

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

SUPERIOR COURT  
(Class action)

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No: 500-06-001147-210

ROBERT ITZKOVITZ

Plaintiff

v.

AIR CANADA

Defendant

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**NATIONAL SETTLEMENT AGREEMENT**

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**1. RECITALS**

- A. This National Settlement Agreement is entered into by and among Plaintiff Robert Itzkovitz, on behalf of himself, as well as on behalf of the Class Members, and Defendant Air Canada to resolve in full the Action. Subject to Court approval as required by the *Code of Civil Procedure*, CQLR, c. C-25.01, and as provided herein, the Parties hereby stipulate and agree that, in consideration for the promises and covenants set forth in the Agreement and upon the issuance by the Court of a Final Judgment Approving Settlement and the occurrence of the Effective Date, the Action shall be settled and terminated upon the terms and conditions contained herein.
- B. **WHEREAS**, on May 11, 2021, the Plaintiff filed the Application for Authorization which asserted claims under the *Consumer Protection Act*, CQLR, c. P-40.1 as well as under the *Civil Code of Québec*, CQLR, c. CCQ-1991, in relation to the purchase of tickets to

travel to or from the United Kingdom with Air Canada and the Air Passenger Duty charged on a ticket for a child under 16 years old on the date of the flight.

- C. **WHEREAS** the Application for Authorization has not been adjudicated.
- D. **WHEREAS** the Parties have reached the resolution set forth in this Agreement, providing for, *inter alia*, the settlement of the Action between and among the Plaintiff, on behalf of himself, as well as on behalf of the Class Members, and the Defendant on the terms and subject to the conditions set forth below.
- E. **WHEREAS** the Parties have determined that a settlement of the Action on the terms reflected in this Agreement is fair, reasonable, adequate, and in the best interests of the Parties and the Class.
- F. **WHEREAS** the Defendant denies the allegations made by the Plaintiff in its proceedings as well as in its pleadings, has not conceded or admitted, shall not be deemed to have conceded or admitted and expressly denies any liability, including any liability for monetary compensation or compensation in kind to the Class Members.
- G. **WHEREAS** the Parties, to avoid the cost of litigation, a judgment being rendered on the merits of the Action and any uncertainty as to the judgment that could be rendered, have concluded that it is desirable that the claims in the Action be settled, without admission, on the terms reflected in this Agreement.
- H. **WHEREAS** the Defendant now consents to the authorization of the Action solely for the purposes of implementing this Agreement in a coordinated and consistent manner across Canada and contingent on the Court's approval as provided for in this Agreement, on the express understanding that such authorization shall not limit the respective rights of the Parties in the event that this Agreement is not approved or is terminated.

- I. **WHEREAS** the Parties assert that the Plaintiff is an adequate Class representative for settlement purposes.

**NOW, THEREFORE**, this Agreement is entered into by and among the Parties, by and through their respective counsel and representatives, and in consideration of the mutual promises, covenants and agreements contained herein and for value received, the Parties agree that upon the Effective Date, the Action and all Released Claims shall be settled and terminated as between the Plaintiff and the Class Members, on the one hand, and the Defendant, on the other hand, as detailed herein.

## 2. DEFINITIONS

2.1 As used in this Agreement and the attached schedules, the following terms shall have the meanings set forth below, unless this Agreement specifically provides otherwise:

- (i) **"Action"** means *Robert Itzkovitz v. Air Canada* (S.C.M.: 500-06-001147-210).
- (ii) **"Agreement"** means this National Settlement Agreement (including all Schedules hereto).
- (iii) **"Air Canada's Counsel"** means Blake, Cassels & Graydon LLP.
- (iv) **"Application for Authorization"** means the *Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff* dated May 11, 2021, filed by the Plaintiff against the Defendant.
- (v) **"Attorneys' Fees and Expenses"** means the attorneys' fees and expenses in the amount of \$261,000 plus GST & QST, as described more particularly in Section 9 of this Agreement.

- (vi) **“Class”** and **“Class Member(s)”** means all Canadian residents who purchased an economy class ticket from Air Canada during the Class Period for a flight departing from the United Kingdom and who were charged the Air Passenger Duty for a passenger under 16 years of age on the date of the flight actually taken, except those purchasers who had their ticket previously refunded or credited by Air Canada. However, any person who files a valid and timely Request for Exclusion is excluded from the Class.
- (vii) **“Class Counsel”** means Renno Vathilakis Inc. and LPC Avocat Inc.
- (viii) **“Class Notice”** or **“Notice”** means the notices (see Long-Form Notice and Short-Form Notice) to be published about the authorization of the Action for settlement purposes and the Agreement or any notices ordered in case of the termination of the Agreement.
- (ix) **“Class Period”** means:
- (1) For the Alberta residents: February 25, 2019, up to and including the date of May 15, 2021.
  - (2) For the British Columbia residents: May 11, 2018, up to and including the date of May 15, 2021.
  - (3) For the Manitoba residents: March 1, 2016, up to and including the date of May 15, 2021.
  - (4) For the New Brunswick residents: November 11, 2018, up to and including the date of May 15, 2021.
  - (5) For the Newfoundland and Labrador residents: November 11, 2018, up to and including the date of May 15, 2021.
  - (6) For the Northwest Territories residents: March 1, 2016, up to and including the date of May 15, 2021.
  - (7) For the Nova Scotia residents: May 11, 2019, up to and including the date of May 15, 2021.

- (8) For the Nunavut residents: March 1, 2016, up to and including the date of May 15, 2021.
  - (9) For the Ontario residents: November 9, 2018, up to and including the date of May 15, 2021.
  - (10) For the Prince Edward Island residents: March 1, 2016, up to and including the date of May 15, 2021.
  - (11) For the Quebec residents: November 22, 2017, up to and including the date of May 15, 2021.
  - (12) For the Saskatchewan residents: May 11, 2019, up to and including the date of May 15, 2021.
  - (13) For the Yukon residents: March 1, 2016, up to and including the date of May 15, 2021.
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- (x) “**Court**” means the Superior Court of Québec, district of Montréal, in which the Action was filed and where the Parties will seek approval of the Agreement.
  - (xi) “**Days**” means calendar days, except that, when computing any period of time prescribed or allowed by this Agreement, the day of the act, event or default from which the designated period of time begins to run shall not be included. Further, when computing any period of time prescribed or allowed by this Agreement, the last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday in Quebec, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday in Quebec.
  - (xii) “**Defendant**” means Air Canada.
  - (xiii) “**Effective Date**” means:
    - a) if no appeal is taken from the Final Judgment Approving Settlement, forty (40) Days after the Court renders the Final Judgment Approving Settlement; or

- b) if an appeal is taken from the Final Judgment Approving Settlement, the date on which all appeal rights have expired, been exhausted, or been finally disposed of in a manner that affirms the Final Judgment Approving Settlement.
- (xiv) **“Final Approval Hearing”** means the hearing to be conducted by the Court on such date as the Court may order to determine the fairness, adequacy, and reasonableness of the Agreement and to determine the Attorneys’ Fees and Expenses.
- (xv) **“Final Judgment Approving Settlement”** means the Final Judgment Approving Settlement to be rendered by the Court:
- a) approving the Settlement as fair, adequate, and reasonable;
  - b) discharging the Released Parties of and from all further liability for the Released Claims;
  - c) permanently barring and enjoining the Releasing Parties from instituting, filing, commencing, prosecuting, maintaining, continuing to prosecute, directly or indirectly, as an individual or collectively, representatively, derivatively, or on their behalf, or in any other capacity of any kind whatsoever, any action in any Court, before any regulatory authority or in any other tribunal, forum or proceeding of any kind against the Released Parties that asserts any Released Claims; and
  - d) issuing such other findings and determinations as the Court and/or the Parties deem necessary and appropriate to implement the Agreement.

- (xvi) “**Long-Form Notice**” means the proposed Notice in the form provided at **Schedule A** (English) and **Schedule B** (French), which will be submitted to the Court for approval.
- (xvii) “**Notice and Administration Expenses**” means all costs and expenses incurred by the Settlement Administrator, including all notice expenses as well as the cost of administering the publication of the Class Notice. Such costs and expenses shall not exceed one hundred thousand dollars (\$100,000).
- (xviii) “**Notice Date**” means thirty (30) Days after the Court’s approval of the Class Notice or any other date set by the Court, by which the Settlement Administrator and the Parties shall complete the Notice Program.
- (xix) “**Notice Program**” means the notice program set forth in **Schedule C** and described in Section 6.
- (xx) “**Objection Date**” means the date by which Class Members must file with the Court and notify to the Parties any objection to the Settlement and shall be no later than fifteen (15) Days before the date of the Final Approval Hearing.
- (xxi) “**Opt-Out Date**” means the postmark date by which a Request for Exclusion must be submitted to the Court in order for a Class Member to be excluded from the Class, and shall be stated in the Class Notice. The actual date cannot be earlier than thirty (30) Days after the date on which the Class Notice is first sent to Class Members and shall be no later than fifteen (15) Days before the date first set for the Final Approval Hearing.
- (xxii) “**Parties**” means the Plaintiff and the Defendant.

- (xxiii) "**Plaintiff**" means Robert Itzkovitz.
- (xxiv) "**Released Claims**" means any and all actions, claims, demands, rights, suits, and causes of action of whatever kind or nature that could have been, or in the future might be asserted by the Plaintiff or any Class Member or any Releasing Party either in the Action or in any action or proceeding in this Court or in any other court or forum, against the Released Parties, including damages, costs, expenses, penalties, and attorneys' fees, known or unknown, suspected or unsuspected, in law or equity arising out of or relating to the allegations made in the Action or in the Application for Authorization. For avoidance of doubt, this includes, *inter alia*, all such claims that related in any way to the purchase of economy-class tickets from Air Canada during the Class Period for a flight departing from the United Kingdom and for which the Air Passenger Duty was charged for a passenger under 16 years of age on the date of the flight actually taken.
- (xxv) "**Released Parties**" means Air Canada, including all of its respective predecessors, successors, assigns, parents, subsidiaries, divisions, departments, and affiliates, and any and all of their past, present and future officers, directors, employees, stockholders, partners, agents, servants, successors, attorneys, insurers, representatives, licensees, licensors, subrogees and assigns. It is expressly understood that, to the extent a Released Party is not a Party to the Agreement, all such Released Parties are intended third-party beneficiaries of the Agreement.
- (xxvi) "**Releasing Parties**" means the Plaintiff and each and every Class Member, including each of their respective spouses, executors, representatives, heirs, successors, bankruptcy trustees, guardians, agents, assigns, predecessors,

divisions, departments, and affiliates, and any and all of their past, present and future employees, partners, agents, servants, attorneys, insurers, representatives and subrogees and all those who claim through them or who assert duplicative claims for relief on their behalf.

(xxvii) “**Request(s) for Exclusion**” means the written communication that must be submitted to the Court pursuant to article 580 C.C.P. and postmarked on or before the Opt-Out Date by a Class Member who wishes to be excluded from the Class.

(xxviii) “**Residual Settlement Amount**” means any Refunds remaining uncashed by the Class Members. Should the total amount of issued Refunds be less than \$400,000, the Residual Settlement Amount shall be increased by the difference between \$400,000 and the amount of the Refunds.

(xxix) “**Settlement**” means the settlement set forth in this Agreement.

(xxx) “**Settlement Administrator**” means Velvet Payment Inc., subject to Court approval.

(xxxi) “**Settlement Amount**” means the amount of eight hundred eighty-one thousand three hundred one dollars (\$881,301), being the maximum amount of the Defendant’s monetary obligations under this Agreement, and inclusive of capital, interest, additional indemnity, taxes, legal fees and costs of all kinds.

(xxxii) “**Short-Form Notice**” means the proposed Notice in the form provided at **Schedule D** (English) and **Schedule E** (French), which will be submitted to the Court for approval.

2.2 Other capitalized terms in this Agreement but not specifically defined in this section shall

have the meanings ascribed to them elsewhere in this Agreement, including by reference to capitalized terms indicating in parentheses.

**3. CONDITIONAL AUTHORIZATION OF THE CLASS ACTION FOR SETTLEMENT PURPOSES ONLY**

3.1 This Agreement is for settlement purposes only, and neither the fact of, nor any provision contained in this Agreement, nor any action taken hereunder, shall constitute or be construed as an admission of: (a) the validity of any claim or allegation made by the Plaintiff, or of any defence asserted by the Defendant in the Action, or (b) any wrongdoing, fault, violation of law, or liability on the part of any Party, Released Party, Class Member, or their respective counsel; or (c) the propriety of class action authorization in the Action or any other action or proceeding.

3.2 As part of an Application to Approve the Settlement, Plaintiff will seek authorization of the Action for settlement purposes only and approval of the Class Notice. The Defendant hereby consents, solely for purposes of the Agreement, to the authorization of the Action and to the approval of the Plaintiff as an adequate representative of the Class; provided, however, that if the Court fails to approve this Agreement or the Agreement otherwise fails to be consummated by the Effective Date, then the Defendant shall retain all rights it had immediately preceding the execution of this Agreement to object to the maintenance of the Action as a class action and this Agreement shall be void and will not constitute, be construed as, or be admissible in evidence as an admission of any kind or be used for any purpose in the Action or in any other pending or future action. Moreover, the Court's authorization of the Class shall not be deemed to be an adjudication of any fact or issue for any purpose other than the accomplishment of the provisions of this Agreement, and shall not be considered the law of the case, *res judicata*, unless and until the Court enters

a Final Judgment Approving Settlement, and regardless of whether the Effective Date occurs, the Parties' agreement to class action authorization for settlement purposes only (and any statements or submissions made by the Parties in connection with seeking the Court's approval of this Agreement) shall not be deemed to be a stipulation as to the propriety of class action authorization, or any admission of fact or law regarding any request for class action authorization, in any other action or proceeding, whether or not involving the same or similar claims. In the event the Court does not render a Final Judgment Approving Settlement, or the Effective Date does not occur, or the Agreement is otherwise terminated or rendered null and void, the Parties' agreement to class action authorization for settlement purposes shall be null and void, the Court's authorization order shall be vacated, and thereafter no class or classes will remain authorized; provided, however, that Plaintiff may thereafter seek authorization of the same or a new class or classes in the Action, and the Defendant may oppose such authorization on any available grounds.

#### **4. SETTLEMENT RELIEF**

4.1 The maximum amount of the Defendant's monetary obligations under this Agreement is the Settlement Amount.

4.2 Each Class Member is eligible to obtain a full refund of the Air Passenger Duty charged for each ticket he or she purchased for a passenger under 16 years of age on the date of the flight actually taken (the "**Refunds**"). The maximum amount to be distributed to Class Members by Defendant is five hundred twenty thousand three hundred one dollars (\$520,301).

4.3 The Refunds shall be processed automatically by Air Canada and made in accordance

with the method of payment used by the Class Member or, when the former is not possible, by cheque mailed to the last known address of the Class Member. Said cheques shall be valid for a period of six (6) months from their issuance, following which said cheques will be stale-dated and Class Members will forfeit their right to a Refund.

4.4 The Refunds shall be processed on the Effective Date or within sixty (60) Days thereof.

4.5 The admissibility for a Refund for Class Members with open tickets that have not yet been flown as of the Effective Date or with travel credits resulting from the cancellation of their flight for which they have not sought a refund shall be determined reasonably by Air Canada at the date of the use of the open ticket or the exchange of that credit for a flight, as the case may be.

4.6 In accordance with the *cy pres* doctrine, the Residual Settlement Amount, if any, shall, subject to Court approval, be paid to a charitable organization to be chosen by the Parties (after payment of any amounts owing to the Fonds d'aide aux actions collectives pursuant to the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives*, CQLR c. F-3.2.0.1.1, r. 2, if any). Such distribution of the Residual Settlement Amount, if any, shall be made within twelve (12) months after the payment of all Refunds according to the payment distribution date outlined in Section 4.4.

## **5. RETENTION OF THE SETTLEMENT ADMINISTRATOR**

5.1 The Parties have retained Velvet Payment Inc. as the Settlement Administrator to help implement the terms of the Agreement. All Notice and Administration Expenses, which shall not exceed \$100,000, shall be paid by the Defendant.

5.2 The Settlement Administrator shall assist with various administrative tasks, including,

without limitation: (1) causing the Class Notice to be published pursuant to the Notice Program set forth in Schedule C, (2) answering written inquiries from Class Members and/or forwarding such inquiries to Class Counsel or its designee, and (3) otherwise assisting with administration of the Agreement.

5.3 The contract with the Settlement Administrator and the Defendant shall obligate the Settlement Administrator to abide by the following performance standards:

5.3.1 The Settlement Administrator shall accurately and objectively describe, and shall train and instruct its employees and agents to accurately and objectively describe the provisions of this Agreement in communications with Class Members.

5.3.2 The Settlement Administrator shall provide prompt, accurate and objective responses to inquiries from Class Counsel or its designee and/or Air Canada's Counsel.

5.3.3 The Settlement Administrator shall keep a clear and careful record of all communications with Class Members, all expenses, and all tasks performed in administering the notices.

## **6. NOTICE TO THE CLASS**

### **(a) Notice**

6.1 No later than the Notice Date, the Settlement Administrator shall cause the Class Notice, in both French and English, to be published in accordance with the Notice Program. The Parties agree that the Notice Program provides for the most efficient means under the circumstances of this case to effect notice to the Class.

6.2 At or prior to the Final Approval Hearing, the Settlement Administrator shall provide the Court with an affidavit attesting that Class Notice have been published in accordance with the Notice Program.

**(b) Long-Form Notice**

6.3 The Long-Form Notice shall be in substantially the form of **Schedules A and B**, attached hereto, agreed to by the Parties and to be approved by the Court. At a minimum, the Long-Form Notice shall: (a) include a short, plain statement of the background of the Action and the Agreement; (b) describe the proposed settlement relief as set forth in this Agreement; (c) inform Class Members that, if they do not exclude themselves from the Class, they may be bound by the Settlement; (d) describe the Settlement process; (e) explain the scope of the releases provided in this Agreement; (f) state that the implementation of the Settlement is contingent on the Court's final approval of the Agreement; (g) state the identity of Class Counsel and the amount sought in Attorneys' Fees and Expenses; (h) explain the procedure for opting-out of the Class, including the applicable deadline; (i) explain the procedure for objecting to the Agreement, including the applicable deadline; (j) explain that any judgment or order entered in the Action, whether favourable or unfavourable to the Class, shall include and be binding on all Class Members; and (k) provide any other information required by the Court.

**(c) Short-Form Notice**

6.4 The Short-Form Notice shall be in substantially the form attached hereto as **Schedules D and E**. At a minimum, the Short-Form Notice shall: (a) include the telephone number and email address to contact Class Counsel; (b) include the definition of the Class; (c) include a brief description of the proposed settlement relief as set forth in this Agreement; and (d)

inform of the right to object to the Settlement and/or opt-out of the Class and the deadlines to exercise these rights.

**(d) Notice Program and Publication of the Class Notice**

6.5 The Short-Form Notice (**Schedules D and E**) and Long-Form Notice (**Schedules A and B**) shall be published in accordance with the Notice Program no later than by the Notice Date.

6.6 The Short-Form Notice (**Schedules D and E**) and/or the Long-Form Notice (**Schedules A and B**), in both French and English, may also be sent via e-mail to all persons that subscribed to Class Counsel's mailing list or request a copy from Class Counsel.

6.7 The Short-Form Notice (**Schedules D and E**) and/or the Long-Form Notice (**Schedules A and B**), in both French and English, shall also be prominently posted on the website of Class Counsel (<https://lpclex.com/airpassengerduty/>).

**7. OBJECTIONS, REQUESTS FOR EXCLUSION, AND MEDIA COMMUNICATIONS**

**(a) Objections**

7.1 Unless otherwise authorized by the Court, any Class Member who intends to object to the approval of the Agreement must do so in writing no later than the Objection Date. The written objection must be filed with the Court and notified to Class Counsel and Air Canada's Counsel no later than the Objection Date. The written objection must include: (a) a heading which refers to the Action; (b) the objector's name, address, telephone number and email address and, if represented by counsel, of his/her counsel; (c) a statement that the objector purchased an economy class ticket from Air Canada, during the Class Period, for a flight departing from the United Kingdom and was charged the Air

Passenger Duty for a passenger under 16 years of age on the date of the flight actually taken; (d) whether the objector intends to appear at the Final Approval Hearing, either in person, remotely or through counsel; (e) a statement that the Class Member is objecting to the approval of the Agreement and the grounds supporting the objection; (f) copies of any papers, briefs, or other documents upon which the objection is based; and (g) the objector's signature.

7.2 Any Class Member who files and serves a written objection, as described in the preceding Section, may appear at the Final Approval Hearing, either in person, remotely or through counsel hired at the Class Member's expense, to object to any aspect of the fairness, reasonableness, or adequacy of this Agreement.

7.3 Unless otherwise authorized by the Court, any Class Member who fails to comply with the above provisions shall waive and forfeit any and all rights he or she may have to appear separately and/or to object, and shall be bound by all the terms of this Agreement and by all proceedings, orders and judgments entered in in the Action.

**(b) Requests for Exclusion (Opt-Out)**

7.4 Any Class Member may request to be excluded from the Class. A Class Member who wishes to opt-out of the Class must do so by sending to the clerk of the Court a written Request for Exclusion that is postmarked no later than the Opt-Out Date. The Request for Exclusion must be personally signed by the Class Member requesting exclusion, include his/her email and mailing address, and contain a statement that indicates a desire to be excluded from the Class.

7.5 Any Class Member who does not file a timely written Request for Exclusion shall be bound by all subsequent proceedings, orders and the Final Judgment Approving Settlement in

the Action, unless he or she has already pending litigation or arbitration against the Defendant relating to the Released Claims.

- 7.6 Any Class Member who properly requests to be excluded from the Class shall not: (a) be bound by any orders or judgments entered in the Action; (b) gain any rights by virtue of the Agreement; and (c) be entitled to object to any aspect of the Agreement.

**(c) Media Communications**

- 7.7 Following the issuance of the judgment authorizing the Action and approving the Class Notice, the Parties agree that they may issue a joint or separate press release.

- 7.8 The Defendant and Class Counsel may post the joint or separate press release on their websites, if they so choose. Any such press release shall only include information relating to the Action or this Agreement available in the public record. The Parties agree not to make any disparaging comments about the other and any other statements or communications to the media pertaining to the Action, this Agreement or its terms shall be limited to promoting the virtues of this Agreement. Defendant may make such disclosures regarding the Action and the terms of the Agreement as it deems necessary in its filings with regulators, to its auditors, or as otherwise required by provincial, federal or foreign law.

- 7.9 Nothing herein shall prevent Class Counsel from responding to Class Members' inquiries regarding the Settlement in a manner consistent with the terms and conditions of this Agreement.

**8. RELEASES**

- 8.1 The Agreement shall be the sole and exclusive remedy for any and all Released Claims

of all Releasing Parties against all Released Parties. No Released Party shall be subject to liability of any kind to any Releasing Party with respect to any Released Claim. Upon the Effective Date, and subject to fulfillment of all of the terms of this Agreement, each and every Releasing Party shall be permanently barred and enjoined from initiating, asserting and/or prosecuting any Released Claim against any Released Party in any court or any forum.

8.2 On the Effective Date, each Releasing Party shall be deemed to have released and forever discharged each of the Released Parties of and from any and all liability for any and all Released Claims.

8.3 On the Effective Date, each of the Released Parties shall be deemed to have released and forever discharged each of the Releasing Parties and their respective counsel, including Class Counsel, for all claims arising out of or relating to the institution, prosecution and resolution of the Action, except to enforce the terms and conditions contained in this Agreement.

8.4 The Court shall retain exclusive and continuing jurisdiction to interpret, apply and enforce the terms, conditions, and obligations under the Agreement, including managing any ancillary matters that may arise from this Agreement

## **9. ATTORNEYS' FEES AND EXPENSES**

9.1 Subject to Court approval, the Defendant agrees to pay Attorneys' Fees and Expenses in the amount of \$261,000 plus GST & QST, which are to be deducted and paid from the Settlement Amount. Defendant shall take no position with regards to the approval of the Attorneys' Fees and Expenses described herein during the Final Approval Hearing, other than that it has agreed to pay them.

- 9.3 During the Final Approval Hearing, Class Counsel will make representations before the Court to obtain approval of the Attorneys' Fees and Expenses, which includes all taxes, legal fees, extrajudicial costs and disbursements incurred up to the date of the Final Judgment Approving Settlement.
- 9.4 No later than ten (10) Days before the Effective Date, Class Counsel will provide the Defendant with an invoice for the amount of Attorneys' Fees and Expenses approved by the Court, to be paid by the Defendant to Class Counsel as legal fees and extrajudicial costs incurred up to the date of Final Judgment Approving Settlement, along with the wire transfer / payment information.
- 9.5 On the Effective Date, the Defendant will pay to Class Counsel the amount of Attorneys' Fees and Expenses if and as approved by the Court in the Final Judgment Approving Settlement.
- 9.6 In consideration for the payment of legal fees, extrajudicial costs, expert fees, and disbursements above, as decided by the Court, Class Counsel will not claim any other fee or disbursement from the Defendant or from the Class Members.

## **10. FINAL JUDGMENT APPROVING SETTLEMENT**

- 10.1 This Agreement is subject to and conditional upon the issuance by the Court of the Final Judgment Approving Settlement that grants final approval of the Agreement, and provides the relief specified herein, which relief shall be subject to the terms and conditions of the Agreement and the Parties' performance of their continuing rights and obligations hereunder.

## **11. REPRESENTATIONS AND WARRANTIES**

11.1 The Defendant represents and warrants: (1) that it has the requisite corporate power and authority to execute, deliver and perform the Agreement and to consummate the transactions contemplated hereby; (2) that the execution, delivery and performance of the Agreement and the consummation by it of the actions contemplated herein have been duly authorized by necessary corporate action on the part of the Defendant; and (3) that the Agreement has been duly and validly executed and delivered by the Defendant and constitutes its legal, valid and binding obligation.

11.2 The Plaintiff represents and warrants (1) that he is entering into the Agreement without the receipt of any consideration other than what is provided in the Agreement or disclosed to, and authorized by, the Court; and (2) that he has reviewed the terms of the Agreement in consultation with Class Counsel and believes them to be fair and reasonable.

11.3 The Parties warrant and represent that no promise, inducement or consideration for the Agreement has been made, except those set forth herein. No consideration, amount or sum paid, accredited, offered, or expended by the Defendant in its performance of this Agreement constitutes a fine, penalty, punitive damage, or other form of assessment for any claim against it.

## **12. NO ADMISSIONS, NO USE**

12.1 The Agreement and every stipulation and term contained in it is conditional upon final approval of the Court and is made for settlement purposes only. Whether or not consummated, this Agreement shall not be: (a) construed as, offered in evidence as, received in evidence as, and/or deemed to be, evidence of a presumption, concession or an admission by the Plaintiff, the Defendant, any Class Member, any Releasing Party or any Released Party, of the truth of any fact alleged or the validity of any claim or defence

that has been, could have been, or in the future might be asserted in any litigation or the deficiency of any claim or defence that has been, could have been, or in the future might be asserted in any litigation, or of any liability, fault, or wrongdoing of such Party; or (b) construed as, offered in evidence as, received in evidence as, and/or deemed to be evidence of a presumption, concession or an admission of any liability, fault or wrongdoing, or in any way referred to for any other reason, by the Plaintiff, the Defendant, any Releasing Party or any Released Party in the Action or in any other civil, criminal or administrative action or proceeding other than such proceedings as may be necessary to effectuate the provisions of the Agreement.

### **13. TERMINATION OF THIS AGREEMENT**

13.1 Either Party may terminate this Agreement by providing written notice to the other Parties within ten (10) Days of the occurrence of any of the following:

- (i) The Court does not authorize the Action for settlement purposes as contemplated herein or the Court's order authorizing the Action is reversed, vacated, or modified in any material respect by another court; or
- (ii) The Court does not enter the Final Judgment Approving Settlement in its entirety, or, if entered, such Final Judgment Approving Settlement is reversed, vacated, or modified in any material respect by another court.

13.2 The Defendant may unilaterally withdraw from and terminate this Agreement if more than fifty (50) Class Members have submitted valid and timely Requests for Exclusion. Defendant may exercise its right to terminate under this provision by giving notice on or before the date of the Final Approval Hearing. If the Defendant elects to terminate the Agreement pursuant to this Section 13.2, the Agreement, subject to Section 13.5 hereto,

and all related documents exchanged or signed by the Parties or submitted to the Court shall be null and void and shall have no effect whatsoever on the Action or its adjudication.

13.3 It is expressly agreed that neither the failure of the Court to grant the Attorneys' Fees and Expenses award nor the amount of any Attorneys' Fees and Expenses that may be finally determined and awarded shall provide a basis for termination of this Agreement by the Plaintiff or by Class Counsel.

13.4 In the event of termination, the Settlement Administrator shall provide information regarding the termination to the Class Members under the same conditions as those provided in the Notice Program.

13.5 In the event this Agreement terminates for any reason, all Parties shall be restored to their respective positions as of immediately prior to the date of execution of this Agreement. Upon termination, Section 3 herein shall survive and be binding on the Parties, but this Agreement shall otherwise be null and void.

#### **14. MISCELLANEOUS PROVISIONS**

14.1 **Entire Agreement:** The Agreement, including all Schedules hereto, shall constitute the entire Agreement among the Parties with regard to the Agreement and shall supersede any previous agreements, representations, communications and understandings among the Parties with respect to the subject matter of the Agreement. The Agreement may not be changed, modified, or amended except in a writing signed by one of Class Counsel and one of Air Canada's Counsel and, if required, approved by the Court. The Parties contemplate that the Schedules to the Agreement may be modified by subsequent agreement of Air Canada's Counsel and Class Counsel, or by the Court. The Parties may make non-material changes to the Schedules to the extent deemed necessary, as agreed

to in writing by all Parties.

**14.2 Governing Law and Jurisdiction:** The Agreement shall be construed under and governed by the laws of the Province of Quebec, Canada applied without regard to conflict of laws provisions. The Parties hereby submit themselves exclusively to the Courts of the Province of Quebec, District of Montreal, concerning any and all matters related to the interpretation or application of this Agreement.

**14.3 Execution in Counterparts:** The Agreement may be executed by the Parties in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Signatures scanned to PDF and sent by e-mail shall be treated as original signatures and shall be binding.

**14.4 Notices:** Whenever this Agreement requires or contemplates that one Party shall or may give notice to the other, notice shall be provided in writing by email to:

**(a) If to Class Counsel:**

Mtre. Michael E. Vathilakis  
[mvathilakis@renvath.com](mailto:mvathilakis@renvath.com) [mailto:](mailto:mvathilakis@renvath.com)

and

Mtre. Joey Zukran  
[izukran@lpclex.com](mailto:izukran@lpclex.com)

**(b) If to Air Canada's Counsel:**

Mtre. Robert J. Torralbo  
[robert.torralbo@blakes.com](mailto:robert.torralbo@blakes.com)

and

Mtre. Simon J. Seida  
[simon.seida@blakes.com](mailto:simon.seida@blakes.com)

**14.5 Suspension of Proceedings:** Upon the execution of this Agreement, all proceedings in

this Action shall be suspended until further order of the Court, except for proceedings to seek authorization of the Action and approval of the Class Notice, and proceedings that may be necessary to implement the Agreement or comply with or effectuate the terms of this Agreement.

14.6 **Good Faith:** The Parties agree that they will act in good faith and will not engage in any conduct that will or may frustrate the purpose of this Agreement. The Parties further agree, subject to Court approval as needed, to reasonable extensions of time to carry out any of the provisions of the Agreement.

14.7 **Binding on Successors:** The Agreement shall be binding upon, and enure to the benefit of the heirs, successors and assigns of the Released Parties.

14.8 **Arms'- Length Negotiations:** The determination of the terms and conditions contained herein and the drafting of the provisions of this Agreement has been by mutual understanding after negotiation, with consideration by, and participation of, the Parties hereto, Air Canada's Counsel and the Class Counsel. This Agreement shall not be construed against any Party on the basis that the Party was the drafter or participated in the drafting. Any statute or rule of construction providing that ambiguities are to be resolved against the drafting party shall not be employed in the implementation of this Agreement and the Parties agree that the drafting of this Agreement has been a mutual undertaking.

14.9 **Waiver:** The waiver by one Party of any provision or breach of the Agreement shall not be deemed a waiver of any other provision or breach of the Agreement.

14.10 **Variance:** In the event of any variance between the terms of this Agreement and any of the Schedules hereto, the terms of this Agreement shall control and supersede the

Schedule(s).

- 14.11 **Schedules:** All Schedules to this Agreement are material and integral parts hereof, and are incorporated by reference as if fully rewritten herein.
- 14.12 **Taxes:** No opinion concerning the tax consequences of the Agreement to any Class Member is given or will be given by the Defendant, Air Canada's Counsel, Class Counsel or the Plaintiff; nor is any Party or their counsel providing any representation or guarantee respecting the tax consequences of the Agreement as to any Class Member. Each Class Member, including the Plaintiff, is responsible for his/her tax reporting and other obligations respecting the Agreement, if any.
- 14.13 **Retain Jurisdiction:** The Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of this Agreement, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the agreement embodied in this Agreement.
- 14.14 **Language:** The Parties acknowledge that they have required and consented to this Agreement and all related documents be drafted in English. *Les parties reconnaissent avoir exigé et consenti à ce que la présente convention et tous les documents connexes soient rédigés en anglais.*
- 14.15 **Translation:** Nevertheless, the Defendant shall procure a French translation of the Agreement. In the event of any dispute as to the interpretation or application of this Agreement, the English version shall govern.
- 14.16 **Transaction:** The present Agreement constitutes a transaction in accordance with Articles 2631 and following of the C.C.Q., and the Parties hereby renounce to any errors

of fact, of law and/or calculation.

14.17 **Recitals:** The recitals to this Agreement are true and form part of the Agreement.

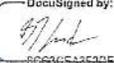
14.18 **Authorized Signatures:** Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement, on behalf of the Parties identified above and their law firms.

*[Signature page follows]*

IN WITNESS WHEREOF, each of the Parties hereto, Class Counsel and Air Canada's Counsel have executed this Agreement as of the date set forth below.

Date: 8/16/2022 | 6:31 PM EDT

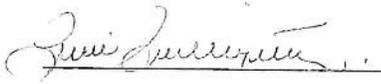
City: Montreal, Québec

DocuSigned by:  
  
808365A3F32E4E7

Mtre. Simon J. Seida  
Blake, Cassels & Graydon LLP  
Attorneys for Defendant Air Canada

Date: Aug 16, 2022

City: Ville St. Laurent



Lucie Guillemette, Executive Vice President  
and Chief Commercial Officer  
Duly authorized representative of Air Canada,  
as she so declares

Date: August 16, 2022

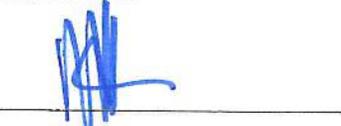
City: Montreal



Mtre. Joey Zukran  
LPC Avocat Inc.  
Class Counsel

Date: August 17, 2022

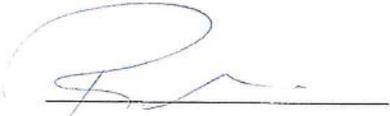
City: Montreal



Mtre. Michael Vathilakis  
Renno Vathilakis Inc.  
Class Counsel

Date: August 17, 2022

City: Montreal



Mr. Robert Itzkovitz  
Plaintiff

## **SCHEDULE C**

### **NOTICE PROGRAM**

The Short-Form Notice and Long-Form Notice to Class Members shall be distributed in the following manner:

a) Sending of Notices by Air Canada

1. Air Canada will send the Short-Form Notice in English and/or French, as is appropriate, by email to all Class Members for whom Air Canada has an email address. The email will include a link to the Long-Form Notice.

b) Publication of Notices by the Settlement Administrator

1. Online ads will be placed by the Settlement Administrator for 20 days with a total budget of \$24,000 on the following websites and apps, in either English or French as appropriate:

(a) Facebook;

(b) Instagram;

(c) Audience network (which allows to extend the reach of the ads beyond Facebook and into other mobile apps).

The total impressions are estimated between 1.80M and 5.2M and the total estimated clicks are estimated between 80,000 and 230,000.

2. The online ads will include a hyperlink directing to Class Counsel's website (<https://lpclex.com/airpassengerduty/>) where Class Members will be able to access the settlement and copies of the pre-approval notices in English and in French.