IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Chun v. Vancouver Whitecaps FC LP,* 2026 BCSC 566

Date: 20260302
Docket: S243667
Registry: Vancouver

Between:

Ho Chun

Plaintiff

And:

Vancouver Whitecaps FC LP, WFC Football GP Ltd., Whitecaps Football Club Ltd., and Major League Soccer L.L.C.

Defendants

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

Before: The Honourable Justice Majawa

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:	S. Lin
Counsel for the Defendants:	K. Booth J.C.O. Spencer M.A. Eizenga
Place and Date of Hearing:	Vancouver, B.C. February 27, 2026
Place and Date of Judgment:	Vancouver, B.C. March 2, 2026

Introduction

[1] **THE COURT:** The plaintiffs in this class action seek approval of a settlement as well as approval of legal fees, disbursements, and an honorarium payable to the class representative.

Background

[2] This class action is a claim on behalf of ticket holders of the Vancouver Whitecaps FC versus Inter Miami CF soccer game that was scheduled to take place on May 25, 2024, (the "Match"). The plaintiff alleges that tickets for that Match were fixed with a face value that was much higher than tickets for other Vancouver Whitecaps games and that was coupled with alleged representations to the effect that Lionel Messi, Luis Suarez, and/or Sergio Busquets would be playing at the Match. The plaintiffs allege that the defendants capitalized on the expectation that these players would be playing at the Match and made representations to that effect, but these players ultimately did not attend nor play at the Match.

[3] On June 4, 2024, this class action was brought against the defendants alleging that the defendants had engaged in:

a) a breach of the *Business Practices and Consumer Protection Act,* S.B.C. 2004, c. 2;

b) a breach of the federal *Competition Act*, R.S.C. 1985, c. C-34;

c) unjust enrichment;

d) a breach of the *Sales of Goods Act*, R.S.B.C. 1996, c. 410; and

e) a breach of contract.

[4] A response to civil claim and certification materials were delivered. The defendants' certification evidence provided a rather detailed explanation of the marketing for the Match and the pricing of tickets for the Match. It also explained that it was the Inter Miami CF team that decided shortly before the Match that Messi,

Suarez, and Busquets would not travel to the match, and that the defendants had no control over the player lineup for the Inter Miami CF team, and had no prior knowledge that these players would not play the Match.

[5] After delivery and exchange of materials, the parties agreed to attend a one-day mediation before the Honourable Elliott Myers on August 19, 2025, for one day. Prior to that mediation, the parties had exchanged detailed mediation briefs in chief and in response. However, the parties were unable to settle the matter at the mediation.

[6] Shortly after mediation, settlement discussions continued based on the framework that was discussed and largely agreed upon at that mediation. On October 16, 2025, an agreement in principle was reached, and a term sheet was executed.

[7] Subsequent to the execution of the term sheet, the parties jointly drafted a settlement agreement and notice to class members to present to this court for settlement approval.

[8] On November 28, 2025, the action was certified for settlement purposes only, and the notices to class members were approved.

Notice to Class Members

[9] On December 29, 2025, notices were issued to class members in the manner that was approved by the Court and specified in the settlement agreement. Notification was made by direct email by the defendants to the class members that had an email address on file, by a national news release, and by posting on class counsel's web sites. Major news outlets also reported on the proposed settlement after the news release was issued.

[10] The defendants have confirmed that 21,292 emails were sent to the class members, and that there were 87 bounce backs.

[11] 11 opt outs and 12 objections were received out of the approximately 50,657 class members, which represents 0.0217% of opt outs and 0.0237% of class members who objected.

[12] I am satisfied the information about the settlement was widely disseminated amongst the class members and that there has been sufficient notice of class members for the purposes of s. 19 of the *Class Proceedings Act,* R.S.B.C. 1996, c. 50 [*CPA*].

Approval of Settlement

[13] Under s. 35 of the *CPA*, class proceedings may only be settled with the approval of the court. The test to meet is not set out in the *CPA*; rather, it comes from the jurisprudence. The court is looking overall to see if the settlement is "fair and reasonable and in the best interests of the class as a whole": *Cardozo v. Becton, Dickinson and Company*, 2005 BCSC 1612 at para. 16 [*Cardozo*]. The settlement is not required to be perfect, but rather "must fall within a range or zone of reasonableness to be approved": *Bodnar v. The Cash Store Inc.,* 2010 BCSC 145 at para. 17. The court cannot modify the terms of a negotiated settlement; it can only approve or reject it: *Jones v. Zimmer GMBH*, 2016 BCSC 1847 at para. 37 [*Jones*].

[14] There are ten factors that are commonly cited as factors to be considered in determining whether a settlement should be approved:

1. The likelihood of recovery, or the likelihood of success;
2. The amount and nature of discovery evidence;
3. Settlement terms and conditions;
4. Recommendations and experience of counsel;
5. Future expense and likely duration of litigation;
6. Recommendations of neutral parties, if any;
7. Number of objectors and nature of objections;
8. Presence of good faith and absence of collusion;
9. Degree and nature of communications by counsel and the representative plaintiffs with class members during litigation;
10. Information conveying to the court the dynamics of and the positions taken by the parties during the negotiation.

Jones at para. 42 and *Cardozo* at para. 17.

Terms of the Settlement

[15] Under the settlement agreement, the Vancouver Whitecaps FC has agreed to make revisions to its ticketing terms and conditions, including by updating the prominent Ticketmaster popup to add language that player lineups are subject to change, that depictions in marketing materials are for reference purposes only, and by moving the disclosure of the ticketing terms to a more prominent location. The defendants also agreed to pay a settlement amount of $475,000 to be donated *cy-pres* to three sports-related organizations after any court-approved deductions for counsel fees, disbursements and an honorarium, which are to be paid from the settlement amount. The settlement is without admission of liability, and the defendants would receive a full release of the claims that were raised or could have been raised in this proceeding. I note that the release expressly excludes any personal injury claims in relation to the Match, i.e., for any such kind of claims that could have occurred at that Match.

[16] The three sports-related organizations to whom the settlement funds, less court-approved deductions for counsel fees, disbursements and honorarium, will be donated in equal shares are:

a. KidSport BC (the British Columbia Chapter of KidSport Canada), which provides grants to children from families facing financial barriers to help cover the cost of children's sport registration fees;

b. Canada SCORES (Vancouver General Fund), which delivers free after-school athletic and educational programs in schools; and

c. BGC South Coast BC (the Boys and Girls Club of the South Coast of British Columbia region), which provides free clubs for children that offer a range of activities, including sports.

[17] I have concluded, for the reasons that follow, that the settlement of this matter is fair and reasonable and in the best interests of the class members and that it falls within a zone of reasonableness.

The Settlement Should be Approved

[18] I accept that class counsel are experienced in the specialized area of class action litigation. The negotiations were conducted at arm's length and in good faith between experienced counsel on both sides. I also note the settlement framework was negotiated at arm's length at a mediation facilitated by an experienced mediator. Although they were not agreed upon then, the terms largely came from that mediation.

[19] I accept on the materials before me that the parties in the action were faced with considerable uncertainty about the prospects of the claim on its merits. I accept that this is a novel and complex claim, that there are a number of possible defences available both at certification and at trial, and that those would be vigorously pursued by the defendants.

[20] Some examples of the risk to the claims are as follows:

1. Over 48,000 ticket holders attended the Match even after it was announced that Messi, Suarez, and Busquets were not attending.

2. Those who attended have arguably been compensated to some extent. They were voluntarily provided a free ticket for a future 2024 regular season home game; 50% off all stadium food and beverage during the Match; and a free children's meal combo for youth 18 and under who attended the Match.

3. There was evidence in support of, and arguments to be made that, the advertisements made by the defendants were not false and misleading and did not make representations that Messi, Suarez, or Busquets would play in the game. There were also arguments to be made that the ticket holders did not rely on the advertisements as guaranteeing those players' attendance,

and thus, it was open to the defendants to argue that there was no basis in fact supporting certification of common issues.

4. The evidence suggests that the bulk of the markups of the tickets was in the secondary market, i.e. resales of tickets after they were purchased from Vancouver Whitecaps FC. Thus, it is not clear that the ticket prices were inflated by the defendants, at least in all circumstances.

5. The evidence supported the defendants' position that it was Inter Miami CF that made the decision shortly before the Match that the players would not travel, and the defendants had no control over that decision.

6. It was arguable as to whether some or all of the class members were aware of the risk that the famous players would not attend, given that had happened with Messi in the past and that it is arguably common knowledge that any given player may not play in a given professional sports match.

7. There were also issues that various ticket-holder groups may not have had standing under various causes of action given the lack of privity of contract between those who purchased on the secondary market and the defendants.

[21] In addition to those litigation risks, there would have been significant expenses incurred in respect of retaining experts to demonstrate various practices in the professional sports industry.

[22] There was, I accept, a considerable risk that the plaintiffs would not be successful at certification or at the common-issues trial. Even if successful at trial, the plaintiffs faced the prospect of lengthy appeals. In light of this, I find the amount of the settlement to be within a range of reasonableness.

Objections

[23] As I mentioned, class counsel received 12 objections to the settlement out of 50,657 class members, which represents an objection percentage, or rate, of 0.0257%.

[24] I have disregarded a number of the objections that seem to repeat misinformation or disinformation found on an internet form about the representative plaintiff as forming the basis of their objection. These objections suggest that the representative plaintiff had already received a refund and would potentially receive other benefits or had received other benefits, and these claims appear to be based on unsubstantiated internet rumours.

[25] A number of the objections do not appear to object to the settlement itself but rather submit that there should be no counsel fees, disbursements, or honorarium.

[26] I have given little weight to one particular objection that appears to be drafted by artificial intelligence, and that includes cases that were AI hallucinations. Within that objection, some grounds echo others, which I have discussed or will discuss. Moreover, on one of the grounds mentioned there, I agree with the plaintiffs that a class action is not a referendum by class members. A class member who is not satisfied with the litigation strategy can opt out of it. Moreover, this particular objector acknowledges the charities selected would provide an indirect benefit and I note that the suggested alternative of offering a discount or a credit for a future match, which is what this objector suggests, was already offered by the Whitecaps in 2024.

[27] As I mentioned earlier, the proposed settlement is a *cy-pres*-award-only situation where funds are directly donated to three charities, and class members will receive no recovery directly. Some objectors seek direct distribution of the funds that are proposed to be paid to the charitable organizations to be paid to the class members instead.

[28] *Cy Pres* settlements may be appropriate where it is not practical to distribute benefits in any other manner. Where direct distribution would be uneconomic considering the modest damages, and where the charitable donation is directly related to issues in the lawsuit, it may be appropriate: *Ali Holdco Inc. v. Archer Daniels Midland Company,* 2019 ONSC 131 at para. 46; *Cronk v. LinkedIn Corporation,* 2023 BCSC 2165 at para. 39 [*Cronk*].

[29] I accept that given the number of class members and the size of the settlement, a *cy-pres* donation is appropriate. The bulk of the settlement funds would be dissipated by the costs for claims administration, including verification of identification and Interac transactions costs.

[30] After those costs, it appears that only a few dollars would remain for each class member. I agree with counsel that such a small amount would not be particularly meaningful for class members who paid much more for their tickets. However, the $475,000 shared between the charitable donations looks to be a very meaningful amount when one considers their revenues and expenses, at least as much as that information is available to me on the record presented.

[31] The charitable donations, as I have noted, are directly related to the issues in the lawsuit. In particular, the three recipients are sports-related organizations, and they are aimed at decreasing financial barriers and increasing access to sports activities for children and youth. One of the organizations is a soccer organization. I find that these are directly related to a sufficient degree.

[32] Given the large size of the class and the relatively modest settlement amount, I accept that a *cy-pres* distribution is a reasonable approach. There are, as I mentioned, also other terms of the settlement that are not monetary in nature but that are to be applied indirectly for the class members' benefit. I have mentioned some of these earlier. These are other terms such as revision of the Whitecaps ticketing terms to specify that there are no guarantees that any particular player will play, to have a popup on the Ticketmaster purchase page referring the viewer to the Whitecaps ticketing terms and making the Whitecaps ticketing terms more prominent on its website.

[33] I do not find the objections that were filed to be a hindrance to a settlement. The low proportion of objectors to the settlement also supports the settlement's reasonableness. The court has approved *cy-pres*-only settlements in which a low proportion of objections were filed in the past: *Jones* at para. 47(g); *Cronk* at paras. 27-28.

[34] Thus, after considering the objections and the relevant factors, I am satisfied the settlement is fair and reasonable and in the best interests of class members and that it falls within a zone of reasonableness.

[35] I am also satisfied the settlement-approval notice and the method by which it will be disseminated provides the information required by the *CPA*, and I approve the form of the settlement notice.

Counsel Fees and Disbursements

[36] Section 38 of the *CPA* requires that counsel fees and disbursements be approved by the court.

[37] The factors to consider in approving are well known and set out in a number of cases, including *McLean v. Cathay Pacific Airways Limited*, 2021 BCSC 1456; and *Cardozo*, as follows:

a. The results achieved;
b. The risks undertaken;
c. The time expended;
d. The complexity of the matter;
e. The degree of responsibility assumed by counsel;
f. The importance of the matter to the client;
g. The quality and skill of counsel;
h. The ability of the class to pay;
i. The client and the class' expectation; and,
j. Fees in similar cases.

[38] A contingency fee of 33% has frequently been held to be a valid fee in class proceedings: *Poulus v. WestJet Airlines Ltd.,* 2024 BCSC 2484 at para. 31.

[39] This court has stated that generally the lower the recovery, the more likely that a higher percentage fee will be fair and reasonable given that there is a base amount of work that counsel would need to undertake even in the smallest of cases: *Cardoso v. Canada Dry Mott's Inc,* 2020 BCSC 1569 at para. 39.

[40] I have reviewed the fees claimed, and the fees amount to $156,750, which is 33% of the settlement amount. I am told, and I see on the record, that this is approximately a two-time multiplier on class counsel's hourly rate.

[41] I accept that this was a complicated matter, that it involved the procedural complexity of class actions, a substantive legal complexity given the nature of the litigation, and that there were distinct defences that could be possible depending on the manner the class members had purchased their tickets and what representations they may have relied upon. I also accept that there were potential causation concerns in relation to the class members' claims or individual claims. I further accept that class counsel are experienced and skilled in the specialized field of class actions, and there is no feasible way in which class members could have retained class counsel on a fee-per-services basis.

[42] A significant amount of time and resources were devoted to this case by class counsel. They did not receive any third-party funding, and therefore, bore all of the cost of the litigation risk. As held by Justice Masuhara in *Pro-Sys Consultants Ltd. v. Infineon Technologies AG,* 2014 BCSC 1936 at para. 54:

> The considerations in approving fees should recognize not only meritorious effort in achieving a positive result but also encourage counsel to take on difficult and risky class action litigation.

[43] In *White v. Attorney General of Canada,* 2006 BCSC 561 at para. 31, Justice Cullen held that:

> In the circumstances, counsel, in taking on the case involving a significant commitment of time and the ongoing payment of disbursements incurred a significant risk to their own economic interests, which if not adequately compensated for, would discourage similar willingness in the bar to take on difficult cases on such a basis in the future. In such circumstance, there is clearly the expectation of a higher fee than in a non-contingency fee basis.

[44] While there was no direct disbursement to class members, monetary recovery that would indirectly benefit class members was achieved by way of donation to the charitable organizations. Further, there are other terms that were agreed to, which I

have discussed, with respect to ticketing policy and improved visibility of terms, which will be a benefit to class members.

[45] Taking all the factors into consideration, I accept the legal fees sought by class counsel are reasonable in the circumstances.

Honorarium

[46] An honorarium of $2,500 is sought for the representative plaintiff.

[47] The Court of Appeal in *Parsons v. Coast Capital Savings Credit Union*, 2010 BCCA 311 at para. 19 set out the considerations for making an award of an honorarium in B.C. To protect against the potential for a representative plaintiff to act in self-interest, contrary to the interests of class members, the court must require:

> ... a representative plaintiff seeking a separate payment to establish that the settlement presented is in the interests of the class as a whole, and that the representative plaintiff has fulfilled all the duties assumed by taking on that special role in the litigation. The court … must ensure that the amount of any separate payment to the representative plaintiff is not disproportionate to the benefit derived by the class members, the effort of the representative plaintiff, and the risks assumed by the representative plaintiff.

[48] The representative plaintiff is not required to provide services of special significance beyond the usual responsibilities under the *CPA* in order to be entitled to an award: *Parsons* at para. 20.

[49] As described above, I am satisfied the settlement presented in this matter is in the interests of the class.

[50] I am also satisfied that the representative plaintiff has fulfilled all his duties. Throughout the litigation, he was involved by providing information, offering his opinion, and keeping updated on developments. He retained and instructed plaintiff's counsel and became informed of the duties and responsibilities he would have in connection with this proceeding. He provided information to class counsel. He discussed settlement positions with counsel and provided his input as to the appropriate range in terms of the settlement, and he reviewed and discussed the

settlement agreement terms with counsel, including instructing plaintiff's counsel to seek its approval.

[51] This matter resolved relatively early in the process, and the representative plaintiff was not required to appear for examination for discovery and was not cross-examined on his affidavit.

[52] The entitlement, in my view, must also be considered in light of the fact that none of the class members have received any direct payment, even though the settlement is successful overall.

[53] Mr. Chun did have to review an objection in which his conduct and integrity was implicated. He had to swear an affidavit in response.

[54] On the record before me, he has also been the subject of discussion on various internet boards in which his integrity has been impugned and in which he was the subject of some vitriolic language. He was accused of conspiring with class counsel for a payday in the hundreds of thousands of dollars.

[55] None of these allegations have been substantiated, and there is no evidence at all that they are true. Nonetheless, this misinformation or disinformation will remain on the internet and be associated with him forever. Being subjected to such negative and false online criticism may discourage people from putting themselves forward as a representative plaintiff, and it is one of the risks that they undertake in this day and age. In my view, the negative online posts that Mr. Chun has endured is a consideration in my assessment of his entitlement and quantum of his honorarium.

[56] I have concluded that Mr. Chun's involvement militates in favour of a modest sum. However, in my view the honorarium sought is not reasonable. In my view, an award of $2,500 would leave an impression that Mr. Chun was put in a conflict of interest in respect of the settlement and would be disproportionate to the benefit derived from the class members, the effort expended by Mr. Chun, and the risks that he assumed.

[57] Having considered his contribution and all the circumstances, including the risks I have referenced with respect to the online posts, I have concluded that an award of $1,500 would be appropriate to recognize his successful contributions to the result. That $1,500 is to be paid as a disbursement.

Conclusion

[58] In conclusion, the settlement agreement is approved.

[59] The form of the orders will reflect those attached to the notice of application with the modification to be made to the amount of the honorarium.

“Majawa, J.”