

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

KATHLEEN POULUS

PLAINTIFF

AND:

WESTJET AIRLINES LTD. and WESTJET ENCORE LTD.

DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

BEFORE } THE HONOURABLE JUSTICE FRANCIS } 13/MAY/2024

ORDER MADE AFTER APPLICATION

ON THE APPLICATION of the Plaintiff, coming on for hearing via MS Teams before the Honourable Justice Francis on May 13, 2024, on reading the materials filed, and on hearing Kevin McLaren, and Serena Cheong for the Plaintiff, and Michael Dery, and Nicolas Pimentel for the Defendants, and on being advised that the Plaintiff and Defendants consent to this Order:

THIS COURT ORDERS that:

1. All capitalized terms in this Order have the same meaning as defined in the Settlement Agreement attached as **Schedule A** to this Order, and apply to and are incorporated into this Order;
2. The class shall be as defined in this Court's Order rendered on January 6, 2021, with the clarification below regarding the interpretation of "made directly with WestJet":

All individuals residing anywhere in the world, who travelled on a WestJet Booking* made directly with WestJet**, during the Class Period "defined below" and paid to WestJet a fee

for the first checked bag:

A: Canada domestic flights: tickets issued on or after September 15, 2014 for travel on or after October 29, 2014 to July 29, 2017; and

B: USA and international flights: tickets issued on or after November 3, 2015 for travel on or after January 6, 2016 to February 27, 2019.

* “WestJet Booking” means a fare-paying itinerary on: (a) a WestJet-operated flight where WestJet was both the “marketing carrier” and “operating carrier”; or (b) a flight operated by WestJet’s code-share partners where WestJet was the “marketing carrier.”

** “made directly with WestJet” means directly through WestJet’s company website, WestJet’s business website, WestJet in person, WestJet’s contact centre, or WestJet Vacations Inc. via its website or contact centre.

(the “**Class**”)

3. The Notice is hereby approved substantially in the forms attached as **Schedule B** to this Order.
4. The settlement approval hearing is fixed for October 11, 2024 at 10:00AM at 800 Smithe Street, Vancouver, BC.
5. Any person who is a member of the Class who wishes to opt out must do so by delivering a written election to Class Counsel in accordance with the Notice attached as **Schedule B** to this Order.

6. The plan for disseminating the Notice as provided for in Section 11 of the Settlement Agreement is approved.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:



Signature of lawyer for the Plaintiff,
Kevin McLaren

By the Court:

Signature of lawyer for the Defendants,
Michael Dery

Registrar

SCHEDULE "A"

CLASS ACTION SETTLEMENT AGREEMENT

made as of January 15,

2024 between

 (the "Plaintiff")

And

WESTJET AIRLINES LTD. and WESTJET ENCORE LTD. (the "Defendants")

RECITALS:

WHEREAS the Plaintiff commenced a proposed class proceeding on July 5, 2019, which was certified as a class proceeding by the Supreme Court of British Columbia on January 6, 2021 (and certification of further claims on March 3, 2021), and upheld by the Court of Appeal on January 21, 2022;

WHEREAS the Plaintiff alleges, among other things, that the Defendants charged baggage fees for each Class Member's first checked baggage, contrary to the terms of the Defendants' and WestJet, an Alberta Partnership's tariffs and the federal *Competition Act*;

WHEREAS the Defendants deny all of the Plaintiff's allegations and do not admit, through the execution of this Settlement Agreement or otherwise, any liability, wrongdoing, unlawful conduct, or fault of any kind by the Defendants, as alleged in the Proceeding or otherwise;

WHEREAS despite the Defendants' belief that they have complete defences on the merits, the Defendants have agreed to enter into this Settlement Agreement to achieve a final worldwide resolution of all claims asserted or which could have been asserted in the Proceeding to avoid further expense, inconvenience and the distraction of protracted litigation;

WHEREAS the Parties intend by this Settlement Agreement to resolve all claims asserted or which could have been asserted in the Proceeding, without admission or prejudice whatsoever;

WHEREAS the Parties, with counsel, engaged in arms-length settlement discussions and negotiations with the assistance of a mediator, that resulted in this Settlement Agreement, which includes all of the terms and conditions of the settlement between the Defendants and the Plaintiff, both individually and on behalf of the Class Members, subject to the approval of the Court;

WHEREAS the Plaintiff and Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analysis of the facts and law

applicable to the claims, and having regard to the burden and expense in litigating the Proceeding, including the risks and uncertainties associated with certification, trials and appeals, the Plaintiff and Class Counsel have concluded that this Settlement Agreement is fair, reasonable, and in the best interests of the Class;

NOW THEREFORE in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that all claims of the Plaintiff and Class Members in the Proceeding be settled and dismissed with prejudice and without costs, subject to the approval of the Court, on the following terms and conditions:

Section 1 Definitions

1.1 For the purposes of this Settlement Agreement, including the Recitals and Schedules hereto:

- (a) **Administration Costs** means all costs, fees, expenses, disbursements, taxes and any other amounts paid by the Parties or otherwise incurred to implement this Settlement Agreement, including the cost of notices, but excluding the Defendants' internal costs, Class Counsel Fees, any honorarium paid to the Plaintiff, and any reasonable disbursements incurred by Class Counsel
- (b) **Court** means the Supreme Court of British Columbia;
- (c) **Class** means:

“All individuals residing anywhere in the world, who travelled on a WestJet Booking* made directly with WestJet**, during the Class Period (defined below) and paid to WestJet a fee for the first checked bag:

A: Canada domestic flights: tickets issued on or after September 15, 2014 for travel on or after October 29, 2014 to July 29, 2017; and

B: USA and international flights: tickets issued on or after November 3, 2015 for travel on or after January 6, 2016 to February 27, 2019.

* **“WestJet Booking”** means a fare-paying itinerary on: (a) a WestJet-operated flight where WestJet was both the “marketing carrier” and “operating carrier”; or (b) a flight operated by WestJet’s code-share partners where WestJet was the “marketing carrier.”

** **“made directly with WestJet”** means directly through WestJet’s

company website, WestJet's business website, WestJet in person, WestJet's contact centre, or WestJet Vacations Inc. via its website or contact centre."

- (d) **Class Counsel** means Hammerco Lawyers LLP, Champlain Avocats and Evolink Law Group;
- (e) **Class Counsel Fees** means the legal fees payable to Class Counsel, and any applicable taxes or charges thereon, as approved by the Court;
- (f) **Class Members** means members of the Class but excluded are the following:
 - (i) the directors and officers of the Defendants;
 - (ii) any judge of a court who has heard or will hear any motion or application in respect of the Proceeding; and
 - (iii) any person who opts out of the Proceedings;
- (g) **Defence Counsel** means Alexander Holburn Beaudin + Lang LLP;
- (h) **Distribution Protocol** means the protocol attached as **Schedule E**;
- (i) **Effective Date** means the date set out in **section 4.2(c)**;
- (j) **Final Order** means the later of a final judgment pronounced by the Court approving this Settlement Agreement in accordance with its terms, once the time to appeal such judgment has expired without any appeal being taken, or upon a final disposition of all appeals;
- (k) **Honourarium** means any payment awarded individually to the Plaintiff in the Proceeding in consideration of the Plaintiff's time, effort, and result obtained for Class Members, as approved by the Court;
- (l) **Notice** means the notice as approved by the Court as described in **section 11.2**;
- (m) **Opt-Out Deadline** means the date which is ninety (90) days after the date the Notice is first published, which will commence promptly after the Court approves the issuance of the Notice;
- (n) **Parties** means the Plaintiff and Defendants;
- (o) **Proceeding** means [REDACTED] v. *WestJet Airlines Ltd. and WestJet Encore Ltd.*, SCBC Vancouver Registry No. VLC-S-S-197550;

- (p) **Released Claims** means any and all manner of claims, demands, actions, suits, debts, judgments, losses, causes of action, known or unknown, that any of the Releasors ever had or now have, and which arise directly or indirectly from and which arises directly or indirectly from, or relates to, the Proceeding, or the facts underlying the Proceeding. For greater certainty, the Released Claims do not include the price-fixing claims in *Hoedel v. WestJet Airline Ltd., et al*, Saskatchewan Kings Bench QBC 2278 of 2016 and, as per para. 7(4) of this Settlement Agreement, the Defendants are not barred from relying on this Settlement Agreement to request a reduction of the award in any other case, action, or complaint on the basis of double recovery, including but not limited to the *Hoedel* decision referenced herein.
- (q) **Releasees** means, jointly and severally, individually and collectively, the Defendants and subsidiaries, past, present and future partners, directors, officers, employees, agents, predecessors, successors, assigns, attorneys, liquidators, receivers, receiver managers, trustees, insurers, owners, shareholders, all of their affiliates as defined in the *Alberta Business Corporations Act*, including but not limited to WESTJET, an Alberta Partnership, WESTJET AIRLINES LTD., WESTJET ENCORE LTD., 2222304 ALBERTA CORP., and WESTJET VACATIONS INC..
- (r) **Releasors** means, jointly and severally, individually and collectively, the Plaintiff and the Class Members and their respective subsidiaries, affiliates, predecessors, successors, heirs, executors, administrators, insurers, assigns, and beneficiaries;
- (s) **Settlement Agreement** means this agreement, including recitals and schedules.

Section 2 Court Approval Required

- 2.1 This Settlement Agreement shall be null and void and of no force or effect, subject to **section 9.4** unless the Court approves this Settlement Agreement.

Section 3 Settlement Amount

- 3.1 Contingent on the approval of the Settlement Agreement by the Court, the Defendants have agreed to pay the settlement amount of WestJet travel credits with face value of \$12,500,000 CAD (twelve million five hundred thousand dollars) (the “**Settlement Amount**”) without any admission of liability, in accordance with this Settlement Agreement.

- 3.2 The Settlement Amount shall be provided in full satisfaction of the Released Claims against the Releasees.
- 3.3 The Settlement Amount shall be all-inclusive of all Administration Costs (including notice and translation), Class Counsel Fees, any honorarium paid to the Plaintiff, interest, costs, taxes and any reasonable disbursements incurred by Class Counsel.
- 3.4 Upon expiry of the appeal period(s) for the settlement approval order(s), the Defendants will:
- (a) As set out in section 5, pay to Class Counsel the Class Counsel Fees, as approved by the Court, plus applicable taxes and reasonable disbursements;
 - (b) As set out in section 6, pay to Class Counsel, on account of any Honourarium awarded individually to the Plaintiff, as approved by the Court;
 - (c) As set out in section 10, distribute the remaining Settlement Amount to Class Members under the Distribution Protocol in Schedule E, as approved by the Court;
 - (d) Following adjudication and payment of claims under the Distribution Protocol, distribute any remaining WestJet travel credits from the Settlement Amount as a *cy-près* donation in accordance with the Distribution Protocol at Schedule E.

Section 4 Settlement Approval

- 4.1 The Parties will use their best efforts to implement this settlement, obtain approval of this Settlement Agreement from the Court, and secure the prompt, complete and final disposition of the Proceeding.
- 4.2 Settlement approval shall be sought in the following way:
- (a) As soon as practicable after execution of this Settlement Agreement, the Plaintiff and Class Counsel shall bring an application before the Court for approval of the Notice described in section 11, substantially in the form attached as Schedule A (the “**Notice Approval Order**”);
 - (b) As soon as practicable thereafter after (i) the Notice described in section 11 has been published, and (ii) the deadline for opting out of the Class has expired, the Plaintiff and Class Counsel shall bring an application before the Court for an order approving this Settlement Agreement,

substantially in the form attached as Schedule D (the “**Settlement Approval Order**”).

- (c) If no appeal is taken from the Settlement Approval Order, the Settlement Approval Order will be deemed final 30 days after it is pronounced or, if any appeal is taken, upon the final disposition of the appeal (the “**Effective Date**”).

4.3 The Parties will jointly represent to the Court that they consent to the settlement, specifically the Notice Approval Order and Settlement Approval Order.

Section 5 Class Counsel Fees and Disbursements

5.1 Class Counsel shall bring an application to the Court for approval of Class Counsel Fees for a maximum amount equal to one-third of the Settlement Amount plus applicable taxes and disbursements contemporaneous with seeking approval of this Settlement Agreement or at such other time thereafter as Class Counsel may determine in their discretion.

5.2 The Defendants will not make submissions in relation to Class Counsel Fees, and will not object to the approval or payment of Class Counsel Fees.

5.3 The Settlement Agreement is not contingent upon Court approval of Class Counsel Fees. A separate order may be issued for Class Counsel Fees, disbursements, and any Honourarium for the Plaintiff.

5.4 Within 14 days of the Effective Date, the Defendants will pay to Class Counsel, by way of cheque or wire transfer, one-third of the Settlement Amount (or any other percentage the Court approves) as Class Counsel Fees, plus applicable taxes, and reasonable disbursements out of and deducted from the Settlement Amount by the Defendants.

Section 6 Honourarium for Plaintiff

6.1 Class Counsel may bring an application to the Court for approval of an Honourarium for the Plaintiff in the Proceedings contemporaneous with seeking approval of this Settlement Agreement or at such other time thereafter as they determine in their discretion.

6.2 Any Honourarium to the Plaintiff will be awarded at the discretion of the Court.

6.3 The Plaintiff may seek an Honourarium of no more than \$3,000.

6.4 The Defendants will not make submissions in relation to any Honourarium for

the Plaintiff, and will not object to the approval or payment of any Honourarium for the Plaintiff.

- 6.5 This Settlement Agreement shall not be contingent upon court approval of any Honourarium for the Plaintiff.
- 6.6 Any Honourarium to the Plaintiff will be paid within 14 days of the Effective Date, by way of cheque or wire transfer, out of and deducted from the Settlement Amount by the Defendants.

Section 7 Releases and Dismissals

- 7.1 Upon the Effective Date, and in consideration of payment of the Settlement Amount and for other valuable consideration set forth in this Settlement Agreement, the Releasors will fully, finally, forever and absolutely release, relinquish, acquit, and discharge the Releasees from and for the Released Claims.
- 7.2 Without limiting any other provisions herein, each Releasor who did not opt out will be deemed by the Settlement Agreement completely and unconditionally to have released and forever discharged the Releasees from any and all Released Claims.
- 7.3 Upon the Effective Date, each Releasor will be forever barred and enjoined from continuing, commencing, instituting, maintaining, asserting or prosecuting, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim, litigation, investigation or other proceeding in any court of law or equity, arbitration, tribunal, proceeding, governmental forum, administrative forum, or any other forum, directly, representatively, or derivatively, against the Releasees, and/or any other person or third-party who may claim contribution or indemnity or claim over other relief from the Releasee, in respect of any Released Claims.
- 7.4 This release and Settlement Agreement is without prejudice to the Releasees relying on this Settlement Agreement in any other case, action, or complaint to request a reduction of the award in that case, action, or complaint on the basis of the risk of double recovery by a Releasor. For greater certainty, the Defendant are not barred from relying on this Settlement Agreement, even if the claims raised in the other case, action, or complaint are not encompassed by the Released Claims.
- 7.5 Upon the Effective Date, the Proceeding shall be dismissed with prejudice as against the Defendants and without costs to the Parties.

- 7.6 Upon the Effective Date, each Class Member shall be deemed to irrevocably consent to the dismissal, without costs and with prejudice, of any other action or proceeding relating to the Released Claims against the Releasee and all such actions or the Proceedings shall be dismissed, without costs and with prejudice.

Section 8 No Admission of Liability and Confidentiality

- 8.1 The Parties agree that, whether or not this Settlement Agreement is finally approved or is terminated in accordance with its terms, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions, and the Proceeding associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission of any violation of any statute, regulation or law, breach of contract or tariff, or of any wrongdoing or liability by the Defendants, or of the truth of any of the claims or allegations made in the Proceeding, or in any other pleading filed by the Plaintiff.
- 8.2 The Parties further agree that, whether or not this Settlement Agreement is finally approved or is terminated, this Settlement Agreement, and anything contained herein, and any and all negotiations, documents, and discussions associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to seek court approval of this Settlement Agreement, to give effect to and enforce the provisions of this Settlement Agreement, or to defend against the assertion of Released Claims, or as otherwise permitted by law.
- 8.3 Class Counsel or anyone currently or hereafter employed by or a partner with Class Counsel shall not divulge to anyone for any purpose any information obtained in the course of the Proceeding on a confidential basis or the negotiation and preparation of this Settlement Agreement, except to the extent that such information was, is or becomes otherwise publicly available or unless ordered to do so by a court.

Section 9 Termination of Settlement Agreement

- 9.1 The Parties expressly reserve all their respective rights and may terminate this Settlement Agreement in the event that:
- (a) the Court declines to approve this Settlement Agreement or any material part thereof or approves this Settlement Agreement in a

materially different form; or

(b) the Settlement Approval Order does not become a final order.

9.2 Any order, ruling or determination with respect to Class Counsel Fees, Honourarium, or the Distribution Protocol shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not constitute any basis for the termination of this Settlement Agreement.

9.3 If material parts of the Settlement Agreement are not approved, or if approval of any material portion or provision of the Settlement Agreement is reversed or altered on appeal, or if terminated in accordance with [section 9.1](#), then:

(a) this Settlement Agreement shall become null and void and shall have no further force or effect except as provided for in [section 9.4](#) (Survival of Provisions after Termination);

(b) the Parties shall be restored to their respective positions in the Proceeding immediately prior to reaching the settlement;

(c) any order by the Court certifying the Proceeding for the purposes of settlement or approving this Settlement Agreement shall be set aside and declared null and void and of no force or effect, and shall be without prejudice to any position of any of the Parties on any issue in the Proceeding or any other proceeding; and

(d) documents or communications related to the settlement (including the minutes of settlement, and this Settlement Agreement) shall have no force or effect, with all applicable privilege protections maintained, and not be admissible in evidence for any purpose in the Proceeding or in any other proceeding.

9.4 If this Settlement Agreement is terminated or otherwise fails to take effect for any reason, the provisions of this [Section and Sections 8, 13.5, 13.6](#) and the definitions and Schedules applicable thereto shall survive the termination and continue in full force and effect. The definitions and Schedules shall survive only for the limited purpose of the interpretation of those aforementioned sections, within the meaning of this Settlement Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

Section 10 Administration

10.1 Class Counsel will be responsible for:

(a) responding to inquiries from Class Members;

- (b) receiving and maintaining Class Member correspondence regarding opting out of the Proceeding and objections to the Settlement;
- (c) posting Notice on Class Counsel's website;
- (d) posting notice on Cision national news release; and
- (e) reporting to the Court on the outcome of the administration of the Distribution Protocol.

10.2 The Defendants will be responsible for:

- (a) posting Notice on a webpage on WestJet's website;
- (b) administering the Settlement including the Distribution Protocol; and
- (c) providing any sworn affidavits detailing the administration of the claims.

10.1 The Parties may agree to retain a third-party claims administrator to issue the Notice and/or assist in administering the Distribution Protocol. The costs of such third-party administration will be deducted as a disbursement from the Settlement Amount.

10.2 The Parties will cooperate to send Notice in accordance with **section 11** by email to potential Class Members for whom the Defendants can identify email addresses. The Defendants, or an approved third-party administrator, shall facilitate dissemination of notice by email.

10.3 Under the Distribution Protocol, class membership will be proven by submission of a simplified claim form that is approved by the Court.

10.4 The mechanics of the implementation and administration of this Settlement Agreement shall be determined by the Court, to the extent not provided for in this Settlement Agreement, if the Parties cannot agree. The Court is at liberty to amend the Distribution Protocol and such amendment shall not constitute any basis for the termination of this Settlement Agreement provided always that any payments made under the Distribution Protocol shall in no way constitute an admission of liability on the part of the Defendants or any Releasee.

Section 11 Notice to the Class Members

11.1 Class Members will be given Notice of this Settlement Agreement and (i) the certification of the Proceeding against the Defendants, (ii) the hearing at which Court will be asked to approve the Settlement Agreement, and, if brought contemporaneously, (iii) the requests to approve Class Counsel Fees,

disbursements, and Honourarium to the Plaintiff.

- 11.2 The Notice described in section 11.1 will be in the form attached as Schedule B or as otherwise agreed by Class Counsel and Defence Counsel and approved by the Court, or in a form ordered by the Court.
- 11.3 The Notice shall be disseminated in English and French within twenty (20) business days (unless otherwise agreed) following the issuance of the Notice Approval Order or as soon as reasonably possible thereafter, in the following manner, unless otherwise ordered by the Court:
- (a) sent by email by the Defendants or an administrator to the email addresses identified by the Defendants for Class Members: one email at the start of the opt-out period and one reminder email after 45 days;
 - (b) Cision national news release;
 - (c) posted on Class Counsel's website; and
 - (d) A webpage of the Defendants' website.
- 11.4 All out-of-pocket costs associated with the publication of the Notice shall be paid from the Settlement Amount, excluding any internal costs of the Defendants.
- 11.5 If any court requires that additional notice be published, the Parties agree that the costs shall be paid from the Settlement Amount and the terms of payment shall follow the same procedure as for the Notice of the settlement approval hearing.
- 11.6 The Defendants shall not have any responsibility for the costs of the Notice or any additional notice required by any court, except for any internal costs associated with the provision of email addresses and hosting a webpage on the Defendants' website.
- 11.7 After this Settlement Agreement is approved by the Court, the parties shall prepare a short notice outlining the terms of the approval, including how claims are to be submitted, and shall be distributed in accordance with this Section 11. In the event the parties cannot agree on the content of the notice, the Parties may seek directions from the Court.

Section 12 Opt-Outs and Objections

- 12.1 Persons who want to opt out of or object to the Proceedings must do so by sending a written election to opt out or object ("**Election**") to Class Counsel in a manner specified in the Notice. An Election to opt out or object will only be

valid if it sent directly by the Class Member to Class Counsel at the designated address on or before the Opt-Out Deadline.

- 12.2 The Election must be signed by the person who wishes to opt out or object and either (i) in the form attached as **Schedule C** or (ii) contain the following information in order to be valid:
- (a) the person's full name, current address and telephone number;
 - (b) proof of class membership in the form of a booking confirmation and proof of paying the first-checked baggage fee during the class period; and
 - (c) a statement to the effect that the person wishes to be excluded from the Proceeding.
- 12.3 Opt-out forms or documents that purport to opt out multiple Class Members, or so-called "mass" or "class" opt-outs, shall not be permitted.
- 12.4 Class Counsel shall provide Defence Counsel with copies of all Elections received by Class Counsel within five (5) business days after the Opt-Out Deadline.
- 12.5 Upon the Settlement Approval Order becoming final, any Class Member who has not opted out of the Proceeding shall be bound by the terms of the Settlement Agreement, including the release of claims.
- 12.6 With respect to any potential Class Member who validly opts out from the Proceeding, the Defendants reserve all of their legal rights and defences.

Section 13 Miscellaneous

- 13.1 The Recitals set out herein are incorporated with and form part of this Settlement Agreement.
- 13.2 The Schedules annexed hereto form part of this Settlement Agreement.
- 13.3 Class Counsel or Defence Counsel may apply to the Court for directions in respect of the implementation and administration of this Settlement Agreement. All applications contemplated by this Settlement Agreement, including applications to the Court for directions, shall be on notice to counsel for the Parties.
- 13.4 Except as otherwise provided herein, the Parties shall bear their own respective costs of the Proceeding and the approval and implementation of the Settlement Agreement.
- 13.5 This Settlement Agreement shall be governed by, construed, and interpreted

solely in accordance with the laws of the Province of British Columbia.

- 13.6 The Court shall retain and have exclusive jurisdiction to interpret and enforce the terms of this Settlement Agreement.
- 13.7 The Settlement Agreement constitutes the entire agreement among the Parties, and supersedes any and all prior and contemporaneous understandings, undertakings, negotiations, representations, communications, promises, agreements, agreements in principle, and memoranda of understanding in connection herewith. The Parties agree that they have not received or relied on any agreements, representations, or promises other than as contained in the Settlement Agreement. None of the Parties shall be bound by any prior obligations, conditions, or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.
- 13.8 This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto.
- 13.9 This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiff, the Class Members, the Defendants, the Releasors, the Releasees and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made by the Plaintiff shall be binding upon all Releasors and each and every covenant and agreement made by the Defendants shall be binding upon all of the Releasees.
- 13.10 This Settlement Agreement has been the subject of negotiations and discussions among the Parties, each of which has been represented and advised by competent counsel. The Parties further agree that the language contained or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.
- 13.11 Each of the undersigned represents that they are fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement.
- 13.12 This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile or electronically transmitted signature shall be deemed an original signature for purposes of executing this Settlement Agreement. This Settlement Agreement may be delivered and is fully enforceable in either original, faxed, or other electronic form provided that it is duly executed.
- 13.13 Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another, such notice, communication, or document shall be provided by email, or letter by overnight delivery to the

representatives for the Party to whom notice is being provided, as identified below:

For the Plaintiff and for Class Counsel in the Proceeding:

Kevin McLaren
Hammerco Lawyers LLP
400 – 2233 Columbia
Street Vancouver, BC
V7Y 0M6

kmclaren@hammerco.ca

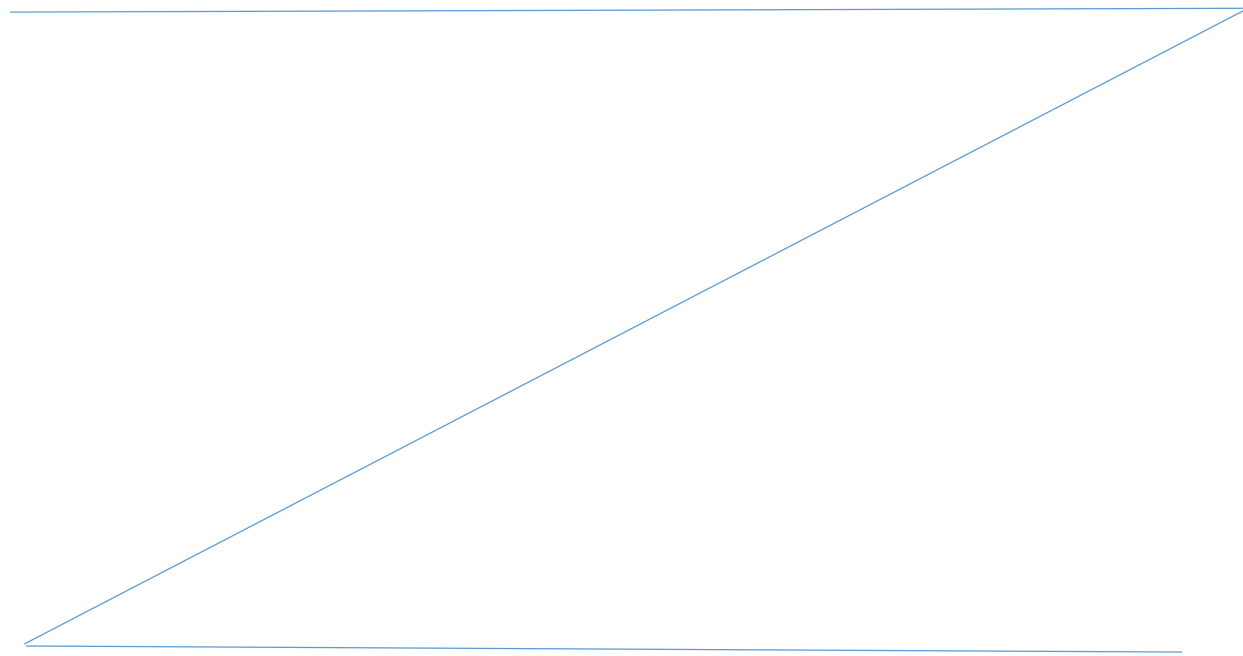
With a copy by email to:
Simon Lin (simonlin@evolinklaw.com)

For the Defendants:

Michael Dery
Alexander Holburn Beaudin +
Lang LLP
2700 – 700 West Georgia Street
Vancouver, BC V7Y 1B8

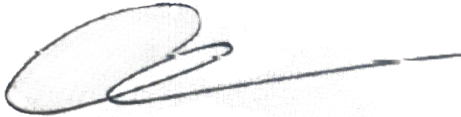
mdery@ahbl.ca

13.14 Date of Execution: The Parties have executed this Settlement Agreement as of the date on the cover page.



13.15 **English Language:** It is the express wish of the parties that this Settlement Agreement and all related documents, including notices and other communications, be drawn up in the English language only. *Il est la volonté expresse des parties que cette convention et tous les documents s'y rattachant, y compris les avis et les autres communications, soient rédigés et signés seulement en anglais.*

FOR THE PLAINTIFF AND FOR CLASS COUNSEL:



Name: Kevin McLaren
Hammerco Lawyers LLP
Solicitor for [REDACTED]

FOR THE DEFENDANTS:



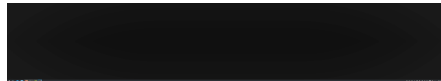
Name: Michael Dery
Alexander Holburn Beaudin + Lang LLP
Solicitor for WestJet Airlines Ltd. and WestJet Encore Ltd.

SCHEDULE A

NO. S-197550
VANCOUVER
REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:



PLAINTIFF

AND:

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DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

BEFORE } THE HONOURABLE JUSTICE FRANCIS } ____/____/2024

ORDER MADE AFTER APPLICATION

ON THE APPLICATION of the Plaintiff coming on for hearing before the Honourable Justice Francis at the Courthouse at 800 Smith Street, Vancouver, B.C., on ◆, 2024, on reading the materials filed, including the settlement agreement dated ◆ (“Settlement Agreement”), and on hearing, Kevin McLaren, Alexia Majidi, Simon Lin, and Serena Cheong for the Plaintiff, and Michael Dery and Nicolas Pimentel for the Defendants, and on being advised that the Plaintiff and Defendants consent to this Order:

THIS COURT ORDERS that:

1. All capitalized terms in this Order have the same meaning as defined in the Settlement Agreement attached as **Schedule “A”** to this Order, and apply to and are incorporated into this Order;

2. The class shall be as defined in this Court's Order rendered on January 6, 2021, with the clarification below the interpretation of "made directly with WestJet":

All individuals residing anywhere in the world, who travelled on a WestJet Booking* made directly with WestJet**, during the Class Period (defined below) and paid to WestJet a fee for the first checked bag:

A: Canada domestic flights: tickets issued on or after September 15, 2014 for travel on or after October 29, 2014 to July 29, 2017; and

B: USA and international flights: tickets issued on or after November 3, 2015 for travel on or after January 6, 2016 to February 27, 2019.

* "**WestJet Booking**" means a fare-paying itinerary on: (a) a WestJet-operated flight where WestJet was both the "marketing carrier" and "operating carrier"; or (b) a flight operated by WestJet's code-share partners where WestJet was the "marketing carrier."

** "**made directly with WestJet**" means directly through WestJet's company website, WestJet's business website, WestJet in person, WestJet's contact centre, or WestJet Vacations Inc. via its website or contact centre.

(the "**Class**");

3. Any person who is a putative member of the Class who wishes to opt-out must do so by delivering a written election to Class Counsel in accordance with the Notice attached as Schedule B to the Settlement Agreement. The written election to opt-out must either be in the form attached as Schedule C to the Settlement Agreement, or otherwise include the information specified in the notice;
4. The Notice is hereby approved substantially in the forms attached as Schedule B to the Settlement Agreement;

5. The plan for disseminating the Notice as provided for in Section 11 of the Settlement Agreement is approved.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER

Signature of Kevin McLaren

Lawyer for the Plaintiff

By the Court:

Signature of Michael Dery

Lawyer for the Defendants

Registrar

**SCHEDULE A TO NOTICE
APPROVAL ORDER**

[Settlement Agreement]

SCHEDULE B TO NOTICE APPROVAL ORDER

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NOTICE OF SETTLEMENT APPROVAL

FOR INDIVIDUALS WORLDWIDE THAT PAID WESTJET A BAGGAGE FEE FOR YOUR FIRST CHECKED BAG (between October 29, 2014 to July 29, 2017 for Canada domestic flights; between January 6, 2016 to February 27, 2019 for international flights), YOU MAY BE AFFECTED BY A PROPOSED CLASS ACTION SETTLEMENT.

NOTICE OF PROPOSED SETTLEMENT

This Notice advises you of a proposed settlement of a class action brought in the Supreme Court of British Columbia. The Court file number is VLC-S-S-197550.

WHAT IS THE CLASS ACTION ABOUT?

The plaintiff alleges that WestJet charged a fee for the first checked baggage contrary to a provision that was included in WestJet's tariff during the class period. The allegation has not been proven in court, and WestJet has not admitted liability.

AM I IN THE SETTLEMENT CLASS?

Individuals anywhere in the world that paid a fee for their first checked baggage for a WestJet flight booked directly with WestJet and issued on or after September 15, 2014, and for travel between October 29, 2014 to July 29, 2017 for Canada domestic flights or tickets issued on or after November 3, 2015 for travel between January 6, 2016 to February 27, 2019 for international flights, and whose itineraries were booked pursuant to tariffs that included the free baggage fee stipulation.

For details of the class definition, please see the settlement agreement found on <<[here](#)>>

CAN I MAKE A CLAIM NOW?

No. A settlement must first be approved by the court. The claim form will be made available after the court approves the settlement and further notice will be issued at that time.

WHEN IS THE APPROVAL HEARING?

The approval hearing will be held on <<[insert hearing date](#)>> at the Vancouver Law Courts at 800 Smithe Street, Vancouver, BC.

An MS Teams link will be made available to class members to observe and/or participate remotely.

WHAT CAN I RECEIVE FROM THE SETTLEMENT?

The settlement is for WestJet Travel Bank credits valued at **\$12,500,000 CAD**, before deduction of class counsel fees, administration costs, interest, taxes, reasonable disbursements and an honorarium for the plaintiff. WestJet will pay in the form of cash class counsel fees (one-third of the settlement), disbursements, and the

plaintiff's honorarium (up to \$3,000). The remaining amount after deductions will be distributed pro rata in the form of a credit to the WestJet Travel Bank accounts of class members that filed a claim within the 90-day opt-out period, following the court-approved claims protocol. The protocol provides for a different distribution formula for those that are before or **after July 6, 2017**, due to potential limitation periods.

The WestJet Travel Bank credits may be redeemed towards WestJet flights within 24-months without any blackout periods. The credits will expire after the 24-months if they are not redeemed in time. The WestJet Travel Bank credits are non-transferable but can be used to book for another guest.

The *pro rata* amount to be distributed will depend on the number of eligible claims submitted, and consequently the claims rate. Class counsel estimates that the pro rata distribution per class member will be **\$x**, assuming an estimated claims rate of 5%. This is only an estimate and not a guarantee distribution figure.

WILL I AUTOMATICALLY RECEIVE THE WESTJET TRAVEL BANK CREDITS?

NO, class members must submit a claim in accordance with the court-approved protocol to be eligible to a pro rata share of the settlement to be deposited to their WestJet Travel Bank accounts. Class members that paid the fee for their first checked bag multiple times during the class period may not submit a claim for more than three first checked bags.

The settlement provides that distribution for each approved claim will not exceed **\$45CAD for class members on or after July 6, 2017**, and **\$18CAD for class members before July 5, 2017**. These are maximum figures, and not the pro rata amount that each member would receive. The pro rata amount would depend on the number of claims.

If there are any amounts remaining after distribution to the class, the remaining amounts would be distributed to non-profit organizations approved by the Court.

WHAT ARE MY OPTIONS?

1. If you want to participate in the settlement and receive the benefits, no action is required. You will then be bound by the terms of the legal release.
2. If you **do not want to participate in the**

settlement, you can opt-out by submitting the written election found on the website.

3. If you wish to **object to the terms of this proposed settlement**, you can write to Class Counsel by <<**objection date**>> in accordance with the steps in the settlement agreement. Please note that the Court cannot change the settlement terms. Any objections will be used by the Court to consider whether to approve the settlement.

WHO REPRESENTS THE CLASS MEMBERS?

The Plaintiff and Class Members are represented by:

<<**class counsel contact**>>

THIS NOTICE IS JUST A SUMMARY. If there is any discrepancy between this notice and the settlement agreement, the settlement agreement shall prevail. Go to <<>> for further information and to review the proposed settlement agreement.

SCHEDULE - Opt-out Form

By completing this form, you are choosing not to participate in this WestJet class action (Supreme Court of British Columbia Vancouver Registry No. VLC-S-S-197550).

If you opt out, you should be aware that there are strictly enforced time limits within which you must take formal legal action to pursue your own claim. By opting out, you will take full responsibility for taking all necessary legal steps to protect your claim.

If you wish to opt out, you must complete, sign, and deliver this opt-out form to Class Counsel by mail, courier, or email no later than ♦, 2024. To deliver your opt-out form to Class Counsel, you must email it to wibaggagefeesca@hammerco.ca or mail or courier it to:

Hammerco Lawyers LLP
400 – 2233 Columbia Street
Vancouver, BC V7Y 0M6
Attention: **Alexia Majidi**

I, _____, (full name) hereby exercise my right to opt out of the class action. I confirm my understanding that I will not receive any benefits under the settlement reached in these proceedings, that I am not represented by Class Counsel, and that I will be responsible for protecting my own interests in relation to the claims asserted in those proceedings.

Date: _____, 2024

Contact information

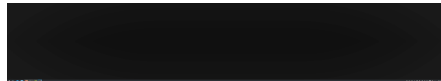
Address: _____ City: _____
Province: _____ Postal code: _____
Phone number: _____
Email: _____

SCHEDULE D

NO. S-197550
VANCOUVER
REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:



PLAINTIFF

AND:

WESTJET AIRLINES LTD. and WESTJET ENCORE LTD.

DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

BEFORE } THE HONOURABLE JUSTICE FRANCIS } ____/____/2024

ORDER MADE AFTER APPLICATION

ON THE APPLICATION of the Plaintiff coming on for hearing before the Honourable Justice Francis at the Courthouse at 800 Smithe Street, Vancouver, B.C., on ◆, 2024, on reading the materials filed, including the settlement agreement dated ◆ (“Settlement Agreement”), and on hearing, Kevin McLaren, Alexia Majidi, Simon Lin, and Serena Cheong for the Plaintiff, and Michael Dery and Nicolas Pimentel for the Defendants, and on being advised that the Plaintiff and Defendants consent to this Order:

THIS COURT ORDERS that:

1. All capitalized terms in this Order have the same meaning as defined in the Settlement Agreement attached as **Schedule “A”** to this Order, and apply to and are incorporated into this Order;

2. The Settlement Agreement is fair, reasonable and in the best interests of the Class;
3. The Settlement Agreement is approved pursuant to section 35 of the *Class Proceedings Act*, RSBC 1996, c 50, and shall be implemented and enforced in accordance with its terms;
4. This Order, including the Settlement Agreement, is binding upon each member of the Class;
5. This action be and is hereby dismissed against the Defendants with prejudice and without costs as against any party;
6. Each member of the Class shall be deemed to irrevocably consent to the dismissal, without costs and with prejudice, of any action or proceeding relating to the Released Claims against the Releasees and all such actions or proceedings shall be dismissed, without costs and with prejudice.
7. Each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims; and
8. For purposes of administration and enforcement of the Settlement Agreement and this Order, this Court retains an ongoing supervisory role and exclusive jurisdiction to administer, supervise, construe and enforce the Settlement Agreement and this Order, subject to the terms and conditions set out in the Settlement Agreement and this Order.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER

Signature of Kevin McLaren,

By the Court:

Lawyer for the Plaintiff

Signature of Michael Dery,
Lawyer for the Defendants

Registrar

SCHEDULE E

Distribution Protocol

1. The definitions in the Settlement Agreement apply to and are incorporated into this Distribution Protocol.
2. This Distribution Protocol is prepared in accordance with section 10 of the Settlement Agreement.
3. Upon the expiry of the appeal periods for the settlement approval order(s) and up to ninety-days thereafter (the “**Claims Period**”), Class Members shall submit a simplified claim in accordance with Section 9 below.
4. Class Members may not submit a claim for more than three pieces of first-checked baggage.
5. The Defendants (or a third-party administrator) will administer the Distribution Protocol in accordance with its terms, prioritizing the goals of efficiency and compensation for eligible claims. At their sole discretion, the Parties may waive technical requirements under the Distribution Protocol, if necessary, to do justice for Class Members. There will be no appeals or other reconsideration of any determinations made under the Distribution Protocol. The Parties will not be liable for any decisions or actions taken under the Distribution Protocol.
6. The Defendants will be entitled to deduct from the Settlement Amount any third-party cost of administering notices and/or the claims, but not for their internal costs.
7. Within 60-days after the Claims Period, for approved claims, the Defendants will distribute to the Class Members’ WestJet Travel Bank account a *pro-rata* share from the remaining Settlement Amount, redeemable towards a WestJet flight without blackout periods. The standard terms for WestJet travel credits, as of December 1, 2023, will apply except transferability, and will have a 24-month expiry and can be used to book for another guest.
 - a. Distribution to class members that are before July 6, 2017, would be at a weighting of 40% as compared to class members that are on or after July 6, 2017, with a maximum of \$18CAD for each first-checked baggage fee paid during the class period;
 - b. Distribution to class members that are on or after July 6, 2017, will be a maximum of \$45CAD for each first-checked baggage fee paid during the class period;
 - c. The first baggage fee will be approved first. If there are remaining amounts thereafter, then the second baggage fee will be approved. If there are remaining amounts after the second baggage fee claims, then the third baggage fee will be approved. Claims will be processed in reverse date order, starting from the most recent trip. If amounts still

remain, they will be donated in accordance with paragraph 10 below.

(collectively, the “**Settlement Benefits**”)

8. Class Members who submit a claim within the Claims Period will be eligible for a share of the Settlement Benefits, as calculated in accordance with section 8 above.
9. Every Class Member that wishes to receive their share of the Settlement Benefits must submit a simplified claim form as follows:
 - a. For Class Members with an active WestJet Travel Bank account that can be identified to an e-mail address that WestJet has on file, those Class Members must submit a pre-filled claim form that the Defendants send via email.
 - b. For any other Class Members, they must submit an electronic or paper claim form consisting of:
 - i. Full Name
 - ii. Contact Information
 - iii. WestJet Travel Bank or Rewards Account Number;
 - iv. The number of claims they are making, and the associated Proof of Class Membership
 - v. Proof of Class Membership, consisting of a copy of the booking confirmation and proof of payment of the first checked baggage fees
10. Class Members that do not submit a claim in accordance with this Distribution Protocol will not receive any Settlement Benefits.
11. Each claim form is for a specific Class Member only, and Class Members may submit a claim on their own behalf only.
12. Claims can be submitted by email to wjbaggagefeesca@hammerco.ca. Class Members can alternatively provide their claim in paper form and mail it to: Hammerco Lawyers LLP at 400-2233 Columbia Street, Vancouver, BC V5Y 0M6.
13. The Defendants will administer all claims received by the date that is one year after the date of the Order approving this Distribution Protocol. If the available Settlement Amount is insufficient to pay all approved substantiated claims at this time, each claim will be proportionally reduced (the “**Distribution**”).
14. The remaining Settlement Amount, after Distribution, is not a settlement fund as contemplated in ss. 35 and 36.2 of the *Class Proceedings Act*.
15. Following the Distribution, the Defendants will disburse the remaining

Settlement Amount, in the form of WestJet Travel Bank credits valid for 24 months, equally to non-profit organizations selected by the Defendants and approved by the Court. Further restrictions may be applied on the donated credits, subject to Court approval. The Defendants may claim the tax benefit of the donations, if any.

16. Following the Distribution and any *cy-pres* donation in Section 15, the Defendants shall provide all necessary information to enable Class Counsel to send a reporting letter to the Case Management Judge setting out the claims made, amounts paid out, and any other matters relevant to the Distribution Protocol process.

SCHEDULE B: Draft Notice

NOTICE OF SETTLEMENT APPROVAL

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The plaintiff alleges that WestJet charged a fee for the first checked baggage contrary to a provision that was included in WestJet's tariff during the class period. The allegation has not been proven in court, and WestJet has not admitted liability.

AM I IN THE SETTLEMENT CLASS?

Individuals anywhere in the world that paid a fee for their first checked baggage for a WestJet flight booked directly with WestJet and for travel between October 29, 2014 to July 29, 2017 for Canada domestic flights or between January 6, 2016 to February 27, 2019 for international flights, and whose itineraries were booked pursuant to a tariff that included the free baggage fee stipulation.

For details of the class definition, please see the settlement agreement found on [<<>>](#)

CAN I MAKE A CLAIM NOW?

No. A settlement must first be approved by the court.

The claim form will be made available after the court approves the settlement and further notice will be issued at that time.

WHEN IS THE APPROVAL HEARING?

The approval hearing will be held on **October 11, 2024 at 10:00AM** at the Vancouver Law Courts at 800 Smithe Street, Vancouver, BC.

A MS Teams link will be made available to class members to observe and/or participate remotely.

WHAT CAN I RECEIVE FROM THE SETTLEMENT?

The settlement is for WestJet Travel Bank credits valued at **\$12,500,000CAD**, before deduction of class counsel fees, administration costs, reasonable disbursement and an honorarium for the plaintiff. WestJet will pay in the form of cash class counsel fees (one-third of the

settlement), disbursements, and the plaintiff's honorarium (up to \$3,000).

The remaining amount after deductions will be distributed *pro rata* in the form of a credit to the WestJet Travel Bank accounts of class members that filed a claim within the 90-day opt-out period, following the court-approved claims protocol. The protocol provides for a different distribution formula for those that are before or after July 6, 2017, due to potential limitation periods.

The WestJet Travel Bank credits may be redeemed towards WestJet flights within 24-months without any blackout periods. The credits will **expire** after the 24-months if they are not redeemed in time. The WestJet Travel Bank credits are non-transferable but can be used to book for another guest.

The *pro rata* amount to be distributed will depend on the number of eligible claims submitted, and consequently the claims rate. Class counsel estimates that the *pro rata* distribution per class member will be around \$10-\$20, assuming an estimated claims rate of 5%. This is only an estimate and not a guarantee distribution figure.

WILL I AUTOMATICALLY RECEIVE THE WESTJET TRAVEL BANK CREDITS?

NO, class members must submit a claim in accordance with the court-approved protocol to be eligible to a *pro rata* share of the settlement to be deposited to their WestJet Travel Bank accounts. Class members that paid the fee for their first checked bag multiple times during the class period may not submit a claim for more than three first checked bags.

The settlement provides that distribution for each approved claim will not exceed \$45CAD for class members on or after July 6, 2017, and \$18CAD for class members before July 5, 2017. These are *maximum* figures, and not the *pro rata* amount that each member would receive. The *pro rata* amount would depend on the number of claims.

If there are any amounts remaining after distribution to the class, the remaining amounts would be distributed to non-profit organizations approved by the Court.

SCHEDULE B: Draft Notice

WHAT ARE MY OPTIONS?

1. If you **want to participate in the settlement** and receive the benefits, no action is required. You will then be bound by the terms of the legal release.
2. If you **do not want to participate in the settlement**, you can opt-out by submitting the written election found on the website.
3. If you wish to **object to the terms of this proposed settlement**, you can write to Class Counsel by **September 27, 2024** in accordance with the steps in the settlement agreement. Please note that the Court **cannot** change the settlement terms. Any objections will be used by the Court to consider whether to approve the settlement.

WHO REPRESENTS THE CLASS MEMBERS?

The Plaintiff and Class Members are represented by:

<<class counsel contact>>

THIS NOTICE IS JUST A SUMMARY. If there is any discrepancy between this notice and the settlement agreement, the settlement agreement shall prevail. Go to **<<>>** for further information and to review the proposed settlement agreement.