

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Rebecca Vigil, on behalf of herself and the
Putative Class

Plaintiff,

v.

SEATGEEK, INC.

Defendant.

No. 1:20-cv-3248-JPC

~~PROPOSED~~ ORDER GRANTING
PRELIMINARY APPROVAL OF
PROPOSED CLASS-ACTION
SETTLEMENT, CERTIFYING A
CLASS FOR SETTLEMENT
PURPOSES, APPROVING
PROPOSED CLASS NOTICE PLAN,
AND SCHEDULING FINAL
APPROVAL HEARING

WHEREAS, Plaintiff Rebecca Vigil (“Named Plaintiff”) and defendant SeatGeek, Inc. (“SeatGeek,” and collectively with the Named Plaintiff, the “Parties”) have entered into a Settlement Agreement and Release (“Settlement Agreement”),¹ which, together with the exhibits attached thereto, sets forth the terms and conditions for the proposed class settlement of the claims alleged in the Second Amended Complaint (“SAC”), the operative complaint in the above-captioned action (the “Action”), on the merits and with prejudice (the “Proposed Settlement”);

WHEREAS, Named Plaintiff has filed a motion pursuant to Fed. R. Civ. P. 23(e) seeking preliminary approval of the Proposed Settlement (the “Motion”);

WHEREAS, the Parties consent to the granting of the Motion and the form and entry of this Order;

NOW THEREFORE, upon review and consideration of the Motion, the Settlement Agreement, and the exhibits attached thereto, including the proposed Full Notice, Email Notice,

¹ The Settlement Agreement, including all exhibits thereto, are hereby incorporated into this Order. Unless otherwise stated herein, the terms defined in the Settlement Agreement shall have the same meanings herein.

Follow-up Email Notice and the proposed Claim Form, and finding that substantial and sufficient grounds exist for entering this Order,

IT IS this 28th day of November, 2022

ORDERED and ADJUDGED as follows:

1. The Court has jurisdiction over the subject matter of this Action and all Parties to the Action, including all Class Members, and venue is proper in this District.

APPROVAL OF PROPOSED SETTLEMENT

2. Subject to further consideration by the Court at the time of the Final Approval Hearing provided for below, the Court has determined that the Proposed Settlement meets the requirements for preliminary approval for the following reasons.

3. *First*, the Court finds that the Proposed Settlement is the result of good faith negotiations, conducted at arms-length over a period of several months, including a formal mediation proceeding conducted before the Honorable James C. Francis IV.

4. *Second*, the Court finds that there are no obvious deficiencies in the Proposed Settlement. The Named Plaintiff, represented by counsel experienced in the prosecution of complex consumer class actions, has investigated the factual bases for the allegations set forth in the SAC. As a result of the work performed to date, Plaintiff's Counsel has a comprehensive understanding of the strengths and weaknesses of the Action, and the risks associated with its continued litigation.

5. *Third*, the Court finds that the Proposed Settlement falls within the range of reasonable outcomes. The benefits conferred upon the proposed Settlement Class, as defined below, are reasonable and adequate in light of the relief that the Named Plaintiff and Plaintiff's

Counsel believe is likely to be recovered at trial, without the costs, uncertainty, delay, and other risks associated with continued litigation.

**PROVISIONAL CERTIFICATION OF THE CLASS
FOR SETTLEMENT PURPOSES**

6. The Named Plaintiff also asks the Court to certify the proposed Settlement Class, as defined below, for settlement purposes only. The Parties agree that if this case were to proceed to trial, SeatGeek would contest the issue of class certification.

7. **Settlement Class.** The Court finds that, for settlement purposes only, the requirements of Fed. R. Civ. P. 23(a) and (b)(3) are satisfied, and hereby provisionally certifies the following Settlement Class:

SeatGeek users in the United States who have one or more Covered Transactions as of the Final Settlement Date where a Covered Transaction means: (1) an initial purchase of tickets to a live event via SeatGeek’s mobile website made between September 10, 2019 and March 17, 2020 by a SeatGeek User located in the United States (such user, a “Purchaser”) *or* (2) the purchase of tickets on SeatGeek’s mobile website or on SeatGeek’s mobile application by the same Purchaser *after* the initial purchase but *before* March 17, 2020, provided such purchases meet all the following criteria as of the Final Settlement Date:

- (a) the live event for which the Purchaser purchased tickets was cancelled prior to the Settlement Date and not rescheduled;
- (b) the Purchaser received a Credit from SeatGeek without affirmatively opting to take the Credit;
- (c) the Purchaser paid SeatGeek for the purchase;
- (d) the purchase did not occur after the creation of a SeatGeek account by the Purchaser;
- (e) the Purchaser has not received a cash refund for the purchase; and
- (f) the Purchaser has not used the Credit, *i.e.*, applied it to another purchase.

Excluded from the Class are SeatGeek’s Counsel, SeatGeek’s officers and directors, the Mediator, and the judges presiding over the Action.

8. The Court makes the following findings with respect to class certification, for

settlement purposes only.

9. *Ascertainability.* The Parties agree that each member of the Settlement Class can be identified through SeatGeeks's internal records.

10. *Numerosity.* The Parties estimate that the size of the Settlement Class exceeds 4,000 individuals. The proposed Settlement Class is thus sufficiently numerous that joinder of all class members into one suit would be impractical.

11. *Commonality.* The commonality requirement is satisfied because the Named Plaintiff shares at least one question of fact or law with the members of the Settlement Class she seeks to represent. They arise from the same events that give rise to the claims of other Class Members and are based on the same legal theories.

12. *Adequate Representation.* The Named Plaintiff's interests are aligned with those of the other Class Members, and there is no conflict between the Named Plaintiff's interests and those of the Class Members. Further, the Court finds that Plaintiff's Counsel possesses adequate experience, has vigorously prosecuted this Action, and has acted at arm's length from SeatGeek.

13. *Predominance of Common Issues.* The Court finds that, with respect to the Proposed Settlement, the common issues raised by SeatGeek's practice of providing credits in excess of the purchase price for events cancelled in the wake of the COVID-19 pandemic in lieu of full cash refunds to SeatGeek users who were not shown a link to the terms of use at or before purchase and who did not specifically request credits predominate over any individual questions relating to the settlement of this litigation, weighing in favor of class treatment at this juncture.

14. *Superiority of the Class Action Mechanism.* The Court finds that, with respect to the Proposed Settlement, a class action is superior to all other available methods for the fair and efficient adjudication of the controversy.

15. *Conditional Appointment of Class Representative and Class Counsel.* The Court conditionally appoints Rebecca Vigil as Class Representative for the purposes of the Proposed Settlement and certification of the Settlement Class for settlement purposes only. The Court conditionally appoints Steven Liddle and Nicholas A. Coulson of Liddle Sheets Coulson P.C., 975 E. Jefferson Ave., Detroit, MI 48207 as Class Counsel pursuant to Fed. R. Civ. P. 23(g). The Named Plaintiff and Class Counsel must fairly and adequately protect and represent the interests of the Class Members.

CLASS NOTICE

16. *Provision of Class Notice.* The Court finds that the proposed Full Notice, Email Notice, and Follow-Up Email Notice, attached to the Settlement Agreement, and if applicable notice by postcard in a substantially similar form as the Email Notice, and their manner of transmission, comply with Rule 23 and due process because the notices and forms are reasonably calculated to adequately apprise Class Members of (i) the pending lawsuit, (ii) the proposed settlement, and (iii) their rights, including the right to either participate in the settlement, exclude themselves from the settlement, or object to the settlement. KCC Class Action Services, LLC is hereby appointed to administer the settlement. The Claims Administrator is directed to notify Class Members of the settlement in the manner specified under Section 3.3 of the Settlement Agreement.

REQUESTS FOR EXCLUSION AND OBJECTIONS TO SETTLEMENT

17. *Requesting Exclusion.* Class Members who want to be excluded from the settlement must send a letter or postcard to the Claims Administrator stating: (a) the name and case number of the Action: “*Vigil v. SeatGeek, Inc.*, Case No. 1:20-cv-3248-JPC”; (b) the full name, address, and telephone number of the Class Member requesting exclusion (email address is

optional); and (c) a statement that the person does not wish to participate in the Proposed Settlement, postmarked no later than one hundred twenty (120) calendar days after entry of this Order. The delivery date is deemed to be the date the request for exclusion is deposited in the U.S. Mail as evidenced by the postmark.

18. *Objection to Settlement.* Class Members who have not submitted a timely written exclusion request pursuant to paragraph 17 above and who want to object to the Settlement Agreement must deliver a written objection to the Claims Administrator no later than one hundred twenty (120) calendar days after entry of this Order. The objection must include: (a) the name and case number of the Action “*Vigil v. SeatGeek, Inc.*, Case No. 1:20-cv-3248-JPC”; (b) the full name, address, and telephone number of the person objecting (email address is optional); (c) the words “Notice of Objection” or “Formal Objection”; (d) in clear and concise terms, the objection and legal and factual arguments supporting the objection; and (e) facts showing that the person objecting is a Class Member. The written objection must be signed and dated, and must include the following language immediately above the signature and date: “I declare under penalty of perjury under the laws of the United States of America that the foregoing statements regarding class membership are true and correct to the best of my knowledge.” The delivery date is deemed to be the date the objection is deposited in the U.S. Mail as evidenced by the postmark. Any Class Member who submits a written objection, as described in this paragraph, may appear at the Final Approval Hearing, either in person or through personal counsel hired at the Class Member’s expense, to object to the Settlement Agreement. Class Members or their attorneys intending to make an appearance at the Final Approval Hearing, however, must include on the timely and valid written objection a statement substantially similar to “Notice of Intention to Appear.” If the objecting Class Member intends to appear at the Final Approval Hearing through counsel, he or

she must also identify the attorney(s) representing the objecting Class Member who will appear at the Final Approval Hearing and include the attorney(s) name, address, phone number, email address, and the state bar(s) to which counsel is admitted. If the objecting Class Member intends to request the Court to allow the Class Member to call witnesses at the Final Approval Hearing, such request must be made in the Class Member's written objection, which must also contain a list of any such witnesses and a summary of each witness's expected testimony. Only Class Members who submit timely written objections including Notices of Intention to Appear may speak at the Final Approval Hearing. If a Class Member makes an objection through an attorney, the Class Member will be responsible for his or her personal attorney's fees and costs. The objection will not be valid if it only objects to the lawsuit's appropriateness or merits.

19. *Failure to Object to Settlement.* Class Members who fail to object to the Settlement Agreement in the manner specified above will: (1) be deemed to have waived their right to object to the Settlement Agreement; (2) be foreclosed from objecting (whether by a subsequent objection, intervention, appeal, or any other process) to the Settlement Agreement; and (3) not be entitled to speak at the Final Approval Hearing.

SCHEDULE AND PROCEDURES

20. *No Admissions.* Nothing in this Order is, or may be construed as, an admission or concession on any point of fact or law by or against any Party.

21. *Administration of Settlement.* Class Counsel and Counsel for SeatGeek are hereby authorized to use all reasonable procedures in connection with approval and administration of the Settlement that are not materially inconsistent with this Order or the Settlement, including making, without further approval of the Court, non-material changes to the form or content of the Class Notice and other exhibits that they jointly agree are reasonable and/or are necessary.

22. Termination. If the Settlement Agreement terminates for any reason, the following will occur: (a) Class certification for settlement purposes will be automatically vacated; (b) The Named Plaintiff will revert to their prior status as a non-Class Representative; (c) Plaintiff's Counsel will revert to their prior status as non-Class Counsel; and (d) the Action will revert to the status that existed immediately before the Settlement Agreement's execution date, i.e., the filing of the SAC. This Order will not waive or otherwise impact the Parties' rights or arguments regarding class certification or any trial of any claims.

23. Stay of Dates and Deadlines. All pretrial and trial proceedings and deadlines are stayed and suspended until further notice from the Court, except for such actions as are necessary to implement the Settlement Agreement and this Order.

24. Final Approval Hearing. On May 17, 2023 at 2:00 p.m. ~~[at least one hundred fifty-eight (158) calendar days out from entry of Preliminary Approval Order]~~ this Court will hold a Final Approval Hearing to determine whether the Settlement Agreement should be finally approved as fair, reasonable, and adequate. This Court may order the Final Approval Hearing to be postponed, adjourned, or continued. If that occurs, SeatGeek will not be required to provide additional notice to the Settlement Class, but the updated hearing date shall be posted on the Settlement Website.

Dated: November 28, 2022



Hon. John P. Cronan
U.S. DISTRICT COURT JUDGE