

SUPERIOR COURT
(Class Action)

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

NO.: 500-06-000754-156

DATE: December 18, 2020

PRESENT: THE HONOURABLE PIERRE-C. GAGNON, J.S.C.

STEVE ABIHSIRA

Representative Plaintiff

v.

VIAGOGO AG

Defendant

and

LPC AVOCAT INC.

Representative Plaintiff's Attorneys

**JUDGMENT APPROVING THE CLASS ACTION SETTLEMENT
AND CLASS COUNSEL FEES**

[1] **CONSIDERING** that on January 22, 2020, the Court authorized the class action against Viagogo AG in the present file;¹

¹ *Abihsira c. Stubhub inc.*, 2020 QCCS 139.

- [2] **CONSIDERING** that the Representative Plaintiff alleged that the Defendant, Viagogo AG, violated sections 224c) and 236.1 CPA and that Viagogo AG has always denied any wrongdoing or having any liability;
- [3] **CONSIDERING** the Transaction Agreement signed by the parties on September 30, 2020 and October 1, 2020 respectively (the "Transaction");²
- [4] **CONSIDERING** that on October 16, 2020, the Court approved the pre-approval notice program contemplated by the Transaction and granted the parties' request to modify the Class description in order to close the Class Period, as follows:³

Every consumer, pursuant to the terms of Québec's *Consumer Protection Act* ("CPA"), residing in Québec at the time of purchase, who from June 23rd, 2013 to January 22, 2020 (the "Class Period"), while physically located in Québec, has purchased from Viagogo's desktop website or mobile application at least one "Ticket" (as defined in s.(1d.1) CPA as meaning any document or instrument that, on presentation, grants the ticket holder admission to a show, sporting event, cultural event, exhibition or any other kind of entertainment) either:

(a) at a price above that announced by the vendor authorized to sell the Tickets by the producer of the event; and/or,

(b) who paid a price higher than the price advertised by Viagogo on its website and/or mobile application (at the first step), excluding the Québec sales tax or the Goods and Services Tax;

- [5] **CONSIDERING** that on October 27, 2020, Viagogo AG sent the pre-approval notices to each of the 329 Class Members;⁴
- [6] **CONSIDERING** that the Representative Plaintiff, Steve Abihira, now brings before this Court an *Application to Approve a Class Action Settlement (Viagogo AG) and for Approval of Class Counsel's Fees* (the "Application for Approval");
- [7] **CONSIDERING** that the Transaction reached between the parties provides for the following benefits:
- a) collective recovery in the form of a settlement fund in the amount of \$19,400 to be distributed equally amongst the 329 Class Members identified by

² Exhibit V-1.

³ *Abihira c. Viagogo AG*, 2020 QCCS 3278, para. 10.

⁴ Exhibit V-2.

Viagogo AG (clauses 9 and 11);⁵

- b) each Class Member will receive a single lumpsum cash payment of CAD \$58.97 (clause 8);
- c) this cash amount of \$58.97 compares favourably with the average service fee charged per ticket by Viagogo AG, as verified by class counsel;
- d) there is no need for Class Members to produce receipts or a proof of purchase, or to take any initiative in order to receive the compensation;
- e) payments will be sent electronically via Interac e-transfer to the Class Members' email address on file (Class Members must have a valid email address and a credit card in order to purchase a ticket on Viagogo AG's platform). However, if a Class Member cannot receive an e-transfer, the Transaction provides a mechanism for them to receive payment by cheque sent via regular mail (clause 10);
- f) class Members who have changed their email address since purchasing a Ticket (and who may not have received the Notice of Approval of the Transaction) may still benefit from the reparation even though their email address is unknown on the date of this judgment;
- g) Viagogo AG will pay the 329 Class Members a net amount of \$58.97 each plus Class Counsel's fees and costs, as well as the costs to distribute the reparation, which are paid on top of the \$58.97 cash payment and not deducted therefrom;
- h) the Transaction provides for collective recovery and any remaining balance under clause 9 shall be paid to the Fonds d'aide aux actions collectives pursuant to the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives* (chapter F-3.2.0.1.1, r. 2). Any balance remaining thereafter shall be paid to a charity to be agreed upon by the Parties and approved by the Court (clause 11);
- i) Viagogo AG must implement a business practice change to its mobile and desktop transaction process to which a ticket price announced to a Quebec Resident for an event located in Quebec at the first step of said process will be equal or higher than the price ultimately paid except for taxes and optional costs or services (paper tickets, delivery, etc.) ("all-in"). Viagogo AG declares that it implemented this business practice change on September 1, 2019 (Clauses 6 and 7).

⁵ The original Transaction stipulated that the \$19,400 would be divided by 388 Class Members. However, out of the 388 transactions initially identified, Viagogo AG discovered that 59 were never processed. The parties therefore agreed that the 329 Class Members would each receive \$58.97 instead of \$50.00. This change does not affect the total value of the Transaction.

- [8] **CONSIDERING** the exhibits filed, including Steve Abihisira's Affidavit;⁶
- [9] **CONSIDERING** that the Court finds that the Transaction is fair and reasonable and in the best interest of Class Members;
- [10] **CONSIDERING** the guiding principles⁷ for determining whether a transaction should be approved and the Court's findings that:
- a) the legal arguments on whether Viagogo AG committed any of the faults alleged and the consequences thereof, if any, are uncertain;
 - b) the legal arguments on whether Viagogo AG is liable towards any of the Class Members are uncertain;
 - c) Viagogo AG denies any liability or wrongdoing. Therefore, the parties would have entered into a contradictory and costly debate;
 - d) the risks of Class Members obtaining no compensation, the expenses, complexity and duration of further litigation weigh in favour of approval;
 - e) the Transaction was reached by experienced fully informed counsels after arm's length negotiations following the authorization of the class action;
 - f) following the dissemination and publication of the pre-approval notices, no Class Members have registered any objections to the Transaction and no Class Members have requested to be excluded from the class action;
 - g) there is no indication that the parties did not act in good faith or colluded;
 - h) the compensation to each Class Member in the amount of \$58.97 without any deductions is very beneficial in the circumstances;
 - i) the process to receive compensation is simple: payments will be sent automatically to each Class Member by Interac e-transfer, without the need to file a claim;
 - j) the terms and conditions of the Transaction, including the amounts offered are fair, reasonable, adequate and worthy of approval.
- [11] **CONSIDERING** that Class Counsel is asking the Court to approve the amount of \$25,000 plus applicable taxes, on top of the compensation offered to Class Members, in order to cover the following costs:
- a) judicial fees and disbursements, including costs and fees for translation of certain documents in order to serve Viagogo AG in Switzerland pursuant to

⁶ Exhibit V-5.

⁷ *Halfon v. Moose International Inc.*, 2017 QCCS 4300, para. 22.

the *Hague Convention (1965) on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*;

- b) extra-judicial fees to compensate Class Counsel for the time expended in the file concerning Viagogo AG (the Application for Approval is supported by an affidavit signed by Me Zukran declaring that Class Counsel worked more than 106 hours in the file against Viagogo AG only. Additional work will be performed in order to assist with the distribution of the settlement benefits);
- c) any amounts that Class Counsel may have to pay to the claims administrator to distribute the reparation to Class Members, to the exoneration of Viagogo AG.

[12] **CONSIDERING** the role that the Court must play in determining the reasonableness of the fees claimed by Class Counsel;⁸

[13] **CONSIDERING** that in the present matter, the fees requested by Class Counsel are fair and reasonable and are therefore approved;

[14] **CONSIDERING** that clause 9 of the Transaction stipulates that Viagogo AG will transfer the amount of CAD \$19,400 to Class Counsel or to its agent, who, acting as claims administrator for the purposes of the Transaction, will send Interac e-transfers to each Class Member to their email addresses;

[15] **CONSIDERING** that Class Counsel is asking the Court to designate Velvet Payments Inc. as the claims administrator for the purposes of receiving from Viagogo AG the sum of \$19,400 in trust and sending the Interac e-transfers to each Class Member to their email addresses as they appear on the Detailed List to be provided confidentially by Viagogo AG to Velvet Payments Inc.;

[16] **CONSIDERING** that the Court is satisfied that Velvet Payments Inc. has the proficiency required to satisfactorily perform the tasks provided for at clauses 9, 12 and 37 of the Transaction;

[17] **CONSIDERING** article 590 of the *Code of Civil Procedure*;

POUR CES MOTIFS, LE TRIBUNAL : FOR THESE REASONS, THE COURT:

[18] **ACCUEILLE** la demande du **GRANTS** the Representative Plaintiff's Représentant en approbation de la Application to Approve the Transaction transaction (Viagogo AG) et pour Agreement (Viagogo AG) and for Approval l'approbation des honoraires des avocats of Class Counsel's Fees; du groupe;

⁸ *Pellemans c. Lacroix*, 2011 QCCS 1345, paras. 50-54.

[19] **DÉCLARE** que les définitions contenues dans la transaction s'appliquent et sont incorporées au présent jugement, et en conséquence en font partie intégrante, étant entendu que les définitions lient les parties à la transaction;

[20] **DÉCLARE** que la transaction (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 *Code civil du Québec*, qui lie toutes les parties et tous les Membres du Groupe tel qu'énoncé aux présentes;

[21] **APPROUVE** la transaction (« Transaction Agreement ») conformément à l'article 590 du *Code de procédure civile du Québec*, et **ORDONNE** aux parties de s'y conformer; étant précisé que chacun des 329 membres doit recevoir 58,97 \$;

[22] **ORDONNE** et **DÉCLARE** que le présent jugement, incluant la transaction, lie chaque Membre du Groupe;

[23] **ORDONNE** à Viagogo AG de notifier par courriel à chaque Membre du Groupe à leur dernière adresse courriel au dossier, dans les 10 jours suivant le jugement approuvant la transaction, l'avis d'approbation de la transaction, en Annexe 1 du présent jugement, afin de les informer de l'approbation de la transaction;

[24] **DÉSIGNE** Paiements Velvet inc. comme administrateur des réclamations afin de recevoir de Viagogo AG la somme de 19 400 \$ en fidéicommiss et d'envoyer les virements électroniques Interac à chaque membre du groupe à leur adresse

DECLARES that the definitions set forth in the Transaction Agreement apply to and are incorporated into this judgment, and as a consequence shall form an integral part thereof, being understood that the definitions are binding on the parties to the Transaction Agreement;

DECLARES that the Transaction 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 *Civil Code of Quebec*, which is binding upon all parties and all Class Members as set forth herein;

APPROVES the Transaction Agreement as a transaction pursuant to article 590 of the *Code of Civil Procedure*, and **ORDERS** the parties to abide by it; being specified that each of the 329 class members is to receive \$58.97;

ORDERS and **DECLARES** that this judgment, including the Transaction Agreement, shall be binding on every Class Member;

ORDERS Viagogo AG to notify each Class Member by email to their last email address on file, within 10 Days following the Judgment Approving the Transaction, with the Notice of Approval of the Transaction Agreement, attached to this judgment as Schedule 1, in order to inform them of the approval of the Transaction Agreement;

DESIGNATES Velvet Payments Inc. as Claims Administrator for the purposes of receiving from Viagogo AG the sum of \$19,400 in trust and sending the Interac e-transfers to each Class Member to their email addresses as they appear on the

électronique telle qu'elle apparaît sur la liste détaillée fournie confidentiellement par Viagogo AG aux avocats du groupe et à Paiements Velvet inc. et **ORDONNE** à Paiements Velvet inc. d'envoyer lesdits virements électroniques Interac aux membres du groupe conformément aux paragraphes 9, 12 et 37 de la transaction;

[25] **APPROUVE** le paiement aux Avocats du Groupe de leurs honoraires extrajudiciaires, débours et des coûts de distribution, au montant de 25 000 \$ plus TPS et TVQ, tel que prévu au paragraphe 39 de la transaction;

[26] **ORDONNE** aux parties de faire rapport de l'exécution du jugement à l'expiration des délais prévus aux paragraphes 42 à 45 de la transaction;

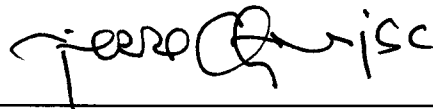
[27] **LE TOUT**, sans frais de justice.

Detailed List provided confidentially by Viagogo AG to Class Counsel and Velvet Payments Inc. and **ORDERS** Velvet Payments Inc. to send said Interac e-transfers to the Class Members pursuant to clauses 9, 12 and 37 of the Transaction Agreement;

APPROVES the payment to Class Counsel of its extrajudicial fees, disbursements and the distribution costs in the amount of \$25,000 plus GST & QST, as provided for at clause 39 of the Transaction Agreement;

ORDERS the Parties, upon the expiry of the times specified at clauses 42 to 45 of the Transaction Agreement, to render account of the execution of the judgment;

THE WHOLE, without legal costs.



PIERRE-C. GAGNON, j.s.c.

Mtre. Joey Zukran
LPC AVOCAT INC.
Attorneys for the Representative Plaintiff

Mtre. Jean-Michel Boudreau
Mtre. Doug Mitchell
IMK
Attorneys for the Defendant

SCHEDULE 1

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL
N° : 500-06-000754-156

SUPERIOR COURT
(Class Action)

STEVE ABIHSIRA
Representative Plaintiff

vs.

VIAGOGO AG
Defendant

TRANSACTION AGREEMENT

SCHEDULE "D" – NOTICE OF APPROVAL OF THE VIAGOGO AG TRANSACTION



DO NOT REPLY – This is an automated message.

Dear Viagogo Customer:

Why are you receiving this email?

We are contacting you because a Quebec Superior Court judgment dated December 18, 2020 (File No: 500-06-000754-156) has approved the settlement of a class action lawsuit with Viagogo AG. As a result, Velvet Payments Inc., the Claims Administrator designated by the Superior Court of Quebec, will be sending you an Interac e-transfer payment of **\$58.97**. An email containing the **password to claim your \$58.97 e-transfer will be sent by Velvet Payments Inc. separately**. Please make sure to deposit your funds within 30 days. If you do not have a valid bank account at a Canadian financial institution, please contact Mtre Zukran within 30 days to provide your mailing address in order for your payment to be paid by cheque mailed to you.

The details relative to the settlement, including a description of the claim, can be found [here](#).

Who should receive the \$58.97 payment?

The Group authorized by the Court, as modified for settlement purposes, is the following:

Every consumer, pursuant to the terms of Québec's *Consumer Protection Act* ("CPA"), residing in Québec at the time of purchase, who between June 23rd, 2013 and January 22, 2020 (the "Class Period"), while physically located in

Québec, has purchased from Viagogo's desktop website or mobile application at least one "Ticket" (as defined in s.(1d.1) CPA as meaning any document or instrument that, on presentation, grants the ticket holder admission to a show, sporting event, cultural event, exhibition or any other kind of entertainment) either:

- a) at a price above that announced by the vendor authorized to sell the Tickets by the producer of the event; and/or,
- b) who paid a price higher than the price advertised by Viagogo on its website and/or mobile application (at the first step), excluding the Québec sales tax or the Goods and Services Tax.

What about other people who may be entitled to a payment but did not get this email?

Anyone who thinks that they are entitled compensation as a result of the settlement but did not receive this email may **send an email to Class Counsel (JZUKRAN@LPCLEX.COM) before [date 30 days after this notice is sent]**. In that email, they must provide their new email address and the previous email address that they used to purchase a Ticket from Viagogo AG which they believe is entitled to the compensation. This is the email address they used to purchase a Ticket during the Class Period. Class Counsel will then contact Viagogo AG, who must reply within 10 days, to verify whether said Class Member is entitled to a payment and will then contact the Class Member within an additional period of 10 days to confirm whether the payment will be made to them.

Who are the lawyers representing the Representative Plaintiff Steve Abihira and the Class Members?

Mtre. Joey Zukran
LPC Avocats
276 Saint-Jacques Street, Suite 801
Montreal, Quebec, H2Y 1N3
T: 514.379.1572
E : JZUKRAN@LPCLEX.COM

The lawyers representing viagogo AG are:

IMK s.e.n.c.r.l./LLP
Mtre. Jean-Michel Boudreau
3500 De Maisonneuve blvd. West, Suite 1400
Montréal (Québec) H3Z 3C1
Telephone: 514-935-4460
Fax: 514-935-2999
jmboudreau@imk.ca

Thank you.

CANADA

PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL
N° : 500-06-000754-156

COUR SUPÉRIEURE
(Action collective)

STEVE ABIHSIRA
Demandeur

c.

VIAGOGO AG
Défenderesse

CONVENTION DE TRANSACTION

ANNEXE « C » – AVIS D'APPROBATION DE LA TRANSACTION VIAGOGO AG



NE PAS RÉPONDRE. Ceci est un message automatisé.

Cher client / chère cliente de Viagogo,

Quel est l'objet de ce courriel ?

Nous communiquons avec vous parce qu'un jugement de la Cour supérieure du Québec rendu le 18 décembre 2020 (dossier n° 500-06-000754-156) a approuvé le règlement conclu dans le cadre d'une action collective avec Viagogo AG. En conséquence, Paiements Velvet inc., l'administrateur des réclamations désigné par la Cour supérieure du Québec, vous fera parvenir un paiement par virement électronique Interac de **58,97 \$**. Un courriel contenant le **mot de passe pour réclamer votre virement électronique de 58,97 \$ sera envoyé séparément par Paiements Velvet inc.** Veuillez vous assurer de déposer vos fonds dans les 30 jours. Si vous n'avez pas de compte bancaire valide dans une institution financière canadienne, veuillez contacter Me Zukran dans les 30 jours pour lui communiquer votre adresse postale afin que votre paiement puisse être effectué par chèque.

Pour consulter les détails du règlement, y compris une description de la réclamation, veuillez visiter [cet hyperlien](#).

Qui devrait recevoir le paiement de 58,97 \$?

Le groupe autorisé par le Tribunal, tel que modifié aux fins du règlement, est le suivant :

Tout consommateur au sens de la *Loi sur la protection du consommateur du Québec* (« LPC »), résidant au Québec au moment de l'achat, qui, entre le 23

juin 2013 et le 22 janvier 2020, alors qu'il était situé au Québec, a acheté à partir du site ou de l'application mobile de Viagogo au moins un « Billet de spectacle » (tel que défini à l'article 1(d.1) LPC comme étant tout document ou instrument dont la présentation donne le droit à son détenteur d'être admis à un spectacle, à un événement sportif, à un événement culturel, à une exposition ou à tout autre divertissement de quelque nature que ce soit), soit :

- a) à un prix supérieur à celui annoncé par le vendeur autorisé par le producteur du spectacle, et/ou
- b) qui a payé un prix supérieur au prix annoncé par Viagogo sur son site internet et/ou application mobile (à la première étape), à l'exclusion de la taxe de vente du Québec ou la taxe sur les produits et services du Canada;

Qu'en est-il des autres personnes qui peuvent avoir droit à la compensation, mais qui n'ont pas reçu ce courriel ?

Les personnes qui croient avoir droit à une compensation à la suite du règlement et qui n'ont pas reçu ce message **peuvent envoyer un courriel à l'avocat du Groupe (JZUKRAN@LPCLEX.COM) d'ici le [indiquer la date 30 jours après l'envoi du présent avis]**. Dans ce courriel, elles doivent indiquer l'adresse courriel associée au compte viagogo AG qui, à leur avis, donne droit à la compensation. Il s'agit de l'adresse courriel utilisée pour acheter un Billet au cours de la Période visée par l'action collective. L'avocat du Groupe contactera ensuite Viagogo AG, qui devra répondre dans un premier délai de 10 jours, afin de vérifier si ladite personne a droit à la compensation, puis la contactera dans un deuxième délai de 10 jours pour confirmer si la compensation lui sera payée.

Qui sont les avocats représentant le demandeur Steve Abihira et les membres du groupe ?

Me Joey Zukran
LPC Avocats
276, rue Saint-Jacques, bureau 801
Montréal, Québec, H2Y 1N3
T: 514.379.1572
E : JZUKRAN@LPCLEX.COM

Les avocats de viagogo AG sont :

IMK s.e.n.c.r.l./LLP
Me Jean-Michel Boudreau
3500, boulevard De Maisonneuve Ouest, bureau 1400
Montréal (Québec) H3Z 3C1
Téléphone : 514-935-4460
jmboudreau@imk.ca

Merci.