

PIERRINGER AGREEMENT

THIS AGREEMENT is made effective this 5th day of April, 2022 (the "Effective Date").

AMONGST:

THE SCHEDULED PLAINTIFFS

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

- and -

Prince of Peace Lutheran Church of Calgary

(hereinafter referred to as the "**Settling Party**"))

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") was approved by the Court in those proceedings for the "District Depositors" (as defined in the Plan). A Subcommittee was constituted under the Plan for the District Depositors (the "District Subcommittee"). The Plan provided for a "Representative Action" (as defined therein), including the actions referenced in clause (b) of these recitals below. The Plan further provided 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 provided 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 provided for distribution of monies recovered from the Representative Action for the benefit of the Representative Action Class.
- (b) The Plaintiffs 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 (hereinafter referred to as the "**Wrongful Conduct**"); by the Settling Party and all other defendant parties (such other defendant parties hereinafter collectively 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:
- i. the Court of Queen's Bench of Alberta, Judicial District of Calgary, Action Nos. 1901-04984 (the "**AB CEF Action**") ; and
 - ii. the Supreme Court of British Columbia, Vancouver Registry No. S1611798 (the "**BC CEF Action**");
- (the AB CEF Action and the BC CEF Action being referred to collectively herein as the "**Actions**").
- (c) The Non-Settling Parties have not advanced, but in the future may advance, claims against the Settling Party for contribution or indemnity;

- (d) The Plaintiffs and the Settling Party desire to resolve amongst themselves all claims or possible claims between them, including all claims advanced directly or indirectly in the Actions, including claims for costs, and all claims arising directly or indirectly from or respecting the Wrongful Conduct;
- (e) The Plaintiffs and the Settling Party acknowledge that the total of the Plaintiffs' damages and losses with respect to the Wrongful Conduct and the Actions may exceed the "Consideration" (defined below) to be paid by the Settling Party hereunder;
- (f) The Plaintiffs desire to preserve their rights and claims arising from the Wrongful Conduct of the Non-Settling Parties and to continue the Actions only as against the Non-Settling Parties; and,
- (g) The Plaintiffs have already entered into a largely parallel Pierringer Agreement dated March 24, 2021, with certain other Defendants in the CEF Actions, and it is the intention of this agreement to substantially mirror that agreement *mutatis mutandis* except as otherwise expressly provided herein.

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 Plaintiffs and the Settling Party agree as follows:

1. With the execution of this Agreement (the "**Agreement**") by counsel for the Settling Party and for the Plaintiffs, the Settling Party shall pay the sum of [REDACTED] inclusive of all interest, costs, disbursements and GST (hereinafter referred to as the "**Consideration**") to the Plaintiffs, in care of, and in trust to, Higgerty Law for the Plaintiffs, unconditionally releasable to the Plaintiffs upon satisfaction of the condition precedent outlined in paragraph 22 below; provided that if those conditions precedent are not satisfied as and when contemplated by that paragraph then Plaintiffs' counsel shall promptly thereafter return the Consideration to counsel for the Settling Party.
2. Notwithstanding any other term of this Agreement, it is the intent of the parties hereto that the Settling Party shall not be liable to make any payments over and above the Consideration, whatsoever, to any of the Plaintiffs or the Non-Settling Parties on account of damages to the 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 Actions.
3. The 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 their respective Actions, in the manner contemplated in paragraph 10 herein, as against the Settling Party and hereby covenant not to sue the Settling Party and/or their directors, officers, 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 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 Actions.

4. The Plaintiffs hereby acknowledge full and complete satisfaction of that portion of their total damages in the Actions, and from the Wrongful Conduct, which can or may have been caused by the Wrongful Conduct of the Settling Party, if any, as may hereinafter be determined in the trial or other disposition of the Actions, or in any other action respecting the Wrongful Conduct.
5. The 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 Settling Party is, or was, liable due to the Wrongful Conduct, or any other act or default, or theory of liability.
6. Notwithstanding any other provision of this agreement, the Plaintiffs in no way release, discharge or covenant not to sue the Non-Settling Parties.
7. The Plaintiffs hereby agree not to seek to recover from any party, either in the Actions or in any other proceedings, any portion of the losses or damages which the Plaintiffs claim in the Actions and which a court or other tribunal may attribute to the Wrongful Conduct of the Settling Party. In particular, and without limiting the generality of the foregoing, the Plaintiffs hereby agree not to seek to recover from the Non-Settling Parties any portion of the Plaintiffs' respective losses attributable to the Wrongful Conduct of the Settling Party as aforesaid.
8. If the Court, following the trial of one, either or both of the Actions or any other action respecting the Wrongful Conduct, grants judgment to the 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 Plaintiffs hereby agree in any event not to seek to recover in any of 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 Plaintiffs and the Settling Party agree that, upon the removal of the conditions precedent described in paragraph 22 herein and the payment of the Consideration by the Settling Party to the Plaintiffs as contemplated in paragraph 1 herein, counsel for the Plaintiffs shall amend the Statement of Claim as already amended in the AB CEF Action, to add the following paragraph:

"The Plaintiffs 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 Prince of Peace Lutheran Church of Calgary("POP") for which any of the Non-Settling Parties might reasonably be entitled to claim contribution, indemnity or an apportionment against POP pursuant to the provisions of the *Tort-Feasors 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 Plaintiffs shall use their best efforts and as soon as is practicable apply for the following "Orders", as that term is defined below:

(a) Declaring in the AB CEF Action that no court approval is required for the settlement contemplated by this agreement or alternatively 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 each 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 Alberta Action as against the Settling Party, and dismissing as expeditiously as the Court will permit the BC Action entirely, provided that the lifting of any stay of the BC Action shall be for the sole purpose of hearing the application to dismiss (it being acknowledged by the parties that the BC Action has already been dismissed);

(d) Granting the Plaintiffs leave to file the 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 or otherwise for contribution and/or indemnity against the Settling Party, 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:

(aa) a copy of this agreement with the amount of the Consideration not redacted may be disclosed to the Court in confidence for the purpose of the Orders sought at any time after the Court grants a sealing order in respect of same and in the meantime it may be disclosed to the court with the Consideration redacted.

(a) a copy of this Agreement with the amount of the Consideration redacted may be disclosed by any party to this Agreement to each of the Non-Settling Parties in the Alberta Actions and to the Monitor in the CCAA Proceedings at any time after complete execution and delivery of this agreement; and,

(b) any information or documents included in any affidavits or any other documents filed with the court by the Settling Party or the Plaintiffs in any one or more of the Actions and in the CCAA Proceedings and which are not subject to a sealing order will upon such filing no longer be confidential.

11.1 Notwithstanding paragraph 11 above, the Settling Party hereby acknowledges that the extent, if any, to which the Consideration shall remain confidential for the purposes of the

hearing of the Settling Party's application for the Orders, the parties seeking advice and direction of the Court in the CCAA Proceedings as to any requirements it may have in relation to the Orders and the contemplated applications for approval of the Plaintiffs' respective contingency fee agreements and counsel fees pursuant to s.39 of the *Class Proceedings Act*, SA 2003, c.16.5 and/or the CCAA Proceedings 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.

- 12.1 The Plaintiffs hereby covenant and agree that they will at all times hold harmless and indemnify the Settling Party and its respective directors, officers, employees, agents, 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 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 the Settling Party 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 Plaintiffs shall not be responsible to hold harmless and indemnify the Settling Party 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.

- 13.1 The Plaintiffs further covenant and agree that they will, at their own expense, at all times defend the Settling Party 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 Settling Party by the Non-Settling Parties in relation to the Wrongful Conduct. Notwithstanding the foregoing, the parties hereby agree that the Plaintiffs will not be required to defend the Settling Party with respect to proceedings that may be brought by the Non-Settling Parties to challenge the validity of this Agreement.

- 14.1 In the event that the Settling Party, through any judgment or order of a Court of competent jurisdiction, is found liable to one, more or all of the Non-Settling Parties for contribution or indemnity or costs in the AB CEF Action, then the Plaintiffs shall fully and immediately indemnify those of Settling Party concerned for any amount required to be paid by such of the Settling Party to such of the Non-Settling Parties concerned pursuant to any such judgment or order. The 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 the Settling Party to the Non-Settling Parties concerned by way of any such judgment or order in relation to the Wrongful Conduct.15.1 Notwithstanding any other paragraph in this Agreement, this Agreement will not have any application to any monies that may be paid or payable to the Plaintiffs:

- (a) by way of fines, levies, penalties or any other orders made in proceedings commenced or to be commenced by the Alberta Securities Commission, including but not limited to that proceeding styled *Re Lutheran Church-Canada*, the Alberta British Columbia District, 2019 ABASC 43, or any parallel or other proceeding commenced by the British Columbia Securities Commission, under applicable provincial securities legislation; and/or

- (b) distributions made to the Plaintiffs under proceedings commenced under the Companies Creditors' Arrangement Act, RSC 1985, c. C-36, including but not limited to the CCAA Proceedings.
16. This Agreement is made without prejudice to the Plaintiffs' rights and claims against the Non-Settling Parties and the 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 Plaintiffs against the Non-Settling Parties shall be solely to the credit of the Plaintiffs.
17. The Settling Party agrees to assist the parties with their full cooperation in the AB Action in accordance with the following terms:
- (i) The Settling Party will give the Plaintiffs and Non-Settling Parties access to any non-privileged documents (physical and electronic records) in its possession;
 - (ii) The Plaintiffs and Non-Settling Parties will be entitled to request copies (physical or electronic) of any of these non-privileged documents. All such non-privileged requested documents will then be provided with reasonable dispatch following any necessary review for privilege to the requesting Plaintiffs and/or Non-Settling Parties, at their respective expense for copying or reproduction.
 - (iii) The Settling Party will, upon reasonable request from the Plaintiff or Non-Settling Parties, provide further information regarding the non-privileged documents in its possession via interviews or written requests.
 - (iv) The Settling Party, or a corporate representative thereof, will, upon reasonable request from the Plaintiffs or Non-Settling Parties, attend at Questioning in this matter upon being served with conduct money to each sought witness in accordance with the Alberta Rules of Court.
 - (v) The Settling Party reserves the right to seek and is at liberty to apply on reasonable notice to the Plaintiffs or Non-Settling Parties for solicitor client costs or otherwise for their efforts of providing access to non-privileged documents, reviewing or producing documents, providing additional information, and attending at questioning.
- 17.1 Subject to the conditions stipulated by paragraph 17 of this Agreement, the Settling Party shall not be required to participate as a party in any further steps in the 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 Settling Party, 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 Plaintiffs and the Settling Party 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 Settling Party 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. The Settling Party hereby represents and warrants that it is insolvent except to any extent as may be disclosed in the "Insolvency Declaration" (as defined below), and has already provided a statutory declaration confirming the same and attaching all necessary documentation to establish the same prior to the bringing of the application for the Orders (the "Insolvency Declaration"). The Settling Party acknowledges that the Plaintiffs have relied upon this representation and warranty in entering into this Agreement.
21. Intentionally deleted.
22. This Agreement is subject to the following condition precedent, which are for the benefit of both the Plaintiffs and the Settling Party, and which may be waived in a manner that is unequivocal and in writing and signed by counsel for the Plaintiffs and by counsel for the Settling Party and delivered to the offices of the counsel for opposite party to this Agreement and/or by receipted email to them, namely that:
 - (a) the Orders are pronounced by a Justice of the Alberta Court of Queen's Bench and of the Supreme Court of British Columbia, as applicable, no later than May 14, 2022, or such other date as the parties may agree to in writing, 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.
- 22.1 The parties acknowledge and agree that the granting of the Orders is severable from the 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*.
23. The obligations of the parties of this Agreement who are individuals are only several, not joint with any other parties to this Agreement.
24. The recitals hereto form part of this Agreement.
25. 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.
26. 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.
27. 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.
28. This Agreement may be executed by counsel on behalf of the Plaintiffs and the Settling Party.
29. 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.

30. 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 Cities of Calgary and Edmonton, in the Province of Alberta, effective as of the Effective Date.

HIGGERTY LAW



Patrick Higgerty, Q.C.

Counsel for CEF Plaintiffs

FIELD LAW



Dan Carroll, Q.C.

Counsel for Prince of Peace Lutheran Church
of Calgary

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.