

## **PIERRINGER AGREEMENT**

THIS AGREEMENT is made effective this 25 day of March, 2025 (the "Effective Date")

AMONGST:

### **THE SCHEDULED PLAINTIFFS**

(being the Plaintiffs listed herein at **Schedule A** (the "CEF Plaintiffs"))

- and -

### **THE SCHEDULED DEFENDANTS**

(hereinafter referred to as the "**Third Settling Parties**" and listed herein at **Schedules B and C**)

WHEREAS:

- (a) Under the proceedings in the Alberta Court of Queen's Bench Action No. 1501-00955 pursuant to the *Companies Creditors' Arrangement Act*, RSC 1985, c. C-36, (the "**CCAA Proceedings**") a plan of compromise and arrangement as amended from time to time (the "Plan") has been approved by the Court in those proceedings for the "Direct Depositors" (as defined in the Plan). A Subcommittee was constituted under the Plan for the District Depositors (the "**District Subcommittee**"). The Plan provides for a "Representative Action" (as defined therein), including the action referenced in clause (d) of these recitals below. The Plan further provides that the Representative Action would be governed by the *Class Proceedings Act*, R.S.B.C. 1996, c.50 (British Columbia) and *Class Proceedings Act*, S.A. 2003, c. C-16.5, as amended by the *Class Proceedings Amendment Act*, 2010, c. 15 (Alberta), "except to the extent such legislation is inconsistent with or modified by the Plan". The Plan further provides that the District Subcommittee "has the power to settle all or portion of the Representative Action" on behalf of the District Depositors (the "**Representative Action Class**"). The Plan further provides for distribution of monies recovered from the Representative Action for the benefit of the Representative Action Class.
- (b) On March 24, 2021, the Representative Action Class entered into a Pierringer Agreement with the Schedule D, E, F and G Defendants (the "**First Settling Parties**") to partially settle this proceeding. The Pierringer Agreement was approved by the Court by way of an Order dated November 25, 2021, which was entered on December 16, 2021 (the "**2021 Partial Settlement**").
- (c) On April 5, 2022, the Representative Action Class entered into a Pierringer Agreement with the Prince of Peace Lutheran Church of Calgary (the "**Second Settling Party**") to partially settle this proceeding. The Pierringer Agreement was approved by the Court by way of an Order dated October 7, 2022, which was entered on October 11, 2022 (the "**2022 Partial Settlement**").
- (d) The District Depositors have allegedly suffered injury, loss, damage and expenses with respect to or arising from, *inter alia*, negligent handling of investment funds, breach of contract, breach of statutory duty, breach of fiduciary duties and wrongful acts and omissions by the Third Settling Parties and the other defendant party Lutheran Church –

Canada, Lutheran Church – Canada Financial Ministries (referred to as the “**Non-Settling Parties**”), for which all the Defendants may be jointly and severally liable, in and as more particularly described in pleadings filed by the Plaintiffs in the Court of King’s Bench of Alberta, Judicial District of Calgary, Action No. 1901-04984 (the “**AB CEF Action**”) and (hereinafter referred to as the “**Wrongful Conduct**”);

- (e) The Non-Settling Parties have not advanced, but in the future may advance, claims against the Third Settling Parties for contribution or indemnity;
- (f) The CEF Plaintiffs and the Third Settling Parties desire to resolve amongst themselves all claims or possible claims between them, including all claims advanced directly or indirectly in the AB CEF Action, including claims for costs, and all claims arising directly or indirectly from or respecting the Wrongful Conduct;
- (g) The CEF Plaintiffs and the Third Settling Parties acknowledge that the total of the CEF Plaintiffs’ damages and losses with respect to the Wrongful Conduct and the AB CEF Action may exceed the “Consideration” (defined below) to be paid by the Third Settling Parties hereunder; and,
- (h) The CEF Plaintiffs desire to preserve their rights and claims arising from the Wrongful Conduct of the Non-Settling Parties and to continue the AB CEF Action only as against the Non-Settling Parties.

NOW THEREFORE THIS AGREEMENT WITNESSES that for and in consideration of the matters hereinbefore referred to, the payments, agreements, covenants and undertakings hereafter referred to, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the CEF Plaintiffs and the Third Settling Parties agree as follows:

1. With the execution of this Agreement (the “**Agreement**”) by counsel for the Third Settling Parties and for the CEF Plaintiffs, the Third Settling Parties shall pay the sum of: inclusive of all interest, costs, disbursements and GST (hereinafter referred to as the “**Consideration**”) to the CEF Plaintiffs, in care of, and in trust to, James & McCall Barristers, unconditionally releasable to the CEF Plaintiffs upon satisfaction of the condition precedent outlined in paragraph 20 below; provided that if the condition precedent is not satisfied as and when contemplated by that paragraph then CEF Plaintiffs’ counsel shall promptly thereafter return the Consideration to counsel for the Third Settling Parties.

2. Notwithstanding any other term of this Agreement, it is the intent of the parties hereto that the Third Settling Parties shall not be liable to make any payments over and above the Consideration, whatsoever, to any of the CEF Plaintiffs or the Non-Settling Parties on account of damages to the CEF Plaintiffs arising out of any of the Wrongful Conduct of any one or more parties, as alleged in the pleadings or as arising out of the AB CEF Action.

3. The CEF Plaintiffs do for themselves and for and on behalf of their heirs, insurers, executors, administrators, subrogees, successors, agents, and assigns, hereby severally agree to discontinue their pursuit of the AB CEF Action, in the manner contemplated in paragraph 10 herein, as against the Third Settling Parties and hereby covenant not to sue the Third Settling Parties and/or their directors, officers, partners, employees, agents, insurers, successors, executors, administrators and/or assigns, for any cause of action, at law or in equity or under any statute, which the CEF Plaintiffs ever could have, or which they, or their heirs, insurers, executors, administrators,



subrogees, successors, or assigns, hereafter can, shall, or may have by reason of any claim for injuries, losses, or damages, arising directly or indirectly from the Wrongful Conduct and with respect to any and all matters arising, directly, or indirectly, out of the matters referred to in the pleadings in the AB CEF Action.

4. The CEF Plaintiffs hereby acknowledge full and complete satisfaction of that portion of their total damages in the AB CEF Action, and from the Wrongful Conduct, which can or may have been caused by the Wrongful Conduct of the Third Settling Parties, if any, as may hereinafter be determined in the trial or other disposition of the AB CEF Action, or in any other action respecting the Wrongful Conduct.

5. The CEF Plaintiffs hereby each severally agree to forbear from pursuing any parties in any legal action, including but not limited to the Non-Settling Parties, for or in connection with recovery of that fraction, portion, or percentage of their respective claims for damages respecting the Wrongful Conduct which may, or shall hereafter, whether by trial or other disposition of the Actions, be determined to be the fraction, portion, or percentage of liability for which the Third Settling Parties are, or were, liable due to the Wrongful Conduct, or any other act or default, or theory of liability.

6. The CEF Plaintiffs in no way release, discharge or covenant not to sue the Non-Settling Parties.

7. The CEF Plaintiffs hereby each severally agree not to seek to recover from any party, either in the AB CEF Action or in any other proceedings, any portion of the losses or damages which the CEF Plaintiffs claim in the AB CEF Action and which a court or other tribunal may attribute to the Wrongful Conduct of the Third Settling Parties. In particular, and without limiting the generality of the foregoing, the CEF Plaintiffs hereby each severally agree not to seek to recover from the Non-Settling Parties any portion of the CEF Plaintiffs' respective losses attributable to the Wrongful Conduct of the Third Settling Parties as aforesaid.

8. If the Court, following the trial of the AB CEF Action or any other action respecting the Wrongful Conduct, grants judgment to the CEF Plaintiffs against the Non-Settling Parties in an amount exceeding the Non-Settling Parties' collective share of the total damages awarded, based upon the fraction or portion or percentage of causal fault of the Non-Settling Parties with respect to the Wrongful Conduct as found by the Court, (the "**Non-Settling Parties Collective Share**") the CEF Plaintiffs hereby agree in any event not to seek to recover in the Actions, directly or indirectly, from the Non-Settling Parties any part of the total damages so awarded which exceed the Non-Settling Parties Collective Share.

9. The CEF Plaintiffs and the Third Settling Parties agree that, upon the removal of the condition precedent described in paragraph 20 herein and the payment of the Consideration by the Third Settling Parties to the CEF Plaintiffs as contemplated in paragraph 1 herein, counsel for the CEF Plaintiffs shall amend the Statement of Claim as already amended in the AB CEF Action to add the following paragraph:

The CEF Plaintiffs hereby expressly waive any right to recover from the Non-Settling Parties any portion of the loss or damages herein which the court may apportion or attribute to the fault, liability or responsibility of the First Settling Parties, the Second Settling Parties and/or the Third Settling Parties for which any of the Non-Settling Parties might reasonably be entitled to claim contribution, indemnity or an apportionment against the First Settling Parties, the Second Settling Parties and/or the Third Settling Parties pursuant to the provisions of the

*Tortfeasors Act*, R.S.A. 2000, c.T-5, as amended, and/or the Contributory Negligence Act, R.S.A. 2000, c. C-27, as amended, or any successor equivalent legislation."

10. The CEF Plaintiffs shall use their best efforts and as soon as is practicable apply for the following "Orders", as that term is defined below:

- (a) An order approving and giving effect to the terms of this Agreement, including any amendments thereto that the parties may agree upon in writing in order to secure such approval;
- (b) Declaring in the AB CEF Action that the "Representative Action Class" defined in the Action is for the purpose of this agreement bound by this agreement as a part of the "Scheduled Plaintiffs" referenced in this agreement;
- (c) Dismissing the AB CEF Action as against the Third Settling Parties only, and any appeal period relating to such Orders has expired without any appeal(s) having been taken from such Orders;
- (d) Granting the CEF Plaintiffs leave to file the further Amended Statement of Claim in the AB CEF Action in the manner set forth in Paragraph 9 of this Agreement to the extent that any such leave is required under the Alberta Rules of Court;
- (e) Barring any claims in the AB CEF Action for contribution and/or indemnity against any of the Third Settling Parties, including without limitation:
  - i. striking out or dismissing as expeditiously as the Court will permit any and all existing notice(s) to co-defendants and/or third-party notice(s) for any such claims; and,
  - ii. prohibiting any such claims in the future

(hereinafter referred to as the "**Orders**").

11. The existence of this Agreement and the contents thereof shall be kept confidential from any person or other legal entity not a party to this Agreement, except:

- (a) a copy of this Agreement with the amount of the Consideration redacted shall be disclosed by the CEF Plaintiffs to each of the Non-Settling Parties in the AB CEF Action forthwith prior to the applications for the Orders; and
- (b) any information or documents included in any affidavits or any other documents filed with the court by the Third Settling Parties or the CEF Plaintiffs in the AB CEF Action and which are not subject to a sealing order will upon such filing no longer be confidential; and
- (c) the CEF Plaintiffs may share this Agreement, both in draft and in final executed form, with the Plaintiffs in Alberta Court of King's Bench Action No. 1801-03538 (the "**AB DIL Action**") and their counsel in that Action.



11.1 Notwithstanding paragraph 11 above, the Third Settling Parties hereby acknowledge that the extent, if any, to which the Consideration shall remain confidential for the purposes of the hearing of the CEF Plaintiffs' application for the Orders and the contemplated applications for approval of the CEF Plaintiffs' respective contingency fee agreements and counsel fees pursuant to s.39 of the *Class Proceedings Act*, SA 2003, c.16.5 is within the discretion of the Court, and that the parties will jointly seek directions from the Court as to whether, and the extent to which, such confidentiality shall be maintained for such applications prior to the bringing of the application for the Orders.

12. The CEF Plaintiffs hereby covenant and agree that they will at all times hold harmless and indemnify the Third Settling Parties and their respective directors, officers, partners, employees, agents, insurers, indemnifiers, administrators, successors, and assigns and each of them, against all actions, proceedings, claims, cross claims, demands, third party proceedings, and suits of every nature and kind whatsoever in the AB CEF Action. The CEF Plaintiffs shall do so by irrevocably waiving, and forbearing from collecting from any of the Non-Settling Parties any amount required to be paid as contribution and indemnity by any one or more of the Third Settling Parties to any one or more of the Non-Settling Parties by way of judgment or order in the AB CEF Action in relation to the Wrongful Conduct. The parties hereby agree that notwithstanding the foregoing, the CEF Plaintiffs shall not be responsible to hold harmless and indemnify the Third Settling Parties in accordance with this provision where such claim for indemnity arises from proceedings taken by the Non-Settling Parties to challenge the validity of this Agreement.

13. The CEF Plaintiffs further covenant and agree that they will, at their own expense, at all times defend the Third Settling Parties in respect to all steps, actions or proceedings in the AB CEF Action, including in that Action any third party proceedings, claims, cross claims, demands, and suits of every nature and kind whatsoever, or other claims for contribution or indemnity, which may be commenced against the Third Settling Parties by the Non-Settling Parties in relation to the Wrongful Conduct. Notwithstanding the foregoing, the parties hereby agree that the CEF Plaintiffs will not be required to defend the Third Settling Parties with respect to proceedings that may be brought by the Non-Settling Parties to challenge the validity of this Agreement.

14. In the event that one or more or all of the Third Settling Parties, through any judgment or order of a Court of competent jurisdiction, are found liable to one, more or all of the Non-Settling Parties for contribution or indemnity or costs in the Actions, then the CEF Plaintiffs shall fully and immediately indemnify those of the Third Settling Parties concerned for any amount required to be paid by such of the Third Settling Parties to such of the Non-Settling Parties concerned pursuant to any such judgment or order. The CEF Plaintiffs shall do so by irrevocably waiving and forbearing from collecting from those of the Non-Settling Parties concerned any amount required to be paid by such of the Third Settling Parties to the Non-Settling Parties concerned by way of any such judgment or order in relation to the Wrongful Conduct.

15. None of the CEF Plaintiffs' obligations under paragraphs 3, 5, 7, 12, 13, and 14 will apply to individual Third Settling Parties in any capacity(ies) other than in their positions with the corporate Third Settling Parties and as individuals; for greater certainty, as an example, if an individual Third Settling Party has held a position with a corporate Non-Settling Party, that individual will not be protected or benefitted in any such capacity by any of those paragraphs.

16. This Agreement is made without prejudice to the CEF Plaintiffs' rights and claims against the Non-Settling Parties and the CEF Plaintiffs shall be at liberty to settle, pursue or relinquish their claims against the Non-Settling Parties in their sole discretion. Any recovery of

funds made by the CEF Plaintiffs against the Non-Settling Parties shall be solely to the credit of the CEF Plaintiffs.

17.1 The Third Settling Parties agree to assist the CEF Plaintiffs and/or the Non-Settling Parties regarding testimony and production of non-privileged documents in their possession or control relevant to any one or more of the AB CEF Action and/or the CCAA Proceedings and the related Alberta Securities Commission proceedings, in the following manner:

(a) At the request of the CEF Plaintiffs or Non-Settling Parties, any Third Settling Parties who are requested to do so shall prepare an Affidavit of Records and provide same to the CEF Plaintiffs and/or Non-Settling Parties; the party requesting the Affidavit of Records shall be responsible for the Third Settling Parties' reasonable solicitor and client costs in respect of preparing the Affidavit of Records;

(b) At the request of the CEF Plaintiffs or Non-Settling Parties, any Third Settling Parties who are requested to do so shall submit a corporate representative or otherwise as necessary for questioning to be conducted by the CEF Plaintiff and/or Non-Settling Parties; the party requesting questioning shall pay reasonable conduct money to secure the witnesses' attendance and shall be responsible for the requested Third Settling Parties' reasonable solicitor and client costs in respect of securing the witnesses' attendance, briefing the witnesses, attending on the witnesses' questioning, and facilitating compliance with any resulting undertakings and interrogatories.

17.2 The Third Settling Parties shall retain all books, documents, securities, contracts, orders, corporate and accounting records, and/or any other papers, records, and information of any kind related to the AB CEF Action for a period of 10 years from the conclusion of the AB CEF Action.

17.3 Subject to the conditions stipulated by paragraph 17.1 of this Agreement, the Third Settling Parties shall not be required to participate as a party in any further steps in the AB CEF Actions, including any further questioning or document production other than as specified in this Agreement.

18. This Agreement shall in no way be construed as an admission of liability by the Third Settling Parties, by whom liability is specifically denied, and if not approved by the court shall be without any admission or prejudice to either party.

19. The CEF Plaintiffs and the Third Settling Parties acknowledge and agree that they will refrain from any publication, oral or written, of any defamatory, disparaging or otherwise derogatory remarks pertaining to each other except as may be permitted or required by law. Furthermore, the Third Settling Parties shall not state to anyone, either expressly or impliedly, any claim to any vindication of any of them by virtue of, or in relation to, the settlement contemplated by this Agreement.

20. This Agreement is subject to the following condition precedent, which is for the benefit of both the CEF Plaintiffs and the Third Settling Parties, and which may be waived in a manner that is unequivocal and in writing and signed by counsel for the CEF Plaintiffs and by counsel for the Third Settling Parties and delivered to the offices of the counsel for opposite party to this Agreement and/or by receipted email to them, namely that the Orders are pronounced by a Justice of the Alberta Court of King's Bench no later than September 30, 2025 or as otherwise agreed upon writing by counsel for the CEF Plaintiffs and the Third Settling Parties, and the expiry



of any applicable appeal period without any appeal being taken by any party, or alternatively the final dismissal of any appeal so taken.

21. The parties acknowledge and agree that the granting of the Orders is severable from the CEF Plaintiffs' application for court approval of counsels' contingency fee agreements and legal fees and disbursements pursuant to s. 39 of the *Class Proceedings Act, supra*.

22. The obligations of the parties to this Agreement are only several, not joint with any other parties to this Agreement.

23. The recitals hereto form part of this Agreement.

24. The parties hereto shall execute all such further and other deeds and documents promptly and when required and shall do or perform, or cause to be done or performed, all such acts as shall be reasonably necessary to ensure the completion of the transaction contemplated herein.

25. This Agreement shall inure to the benefit of and be binding upon each of the parties hereto and their respective heirs, administrators, executors, successors and assigns.

26. This Agreement shall be governed by and construed in accordance with the law of the Province of Alberta and the parties hereto irrevocably attorn to the jurisdiction of the Courts of the Province of Alberta and agree that the Courts of the Province of Alberta shall have exclusive jurisdiction in the resolution of any legal disputes arising from or in connection with this Agreement.

27. This Agreement may be executed by counsel on behalf of the CEF Plaintiffs and the Third Settling Parties.

28. The parties to this Agreement each hereby acknowledge that they have been represented by legal counsel of their own choice through all the negotiations which preceded the execution of this Agreement and that they have executed this Agreement, through their respective counsel, with the consent of and on the advice of their counsel.

29. This Agreement shall not be construed in favour of or against any of the parties to this Agreement, but shall be construed as if all parties hereto drafted this Agreement. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

**IN WITNESS WHEREOF**, we have hereunto set our hand and seal at the City of Calgary, in the Province of Alberta, effective as of the Effective Date.

JSS Barristers



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For: Carsten Jensen, K.C.

Counsel for the Schedule B Defendants

Emery Jamieson LLP

  

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Laura Feehan

Counsel for the Schedule C Defendants

Napoli Shkolnik Canada

  

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*for* Clint Docken, K.C.

Counsel for the CEF Plaintiffs

James & McCall Barristers

  

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Kyle Shewchuk

Co-Counsel for the CEF Plaintiffs



## **SCHEDULE A - SCHEDULE A PLAINTIFFS**

- All current members of the District Subcommittee, namely:
  - Glen Mitchell
  - Wiley Hertlein
  - William Mulder
  - Willy Berger
  - Rod Johnson; and,
- The CEF Representative Action Class.

## **SCHEDULE B - SCHEDULE B DEFENDANTS**

- Francis Taman
- Bishop & McKenzie LLP, a Partnership

## **SCHEDULE C - SCHEDULE C DEFENDANTS**

- Ronald Chowne
- Prowse Chowne LLP, a Partnership

## **SCHEDULE D - SCHEDULE D DEFENDANTS**

- The Alberta – British Columbia District, Lutheran Church – Canada, ("District")
- The Alberta-British Columbia District Investments Ltd. ("District Investments")
- The Shepherd's Village Ministries Ltd. ("SVML")
- Any unnamed but relevant director or other officer of District, District Investments, and/or SVML
- Donald Schiemann
- Jim Kentel
- William Ney
- Harold Ruf
- Mark Ruf
- Harold Schmidt
- James Schuelke
- Mark Beiderweiden
- Harold Habershtock
- James Heinbuch
- Cliff Habershtock
- Gene Gabert
- Richard Lutz
- David Schick
- Cindy Willisko
- Daryl Becker
- Randy Heide
- Mark Sander
- Judith Burns
- Marj Plitt
- Gerry Steinke
- Keith Kruse
- Forrest Stroup
- Keith Habershtock
- Melanie Kuhn
- David Dressler
- Philip Washeim
- Greg Giese
- Wayne Lunderby
- Michael Gillingham
- Craig Tufts
- Rhonda Buck
- Vic Esperanza
- Lynn Gergens
- Deloyce Weist
- Janice Ruf

- Candace Rivet
- Darla Hennig also known as Darla Hennig, Stan Lee
- Kurt/Kurtis Robinson
- Ted Ulmer
- Phillip Washeim
- Frank Kobie
- Brian Lewis,
- Don Habershtock,
- Mark Wolgram

#### **SCHEDULE E - SCHEDULE E DEFENDANTS**

- Encharis Community Housing and Services ("Encharis")
- Any unnamed but relevant director or other officer of Encharis
- Hans Heumann
- Grant McMaster
- James Werschler
- Dave Schoepp
- Steve Grande

#### **SCHEDULE F - SCHEDULE F DEFENDANTS**

- David Bode
- John Mueller
- Bill Morgan
- Roland Kubke
- Glenn Schaeffer

#### **SCHEDULE G - SCHEDULE G DEFENDANTS**

- Paul Gerhard Eifert
- Marvin Mutschler