

CITATION: Li et al. v. Barber et al.
COURT FILE NO.: CV-22-88514-CP
DATE: 2026 01 29

SUPERIOR COURT OF JUSTICE – ONTARIO
Proceeding under the *Class Proceedings Act, 1992*

RE: ZEXI LI, HAPPY GOAT COFFEE COMPANY INC., 7983794 CANADA INC
(c.o.b. as UNION: LOCAL 613) and GEOFFREY DEVANEY, Plaintiffs

AND:

CHRIS BARBER, BENJAMIN DICHTER, TAMARA LICH, PATRICK KING, JAMES BAUDER, BRIGITTE BELTON, DANIEL BULFORD, DALE ENNS, CHAD EROS, CHRIS GARRAH, MIRANDA GASIOR, JOE JANZEN, JASON LAFACE, TOM MARAZZO, RYAN MIHILEWICZ, SEAN TIJESSEN, NICHLOAS ST. LOUIS (a.k.a. @NOBODYCARIBOU), FREEDOM 2022 HUMAN RIGHTS AND FREEDOMS, GIVESENDGO LLC, JACOB WELLS, HAROLD JONKER, JONKER TRUCKING INC. and BRAD HOWLAND, Defendants

BEFORE: C. MacLeod RSJ

COUNSEL: **Paul Champ & Christine Johnson**, for the Plaintiffs

James Manson & Christopher Fleury for the Defendants, Lich, Barber, Marazzo, Tiessen, Gasior, Bulford, Enns, Mihilewicz, Howland, Jonker, Jonker Trucking Inc. and Freedon 2022 Human Rgts and Freedoms

Shelley Overwater for the Defendants King & Janzen

Jim Karahalios & Andrew Burgess, for the defendants Dichter, Garrah, St. Louis, Belton, Wells and GiveSendGo LLP

Ryan O'Connor & Gurpeet Farmaha, for the defendant, Chad Eros

HEARD: January 29, 2026

CASE MANAGEMENT ORDER & DIRECTION

[1] On July 31, 2025 I established a timetable making the certification motion in this proposed class proceeding returnable on July 7th, 8th and 9th, 2026 unless otherwise ordered. That timetable required the plaintiffs to serve the certification record by September 15th, 2025 and then required the defendants to serve responding material by December 19th, 2025.

[2] This case conference was convened at the request of certain of the defendants because the plaintiffs failed to meet the September 15th deadline and so it would not be possible for the defendants to meet the deadline of December 15th. Worse, the defendants alleged that they had heard nothing from counsel for the plaintiffs for some time despite various inquiries made to his office.

[3] In the lead up to this case conference, counsel for the plaintiff apologized for the delay, explained various complications that had arisen and proposed to deliver all the plaintiffs' affidavit material for the certification motion by February 2, 2026. He also proposed a revised timetable leading up to the proposed motion dates in July. The proposed timetable, however, would compress the time for the defendants to prepare and file affidavit material and truncate the time available for cross examinations. This, the defendants contend, would be unfair.

[4] In the meantime, another issue has arisen. The defendants have become aware of the fact that there was an undisclosed settlement agreement between the plaintiffs and the defendant, Chad Eros signed in April of 2024. Although the plaintiffs take the view that this was only a tentative agreement because Mr. Eros did not take the steps necessary to implement it, at least some of the defendants, contend that non-disclosure was improper and should result in a stay of proceedings. They rely on comments by Justice Perell in *Zwaniga v. JohnVince Foods Distribution L.P.*, 2012 ONSC 3848 (CanLII) and by reference to the words of the Court of Appeal in *Aecon Buildings v. Brampton (City)*, 2010 ONCA 898 (CanLII); leave to appeal refused 2011 CarswellOnt 5517.

[5] Such a stay is discretionary and therefore fact specific. The plaintiffs refer to *McCartney v. CDSPI Advisory Services Inc.*, 2025 ONSC 4250 in which there were opposing motions to stay or for approval of the settlement heard in conjunction with the certification motion. In that decision, Morgan J. approved the partial settlement and dismissed the motion to stay. The plaintiffs rely on the finding that since the agreement did not come into force until approved by the court, there was no prejudice to the non-settling defendant.

[6] The issue for today was not to decide the question but simply whether to hear this as a preliminary motion or to combine it with the certification motion. While I have the discretion to hear such a motion together with the certification motion, there is the presumption in s. 4.1 of the *Class Proceedings Act* and, as the defendants also point out, it may be the case that some of the counsel have to provide evidence and cannot argue the motion. That remains to be seen but in my view, it is better to dispose of this issue now rather than waiting for the certification motion.

[7] The second issue is that if the certification motion will have to be adjourned from the original target dates, counsel for the GoSendGo defendants wishes to bring a summary judgment motion. I am advised that those parties had advised the plaintiff they would forebear doing so if the certification motion was to move along expeditiously but in light of the delay, now expect they will have instructions to proceed.

[8] In summary, I have agreed to deal with the settlement / stay motion before the certification motion and to adjust the timetable for the certification motion to take the late delivery of the materials and the preliminary motion into account.

[9] In terms of scheduling, counsel will recall that pursuant to the previous endorsement, they were to have kept March 11, 2026 and the dates in July available. It seems unlikely that the March date will be suitable but if earlier dates cannot be found, the July dates may be appropriate for one or more of the motions.

[10] The court therefore orders and directs as follows:

- a) The timetable established for the certification motion on July 31, 2025 is amended.
- b) The plaintiffs shall serve the certification record by February 6, 2026.
- c) The deadline for the defendants to serve responding affidavits is extended to dates to be set and the dates for the hearing of the certification motion will also be addressed at a future case conference.
- d) The GiveSendGo defendants may bring a motion to stay the proceeding or for other relief based on alleged failure to disclose a settlement agreement. The following timetable will apply:
 - i) The moving party defendants shall serve their motion record (returnable on a date to be fixed by the court) by February 13th, 2026.
 - ii) All other defendants who wish to bring the same motion or to support the motion shall serve their motion records by February 23rd, 2026. If Mr. Eros will be a moving party, he shall comply with this deadline. If he will be a responding party then he will so indicate to the other parties and a deadline will be set for his materials at the case conference.
 - iii) There will be a case conference on March 4, 2026 at 9:00 a.m. by videoconference to set a timetable for responding materials, cross examination, to fix a return date and for other directions.
 - iv) Unless otherwise directed, the coordinates for the March 4 videoconference will be as follows:
[REDACTED]
- e) A timetable for the remaining steps in the certification motion will be established following the motion for a stay unless the court otherwise orders.

f) If any party wishes to bring a summary judgment motion in advance of the certification motion, they are to so indicate on or before the next case conference. The court will give further directions once that information is received.

[11] As a courtesy, counsel for the plaintiff shall send a copy of this endorsement to counsel for the Attorney General of Ontario who, although not a party to the action, has an interest in the funds that are frozen and held in escrow.

[12] This order constitutes a timetable pursuant to Rule 3, a case management order pursuant to Rule 50.13 and an order pursuant to s. 12 of the *Class Proceedings Act*. It is effective without further formality.



Digitally signed by C. MacLeod RSJ
Date: 2026.01.29 14:57:58 -05'00'

Justice C. MacLeod

Date: January 29, 2026