IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Campbell v Capital One Financial Corporation,* 2026 BCSC 2016

Date: 20261021
Docket: S198617
Registry: Vancouver

Between:

Duncan Campbell

Plaintiff

And

Capital One Financial Corporation, Capital One Bank (USA), National Association, and Capital One Bank (Canada Branch)

Defendants

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

Before: The Honourable Justice S. Ramsay

Reasons for Judgment (Settlement Approval and Fee Approval)

Counsel for Plaintiff:	T.P. Charney J. Rocha C. Edwards K. Garcha A. Mahmood
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Place and Date of Hearing:	Vancouver, B.C. September 22, 2026
Place and Date of Judgment:	Vancouver, B.C. October 21, 2026

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Introduction

[1] In this class proceeding, the representative plaintiff, Duncan Campbell, seeks approval of settlement. The defendants consent to the settlement approval. The plaintiff also seeks approval of counsel fees and an honorarium of $5,000 paid to Mr. Campbell. The defendants take no position on those orders.

[2] This action was originally commenced in 2019, with an amended notice of civil claim filed on January 10, 2022. In June 2022, Justice Iyer certified this action as a multi-jurisdictional class proceeding: 2022 BCSC 928 (the "Certification Decision"); appeal and cross-appeal dismissed 2024 BCCA 253.

[3] In the Certification Decision, Iyer, J. (as she then was) summarized the events giving rise to this action as follows:

> [1] Capital One issues credit cards for its banking business as well as for Costco Wholesale and the Hudson's Bay Company. When applying for such a credit card, individuals provide Capital One1 with their personal and financial information. Capital One stores that information in a database on Amazon Web, a third party cloud based server in the United States. In the spring of 2019, Paige Thompson hacked Capital One's database. She downloaded the personal and financial information of American and Canadian residents who had applied for Capital One credit cards ("Data Breach"). The Data Breach affected six million Canadian customers and about 100 million American customers.
>
> [2] In July 2019, an independent security researcher discovered the breach and informed Capital One, which contacted American law enforcement. FBI agents arrested Ms. Thompson and seized digital devices from her home on July 29, 2019. On the same day, Capital One published a statement about the cyber-breach on its website.
>
> [3] The data stolen from Canadians included information submitted on credit card applications between 2005 and early 2019, such as name, date of birth, mother's maiden name, address, email address, phone number, employer name, housing situation, annual income, status of mortgage, and banking information. It included some people's credit scores, credit limits, balances and payment history, and fragments of transaction histories over a total of 23 days in 2016-2018. The Data Breach also compromised about one million social insurance numbers. I will refer to all of this information as the "Confidential Information".
>
> [4] Capital One wrote to all affected individuals to notify them of the Data Breach. It explained what steps they could take to monitor and protect their data and offered them free credit monitoring and identity protection services, including identity theft protection for two years. It stated that no credit card

> numbers, PIN codes or login credentials were compromised in the Data Breach.

[4] In these reasons, I adopt and use the defined terms from the above excerpt.

[5] Iyer, J. certified the action as a multi-jurisdictional class proceeding to bring claims in negligence, breach of contract, breach of statutory privacy torts, and breach of consumer protection legislation. The relief sought by the class included a claim for significant damages ($800 million).

[6] The certified class is defined as “all Canadians, except residents of Québec, who applied for or were issued a Capital One credit card and were notified by Capital One that their information was compromised in the Data Breach”: Certification Decision, para 178(b). The class consists of 4,974,041 individuals, of which 872,122 had their social insurance numbers affected (approximately 17.5% of the class). Mr. Campbell is the appointed representative plaintiff for the class: Certification Decision, para 178(c).

[7] After almost two years of negotiations, on or about November 18, 2025, the parties reached an agreement in principle to settle this proceeding. The parties then engaged in significant negotiations regarding the terms of the settlement agreement, which was executed on May 19, 2026. The settlement is expressly made in the context of the defendants maintaining their denial of any wrongdoing or liability to the class.

[8] On June 22, 2026, I approved long and short form notices to the class members of certification and the settlement approval hearing, and I appointed Verita Global, LLC, as claims administrator.

The settlement

[9] Under the settlement agreement, the defendants will pay $35 million in settlement of all class members’ claims. After payment of legal fees, disbursements, and the honorarium to Mr. Campbell (if all amounts are approved as requested, which I address further below), and after accounting for the anticipated cost of claims

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administration, the net settlement fund available to be claimed by class members is expected to be in the range of $24.5 million.

[10] The net settlement fund will be available for distribution to class members in respect of claims made in three categories:

a) *Out-of-pocket costs*: reimbursement of actual costs incurred to mitigate damages, such as the cost to purchase credit monitoring. This category also contemplates claims of up to $25,000 for any fraud that is "fairly traceable" to the Data Breach; however, class counsel considers successful fraud claims unlikely since Ms. Thompson did not use or disseminate class members' personal information.

b) *Wasted time and inconvenience*: compensation for time spent responding to the Data Breach, such as changing passwords, applying for credit monitoring, and monitoring accounts. Class members whose social insurance numbers were included in the Data Breach may claim up to 8 hours (or $200) under this category; remaining class members are eligible to claim up to 5 hours (or $125). All claims in this category will also receive an additional "top-up" payment of $75 per claim.

c) *Annual fees*: class members who paid annual credit card fees (approximately 30% of the class) can claim up to $50 as partial reimbursement of those fees.

[11] Under the settlement structure, class members who claim both the maximum for time spent responding to the Data Breach and the annual fee reimbursement will recover $325 if their social insurance number was affected, or $250 if their social insurance number was not affect. They will also be reimbursed for any credit monitoring costs they incurred.

[12] Any settlement funds remaining after the payments contemplated above will be allocated proportionally to class members with approved (or partially approved) claims, up to a maximum payment of $750 per claimant. If any funds remain thereafter, the

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balance will be distributed *cy-près* to one or more charities and/or academic institutions to be agreed upon by the parties. If it appears that there will be a significant residue of settlement funds after all claims have been paid, it will be open to class counsel, with input from Verita, to consider efforts to increase the take-up rate, such as further public notice of the claims program.

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Settlement approval

[13] Under s. 35 of the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 [*CPA*], a class proceeding may be settled only with approval of the court. Once approved, the settlement binds every class member who has not opted out of the proceeding.

[14] The test for settlement approval is well-established and not controversial. The standard is reasonableness, not perfection: the court must be satisfied that the settlement is "fair and reasonable and in the best interests of the class as a whole": *Lewis v WestJet Airlines Ltd.*, 2026 BCSC 1547 at para 12.

[15] Public policy favours the settlement of complex litigation. There is a strong presumption of fairness where a settlement has been negotiated at arm's length by experienced class counsel who are in a unique position to assess the risks and rewards of the litigation; their recommendations are given considerable weight by the reviewing court: *Jones v Zimmer GMHB*, 2016 BCSC 1847 at para 36.

[16] Relevant factors to consider in assessing whether a settlement is reasonable and in the best interests of the class include: (a) the likelihood of recovery or success; (b) the amount and nature of discovery evidence; (c) the settlement's terms and conditions; (d) the recommendation and experience of counsel; (e) the future expense and likely duration of the litigation; (f) the recommendation of any neutral parties; (g) the number of objectors and the nature of their objections; (h) the presence of good faith and the absence of collusion; (i) the degree and nature of communications by counsel with class members; and (j) information conveying the dynamics of, and positions taken during, the negotiations: *Lewis* at para 14.

[17] I will address these factors as class counsel did in their submissions, using the framework applied in *Douez v Facebook, Inc*, 2024 BCSC 653:

> [18] Many cases have listed the factors a court may consider in conducting this assessment. I agree with class counsel that the framework this court applied in *Coburn* is useful here. It considers four factors:
>
> a) has counsel of sufficient experience and ability undertaken sufficient investigations to satisfy the court that the settlement is based on a proper analysis of the claim?
>
> b) is there any reason to believe that collusion or extraneous considerations have influenced negotiations such that an inappropriate settlement may have been reached?
>
> c) on a cost/benefit analysis, are the plaintiffs well-served by accepting the settlement rather than proceeding with the litigation? And
>
> d) has sufficient information been provided to the members of the class represented by representative plaintiffs and, if so, are they generally favourably disposed to the settlement?

[18] Applying the above framework, I find that the settlement in this case is fair, reasonable, and in the best interests of the class, for the following reasons.

Is the Settlement Based on a Proper Analysis of the Claim?

[19] This case has a long history. I accept that class counsel has had sufficient time and information to properly gather evidence, including expert evidence, evaluate the claims, and reach informed conclusions on both the likelihood of success on the merits of the case and the damages that might be available to class members.

[20] Class counsel has extensive experience in class proceedings. The evidence establishes that they have carefully considered the relative merits of the claims being advanced on behalf of class members. While class counsel believes the plaintiff could arguably establish negligence, breach of contract, and the statutory privacy torts in relation to the defendants' data security, they believe there is some uncertainty regarding the strength of at least some of class members' claims, including the privacy tort claims and damages. In particular, information obtained from the now-concluded criminal proceeding against Ms. Thompson provides some

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degree of certainty that she did not disseminate the Confidential Information, which has informed class counsel's assessment that there could be difficulty establishing compensable damages (aside from mitigation damages) in this case.

[21] I am satisfied that the settlement is based on a proper analysis of the class members' claims. I find there is genuine litigation risk associated with class members' ultimate prospect of recovery on some or all claims after a common issues trial. The settlement was reached in the context of that risk.

Has there been Collusion or Improper Extraneous Considerations?

[22] There is nothing to suggest any collusion or improper considerations in arriving at the settlement. This litigation has been hard fought on both sides, through certification and appeal. The settlement was achieved through a lengthy arms-length negotiation between experienced class action counsel, with input from Mr. Campbell throughout.

Do the Cost/Benefit Considerations Favour Settlement?

[23] I am satisfied that the cost/benefit considerations favour settlement, for the following reasons.

[24] As discussed above, there are litigation risks associated with proceeding to trial. Even if the plaintiff succeeds on the common issues, the class members will still need to establish their individual damages. Further, the scope of recoverable damages is uncertain.

[25] In contrast, the settlement guarantees timely compensation to class members, avoiding the delay and risk associated with trial, any appeals (which are likely given the issues in this litigation), and individual issue hearings.

[26] This is a disputed claim that the defendants have vigorously defended to date. The settlement provides certainty and avoids the risk of the defendants' successfully defending against some or all of the class members' claims at trial. It provides class members with a simplified, accessible, and inexpensive claims process, relative to

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that which would be required if the claims were litigated. All these considerations favour settlement at this stage of the proceeding.

[27] I accept that the evidence supports class counsel's estimate of a 1%-2% take-up rate (that is, the percentage of class members who will claim an award from the settlement) as reasonable. That translates to somewhere between fifty thousand and one hundred thousand claims filed by class members. Even if claims fall at the high end of the anticipated take-up rate, the evidence establishes that there will be sufficient settlement funds to satisfy all claims, which supports the reasonableness of the settlement: *Smith v Vancouver City Savings Credit Union*, 2012 BCSC 990 at paras 21-24, 28.

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Are class members sufficiently informed and generally favourably disposed to the settlement?

[28] I am satisfied that the evidence establishes that class members are sufficiently informed about the case and the settlement. Notice has been provided to class members in the approved manner. Advertisements were placed in two national newspapers, a social media campaign achieved 8.3 million impressions, and emails were sent to 2.9 million email addresses provided by the defendants. Verita confirms that 2.85 million of those emails were successfully delivered. The notices are posted on the website Verita established for the settlement.

[29] The class notices clearly set out the claims that class members can make on the settlement funds. Verita's website will provide details about the claims process if settlement is approved. Class counsel also maintain a website for this proceeding, which included information about the settlement and options available to class members and provided a means by which people could register and provide information to class counsel. Class counsel sent email notification of the settlement to all of the approximately 1,900 people who had registered on their website.

[30] Finally, both class counsel and Verita have spent significant time and resources responding to class member inquiries following the notice of certification and proposed settlement.

[31] Turning to class members' views, there are certainly some class members who are either not in favour of the settlement or have chosen not to participate in it. As of the September 11, 2026, response deadline, 849 individuals had opted out of the class proceeding and 7 class members had submitted objections to the settlement.

[32] Despite that, I am satisfied that the evidence demonstrates that class members are generally favourably disposed to the settlement, for the following reasons.

[33] First, Mr. Campbell is a well-informed and engaged representative plaintiff. He supports the settlement.

[34] Second, the number of class members who have opted out of the proceeding represents a very small percentage of total class members (about 1/100th of a percent). The number of class members who have communicated an objection to the settlement is an even smaller percentage of the total class.

[35] Most of the objecting class members provided thoughtful, comprehensive comments in support of their concerns. Some expressed just a single reason for their objection; others cited multiple reasons. I have carefully considered their concerns and find that they do not weigh against settlement, for the following reasons.

[36] Some objectors said they did not have sufficient information to know if they were included in the class or to assess the settlement. I am satisfied that to the extent these concerns have merit, they are sufficiently addressed by information that either has now been provided or will become available through the claims process.

[37] One class member felt class counsel had not provided enough information about their fees; in my view, the degree of information communicated to the class in that regard was reasonable. One objector raised a concern about lack of clarity regarding counsel fees and other costs, pointing to language used in a "Settlement FAQ" document. I find that the terms of the settlement relating to counsel fees and

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other costs are sufficiently clear when all documentation, including the settlement agreement itself, is considered.

[38] Numerous class members believe the amount of the settlement is too low to adequately compensate class members for their losses. While I accept that the settlement is potentially lower than damages that might be awarded after a trial, the opposite is also true—the settlement is potentially higher than damages would be if this matter did not settle. As already discussed above, the claims are disputed and vigorously defended, and there is genuine litigation risk associated with class members' ultimate prospect of recovery.

[39] One objecting class member suggests that the settlement is low relative to the scale of the breach and the number of class members affected by the Data Breach. I do not accept that characterization of the settlement. I agree with class counsel's submission that the settlement amount is relatively comparable with known recoveries in other Canadian data breach class actions. I also observe that the settlement in this case is over 13% of the settlement in the parallel American litigation arising out of the Data Breach, which exceeds what has been described as a "judicially acceptable comparative measure" of 8% to 10%: *Sheridan Chevrolet v Valeo S.A.*, 2021 ONSC 7375 at para 8.

[40] Some objecting class members feel that the settlement is inadequate, unreasonable, and unfair to those class members who have faced identity theft or are otherwise exposed to long term harm because of the Data Breach. I place relatively low weight on these objections given the evidence that Ms. Thompson did not use or disseminate class members' personal information. Further, to the extent that class members believe they did experience such harm, a fraud claim is available to them under the settlement.

[41] In general response to objections to the settlement value, having considered the evidence and class counsel's explanations in support of their litigation risk and settlement assessment, I find that the settlement amount and the net benefit that

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individual class members can expect to receive under the settlement is reasonable and fair in the circumstances of this proceeding.

[42] One class member suggests there should be a settlement term requiring a holdback of a portion of counsel fees until more information is available about the take-up rate. While it would have been open to the parties to include a term to that effect in the settlement, they did not do so. The settlement need not be perfect, only reasonable: *Lewis* at para 12. In my view, there is nothing unreasonable about the absence of a holdback for legal fees.

[43] One of the objecting class members believes that the settlement does not address their unique situation. The explanation provided by this class member demonstrates that their allegations raise issues beyond the scope of this proceeding. It would not have been reasonable, or even possible, for the settlement to include terms addressing their specific concerns.

[44] One objecting class member is concerned that the settlement resolves the litigation without addressing alleged governance failures that gave rise to the Data Breach. They express a concern that the resolution does not meaningfully reduce the risk of a similar Data Breach occurring in the future. This class member suggests that any resolution of this class proceeding should include a mechanism to monitor and verify improvements to the defendants' data governance, security practices, and organizational oversight. The difficulty with this objection is that the proposed relief has no basis in the pleadings. In any event, my task is to determine whether the settlement falls within a range of reasonableness, not to modify or rewrite its terms: *Lewis* at paras 12-13. The absence of the proposed terms does not bring the settlement outside the range of reasonableness in this case. I also observe that there is evidence that at least some of the enhanced measures suggested by the class member have already been implemented.

[45] Two objecting class members expressed concerns about the fraud claims process contemplated under the settlement. One class member is concerned about how Verita will determine whether a fraud claim is "fairly traceable" to the Data

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Breach; in response, I observe that the settlement agreement articulates the relevant factors that Verita must consider in making that determination. The other objector expresses a concern that there is no way to appeal Verita's decisions, particularly with respect to fraud claims. I am satisfied that the Court's ongoing supervisory role in relation to the administration of the settlement creates a safeguard that adequately addresses that concern: See *J.W. v Canada (Attorney General*), 2019 SCC 20 at paras 31, 120.

[46] Some objectors take issue with the legal fees requested by class counsel. They believe the fees are too high and suggest a greater percentage of the total settlement amount should be available for class members claims rather than legal fees. However, for the reasons set out below in my assessment of whether to approve class counsel fees, I find that the legal fees requested in this case are fair and reasonable. I acknowledge that the fees are significant, but they are not out of line with what can reasonably be expected in a complex class proceeding.

[47] Finally, in assessing class members' views about the settlement, it is significant that Verita received 58 statements in support of the settlement, two of which were delivered after the September 11, 2026, deadline. That means that, even excluding the two late statements, for every one class member who opposes the settlement there are eight class members who have expressed support of it.

[48] For the above reasons, I have no difficulty concluding that sufficient information has been provided to the class members and that the class is generally favourably disposed to the settlement. Those who are opposed to the settlement have not raised concerns that weigh against approval of the settlement.

Conclusion regarding settlement approval

[49] The settlement in this case was reached after hard-fought, years-long litigation and is the result of a lengthy and arm's-length settlement process involving experienced counsel. Class counsel had sufficient information available to them about the facts and the current state of the law to assess litigation risk and the prospect of financial recovery if the case proceeded to trial on common and individual

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issues. There is no evidence of any impropriety in respect of the settlement. The class is sufficiently informed and generally favourably disposed to the settlement, and the class is well-served by a timely and reasonable settlement. I find that the settlement is fair, reasonable, and in the best interests of the class as a whole. I therefore approve the settlement.

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Class counsel fees

[50] Section 38 of the *CPA* requires that counsel fees and disbursements be approved by the court. “The purpose of the approval by the court is to ensure that the fee charged to the class is fair and reasonable, and that the class counsel is appropriately compensated since class action litigation can be challenging and risky”: *Cardozo v Becton, Dickinson and Company,* 2005 BCSC 1612 at para 24.

[51] In this case, the plaintiff seeks approval of class counsel fees in the amount of $8,750,000 (25% of the total settlement), plus taxes ($1,050,000 based on British Columbia’s 12% tax rate) and disbursements ($78,293.15).

[52] In British Columbia, the contingency fee agreement negotiated between class counsel and the representative plaintiff is the starting point of the analysis as to the appropriateness of class counsel’s fees, and the fee should be reduced only where there is a principled reason for doing so: *Pro-Sys Consultants Ltd. v Microsoft Corporation*, 2018 BCSC 2091 at para 49. Here, the requested fees are in accordance with the retainer agreement between class counsel and Mr. Campbell, which provides for a 25% contingency fee plus taxes and disbursements, payable only in the event of a successful settlement or judgment.

[53] With that in mind, the factors relevant to whether a fee is fair and reasonable include: (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 expectations of the client and the class; and (j) fees in similar cases: *Chun v Vancouver Whitecaps FP LP*, 2026 BCSC 566 at para 37.

[54] Having considered these factors, I find that the fee sought by class counsel is fair and reasonable, for the following reasons.

[55] Class counsel has achieved a good result for the class. This was a complex and highly contested proceeding involving novel legal issues that would have been uneconomical for a single class member to pursue on their own. As of September 9, 2026, docketed time on this file was 5,467 hours, valued at $3,762,893 at class counsel's standard hourly rates. There is no realistic prospect that individual class members would have retained counsel to pursue their claims on a non-contingency basis, given the value of their claims as compared to the cost of the litigation on a fee-per-service basis.

[56] Class counsel are experienced lawyers. They pursued the claim vigorously and skillfully. They expended significant time and effort achieving certification and successfully negotiating settlement. Further, class counsel's work is not yet done. They will continue to oversee the file through settlement and will assist class members with the claims administration.

[57] Until settlement was reached, class counsel accepted the risk that the claim would ultimately not succeed, in which case they would receive no fees. This was a significant risk, particularly before the proceeding was certified, given the legal and factual uncertainties in this case, including in relation to the privacy torts and the damages claims.

[58] The subject matter of the proceeding—a data breach affecting personal information, including social insurance numbers—was important to class members, even if individual damages were ultimately not expected to be significant given what is now known about Ms. Thompson's non-dissemination of the Confidential Information she obtained in the Data Breach.

[59] The fee accords with the contingency fee agreement between class counsel and Mr. Campbell. Mr. Campbell supports the fee, which is lower than the 33%

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contingency fee that has frequently been held valid in class proceedings. The requested fee in this case is in line with precedent in other proceedings.

[60] While the requested fee is more than twice the value of counsel's docketed time, I find it is reasonable that class counsel fees exceed the value of docketed hours given the risks counsel assumed in prosecuting this claim over 7 years on a contingency basis. There is nothing unreasonable about the amount of the disbursements given the steps taken to date in this litigation.

[61] For these reasons, I approve the requested fee.

Honorarium for the representative plaintiff

[62] The plaintiff seeks approval of an honorarium of $5,000 for Mr. Campbell, payable out of the settlement.

[63] In *Parsons v Coast Capital Savings Credit Union*, 2010 BCCA 311, the Court of Appeal provided guidance as to when a court may approve a separate payment to a representative plaintiff, stating:

> [19] There is no doubt that a representative plaintiff could be tempted to act in self interest, contrary to the interests of class members, where the potential exists for substantial preferential treatment in the terms of settlement. Protecting against this, the approving 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, additionally, 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.
>
> [20] With these cautions, however, and with respect, I consider it is too narrow to say, as the judge did here, that services of special significance beyond the usual responsibilities under the *Act* are required for a separate award to the representative plaintiff. Where the representative plaintiff has fulfilled his or her duties, which will include attendance for examination in discovery, providing instructions on all steps taken in the litigation and on the settlement (which necessarily requires immersion in the substance of the case), and where a monetary settlement in favour of the class members is achieved, a modest award in recognition of the effort expended on behalf of the class members is consistent with restitutionary principles and recognition of the principle of *quantum meruit.* This expectation is further justified by the exposure to costs assumed by the representative plaintiff in commencing the

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> action. While that risk is mitigated upon certification, there is a real exposure to costs assumed on commencing the action. Other intangible costs also are borne by such a plaintiff, including the sometimes not inconsiderable weight of being the leader of the claimants.

[64] Applying these principles, I find that the proposed $5,000 honorarium to Mr. Campbell should be made in this case.

[65] I have already found that the settlement is fair, reasonable, and in the best interests of the class.

[66] The evidence establishes that Mr. Campbell has fulfilled his duties as representative plaintiff. He retained class counsel on September 30, 2019, and has been actively involved in the litigation ever since. He has maintained ongoing communication with legal counsel. He has reviewed regular case updates, provided timely responses, and stayed engaged through each stage of the litigation. Mr. Campbell carefully reviewed documents such as pleadings and the settlement agreement. He dedicated time to the tasks required of a representative plaintiff, including gathering evidence required for discovery.

[67] While Mr. Campbell was prepared to continue to litigate this claim, he believes the settlement is in the best interests of the class.

[68] The honorarium of $5,000 is reasonable and fair, considering the evidence of Mr. Campbell's engagement in this litigation. The amount is proportionate to his efforts and to the total settlement, falls within the usual range of compensation for representative plaintiffs in British Columbia, and does not benefit Mr. Campbell unduly in relation to the class as a whole: *Lewis* at paras 65-67.

Conclusion

[69] In conclusion, for the reasons set out above, the settlement, requested class counsel fees, and requested honorarium are approved.

"Ramsay J."

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