n'a pas annulé cette réservation; et

(4) a payé un prix supérieur au prix initialement annoncé, à l'exception des droits exigibles en vertu d'une loi fédérale ou provinciale lorsque, en vertu de cette loi, ces droits doivent être perçus directement du consommateur pour être remis à une autorité publique.

L'Entente prévoit qu'une indemnité sera distribuée à chaque membre du Groupe. Cette indemnité sera distribuée en argent (par virement Interac).

L'Entente prévoit que le montant total payable par KAYAK sera de 40 527 \$ CA. Ce montant inclut les honoraires et déboursés des avocats en demande et les taxes applicables. Les avocats en demande demanderont à la Cour d'approuver des honoraires de 25 % du montant total payable par KAYAK, plus les taxes applicables.

Après la déduction d'honoraires de 25 % (si ceux-ci sont approuvés par la Cour), des déboursés des avocats en demande et des taxes applicables, les indemnités par membre devraient être d'un montant d'approximativement 10,28 \$ CA par réservation.

Le résumé qui précède fait état des points saillants de l'Entente. Le texte complet de l'Entente est disponible sur le site Web de Trudel Johnston & Lespérance (« TJL »), les avocats en demande : <https://tjl.quebec/recours-collectifs/reservation-dhebergement-en-ligne/>.



## **Approbation de l'Entente par la Cour**

Pour que l'Entente soit valide, elle devra être approuvée par la Cour. Une demande d'approbation de l'Entente sera présentée devant l'Honorable juge Martin F. Sheehan de la Cour supérieure le [insérer date] en salle \_\_\_ du Palais de justice de Montréal. Il sera possible d'assister à l'audition virtuellement au lien suivant : [insérer le lien]. La date et l'heure de l'audition peuvent être modifiées par la Cour. Dans ce cas, une mise à jour sera affichée sur le site web de TJL : <https://tjl.quebec/recours-collectifs/reservation-dhebergement-en-ligne/>.

## **Objection à l'Entente et commentaires**

Les membres du Groupe ont le droit de s'opposer à l'Entente et de formuler des commentaires à son égard. Sous réserve du droit d'exclusion mentionné ci-dessus, un membre du Groupe restera un membre du Groupe, qu'il s'oppose ou non à l'Entente. Si l'Entente est approuvée par la Cour, tous les membres du Groupe qui recevront une indemnité dans le cadre de l'Entente perdront tout droit de poursuivre KAYAK pour l'affichage du prix pour une réservation d'hébergement sur son site Internet ou sur son application mobile entre les dates indiquées ci-dessus dans la description du Groupe.

Si vous désirez vous opposer à l'Entente ou formuler des commentaires à son égard, vous devez envoyer votre opposition ou vos commentaires par écrit au plus tard le [insérer date] par courriel à TJL, à [info@tjl.quebec](mailto:info@tjl.quebec), ou par télécopieur, au 514-871-8800. Votre document écrit doit inclure :

- vos nom, adresse, courriel et numéro de téléphone;
- un bref exposé des raisons de votre opposition ou de vos commentaires; et
- si vous avez l'intention d'assister à l'audition en personne ou par l'intermédiaire d'un.e avocat.e. Dans ce dernier cas, vous devez transmettre le nom, l'adresse, l'adresse électronique et le numéro de téléphone de l'avocat.e.

TJL transmettra à KAYAK et à la Cour une copie des oppositions et commentaires reçus avant le [insérer date].

Les membres du groupe qui ne s'opposent pas à l'Entente et qui ne désirent pas formuler des commentaires à son égard n'ont pas à se présenter à l'audition pour l'approbation de l'Entente ni à prendre d'autres mesures pour le moment.

Si l'Honorable juge Martin F. Sheehan approuve l'Entente, un autre avis sera publié pour vous informer de la procédure et des délais pour choisir la méthode de distribution de votre indemnité.

Vous pouvez contacter les avocats de monsieur Chafik Mihoubi, le représentant, aux coordonnées suivantes :



Sans frais : 1 844-588-8385  
Télec. : 514-871-8800  
Courriel : [info@tjl.quebec](mailto:info@tjl.quebec)

TRUDEL JOHNSTON & LESPÉRANCE  
750, Côte de la Place d'Armes, bureau 90  
Montréal (Québec) H2Y 2X8

GRENIER VERBAUWHEDE |  VOCATS INC.

5215, rue Berri, bureau 102

Montréal (Québec) H2J 2S4

Téléphone : 514-866-5599

Courriel : [info@grenierbauwhede.ca](mailto:info@grenierbauwhede.ca)

**No.: 500-06-001041-207**

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**COUR SUPÉRIEURE**

(Actions collectives)

DISTRICT DE MONTRÉAL

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**CHAFIK MIHOUBI**

Demandeur

c.

**PRICELINE.COM, L.L.C. et al.**

Défenderesses

Notre dossier: 1448-1

BT 1415

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**PIÈCE PK-2 AU SOUTIEN DE LA DEMANDE POUR  
MODIFICATION DU GROUPE À DES FINS DE  
RÈGLEMENT ET D'APPROBATION DE DEUX  
ENTENTES DE RÈGLEMENT ET ORDONNANCES  
CONNEXES**

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***ORIGINAL***

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Avocats:

M<sup>e</sup> Mathieu Charest-Beaudry

M<sup>e</sup> Lex Gill

**TRUDEL JOHNSTON & LESPÉRANCE, INC.**

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[mathieu@tjl.quebec](mailto:mathieu@tjl.quebec)

[lex@tjl.quebec](mailto:lex@tjl.quebec)