

COURT FILE NUMBER 1801-03538 (JDR)
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFFS (APPLICANTS) Reid Glenn and Marilyn Huber
DEFENDANTS (RESPONDENTS) Concentra Trust/La Societe de Fiducie Concentra, Lutheran Church-Canada, Lutheran Church – Canada Financial Ministries, Lutheran Church – Canada, The Alberta – British Columbia District, Lutheran Church – Canada, The Alberta-British Columbia District Investments Ltd., Encharis Community Housing and Services, Francis Taman, Bishop & McKenzie LLP, a Partnership, John Williams, Ronald Chowne, Prowse Chowne LLP, a Partnership, Donald Schiemann, Harold Haberstock, Keith Haberstock, Forrest Stroup, Mark Ruf, Kurtis Robinson, Jim Kentel, Richard Lutz, Harold Schmidt, Judith Bums, Melanie Kuhn, Keith Kruse, David Dressler, Wayne Lunderby, Phillip Washeim, Greg Giese, Michael Gillingham, Craig Tufts, Rhonda Buck, Vic Esperanza, Lynn Gergens, Deloyce Weist, Frank Kobie, Marvin Mutschler, Darla Henning also known as Darla Hennig, Stan Lee, Janice Ruf, Candace Rivet, Brian Lewis, Hans Heumann, James Werschler, David Schoepp, Grant McMaster, Don Haberstock, and Mark Wolgram



DOCUMENT **ORDER FOR APPROVAL AND CERTIFICATION FOR PARTIAL SETTLEMENT**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT Sugden McFee & Roos LLP
Attention: Errin A. Poyner
700 – 375 Water Street,
Vancouver, B.C. V6B 5C6
Ph: 604-687-7700
Fax: 604-687-5596

DATE ON WHICH ORDER WAS PRONOUNCED: November 25th, 2021

NAME OF JUSTICE WHO MADE THIS ORDER: Associate Chief Justice J.D. Rooke

LOCATION OF HEARING: Calgary Courts Centre

UPON THE APPLICATION of the Applicants/Plaintiffs; **AND UPON HAVING REVIEWED** the Notice of Application and all written materials provided by the parties; **AND UPON HEARING** the representations of counsel for the parties; and on being advised that the Plaintiffs and certain of the Defendants have entered into a Settlement Agreement (as defined below);

IT IS HEREBY ORDERED AND DECLARED THAT:

Settlement Approval

1. The Settlement under the Settlement Agreement made effective the 24 day of March, 2021, between the Plaintiffs and the Defendants, as listed in Schedules C, D, E, and F of the Notice of Application (the "**Settling Parties**"), a true copy of which, redacted for the Consideration, is attached hereto as Schedule "A" as well as Exhibit "A" of the Affidavit sworn herein by Marilyn Huber on April 30th, 2021 (the "**Settlement Agreement**") is hereby approved and is in full force and effect except as otherwise stated in paragraph 10 below.
2. Except to the extent that they are set out in or modified by this Order and the previous Notice Approval Order in this Action, the words in quotation in this Order have the same meaning as in the Settlement Agreement except that references in this Application to "Settling Parties" and "Non-Settling Parties" only includes Defendants to this Action.
3. This Action is dismissed against the "Settling Parties" on a without costs basis.
4. Any and all claims by the "Non-Settling Parties", regarding claims for contribution or indemnity in this Action against the "Settling Parties", including all Notices Against Co-Defendant against the "Settling Parties", are dismissed and barred on a without costs basis.
5. Any and all claims by the "Settling Parties" made pursuant to Rule 3.43 of the *Alberta Rules of Court* for contribution or indemnity in this Action against each of the "Non-Settling Parties", including all Notices Against Co-Defendant by the "Settling Parties", are dismissed and barred on a without costs basis.
6. Any and all current or new claims as may be brought or made against the "Settling Parties" in this action by any party, for contribution or indemnity by Notice to Co-Defendant pursuant to Rule 3.43 of the *Alberta Rules of Court*, are barred on a without costs basis.
7. Any and all claims made against the "Settling Parties" by any of the "Non-Settling Parties" pursuant to Rule 3.43 of the *Alberta Rules of Court*, the *Tort-Feasors Act* or the *Contributory Negligence Act* are hereby dismissed and struck out without costs against the "Non-Settling Parties".
8. The Plaintiffs shall limit their claims to that fraction or portion or percentage of the total amount of the damages attributable to the negligence, breach of contract, breach of duty including statutory duty or any other act, default or theory of liability of each of the "Non-Settling Parties" and any other Defendants that may be added to this action subsequent to this Order, if any, (collectively with the "Non-Settling Parties", the "**Remaining Defendants**"). The Plaintiffs' claims against the Remaining Defendants is hereby limited to the collective several liability of the Remaining Defendants. The extent to which any remaining liability of the Remaining Defendants may be joint, as well as several, as among them, shall be determined by the Court as and when the Court may deem fit.
- 8.1 In the event that the "Non-Settling Parties", or any of them, would have otherwise had a right of contribution or indemnity by virtue of contract, statute or common law beyond the rights created by the *Tort-Feasors Act* or the *Contributory Negligence Act*, as against a "Settling Party", this Order terminates any such rights.

- 8.2 All liability of the “Non-Settling Parties” to the Plaintiffs for any claims for which the “Non-Settling Parties” could seek contribution or indemnification from a “Settling Party” is hereby extinguished.
- 8.3 It is hereby acknowledged that the portion of the Plaintiffs’ claims for any damages caused by the alleged negligence, breach of contract, breach of duty including statutory duty, or any other act or duty of any of the “Settling Parties”, have been satisfied. The Plaintiffs are prohibited from pursuing any “Non-Settling Parties” or any Remaining Defendants for any claims for damages that are attributable to any alleged negligence, breach of contract, breach of duty including statutory duty, or any other act or duty of any of the “Settling Parties”.
9. Although no judgment may be given against the “Settling Parties” per the terms of the Settlement Agreement and this Order, nothing in this Order is intended to limit the right of any party to seek, or the Court from making, a determination of the degree in which the “Settling Parties” were at fault or otherwise liable to either the Plaintiffs or “Non-Settling Parties” in accordance with the *Contributory Negligence Act* or any other right created by contract, statute, or otherwise.
10. Notwithstanding the removal of the “Settling Parties” as parties to this Action, paragraph 17.1 of the Settlement Agreement is not approved, and is replaced with the following terms which are approved by the Court and in full force and effect and binding upon all parties to this proceeding;
- (i) The “Settling Parties” will give the Plaintiffs and “Non-Settling Parties” access to any non-privileged documents (physical and electronic records) in their 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 Parties” will, upon reasonable request from the Plaintiff or “Non-Settling Parties”, provide further information regarding the non-privileged documents in their possession via interviews or written requests.
 - (iv) The “Settling Parties”, 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 Parties” reserve the right to seek and are 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.
11. Leave is granted to file the amendments to the Amended Statement of Claim in the within action in the form of a Second Amended Statement of Claim as set out at Schedule "B" attached hereto. Such Second Amended Statement of Claim shall expressly note that all liability of the “Non-Settling Parties” to the Plaintiffs for any claims for which the “Non-Settling Parties” could seek contribution or indemnification from a “Settling Party” is hereby extinguished.

Approval of Contingency Fee Agreement

12. As required by paragraph 39(1)(a) of the *Class Proceedings Act*, the Class Counsel's Retainer Agreement dated December 16, 2016, regarding this matter is approved at this juncture prior to the portion of this hearing pertaining to Certification.

Certification for Settlement Purposes Only

13. The Orders in paragraphs 14 to 22 inclusive below are solely for the purpose of the settlement contemplated by the Settlement Agreement and do not in any way effect the ability of any "Non-Settling Party" to contest certification in the ordinary course.
14. This proceeding is certified as a class proceeding pursuant to the *Class Proceedings Act* including without limitation sections 4, 5, 6 and 9 thereof, but only for the limited purposes of approving the Settlement Agreement.
15. The "Representative Action Class", as defined below, is bound by the Settlement Agreement as a part of the "Scheduled Plaintiffs" referenced in the Settlement Agreement;
16. The "Representative Action Class" subject to this certification, which certification is solely for the limited purposes of approving the Settlement Agreement, shall be defined as follows:
 - a. people resident in Alberta, and the estates of such people where applicable, who on January 2, 2015 were depositors to The Lutheran Church – Canada, Alberta and British Columbia District Investments Ltd. and who elected or are deemed to have elected to participate in and had not opted out of the Representative Action referred to in Article 5.1 of the Amended Amended Plan of Arrangement of DIL (the "DIL Plan") prepared and sanctioned in Alberta Court of Queen's Bench Action No. 1501-00955 (the "CCAA Proceedings") in the manner set out in Art. 5.7 of that Plan prior to the commencement of the DIL Representative Action; and
 - b. people resident outside of Alberta, and the estates of such people where applicable, and who on January 2, 2015 were depositors to The Lutheran Church – Canada, Alberta and British Columbia District Investments Ltd. and who elected or are deemed to have elected to participate in and had not opted out of the Representative Action referred to in Article 5.1 of the DIL Plan in the manner set out in Art. 5.7 of that Plan prior to the commencement of the Representative Action.
17. The Plaintiffs Reid Glenn and Marilyn Huber are appointed as Representative Plaintiffs for the "Representative Action Class".
18. The opt-out process whereby certain DIL Depositors have opted out of and are excluded from the Representative Action Class pursuant to Article 5.5 and 5.7 of the Amended Amended Plan of Arrangement of DIL as approved and sanctioned in the CCAA Proceedings will suffice as the opt-out process in this Action without further opt-out process herein.
19. Sugden McFee & Roos LLP is appointed as Class Counsel for the "Representative Action Class".
20. The nature of the claims asserted in this Action on behalf of the "Representative Action Class" are those as outlined in the Statement of Claim herein as amended from time to time.
21. The relief sought by this "Representative Action Class" in this proceeding is their allocation of the "Consideration" as specified in the Settlement Agreement.

22. The common issue in this Action for the “Representative Action Class” under the certification is whether the “Non-Settling Parties” are liable to the “Representative Action Class”.

General

23. By December 17, 2021, the Plaintiffs will have issued the Approval Notice to all members of the “Representative Action Class” substantially in the same manner and form as set out in the Notice Plan. A true copy of the Approval Notice is hereto attached as Schedule “C”.
24. The Plaintiffs’ proposed Claims Administrator MNP Ltd. (the “Claims Administrator”) is appointed in accordance with its Engagement Letter dated June 18, 2021 to finalize the calculation of and distribute to each member of the DIL Representative Action Class such members’ proportionate share of the portion of the “Consideration” allocated to them in the manner described in the Approval Notice. The Settlement Administrator accordingly shall have access to any of the contents and/or information in the thumb drive subject to the Order Restricting Court Access, including without limitation the Monitor’s Opt-in/Opt-out List and the unredacted Pierringer Agreement, as required to perform the distribution as determined by Class Counsel.
- 24.1 Once this Order is unappealable, out of the portion of the Consideration allocated to the Plaintiffs and held in trust by Class Counsel, Class Counsel will disburse:
- a) the total amount required for the Claims Administrator to perform the distribution to the Representative Action Class as outlined in paragraph 24 above;
 - b) the augmented litigation holdback referenced in the Approval Notice, which is set in the amount of \$180,338.08, in accordance with the Plaintiffs’ instructions;
 - c) the “Class Counsel Fees” as defined by and pursuant to the Class Counsel Fees Order to pay that amount to Class Counsel;
 - d) the amount required to pay the outstanding third-party professional fees referenced in the Approval Notice plus related disbursements and GST;
25. No action may be commenced against the Claims Administrator acting in its capacity as Claims Administrator without leave of the Court.
26. Payment of settlement funds will be made to Class Members or their Estates, where applicable, in the manner set out in the Approval Notice attached as Schedule “C” hereto. The funds for any settlement payment unclaimed after six months of the date of mailing of the Approval Notice or cheque uncashed after six months from the date that the cheque was mailed will be added to the litigation fund referenced in the Approval Notice.
27. Approval as to the form and content of this Order may be provided electronically or by facsimile and in counterparts.
28. This Order may be served on all parties to the Action by electronically or by facsimile and in counterparts.



Associate Chief Justice J.D. Rooke

December 16, 2021

APPROVED AS TO THE ORDER GRANTED

This 10 day of Dec., 2021

Emery Jamieson LLP



Phyllis Smith, Q.C, counsel for Prowse Chowne LLP,
John Williams and Ronald Chowne

This __ day of _____, 2021

Gowling WLG (Canada) LLP

David Bishop and Alison J. Gray, counsel for Lutheran
Church Canada and Lutheran Church Canada –
Financial Ministries

This __ day of _____, 2021

JSS LLP

Carsten Jensen Q.C. and Sean Carrie, counsel for
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Dean A. Hutchison, counsel for Concentra Trust/La
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Errin A. Poyner, counsel for the Plaintiffs Marilyn
Huber and Reid Glenn

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This 14 day of Dec, 2021

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Andrew Epstein, counsel for Marvin Mutschler

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APPROVED AS TO THE ORDER GRANTED

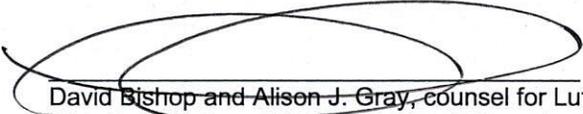
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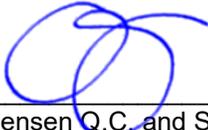
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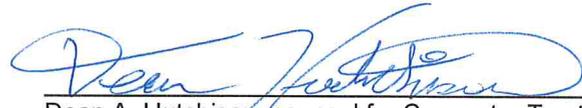
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Francis Taman and Bishop & McKenzie LLP, a
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This 10th day of Dec, 2021

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Dean A. Hutchison, counsel for Concentra Trust/La
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This 8 day of Dec, 2021

Sugden, McFee & Roos LLP

Errin A. Poyner, counsel for the Plaintiffs Marilyn
Huber and Reid Glenn

"Schedule A"

PIERRINGER AGREEMENT

THIS AGREEMENT is made effective this 24 day of March, 2021 (the "Effective Date").

AMONGST:

THE SCHEDULED PLAINTIFFS

(being the Plaintiffs listed herein at **Schedule A (the "CEF Plaintiffs")** and **Schedule B (the "DIL Plaintiffs")**, and collectively referred to herein as the **"Plaintiffs"**)

- and -

THE SCHEDULED DEFENDANTS

(hereinafter referred to as the **"Settling Parties"** and listed herein at **Schedules C, D, E, and F**)

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") separate parallel plans of compromise and arrangement as amended from time to time have been approved by the Court in those proceedings for each of the "DIL Depositors" and the "District Depositors" (as defined in those two separate plans) (collectively the "Plans"). A Subcommittee was constituted under the plan for the DIL Depositors (the "DIL Subcommittee") and a Subcommittee was constituted under the plan for the District Depositors (the "District Subcommittee"). Each of the Plans provide for a "Representative Action" (as defined therein), including the actions referenced in clause (b) of these recitals below. Each of the Plans further provide that those respective Representative Actions 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". Each of the Plans further provide that the DIL Subcommittee or the District Subcommittee, as applicable, "has the power to settle all or portion of the Representative Action" on behalf of the DIL Depositors and the District Depositors respectively (collectively the "Representative Action Class" and individually the "DIL Representative Action Class" and the "CEF Representative Action Class" respectively). The Plans further provide for distribution of monies recovered from the applicable Representative Action for the benefit of the applicable 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 by the Settling Parties and the 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 1801-03538 (the **"AB DIL Action"**); (the AB CEF Action and the AB DIL Action being referred to collectively herein as the **"Alberta Actions"** or the **"AB Actions"**); and

- ii. the Supreme Court of British Columbia, Vancouver Registry Nos. S1611746 (the "BC DIL Action") and S1611798 (the "BC CEF Action"); (the BC DIL Action and the BC CEF Action being referred to collectively herein as the "BC Actions"),

(the BC Actions and the Alberta Actions being referred to collectively herein as the "Actions") amongst, as applicable, the Plaintiffs and the Settling Parties and the Non-Settling Parties (hereinafter referred to as the "Wrongful Conduct");

- (c) The Non-Settling Parties have not advanced, but in the future may advance, claims against the Settling Parties for contribution or indemnity;
- (d) The Plaintiffs and the Settling Parties 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 Parties 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 Parties hereunder; and,
- (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.

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 Parties agree as follows:

1. With the execution of this Agreement (the "Agreement") by counsel for the Settling Parties and for the CEF Plaintiffs and the DIL Plaintiffs, the Settling Parties shall pay the sum of [REDACTED] inclusive of all interest, costs, disbursements and GST (hereinafter referred to as the "Consideration") to the CEF Plaintiffs and the DIL Plaintiffs, in care of, and in trust to, and allocated between Higgerty Law in the amount of [REDACTED] for the CEF Plaintiffs and Sugden McFee and Roos LLP in the amount of [REDACTED] for the DIL Plaintiffs, unconditionally releasable to the Plaintiffs upon satisfaction of the conditions 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 Parties.

2. Notwithstanding any other term of this Agreement, it is the intent of the parties hereto that the Settling Parties 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 CEF Plaintiffs and the DIL 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 Parties and hereby covenant not to sue the Settling

Parties 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 Parties, 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 CEF Plaintiffs and the DIL 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 Parties are, or were, liable due to the Wrongful Conduct, or any other act or default, or theory of liability.

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

7. The CEF Plaintiffs and the DIL Plaintiffs hereby each severally 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 Parties. In particular, and without limiting the generality of the foregoing, the CEF Plaintiffs and the DIL Plaintiffs hereby each severally 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 Parties as aforesaid.

8. If the Court, following the trial of one, either or both of the Alberta Actions or any other action respecting the Wrongful Conduct, grants judgment to either or both of the DIL Plaintiffs and/or 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 and the DIL Plaintiffs hereby each severally 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 Parties agree that, upon the removal of the conditions precedent described in paragraph 22 herein and the payment of the Consideration by the Settling Parties to the Plaintiffs as contemplated in paragraph 1 herein, counsel for the DIL Plaintiffs shall amend the Statement of Claim as already amended in the AB DIL Action, and 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 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 Settling Parties for which any of the Non-Settling Parties might reasonably be entitled to claim contribution, indemnity or an apportionment against the Settling Parties 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 Actions 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 Actions 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 Actions as against the Settling Parties only, and dismissing as expeditiously as the Court will permit the BC Actions entirely, provided that the lifting of any stay of the BC Actions shall be for the sole purpose of hearing the application to dismiss;

(d) Granting the Plaintiffs leave to file the Amended Statement of Claim in the AB CEF Action and leave to file the Amended Statement of Claim in the AB DIL 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 Actions for contribution and/or indemnity against any of the 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 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 Parties 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 Parties hereby acknowledge that the extent, if any, to which the Consideration shall remain confidential for the purposes of the hearing of the Settling Parties' 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. The DIL Plaintiffs hereby covenant and agree that they will at all times hold harmless and indemnify the Settling Parties and their 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 DIL Action. The DIL 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 Settling Parties to any one or more of the Non-Settling Parties by way of judgment or order in the AB DIL Action in relation to the Wrongful Conduct. The parties hereby agree that notwithstanding the foregoing, the DIL Plaintiffs shall not be responsible to hold harmless and indemnify the 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.

12.1 The CEF Plaintiffs hereby covenant and agree that they will at all times hold harmless and indemnify the Settling Parties and their 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 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 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 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 DIL Plaintiffs further covenant and agree that they will, at their own expense, at all times defend the Settling Parties in respect to all steps, actions or proceedings in the AB DIL 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 Parties by the Non-Settling Parties in relation to the Wrongful Conduct. Notwithstanding the foregoing, the parties hereby agree that the DIL Plaintiffs will not be required to defend the Settling Parties with respect to proceedings that may be brought by the Non-Settling Parties to challenge the validity of this Agreement.

13.1 The CEF Plaintiffs further covenant and agree that they will, at their own expense, at all times defend the 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 Settling Parties by the Non-Settling Parties in relation to the Wrongful Conduct. Notwithstanding the foregoing, the parties hereby agree that the AB CEF Plaintiffs will not be required to defend the 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 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 AB DIL Action, then the DIL Plaintiffs shall fully and immediately indemnify those of the Settling Parties concerned for any amount required to be paid by such of the Settling Parties to such of the Non-Settling Parties concerned pursuant to any such judgment or order. The DIL 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 Settling Parties to the Non-Settling Parties concerned by way of any such judgment or order in relation to the Wrongful Conduct.

14.1 In the event that one or more or all of the 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 AB CEF Action, then the CEF Plaintiffs shall fully and immediately indemnify those of Settling Parties concerned for any amount required to be paid by such of the 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 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 Plaintiffs' obligations under paragraphs 3, 5, 7, 12, 12.1, 13, 13.1, 14 and 14.1 will apply to individual Settling Parties in any capacity(ies) other than in their positions with the corporate Settling Parties and as individuals; for greater certainty, as an example, if an individual 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.

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.

in relation to the Wrongful Conduct or otherwise.

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 Parties agree to assist the Plaintiffs with their full cooperation in the AB Actions, including but not limited to attending upon interviews with the Plaintiffs' counsel at mutually convenient times, dates, and places.

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

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

(b) At the request of the Plaintiffs or Non-Settling Defendants, any Settling Parties who are requested to do so shall submit a corporate representative or themselves, as the case may be, as necessary for questioning to be conducted by the Plaintiff and/or Non-Settling Defendants; the party requesting questioning shall pay reasonable conduct money to secure the witnesses' attendance and shall be responsible for the requested 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 Subject to the conditions stipulated by paragraphs 17 and 17.1 of this Agreement, the Settling Parties 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 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 Plaintiffs and the 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 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. The Settling Parties hereby represent and warrant that their legal counsel have made reasonable efforts and inquiries to determine the following described insurance coverage, and that based on those efforts and inquiries, the Consideration payable under this Agreement represents the total amount of indemnity and liability insurance coverage available to the Settling Parties in respect of the Wrongful Conduct and that there is no other indemnity or liability insurance coverage available to the Settling Parties in respect of the Wrongful Conduct, and have already provided the Plaintiffs statutory declarations attaching true and accurate copies of the applicable

insurance policies (the "Insurance Declarations"). The Settling Parties acknowledge that the Plaintiffs have relied upon this representation and warranty in entering into this Agreement.

20.1 The corporate Settling Parties hereby represent and warrant that the corporate Settling Parties are insolvent except to any extent as may be disclosed in the "Insolvency Declarations" (as defined below), and have already provided statutory declarations confirming the same and attaching all necessary documentation to establish the same prior to the bringing of the application for the Orders (the "Insolvency Declarations"). The Settling Parties acknowledge that the Plaintiffs have relied upon this representation and warranty in entering into this Agreement.

20.2 Notwithstanding paragraphs 20 and 20.1 above, neither of those paragraphs have any application to "SVML" (defined in Schedule C of this Agreement).

21. Intentionally deleted.

22. This Agreement is subject to the following conditions precedent, which are for the benefit of both the Plaintiffs and the Settling Parties, 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 Parties 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 the Supreme Court of BC, as applicable, no later than May 14, 2021, or such later 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; and,

(b) within 30 days of any waiver or satisfaction of the condition precedent in clause (a) above of this paragraph, the parties seek and receive any advice and direction of the Court in the CCAA Proceedings as that Court may deem fit as to any requirements it may have in relation to the Orders, and that any such advice and direction be mutually satisfactory to the Parties.

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 Parties.

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 City of Calgary, in the Province of Alberta, effective as of the Effective Date.

HIGGERTY LLP

SUGDEN MCFEE & ROOS LLP

Patrick Higgerty, Q.C.

Counsel for Schedule A Plaintiffs.

**SINGLETON URQUHART REYNOLDS
VOGEL LLP**

Errin A. Poyner

Counsel for Schedule B Plaintiffs.

SCOTT VENTURO RUDAKOFF LLP



John R. Singleton, QC

Counsel for Schedule C Defendants.

HMC LAWYERS LLP

Alan S. Rudakoff, QC & Neil Tichkowsky

Counsel for Schedule D Defendants.

LINDSEY LLP

David J. Corrigan, QC

Counsel for Schedule E Defendants.

Andrew N. Epstein

Counsel for Schedule F Defendants.

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.

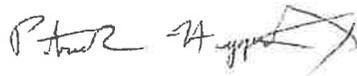
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HIGGERTY LAW



Patrick Higgerty, Q.C.

Counsel for Schedule A Plaintiffs.

**SINGLETON URQUHART REYNOLDS
VOGEL LLP**

John R. Singleton, QC

Counsel for Schedule C Defendants.

HMC LAWYERS LLP

David J. Corrigan, QC

Counsel for Schedule E Defendants.

SUGDEN MCFEE & ROOS LLP

Errin A. Poyner

Counsel for Schedule B Plaintiffs.

SCOTT VENTURO RUDAKOFF LLP

Alan S. Rudakoff, QC & Neil Tichkowsky

Counsel for Schedule D Defendants.

LINDSEY LLP

Andrew N. Epstein

Counsel for Schedule F Defendants.

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.

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HIGGERTY LAW

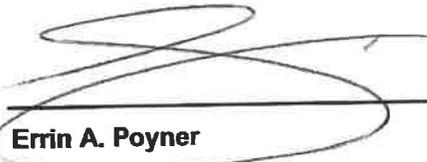


Patrick Higgerty, Q.C.

Counsel for Schedule A Plaintiffs.

**SINGLETON URQUHART REYNOLDS
VOGEL LLP**

SUGDEN MCFEE & ROOS LLP



Errin A. Poyner

Counsel for Schedule B Plaintiffs.

SCOTT VENTURO RUDAKOFF LLP

John R. Singleton, QC

Counsel for Schedule C Defendants.

HMC LAWYERS LLP

Alan S. Rudakoff, QC & Neil Tichkowsky

Counsel for Schedule D Defendants.

LINDSEY LLP

David J. Corrigan, QC

Counsel for Schedule E Defendants.

Andrew N. Epstein

Counsel for Schedule F Defendants.

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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.

HIGGERTY LLP

SUGDEN MCFEE & ROOS LLP

Patrick Higgerty, Q.C.

Counsel for Schedule A Plaintiffs.

**SINGLETON URQUHART REYNOLDS
VOGEL LLP**

Erin A. Poyner

Counsel for Schedule B Plaintiffs.

SCOTT VENTURO RUDAKOFF LLP

John R. Singleton, QC

Counsel for Schedule C Defendants.

HMC LAWYERS LLP

Alan S. Rudakoff, QC & Neil Tichkowsky

Counsel for Schedule D Defendants.

LINDSEY LLP

David J. Corrigan, QC

Counsel for Schedule E Defendants.

Andrew N. Epstein

Counsel for Schedule F Defendants.

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 PLAINTIFFS

- All current members of the DIL Subcommittee, namely:
 - Marilyn Huber
 - Reid Glenn
 - Holly Drinkle
 - Randall Scott Kellen; and,
- The DIL Representative Action Class.

SCHEDULE C - SCHEDULE C 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 | ▪ Judith Burns |
| ▪ Jim Kentel | ▪ Marj Plitt |
| ▪ William Ney | ▪ Gerry Steinke |
| ▪ Harold Ruf | ▪ Keith Kruse |
| ▪ Mark Ruf | ▪ Forrest Stroup |
| ▪ Harold Schmidt | ▪ Keith Haberstock |
| ▪ James Schuelke | ▪ Melanie Kuhn |
| ▪ Mark Beiderweiden | ▪ David Dressler |
| ▪ Harold Haberstock | ▪ Philip Washeim |
| ▪ James Heinbuch | ▪ Greg Giese |
| ▪ Cliff Haberstock | ▪ Wayne Lunderby |
| ▪ Gene Gabert | ▪ Michael Gillingham |
| ▪ Richard Lutz | ▪ Craig Tufts |
| ▪ David Schick | ▪ Rhonda Buck |
| ▪ Cindy Willisko | ▪ Vic Esperanza |
| ▪ Daryl Becker | ▪ Lynn Gergens |
| ▪ Randy Heide | ▪ Deloyce Weist |
| ▪ Mark Sander | ▪ 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 Haberstock,
- Mark Wolgram

SCHEDULE D - SCHEDULE D 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 E - SCHEDULE E DEFENDANTS

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

SCHEDULE F - SCHEDULE F DEFENDANTS

- Paul Gerhard Eifert
- Marvin Mutschler

SCHEDULE "B"

Form 10
[Rule 3.25]

COURT FILE NUMBER 1801-03538 (JDR)
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFFS REID GLENN AND MARILYN HUBER



DEFENDANTS Concentra Trust/La Societe de Fiducie Concentra, Lutheran Church—Canada, Lutheran Church – Canada Financial Ministries, ~~Lutheran Church—Canada, The Alberta British Columbia District, Lutheran Church—Canada, The Alberta British Columbia District Investments Ltd., Encharis—Community—Housing—and Services, Francis Taman, Bishop & McKenzie LLP, a Partnership, John Williams, Ronald Chowne, Prowse Chowne LLP, a Partnership, Donald Schiemann, Harold Haberstock, Keith Haberstock, Farrest Stroup, Mark Ruf, Kurtis Robinson, Jim Kentel, Richard Lutz, Harold Schmidt, Judith Burns, Melanie Kuhn, Keith Kruse, David Dressler, Wayne Lunderby, Phillip Washeim, Greg Giese, Michael Gillingham, Craig Tufts, Rhonda Buck, Vic Esperanza, Lynn Gergens, Deloyce Weist, Frank Kobie, Marvin Mutschler, Darla Henning also known as Darla Hennig, Stan Lee, Janice Ruf, Candace Rivet, Brian Lewis, Hans Heumann, James Werschler, David Schoepp, Grant McMaster, Don Haberstock, and Mark Wolgram~~

SCHEDULE “B”

DOCUMENT

SECOND AMENDED STATEMENT OF CLAIM

ADDRESS FOR SERVICE	Errin Poyner
AND	Sugden McFee & Roos LLP
CONTACT INFORMATION	Barristers and Solicitors
OF	Suite 700 – 375 Water Street,
PARTY FILING THIS	Vancouver, British Columbia
DOCUMENT	Tel: (604) 687-7700
	Fax: (604) 687-5596

BROUGHT UNDER THE CLASS PROCEEDINGS ACT

NOTICE TO DEFENDANTS

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

Note: State below only facts and not evidence (Rule 13.6)

Statement of facts relied on:

1. The Plaintiff, Reid Glenn, is Retired and resides at 4 Grenier, in the Hamlet of St. Isadore, in the Province of Alberta.
2. The Plaintiff, Marilyn Huber, is a Manager and resides at 18164 96 Ave, Edmonton, Alberta T5T 3N3
3. The Defendant, the Lutheran Church — Canada (the "LCC"), is a religious body incorporated under the *Act to Incorporate Lutheran Church-Canada 7-8 Eliz. II Chap. 68 S.C. 1959* with a registered office located at 3074 Portage Avenue, in the City of Winnipeg, in the Province of Manitoba.
4. The Defendant, the Lutheran Church – Canada Financial Ministries (the “LCCFM”), is a non-profit corporation registered under the *Canada Not-for-profit Corporations Act, S.C. 2009, c. 23, as am.*, and has a registered and records office located at 3074 Portage Avenue, in the City of Winnipeg, in the Province of Manitoba.
5. The ~~Defendant, the~~ Lutheran Church – Canada, the Alberta-British Columbia District (the “ABC District”) is a corporation incorporated or continued pursuant to the *Lutheran Church – Canada, the Alberta - British Columbia District Corporation Act, SA 1991, c. 42 as am.*, and has a head office located at 10039 – 117th Street, in the City of Edmonton, in the Province of Alberta.

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6. The ~~Defendant, the~~ Lutheran Church – Canada, the Alberta-British Columbia District Investments Ltd. ("DIL") is a company incorporated pursuant to the laws of Alberta and has a registered and records office located at 2300, 10180 – 101 Street, in the City of Edmonton, in the Province of Alberta.
7. Encharis Community Housing and Services ("ECHS") is a company incorporated under the laws of Alberta and has a registered and records office located at 1700 – 530 8 Avenue S.W., in the City of Calgary, in the Province of Alberta.
8. The Defendant Prowse Chowne LLP ("Prowse Chowne") is a partnership of barristers and solicitors located at 1300-10020 101A Avenue NW, in the City of Edmonton, in the Province of Alberta.
9. The Defendant John Williams ("Williams") is a Barrister and Solicitor and a partner in the law firm of Prowse Chowne, which is located at 1300-10020 101A Avenue NW, in the City of Edmonton, in the Province of Alberta.
10. The Defendant Ronald Chowne ("Chowne") is a Barrister and Solicitor and a partner in the law firm of Prowse Chowne, which is located at 1300-10020 101A Avenue NW, in the City of Edmonton, in the Province of Alberta.
11. The Defendant Bishop & McKenzie LLP ("Bishop & McKenzie") is a partnership of barristers and solicitors located at 1700 – 530 8th Avenue, in the City of Calgary, in the Province of Alberta.
12. The Defendant Francis Taman ("Taman") is a Barrister and Solicitor and a partner in the law firm of Bishop & McKenzie, which is located at 1700 – 530 8th Avenue, in the City of Calgary, in the Province of Alberta.
13. The Defendant Concentra Trust/La Societe de Fiducie Concentra ("Concentra"), is an extraprovincial trust company incorporated, continued or amalgamated under the *Trust and Loan Companies Act*, RS 1991, c. 45 laws of Canada, with a an attorney in Alberta located at 2500, 10155 – 102 Street, in the City of Edmonton, in the Province of Alberta.
14. Donald Schiemann ("Schiemann") is a Pastor and resides at 4617 – 57 Avenue, in the City of Stoney Plain, in the Province of Alberta.
15. Harold Haberstock ("H. Haberstock") is a Pastor and resides at 1115 Regina Street, in the City of Creston, in the Province of British Columbia.
16. Keith Haberstock ("K. Haberstock") is a Pastor and resides at 160 Springmere Way, in the City of Chestermere, in the Province of Alberta.
17. Forrest Stroup ("Stroup") is a Pastor and resides at RR 2 Site 260 Comp 33, in the City of Stony Plain, in the Province of Alberta.

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18. Mark Ruf (“M. Ruf”) is a Pastor and resides at 144 Riverwood Circle, in the City of Calgary, in the Province of Alberta.
19. Kurtis Robinson (“Robinson”), was at all times material to these proceedings the Executive Assistant to the ABC District, the President of DIL, and the General Manager of ECHS. Robinson resides at 403 Lakeside Green, in the City of St. Albert, in the Province of Alberta.
20. Jim Kentel (“Kentel”), whose occupation is unknown to the Plaintiffs, resides at 1194 Trevor Drive, in the City of Kelowna, in the Province of British Columbia.
21. Richard Lutz (“Lutz”), whose occupation is unknown to the Plaintiffs, resides at 10 Greenwood Drive, in the City of Spruce Grove, in the Province of Alberta.
22. Harold Schmidt (“Schmidt”), whose occupation is unknown to the Plaintiffs, resides at 39 Lamartine Crescent, in the City of St. Albert, in the Province of Alberta.
23. Judith Burns (“Burns”), whose occupation is unknown to the Plaintiffs, resides at box 2724, in the City of High Prairie, in the Province of Alberta.
24. Melanie Kuhn (“Kuhn”), whose occupation is unknown to the Plaintiffs, resides at in RR3, the City of Red Deer, in the Province of Alberta.
25. Keith Kruse (“Kruse”), whose occupation is unknown to the Plaintiffs, resides at 10703 – 38th Street, in the City of Edmonton, in the Province of Alberta.
26. David Dressler (“Dressler”) is a Pastor and resides at 1166 Prestwick Circle, in the City of Calgary, in the Province of Alberta.
27. Wayne Lunderby (“Lunderby”) is a Pastor and resides at 46575 Extrom Road, in the City of Chilliwack, in the Province of British Columbia.
28. Phillip Washeim (“Washeim”) is a Pastor and resides at 6574 Arranwood Drive, in the City of Sooke, in the Province of British Columbia.
29. Greg Giese (“Giese”), whose occupation is unknown to the Plaintiffs, resides at 1207 Decker Way, in the City of Edmonton, in the Province of Alberta.
30. Michael Gillingham (“Gillingham”), whose occupation is unknown to the Plaintiffs, resides at 88 Summerfield Wynd, in the City of Sherwood Park, in the Province of Alberta.
31. Craig Tufts (“Tufts”), whose occupation is unknown to the Plaintiffs, resides at 11709 Lochhaven Drive, in the City of Coldstream, in the Province of British Columbia.

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32. Rhonda Buck ("Buck"), whose occupation is unknown to the Plaintiffs, resides at 25 Campbell Drive, in the City of Stony Plain, in the Province of Alberta.
33. Vic Esperanza ("Esperanza"), is a Pastor and resides at 17416 64th Avenue, in the City of Surrey, in the Province of British Columbia.
34. Lynn Gergens ("Gergens"), whose occupation is unknown to the Plaintiffs, resides at 91, 8930 Walnut Grove Drive, in the City of Langley, in the Province of British Columbia.
35. Deloyce Weist ("Weist"), whose occupation is unknown to the Plaintiffs, resides at 1055 Foxwood Crescent, in the City of Sherwood Park, in the Province of Alberta.
36. Frank Kobie ("Kobie"), whose occupation is unknown to the Plaintiffs, resides at 1320 Thompson Court, in the City of Edmonton, in the Province of Alberta.
37. Marvin Mutschler ("Mutschler") is the Manager of ECHS, and resides at 438 Prospect Drive, in the City of Medicine Hat, in the Province of Alberta.
38. Darla Henning, also known as Darla Hennig ("Henning") is the ABC District Church Extension Fund Manager and resides at Box 156, in the City of Tomahawk, in the Province of Alberta.
39. Stan Lee ("Lee"), Chartered Professional Accountant, resides at 4878 Selkirk Street, in the City of Vancouver, in the Province of British Columbia.
40. Janice Ruf ("J. Ruf") is the Senior Manager of ABC District Services and the Secretary/Treasurer of DIL. She resides at 90 Groveland Road, in the City of Sherwood Park, in the Province of Alberta.
41. Candace Rivet ("Rivet") is the ABC District Church Extension Fund Administrator and the Vice-President of DIL. She resides at 15 Hamilton Crescent, in the City of Edmonton, in the Province of Alberta.
42. Brian Lewis ("Lewis"), whose occupation is unknown to the Plaintiffs, resides at 975 Pigeon Avenue, in the City of Williams Lake, in the Province of British Columbia.
43. Hans Heumann ("Heumann"), whose occupation is unknown to the Plaintiffs, resides at 800, 715 – 5th Avenue, in the City of Calgary, in the Province of Alberta.
44. James Werschler ("Werschler"), whose occupation is unknown to the Plaintiffs, resides at 2050 Halifax Street, in the City of Regina, in the Province of Saskatchewan.
45. David Schoepp ("Schoepp"), whose occupation is unknown to the Plaintiffs, resides at 900,

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285030 Luther Rose Blvd., in the City of Calgary, in the Province of Alberta.

46. Grant McMaster (“McMaster”), whose occupation is unknown to the Plaintiffs, resides at 225, 20316 – 56th Avenue, in the City of Langley, in the Province of British Columbia.
47. Don Haberstock (“D. Haberstock”), whose occupation is unknown to the Plaintiffs, resides at 17819 – 108 Street, in the City of Edmonton, in the Province of Alberta.
48. Mark Wolgram (“Wolgram”), whose occupation is unknown to the Plaintiffs, resides at 28 Gatewood Avenue, in the City of St. Albert, in the Province of Alberta.

A. The Lutheran Church – Canada [“LCC”]

49. LCC is a statutorily incorporated national religious body divided into three separately incorporated Districts: the Alberta and British Columbia District, the Central District and the East District.
50. LCC has developed and implemented a program whereby congregations are encouraged to purchase lands upon which to construct churches and schools wherein to carry out the ministry of the Lutheran faith, using funds borrowed from their respective Districts. The source of those funds is deposits made with the Districts by the congregations within those Districts, and by individual members of those congregations, as well as by non-members. LCC refers to this program as “Church Planting” and/or “Church Extension” (the “LCC Church Extension Program”).

B. Lutheran Church – Canada Financial Ministries (“LCCFM”)

51. LCC has delegated the administration of the LCC Church Extension Program to LCCFM.
52. LCCFM was formed to assist LCC districts and member congregations to finance the acquisition of sites and the erection of facilities to aid expansion for programs of ministry, witness, outreach and service or for any other programs of the LCC and/or LCCFM through the LCC Church Extension Program and other activities.
53. The LCCFM is responsible for establishing policies and programs for maintaining, supervising and enlarging the LCC Church Extension Program. It is responsible for administering those policies and programs on a sound financial basis.
54. LCC and its Districts, including the ABC District, are members of LCCFM.

C. The Lutheran Church Canada – The Alberta-British Columbia District (the “ABC District”)

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55. In 1944, Lutheran Church – Canada, the Alberta-British Columbia District was incorporated as the Alberta and British Columbia District of the Evangelical Lutheran Synod of Missouri, Ohio and other States by way of a special Act of the Alberta Legislature, S.A. 1944, c. 82 *as am*. In 1991 the District was continued and renamed the Lutheran Church – Canada, the Alberta-British Columbia District (the “ABC District”) pursuant to the *Lutheran Church – Canada, The Alberta British Columbia District Corporation Act*, SA 1991, c. 42.

D. The LCC/ABC District Church Extension Program

56. In or about 1921 and prior to its incorporation in 1944, the ABC District created a Church Extension Program (the “ABC District Church Extension Program”) to advance the Church Extension objectives and policies of its parent organization, which was then the Lutheran Church – Missouri Synod (“LCMS”) and as of its incorporation in 1959, the LCC, as set out in para. 50 herein.

57. The ABC District operates the ABC District Church Extension Program as a joint enterprise with LCC and/or LCCFM in furtherance of a common purpose, in that:

- a. The ABC District is able to maintain the ABC District Church Extension Program only with the approval of LCC;
- b. The ABC District is required to operate the ABC Church Extension Program in conformity with policies established by the LCC and/or LCCFM;
- c. The LCC and/or LCCFM aids the ABC District in motivating individuals, congregations and organizations in acquiring investments for the ABC District Church Extension Program in a systematic manner;
- d. The LCC and/or LCCFM provides leadership in advance site acquisition for further expansion of the ministry of the LCC;
- e. The ABC District was required to provide to the LCC and/or LCCFM, on an annual basis, a complete financial statement of the ABC District Church Extension Program, including monies borrowed and received, total amount of loans outstanding, and any amounts delinquent;
- f. All revenues earned by ABC District as a result of its Church Extension Program activities are shared with the LCC and/or LCCFM;
- g. ABC District, LCC and/or LCCFM all receive direct or indirect financial and other benefits from the ABC District’s Church Extension Program, in that:
 - (i) The acquisition and erection of new churches and schools in which to carry out the ministry of the Lutheran faith increases church membership at the congregation level;
 - (ii) Increased church membership at the congregation level results in increased member donations to the congregation. Those donations are shared with the District, which in turn shares those donations with the LCC and/or LCCFM.

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58. At all times material to these proceedings, Schiemann was both the President and a director of the ABC District, and a director of the LCC.
59. The ABC District, together with the LCC and/or LCCFM as set out above, established two funds in furtherance of the ABC District Church Extension Program:
- a. The Church Extension Fund (the "CEF") is a non-registered fund held by ABC District which offered term investments, savings accounts and a children's savings program; and
 - b. The Lutheran Church Canada, The Alberta-British Columbia District Investment Ltd. ("DIL"), is an incorporated tax-sheltered investment fund offering registered RRSP, RRIF and TFSA investments.
60. At all times material to these proceedings, the Defendant Concentra was the trustee of DIL's registered RRSP and RRIF trust funds (the "RRSP and RRIF Trusts"), pursuant to the terms of a RRSP and RRIF Agency Trust Agreement dated April 9, 2002 (the "2002 RRSP and RRIF Trust Agreement") and a Replacement Trustee Agreement dated January 1, 2005 (the "2005 RRSP and RRIF Replacement Trustee Agreement").
61. Concentra was also the trustee of DIL's TFSA trust funds (the "TFSA Trust") pursuant to the terms of a Tax Free Savings Account (TFSA) Agency Agreement dated October 30, 2009 (the "2009 TFSA Trust Agreement").
62. The RRSP and RRIF Trust and the TFSA Trust are referred to collectively herein as the "DIL Trusts".
63. It was a term of the DIL Trusts that all monies on deposit in the DIL Trusts would be held in trust for the depositors thereto (including the Plaintiffs) by Concentra on the following terms:
- (a) that the monies on deposit in the DIL Trusts would be used solely for the purposes of investment in accordance with the mandate of the ABC District's Church Extension Program as set out in paras. 50 and 56 herein;
 - (b) that the monies on deposit in the DIL Trusts would be invested in "qualified investments" as that term is defined in the *Income Tax Act*, RSC 1985, c.1; and
 - (c) that the monies deposited to the DIL Trusts would be repaid to the depositors on demand, and with interest at rates set by the ABC District.
64. Pursuant to the terms of the 2002 RRSP and RRIF Trust Agreement, the 2005 RRSP and RRIF Replacement Trustee Agreement and the 2009 TFSA Trust Agreement, Concentra appointed DIL to act as its agent in carrying out the administration of the DIL Trusts, including the matters set out in para. 63 herein.

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65. In turn, DIL retained ABC District as its sub-agent to provide management services in respect of the DIL Trusts, in exchange for a management fee.
66. The ABC District’s Department of Stewardship and Financial Ministries (the “DSFM”) established Loan Eligibility Policies in respect of the CEF and DIL trust funds which conformed to the policies established by the LCC and/or LCCFM for that purpose. Those Policies limited eligibility for loans to:
 - a. congregations of the ABC District “in good standing”, defined as “those congregations which support the mission and ministry of the District and Synod in a responsible way, function under a district approved constitution and comply with the policy and practice established by the Lutheran Church – Canada”; and
 - b. institutions and entities of the LCC, whose constitutions, policies and practices are consistent with those of LCC.
67. Further, according to the Loan Eligibility Policies set by the DSFM, the LCC and/or the LCCFM, loans were to be made for capital projects only, including acquisition of land, purchase or construction of building facilities, major renovations to existing facilities or expansion of existing facilities.
68. The DSFM also set Loan Criteria for the CEF and DIL Trusts in conformity with policies established by the LCC and/or LCCFM for that purpose, including (but not limited to) the following:
 - a. The need for facilities, renovations or property in which to carry out the ministry of the Lutheran faith;
 - b. Need for financing of existing debt;
 - c. Relationship of total loan to property values and/or total assets;
 - d. Financial history of congregation and financial projections for future;
 - e. Growth potential of area and membership;
 - f. The existence of a pledge program for the building project;
 - g. Indebtedness per communicant;
 - h. Ability of congregation to service debt;
 - i. Percentage of total income for debt service; and
 - j. Continuity of the debtor congregation’s financial support to the ABC District and the LCC.
69. The DSFM also set Loan Conditions for the CEF and DIL Trusts in conformity with policies established by the LCC and/or LCCFM for that purpose, which required debtor congregations to provide certain items before loan funds would be disbursed, including (but not limited to) the following:
 - a. Security documentation appropriate to the size and conditions of the loan;
 - b. Loan Repayment Agreement signed by the officers of the debtor congregation;

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- c. Commitment to promoting Church Extension investments among the members of the debtor congregation; and
- d. Financial statements submitted annually to the DSFM.

- 70. All loans in excess of \$100,000.00 required the approval of the ABC District's Board of Directors.
- 71. The ABC District guaranteed the investments of DIL depositors in Church Extension programs.

E. The Prince of Peace Village Loans

- 72. In or about 1993, however, the ABC District decided to use the monies on deposit in the CEF Trust to purchase 156 acres of real property near Calgary, Alberta (the "POP Village Lands") for the purposes of developing those lands on its own behalf into a multi-use residential and commercial development called the Prince of Peace Village ("POP Village"), including a 174-unit seniors' condominium development, a seniors' assisted living residence ("The Manor"), and an Alzheimer's care centre ("The Harbour").
- 73. A portion of the POP Village Lands was set aside to build a church and a school for the benefit of the Prince of Peace congregation.
- 74. The decision of the ABC District to embark upon the speculative real estate development of the Prince of Peace Village on its own behalf, funded by the CEF Trust, was contrary to the purposes of the ABC District Church Extension Program, which was to provide mortgage financing for congregations to build churches and schools in which to carry out the ministry of the Lutheran faith.
- 75. LCC and/or LCCFM were aware of, or ought to have been aware of, and approved the ABC District's decision to utilize the CEF Trust monies for the purpose of developing the POP Village Lands.
- 76. The POP Village development commenced in 1993 and was carried on by the ABC District from 1993 through 2006.
- 77. Taman was at all times material to these proceedings a member of the Prince of Peace congregation, and a member of the congregation's Building Committee responsible for advancing and promoting the development of the POP Village Lands.
- 78. In addition to being the President and a director of ABC District and a director of LCC, Schiemann was at all times material to these proceedings a member of the Prince of Peace Congregation.

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79. The POP Village opened in or about 1998. However, at that time the development was operating at a financial deficit, and continued to do so. The ABC District financed those deficits through additional input of funds from the CEF Trust, and increased its promotion of the CEF to its congregations and their members for the purpose of increasing deposits with which to fund the POP Village development's financial demands.
80. On November 9, 2005, ABC District incorporated ECHS to act as the developer of the POP Village.
81. At all times material to these proceedings, Taman and Bishop & McKenzie were the solicitors for both ABC District and ECHS.
82. At all times material to these proceedings, Taman was also a director, trustee, like official or principal of both ABC District and ECHS.
83. In 2006, the ABC District transferred to ECHS all of its interest in the POP Village Lands in exchange for a mortgage loan in the amount of approximately \$45,000,000.00 (the "~~First POP Village CEF Mortgage Loan~~ First District – ECHS Mortgage") and the assumption of ABC District's contingent liabilities of approximately \$33,000,000.00 with respect to the POP Village life leases (the "POP Village Life Lease Assumption Agreement"), in order to facilitate ECHS's speculative development of the POP Village Lands. The ~~First POP Village CEF Mortgage Loan~~ First District – ECHS Mortgage was secured by a mortgage registered against the POP Village Lands and a 101 acre parcel of real property in Chestermere, Alberta.
84. Chowne and Prowse Chowne were the solicitors for ABC District in respect of the transfer of the POP Village Lands from ABC District to ECHS, and ~~First POP Village CEF Mortgage Loan~~ the First District – ECHS Mortgage.
85. Taman and Bishop & McKenzie were the solicitors for ECHS in respect of the transfer of the POP Village Lands from ABC District to ECHS, and the ~~First POP Village CEF Mortgage Loan~~ First District – ECHS Mortgage.
86. To the knowledge of ABC District, DIL, LCC and/or LCCFM, and Taman, ECHS was insolvent from its inception and continued to operate at a deficit.
87. ABC District subsequently approved additional unsecured loans to ECHS from the CEF Trust in the amount of approximately \$28,500,000.00 (the "POP Village CEF Unsecured Loans") in order to allow ECHS to service its mortgage debt and finance its operating deficit in respect of the POP Village.
88. On or about November 17, 2011, ~~December 7, 2011~~ Concentra and/or DIL approved a mortgage loan from the DIL Trusts to ECHS in the amount of \$4,000,000.00 payable on demand with interest at 6% per annum (the "First POP Village DIL Mortgage Loan") and

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\$3,950,000.00 payable on demand with interest at 6% per annum (the "Second POP Village DIL Mortgage Loan") (referred to collectively as the "POP Village DIL Mortgage Loans").

89. The POP Village DIL Mortgage Loans were a fraudulent and dishonest scheme, in that they were advanced by Concentra, DIL and/or ABC District to ECHS for the purpose of financing the POP Village development and enabling ECHS to meet its debt obligations to ABC District under the ~~First POP Village CEF Mortgage Loan~~ First District – ECHS Mortgage and/or its obligations to other lenders, and not for the benefit of the beneficiaries of the DIL Trusts, and constituted a risk to the interests of the beneficiaries of the DIL Trusts that Concentra, DIL and/or ABC District knew that they were not entitled to take.
90. On or about November 17, 2011, Schiemann, M. Ruf, H. Haberstock, Dressler, Lunderby, K. Haberstock, Washeim, Burns, Giese, Kentel, Kuhn, Schmidt and Gillingham were the directors of ABC District (the "2011 ABC District Directors").
91. On or about November 17, 2011, Kentel, Kobie, Schmidt, Lewis, Giese, M. Ruf, Lutz, Henning and Lee were the directors of DIL (the "2011 DIL Directors").
92. On or about November 17, 2011, Robinson, J. Ruf and Rivet were the officers of DIL (the "2011 DIL Officers")
93. The 2011 DIL Directors and the 2011 DIL Officers are referred to collectively herein as the "2011 DIL Officers and Directors".
94. The POP Village DIL Mortgage Loans were authorized, directed and approved by the 2011 ABC District Directors and the 2011 DIL Officers and Directors.
95. On or about November 17, 2011, Schiemann, Heumann, McMaster, Werschler, M. Ruf and Schoepp were the directors of ECHS (the "2011 ECHS Directors").
96. On or about November 17, 2011, ABC District and DIL were under common ~~control~~ directorship in that Kentel, Schmidt, Giese and M. Ruf were directors and/or officers of both ABC District and DIL.
97. On or about November 17, 2011, ABC District and ECHS were under common ~~control~~ directorship, in that Schiemann and M. Ruf were directors and/or officers of ABC District and ECHS.
98. On or about November 17, 2011, DIL and ECHS were under common ~~control~~ directorship in that M. Ruf was an officer and/or director of both DIL and ECHS.
99. Chowne, Williams and Prowse Chowne were the solicitors for DIL in respect of the POP Village DIL Mortgage Loans.
100. On or about November 17, 2011, Chowne, Williams and Prowse Chowne were also the

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solicitors for ABC District.

101. Taman and Bishop & McKenzie were the solicitors for ECHS in respect of the POP Village DIL Mortgage Loans.
102. The 2011 ABC District Directors, the 2011 DIL Officers and Directors and the 2011 ECHS Directors knew or were willfully blind or reckless to the fact that:
 - a. ECHS was insolvent;
 - b. ECHS had not prepared any financial statements since its incorporation; and
 - c. There was insufficient equity in the POP Village Lands to secure the POP Village DIL Mortgage Loans over and above the First POP Village CEF Mortgage Loan.
103. Pursuant to an agreement between DIL and ABC District made in or about September 2011, the POP Village DIL Mortgage Loans were to be registered in priority to the ~~POP Village CEF Mortgage Loan~~ and the First District – ECHS Mortgage Loan (the "First ABC District – DIL Priority Agreement").
104. Contrary to the First ABC District – DIL Priority Agreement, and as a result of ABC District's failure to execute and Concentra and/or DIL's failure to prepare and register the First ABC District – DIL Priority Agreement concurrently with the POP Village DIL Mortgage Loans, the POP Village DIL Mortgage Loans were registered in second and third position behind the First District – ECHS Mortgage Loan.
105. In the alternative, Concentra and/or DIL failed to require that ABC District grant priority to the POP Village DIL Mortgage Loans ahead of the First District – ECHS Mortgage Loan ~~First POP Village CEF Mortgage Loan~~ as a condition of advancing those Loans, despite there being inadequate equity in the POP Village Lands to secure the POP Village Mortgage Loans, and for the benefit of the ABC District and the Prince of Peace congregation.
106. In the ~~further~~ alternative, on or about November 17, 2011 Concentra and/or DIL advanced the First POP Village DIL Mortgage Loan from the DIL Trusts in the amount of \$4,000,000.00. The mortgage loan to ECHS in the amount of \$3,950,000.00 was made by ABC District from the CEF Trust on the same date (the "Second District – ECHS Mortgage Loan" ~~POP Village CEF Mortgage Loan~~2).
107. ABC District then assigned the Second District – ECHS Mortgage Loan ~~POP Village CEF Mortgage Loan~~ to Concentra and/or DIL by way of a Transfer of Mortgage dated January 22, 2014 (the "2014 Mortgage Transfer"), in exchange for consideration of \$3,950,000.00.
108. The 2014 Mortgage Transfer was a dishonest and fraudulent design on the part of Concentra, DIL and/or AC District in that its purpose was to provide capital to ABC District for the purpose of funding its operations, making additional loans to ECHS, and meeting its obligations to the beneficiaries of the CEF Trust, and was not for the benefit of the beneficiaries of the DIL Trusts, and constituted a risk to the prejudice of the interests of

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the beneficiaries of the DIL Trusts that Concentra, DIL and/or ABC District knew that they were not entitled to take.

- ~~109. The First POP Village DIL Mortgage Loan and the Second POP Village CEF Mortgage Loan, as amended by the 2014 Mortgage Transfer, are referred to collectively and alternatively with the First and Second POP Village DIL Mortgage Loans as the "POP Village DIL Mortgage Loans".~~
110. On January 22, 2014, Schiemann, M. Ruf, Dressler, Tufts, Buck, Esperanza, K. Haberstock, Gergens, Giese, Kentel, Kuhn, Schmidt and Weist were directors of ABC District (the "2014 ABC District Directors").
111. On January 22, 2014, Schmidt, Kentel, M. Ruf, Henning, Lewis, Giese, Wolgram and D. Haberstock were the directors of DIL (the "2014 DIL Directors").
112. The 2014 Mortgage Transfer was authorized, approved and directed by the 2014 ABC District Directors, and by the 2014 DIL Directors.
113. The 2014 ABC District Directors and the 2014 DIL Directors knew, or were willfully blind or reckless to the fact that:
- a. ECHS was insolvent;
 - b. ECHS had not issued financial statements since the date of its incorporation; and
 - c. There was insufficient equity in the POP Village Lands to secure the Second POP Village CEF Mortgage Loan upon its transfer to DIL pursuant to the terms of the 2014 Mortgage Transfer.
114. On January 22, 2014, ABC District and DIL were under common ~~control~~ directorship, in that M. Ruf, Kentel, Schmidt and Giese were directors of both ABC District and DIL.
115. Chowne, Williams and Prowse Chowne were the solicitors for Concentra and DIL in respect of the 2014 Mortgage Transfer.
116. Chowne, Williams and Prowse Chowne were also the solicitors for ABC District in respect of the 2014 Mortgage Transfer.
117. Pursuant to an agreement between DIL and ABC District made in or about January 2014, the Second District – ECHS Mortgage, ~~POP Village CEF Mortgage Loan~~, as amended by the 2014 Mortgage Transfer, was to be registered against the title to the POP Village Lands in priority to the First District – ECHS Mortgage ~~POP Village CEF Mortgage Loan~~ (the "Second ABC District – DIL Priority Agreement").
118. However, contrary to the Second ABC District – DIL Priority Agreement, ABC District failed to execute, and Concentra and/or DIL failed to prepare and register, the Second ABC District – DIL Priority Agreement concurrently with the registration of the 2014 Mortgage

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Transfer.

119. In the alternative, Concentra and/or DIL failed to require that ABC District grant the Second District – ECHS Mortgage POP Village CEF Mortgage as modified by the 2014 Mortgage Transfer priority over the First POP Village CEF Mortgage Loan First District – ECHS Mortgage as a condition of the 2014 Mortgage Transfer, despite there being inadequate equity in the POP Village Lands to secure the Mortgage.
120. As a result of the matters set out in paras. 88 – 119 herein, the First POP Village DIL Mortgage Loan was registered in second position behind the First POP Village CEF Mortgage Loan First District – ECHS Mortgage, and the Second POP Village DIL Mortgage Loan (or alternatively the Second DIL – ECHS Mortgage POP Village CEF Mortgage Loan, as amended by the 2014 Mortgage Transfer) was registered in third position.
121. To the knowledge of ABC District, DIL, the 2011 ABC District Directors, the 2011 DIL Officers and Directors and the 2014 DIL Directors:
- a. the POP Village DIL Mortgage Loans or alternatively the First POP Village DIL Mortgage Loan and the 2014 Mortgage Transfer contravened the mandate of the ABC District Church Extension Program and the terms of the DIL Trusts as set out in paras. 50, 56 and 63 herein, in that they were not made for the purpose of building churches and/or schools in which to carry out the ministry of the Lutheran faith, but rather for the purpose of enabling ECHS to engage in speculative real estate development;
 - b. contrary to the terms of the DIL Trusts the POP Village DIL Mortgage Loans or alternatively the First POP Village DIL Mortgage Loan and the 2014 Mortgage Transfer were not “qualifying investments” as that term is defined in the *Income Tax Act*, RSC 1985, c.1.
 - c. the POP Village DIL Mortgage Loans or alternatively the First POP Village DIL Mortgage Loan and the 2014 Mortgage Transfer contravened the ABC District’s Church Extension Program Loan Eligibility Policies, Loan Criteria and Loan Conditions as set out in paras. 66 – 69 herein in respect of the CEF and DIL Trusts in that:
 - (i) ECHS was not a “congregation of the ABC District in good standing” nor an institution or entity of the LCC whose constitution, policies and practices were consistent with those of LCC;
 - (ii) the POP Village was a non-denominational commercial housing and health care project which was not intended or required to carry out the ministry of the Lutheran faith;
 - (iii) The loan-to-value ratio in respect of each of the Mortgage Loans or alternatively the First POP Village DIL Mortgage Loan and the 2014 Mortgage Transfer was greater than that which would be commercially acceptable, or alternatively was based on an inflated valuation of the POP Village Lands;

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- (iv) The POP Village development was commenced and continued in the absence of any, or any reliable, financial projections;
- (v) ECHS lacked the experience and qualifications to bring the POP Village to successful completion;
- (vi) ECHS had no ability to service the POP Village DIL Mortgage Loans or alternatively the First POP Village DIL Mortgage Loan or the Second POP Village Mortgage Loan as modified by the 2014 Mortgage Transfer;
- (vii) ECHS was insolvent and had not issued any financial statements since the date of its incorporation;
- (viii) ECHS did not and was not required to provide financial support to ABC District and/or LCC in exchange for the POP Village DIL Mortgage Loans or alternatively the First POP Village Mortgage Loan and the 2014 Mortgage Transfer;
- (ix) The POP Village DIL Mortgage Loans or alternatively the First POP Village Mortgage Loan and 2014 Mortgage Transfer were unsecured or alternatively inadequately secured;
- (x) The officers of ECHS were not required to sign Loan Repayment Agreements with ABC District and DIL in respect of the POP Village DIL Mortgage Loans or alternatively the First POP Village DIL Mortgage Loan and the 2014 Mortgage Transfer;
- (xi) ECHS was not required to make a commitment to promote Church Extension investments among its members or others;
- (xii) ECHS was not required to submit financial statements to the ABC District or to DIL, or alternatively the ABC District and/or DIL failed to scrutinize those financial statements to assess the risk to the POP Village DIL Mortgage Loans or alternatively the First POP Village DIL Mortgage Loan and the 2014 Mortgage Transfer.

122. However, despite this knowledge the Directors approved, authorized and directed DIL and ABC District (as sub-agent to DIL and manager of the DIL Trusts) to grant the POP Village DIL Mortgage Loans to ECHS or alternatively the First POP Village Mortgage Loan and the 2014 Mortgage Transfer in order to support the successful development of the POP Village and the repayment of the First and Second District – ECHS Mortgage Loans ~~POP Village CEF Mortgage Loans to the ABC District~~, for the benefit of the ABC District (in its own capacity) and the POP congregation.

123. DIL, ABC District and the Directors did not disclose to the beneficiaries of the DIL Trusts that by reason of the registration of the POP Village DIL Mortgage Loans or alternatively the First POP Village DIL Mortgage Loan and the 2014 Mortgage Transfer in second and third position behind the ~~First POP Village CEF Mortgage Loan~~ First District – ECHS Mortgage, the POP Village DIL Mortgage Loans were likely to be and were uncollectible.

124. The POP Village development was ultimately unsuccessful and ECHS defaulted on the First and Second District – ECHS Mortgages and the ~~POP Village CEF Loans~~ and the POP Village DIL Mortgage Loans. There is insufficient equity in the POP Village Lands to

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discharge the POP Village DIL Mortgage Loans or alternatively the First POP Village DIL Mortgage Loan and the 2014 Mortgage Transfer.

F. The Strathmore Loan

125. In or about 2007, ECHS purchased a parcel of real property located in Strathmore, Alberta (the "Strathmore Property").
126. On or about July 31, 2008, ABC District purchased the Strathmore Property from ECHS for \$1.00 (the "ABC District Strathmore Purchase").
127. Chowne and Prowse Chowne were the solicitors for ABC District in respect of the ABC District Strathmore Purchase.
128. Also on or about July 31, 2008, Concentra acting as Trustee of the DIL Trust and/or DIL acting as agent of Concentra loaned its manager and sub-agent ABC District \$5,891,322.54 payable on demand and with interest at 6.5% from the DIL Trust, to be secured by the Strathmore Property (the "Strathmore Loan").
129. On July 31, 2008, Kentel, Kobie, Schmidt, Mutschler, M. Ruf, Lutz, Henning and Lee were the directors of DIL (the "2008 DIL Directors").
130. On July 31, 2008, Schiemann, J. Ruf and Rivet were the officers of DIL (the "2008 DIL Officers").
131. The 2008 DIL Directors and the 2008 DIL Officers are referred to collectively herein as the "2008 DIL Officers and Directors".
132. On July 31, 2008, Schiemann, M. Ruf, H. Haberstock, Stroup, K. Haberstock, Burns, Kentel, Kuhn, Lutz, Schmidt and Kruse were the directors of ABC District (the "2008 ABC District Directors")
133. On July 31, 2008, DIL and District were under common ~~control~~ directorship, in that Kentel, Schmidt, Lutz, Schiemann and M. Ruf were directors and/or officers of both DIL and District.
134. The Strathmore Loan was approved, authorized and directed by the 2008 DIL Officers and Directors and the 2008 ABC District Directors, who knew or ought to have known that the Strathmore Property was worth substantially less than \$5,891,322.54.
135. Pursuant to an agreement between Concentra and/or DIL and ABC District, ABC District was required to provide security for the Strathmore Loan by executing a mortgage against the Strathmore property in favour of Concentra.

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136. ABC District failed to execute a mortgage in favour of Concentra in respect of the Strathmore Loan.
137. Alternatively, ABC District executed a mortgage in favour of Concentra as Trustee for DIL in respect of the Strathmore Loan, but DIL and/or ABC District as sub-agent to DIL and manager of the DIL Trust failed to register that mortgage.
138. Alternatively, Concentra and/or DIL failed to require ABC District to execute a mortgage in favour of Concentra in respect of the Strathmore Loan.
139. Chowne and Prowse Chowne were the solicitors for both ABC District and DIL in respect of the Strathmore Loan.
140. Despite the fact that the Strathmore Property was worth considerably less than the principal amount of the Strathmore Loan, and despite ABC District's failure to execute and/or register a mortgage in favour of Concentra and/or DIL in respect of the Strathmore Loan, Concentra and/or DIL advanced the proceeds of the Strathmore Loan to ABC District.
141. The Strathmore Loan contravened the mandate of the ABC District Church Extension Program and the terms of the DIL Trusts as set out in paras. 50, 56 and 63 herein, in that it was not made for the purpose of building churches and/or schools in which to carry out the ministry of the Lutheran faith, but rather for the purpose of raising operating funds for the ABC District and/or ensuring that the ABC District could meet its financial obligations to the beneficiaries of the CEF Trust.
142. Further, the Strathmore Loan was a dishonest and fraudulent scheme on the part of Concentra, DIL and/or ABC District, in that it constituted a risk to the prejudice of interests of the beneficiaries to the DIL Trust that Concentra, DIL and ABC District knew they were not entitled to take.
143. Further, the Strathmore Loan contravened the terms of the DIL Trusts in that it was not a "qualifying investment" as defined in the *Income Tax Act*, RSC 1985, c. 1.
144. Further, the Strathmore Loan contravened the Loan Eligibility Policies, the Loan Criteria and the Loan Conditions in that:
 - a. The Strathmore Loan was not made for a capital project;
 - b. It was not required to provide or renovate facilities or property in which to carry out the ministry of the Lutheran faith;
 - c. There were no steps taken to obtain any reliable appraisal of the market value of the Strathmore Property prior to approving the Loan;
 - d. It was in excess of a commercially reasonable loan-to-value ratio;
 - e. There was no plan or commitment by ABC District to repay or service the debt;
 - f. It was not adequately secured by a registrable mortgage, or at all;

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- g. It was not supported by a Loan Repayment Agreement signed by the officers of the ABC District;
 - h. The ABC District did not provide annual financial statements to the DSFM for review of its ongoing eligibility.
145. LCC and/or LCCFM were aware, or were willfully blind or reckless as to the fact that Concentra and/or DIL had extended the Strathmore Loan to ABC District, and that the Strathmore Loan contravened the mandate of the ABC District Church Extension Program, the terms of the DIL Trusts, and the Loan Eligibility Policies, Loan Criteria and Loan Conditions as set out in paras. 141 - 144 herein.
146. On December 23, 2014, ABC District executed a \$5,891,322.54 mortgage against the Strathmore Property in respect of the Strathmore Loan (the "Concentra Strathmore Mortgage"). Concentra and/or DIL proceeded to register that Mortgage against the title to the Strathmore Property.
147. Due to Concentra and/or DIL and/or ABC District's six and a half year delay in registration of the Concentra Strathmore Mortgage, the Mortgage was unenforceable, rendering Concentra unable to execute on the underlying security and collect the Strathmore Loan on behalf of the beneficiaries to the DIL Trusts, including the Plaintiffs.
148. DIL, ABC District, the 2014 DIL Directors and the ABC District Directors failed to disclose to the beneficiaries of the DIL Trusts, including the Plaintiffs, that the Strathmore Mortgage Loan had not been secured by a mortgage when it was granted in 2008, or that the Concentra Strathmore Mortgage was registered on December 23, 2014, or that the lengthy delay that occurred between 2008 and the registration of the Concentra Strathmore Mortgage on December 23, 2014 rendered the Strathmore Loan uncollectible.

G. The CCAA Proceedings

149. As a result of the facts and matters set out herein, DIL and/or Concentra were unable to meet their obligations to the beneficiaries to the DIL Trusts, including the Plaintiffs.
150. Knowing that Concentra and DIL were unable to meet their obligations to the beneficiaries of the DIL Trusts, Concentra, DIL, the 2014 DIL Directors, and the 2014 ABC District Directors continued to encourage and accept deposits to the DIL Trusts up until and including December 31, 2014, without disclosing their insolvency and pending insolvency proceedings to the beneficiaries of the DIL Trusts, including the Plaintiffs.
151. The LCC and/or LCCFM were aware or ought to have been aware of the insolvency of DIL, and of the impending CCAA Proceeding. However, LCC and/or LCCFM took no steps to halt the operations of the ABC District Church Extension Program or the DIL, or to inform the depositors to the DIL Trusts that their deposits were at risk.

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152. On January 2, 2015 ABC District, DIL, ECHS and a related company Encharis Management and Support Services ("EMSS") (the "Applicants") sought protection from their creditors under the *Company's Creditors Arrangement Act*, RSC 1985, c.C-36, as amended (the "CCAA Proceedings"). An Order to that effect was granted by the Court of Queen's Bench of Alberta on January 23, 2015 in Court of Queen's Bench Action No. 1501-00955. The DIL Amended Amended Plan of Compromise and Arrangement dated January 11, 2016 (the "DIL Plan") was sanctioned by the Court by order dated August 2, 2016.
153. Taman and Bishop & McKenzie are the solicitors for the Applicants in the CCAA Proceedings.
154. By way of an agreement approved by the Court of Queen's Bench issued in the CCAA Proceedings on January 4, 2016, ABC District and DIL agreed, *inter alia*:
- (i) That District shall pay to DIL the all-inclusive sum of \$4,114,006.00 in settlement of DIL's claims against District in relation to the POP Village DIL Mortgage Loans (the "POP Village DIL Mortgage Settlement Agreement"); and
 - (ii) That District shall pay to DIL 50% of the net proceeds of sale of the Strathmore Property in settlement of DIL's claims against District in relation to the Strathmore Loan (the "Strathmore Settlement Agreement")
- which settlement resulted in financial losses to the beneficiaries of the DIL Trusts, including the Plaintiffs and putative class members.
155. In or about June 2016, ABC District paid to DIL the proceeds of the POP Village DIL Mortgage Settlement Agreement. These funds have been distributed to the beneficiaries of the DIL Trusts, including the Plaintiffs.
156. On or about September 16, 2016, pursuant to the Strathmore Settlement Agreement, ABC District sold the Strathmore Property for approximately \$3,100,000.00. 50% of the net sale proceeds have been distributed to the beneficiaries of the DIL Trusts, including the Plaintiffs.
157. Pursuant to the CCAA Proceedings, the remaining investment assets of the DIL Trusts have been or will be liquidated for the benefit of the beneficiaries of the DIL Trusts. However, the proceeds of those assets are not sufficient to satisfy Concentra and/or DIL's total outstanding obligations to the beneficiaries of the DIL Trusts, including the Plaintiffs.

H. The Plaintiffs

- (i) **The Plaintiff Marilyn Huber**

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158. Marilyn Huber is 51 years old is a member of the Good Shepherd Lutheran Church in Valleyview, Alberta.
159. At all times material to these proceedings, Ms. Huber has been a beneficiary of the DIL RRSP Trust. As of December 31, 2014, the balance of Ms. Huber's DIL RRSP account was \$72,179.36.
160. Through the course of the CCAA Proceedings, Ms. Huber has received distributions of \$43,753.86 from DIL.
161. As a result of the facts and matters set out herein, Ms. Huber has suffered damages and loss in the amount of \$28,425.50, which is the shortfall in her RRSP account. There are insufficient assets in the DIL investment portfolio to satisfy DIL's obligations to Ms. Huber.

(ii) The Plaintiff Reid Glenn

162. Reid Glenn is 62 years old and is a member of the Prince of Peace Lutheran Church in Peace River, Alberta.
163. At all times material to these proceedings, Mr. Glenn has been a beneficiary of the DIL RRSP Trust. As of December 31, 2014, the balance of Mr. Glenn's DIL account was \$364,095.79.
164. Through the course of the CCAA Proceedings, Mr. Glenn has received distributions of \$220,708.49 from DIL.
165. As a result of the facts and matters set out herein, Mr. Glenn has sustained damages and loss in the amount of \$143,387.30, which is the shortfall in his RRSP account. There are insufficient assets in the DIL investment portfolio to satisfy DIL's obligations to Mr. Glenn.

I. The Class

166. This is a proposed class proceeding on behalf of the Plaintiffs and:
- a. a putative class of people resident in Alberta, or their estates where applicable, who on January 2, 2015 were depositors to The Lutheran Church – Canada, Alberta and British Columbia District Investments Ltd. and who elected or are deemed to have elected to participate in and had not opted out of the Representative Action referred to in Article 5.1 of the DIL Plan in the manner set out in Article 5.7 of the DIL Plan

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prior to the commencement of these proceedings (the “AB DIL Class”); and

- b. a putative extra-provincial class of people resident outside of Alberta, or their estates where applicable, and who on January 2, 2015 were depositors to The Lutheran Church – Canada, Alberta and British Columbia District Investments Ltd. and who elected or are deemed to have elected to participate in and had not opted out of the Representative Action referred to in Article 5.1 of the DIL Plan in the manner set out in Art. 5.7 of the DIL Plan prior to the commencement of these proceedings (the “Extraprovincial DIL Class”).

J. Liability of Concentra: Breach of trust, breach of fiduciary duty, and negligence

167. As trustee of the DIL Trusts, Concentra owed the following duties to the beneficiaries of the DIL Trusts, including the Plaintiffs:

- a. as a trustee, to:
 - (i) abide by the terms of the DIL Trusts;
 - (ii) to refrain from investing the DIL Trusts funds in a manner inconsistent with the terms of the DIL Trusts, both at common law and in accordance with s. 3(1) and 4(1) of the *Trustee Act*, RSA 2000, c. T-8;
 - (iii) to exercise the degree of care, skill, diligence and judgment that a reasonable investor would exercise in the making of investments on behalf of the beneficiaries of the DIL Trusts, both at common law and in accordance with s. 4(1) of the *Trustee Act*, *supra*;
 - (iv) to invest the DIL Trusts funds with a view to obtaining a reasonable return while avoiding undue risk, having regard to the circumstances of the Trusts, in accordance with s.3(2) of the *Trustee Act*, *supra*;
 - (v) to establish and adhere to investment lending policies, standards and procedures that a reasonable and prudent person would apply in respect of a portfolio of investments and loans to avoid undue loss and obtain a reasonable rate of return, in accordance with s. 450 of the *Trust and Loan Companies Act*, SC 1991, c. 45;
- b. As a fiduciary:
 - (i) to act honestly, in good faith and strictly in the best interests of the beneficiaries of the DIL Trusts; and
 - (ii) to ensure that its agent DIL and its subagent and manager ABC District acted honestly, in good faith and in the best interests of the beneficiaries of the DIL Trusts; and
- c. To exercise the same degree of care in the administration of the DIL Trusts as

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would a reasonable trustee, including in the supervision of its agent DIL and its subagent and manager ABC District to ensure that they:

- (i) abided by the terms of the DIL Trusts;
- (ii) refrained from investing the DIL Trusts funds in a manner inconsistent with the DIL Trusts;
- (iii) exercised the same degree of care, skill, diligence and judgment in the performance of its duties as Concentra was obliged to exercise.
- (iv) Complied with and applied the mandate of the ABC District Church Extension Program, and the ABC District's Loan Eligibility Policies, Loan Criteria and Loan Conditions.

168. In breach of its duty of trust to the beneficiaries of the DIL Trusts, including the Plaintiffs, Concentra:

- a. authorized, or permitted DIL and/or ABC District to authorize, the POP Village DIL Mortgage Loans or alternatively the First POP Village Mortgage Loan and the 2014 Mortgage Transfer,
 - (i) which were contrary to the terms of the DIL Trusts in that:
 - 1. the loan proceeds were not used for investment purposes in accordance with the mandate and policies of the ABC District's Church Extension Program as set out in paras. 50, 56 and 63 herein, but were instead advanced to ECHS in order to allow it to pursue speculative real estate development of the POP Village Lands and/or to provide operating capital to ABC District; and
 - 2. the Loans were not "qualifying investments" within the meaning of the *Income Tax Act*, RSC 1985, c. 1;
 - (ii) failed to exercise a reasonable degree of skill, care, diligence and judgment in the making of investments on behalf of the beneficiaries of the DIL Trusts by (including but not limited to):
 - 1. failing to take any reasonable steps, or any steps at all, to determine the market value of and equity in the POP Village Lands prior to granting and/or ~~assuming~~ approving the POP Village DIL Mortgage Loans or alternatively the First POP Village DIL Mortgage Loan and the 2014 Mortgage Transfer;
 - 2. failing to determine whether ECHS was capable of servicing the POP Village DIL Mortgage Loans prior to advancing the Loan proceeds and/or authorizing the 2014 Mortgage Transfer, in circumstances where ECHS was insolvent at the time that the Loans were granted;
 - 3. failing to conduct reasonable and timely, or any, reviews of the security or (lack thereof) given for the POP Village DIL Mortgage Loans or alternatively the First POP Village DIL Mortgage Loan and the 2014 Mortgage Transfer;
 - (iii) failed to establish and adhere to investment lending policies, standards and

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procedures that a reasonable and prudent person would apply and adhere to, including but not limited to the Loan Eligibility Policies, Loan Criteria and Loan Conditions as set out in paras. 66 – 69 herein with respect to the POP Village DIL Mortgage Loans and/or the First POP Village DIL Mortgage Loan and the 2014 Mortgage Transfer, in the manner set out in para. 121 herein; and

- b. authorized, or permitted DIL and/or ABC District to authorize, the Strathmore Loan,
 - (i) which was contrary to the terms of the DIL Trusts in that:
 - 1. the loan proceeds were not used for investment purposes in accordance with the mandate and policies of the ABC District’s Church Extension Program as set out in paras. 50, 56 and 63 herein, but instead were advanced to ABC District in order to provide operating capital and/or to service its obligations to the beneficiaries of the CEF Trust;
 - 2. the Loan was not a “qualifying investment” within the meaning of the *Income Tax Act*, RSC 1985, c. 1;
 - (ii) failed to exercise a reasonable degree of skill, care, diligence and judgment in the making of the Strathmore Loan on behalf of the beneficiaries of the DIL Trusts by:
 - 1. failing to ensure that the Strathmore Loan was secured by a registrable mortgage over the Strathmore Property;
 - 2. failing to conduct reasonable and timely reviews of the security for the Strathmore Loan on an ongoing basis;
 - 3. failing to obtain an appraisal or take another reasonable steps to determine the market value of the Strathmore Property prior to approving and advancing the Loan;
 - (iii) failing to establish and adhere to investment lending policies, standards and procedures that a reasonable and prudent person would apply and adhere to, including but not limited to the Loan Eligibility Policies, Loan Criteria and Loan Conditions as set out in paras. 66 – 69 herein with respect to the Strathmore Loan, in the manner set out in para. 144 herein,

all of which caused the Plaintiffs and putative AB DIL Class and Extraprovincial DIL Class members to suffer damages and loss.

169. Further, in breach of its fiduciary duties to the beneficiaries of the DIL Trusts, including the Plaintiffs, Concentra permitted its agent DIL to engage and continue to employ ABC District as its subagent and manager and to loan monies to ABC District and to ECHS which was under common ~~control~~ directorship with ABC District, despite its knowledge that:

- a. ECHS was a borrower from DIL in respect of the POP Village DIL Mortgage Loans

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and a borrower from ABC District in respect of the First and Second District – ECHS Mortgages ~~POP Village CEF Mortgage Loan~~, and was under common ~~control~~ directorship with both ABC District and DIL, which were under common ~~control~~ directorship with each other, which put both ABC District and DIL in a conflict of interest as between their duties to the beneficiaries to the DIL Trusts in respect of the POP Village DIL Mortgage Loans and their interests in the First and Second District – ECHS Mortgages ~~POP Village CEF Mortgage Loan~~, and which resulted in:

- (i) the approval of the POP Village DIL Mortgage Loans or alternatively the First POP Village DIL Mortgage Loan and the 2014 Mortgage Transfer, despite their contravention of the terms of the DIL Trusts, the Loan Eligibility Policies, the Loan Criteria and the Loan Conditions as set out in para. 121 herein and the insolvency of ECHS; and
- (ii) the registration of the POP Village DIL Mortgage Loans, or alternatively the First POP Village DIL Mortgage Loan and the 2014 Mortgage Transfer, in second and third priority behind the First POP Village CEF Mortgage Loan without the concurrent registration of the First and/or Second District – DIL Priority Agreements, or any priority agreements, in circumstances where the ~~Loan Mortgages~~ were at risk of being uncollectible by reason of the lack of equity in the POP Village Lands and the inability of ECHS to adequately manage or complete the project as set out in para. 120 herein, and for the benefit of ABC District and the Prince of Peace congregation; and

b. ABC District was a borrower from DIL in respect of the Strathmore Loan and was under common ~~control~~ directorship with DIL, which put both ABC District and DIL in a conflict of interest as between their duties to the beneficiaries of the DIL Trusts and their interest in the Strathmore Loan, and which resulted in:

- (i) the approval of the Strathmore Loan despite its contravention of the terms of the DIL Trust and the contravention of the Loan Eligibility Policies, Loan Criteria and Loan Conditions as set out in para. 144 herein; and
- (ii) the failure of ABC District and DIL to execute and register the Strathmore Mortgage against the title to the Strathmore Property at the time that the Strathmore Loan was advanced as set out in para. 136 herein,

all of which caused the Plaintiffs and putative AB DIL Class and Extraprovincial DIL Class members to suffer damages and loss.

170. Further, in breach of its duty of care to the DIL Depositors, Concentra failed to comply with and apply, and/or or ensure that the DIL and ABC District complied with and applied, the Loan Eligibility Policies, the Loan Criteria and the Loan Conditions:

- a. With respect to the POP Village DIL Mortgage Loans (or alternatively the First POP Village DIL Mortgage Loan and the Second POP Village CEF Mortgage Loan, as amended by the 2014 Mortgage Transfer ~~District – DIL Transfer of Mortgage~~), in the manner set out in para. 121 herein; and
- b. With respect to the Strathmore Loan, in the manner set out in para. 144 herein,

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all of which caused the Plaintiffs and putative AB DIL Class and Extraprovincial DIL Class members to suffer damages and loss.

K. Liability of DIL: Breach of trust, breach of fiduciary duty, and negligence

171. As the agent of Concentra, the trustee of the DIL Trusts, DIL owed the same duty of trust, fiduciary duties and duties of care to the beneficiaries of the DIL Trusts, including the Plaintiffs, as were owed by Concentra, as set in para. 167 herein.
172. DIL breached its duties to the beneficiaries of the DIL Trusts,
- a. With respect to the POP Village DIL Mortgage Loans, or alternatively the First POP Village DIL Mortgage Loan and the 2014 Mortgage Transfer, in the manner set out in paras. 168a., 169a. and 170a. herein,
 - b. With respect to the Strathmore Loan, in the manner set out in paras. 168b, 169b, and 170b. herein,

all of which caused the Plaintiffs and putative AB DIL Class and Extraprovincial DIL Class members to suffer damages and loss.

173. In the alternative, at all times material to these proceedings DIL acted as the agent of Concentra in the operation and administration of the DIL Trusts. The acts, omissions and breaches of duty of DIL as set out herein occurred within the normal course of the business of Concentra, and were within the actual or ostensible authority granted to DIL by Concentra. Accordingly, Concentra is vicariously liable for the acts, omissions and breaches of duty of DIL as set out herein.

L. Liability of the DIL Officers and Directors: Breach of Trust and Breach of Fiduciary Duty

(i) The 2008 DIL Officers and Directors

174. The 2008 DIL Officers and Directors had the same trust duties, fiduciary duties and duties of care as DIL had to the beneficiaries of the DIL Trusts, as set out in para. 171 herein.
175. The 2008 DIL Officers and Directors, or one or more or all of them, knew or were willfully blind or reckless to the fact that the Strathmore Loan contravened the mandate of the ABC District Church Extension Program and the terms of the DIL Trusts as set out in

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paras. 50, 56 and 63, and the Loan Eligibility Policies, the Loan Conditions and the Loan Criteria set out in paras. 66 – 69 herein.

176. Despite this knowledge, the 2008 DIL Officers and Directors, or one or more or all of them, in breach of their trust and fiduciary duties to the beneficiaries of the DIL Trusts, rendered assistance to DIL, Concentra and/or ABC District in the breach of the DIL Trusts by:

- a. authorizing, directing and approving the Strathmore Loan, for the financial benefit of ABC District, of which one or more or all of them were officers and directors, and not for the benefit of the beneficiaries of the DIL Trusts; and
- b. failing to disclose the matters set out in paras. 168(b) to the beneficiaries of the DIL Trusts.

177. As a result of the foregoing, the Plaintiffs and putative members of the AB DIL Class and Extraprovincial DIL Class have suffered damages and loss.

(a) The 2011 and/or 2014 DIL Officers and Directors

178. The 2011 and/or 2014 DIL Officers and Directors had the same fiduciary duties, trust duties and duties of care as DIL had to the beneficiaries of the DIL Trusts, as set out in para. 171 herein.

179. The 2011 DIL Officers and Directors and the 2014 DIL Officers and Directors, or one or more or all of them, knew or were willfully blind or reckless as to the fact that the POP Village DIL Mortgage Loans, or alternatively the First POP Village DIL Mortgage Loan and the 2014 Mortgage Transfer, contravened the mandate of the ABC District Church Extension Program and the terms of the DIL Trusts as set out in paras. 50, 56 and 63 herein, the Loan Eligibility Policies, the Loan Conditions and the Loan Criteria set out in paras. 66 – 69 herein, and were unlikely to be collectible in the event of default by ECHS.

180. Despite this knowledge, the 2011 and/or 2014 DIL Officers and Directors, or one or more or all of them, in breach of their trust and fiduciary duties and their duty of care to the beneficiaries of the DIL Trusts, including the Plaintiffs, rendered knowing assistance to DIL, Concentra and/or ABC District in the breach of the DIL Trusts by authorizing, directing, and approving the execution, funding and registration of the POP Village DIL Mortgage Loans, or alternatively the First POP Village DIL Mortgage Loan and the 2014 Mortgage Transfer, in second and third priority to the District – ECHS Mortgage ~~First POP Village CEF Mortgage Loan~~, for the benefit of:

- a. With respect to the First and Second POP Village DIL Mortgage Loans: for the benefit of the Prince of Peace Congregation and ECHS in their interests in completion of the POP Village development, and for the benefit of ABC District in order to protect ABC District's interest in the District – ECHS Mortgage ~~First POP Village CEF Mortgage Loan~~; or alternatively,

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b. With respect to:

- (i) the First POP Village DIL Mortgage Loan: for the benefit of the Prince of Peace Congregation and ECHS in the completion of the POP Village development, and in order to protect ABC District's interest in the District – ECHS Mortgage ~~First POP Village CEF Mortgage Loan~~;
- (ii) the Second POP Village ~~CEF~~ DIL Mortgage Loan, as amended by the 2014 ~~Transfer of Mortgage~~ Transfer: in order to provide capital to the ABC District with which to carry on its operations, fund additional loans to ECHS and meet its obligations to the beneficiaries of the CEF Trust.

181. Further, the 2011 and/or 2014 DIL Officers and Directors failed to disclose to the beneficiaries of the DIL Trusts the matters set out in paras. 168(a) and 179 - 180 herein.

182. Further, despite their knowledge of the facts and matters set out in paras. 168(a) and 179 – 180 ~~183 and 184~~ herein, and despite knowing that the Strathmore Mortgage was unenforceable by reason of the 6.5 year delay in registration, and despite knowing that ABC District, Encharis and DIL were insolvent and planning to seek protection from their creditors pursuant to the CCAA Proceedings, the 2014 DIL Officers and Directors continued to encourage and accept deposits to the DIL Trusts by the Plaintiffs and putative BC DIL Class and Extraprovincial DIL Class members, up to and including December 31, 2014.

183. As a result of the foregoing, the Plaintiffs and putative AB DIL Class and Extraprovincial DIL Class members have suffered damages and loss.

M. Liability of ABC District: Breach of trust, breach of fiduciary duty, and negligence

184. As the sub-agent of DIL, ABC District owed the same duty of trust, fiduciary duties and duties of care to the beneficiaries of the DIL Trust, including the Plaintiffs, as were owed by Concentra and DIL, as set in paras. 167 and 171 herein.

185. ABC District breached its duties to the beneficiaries of the DIL Trust,

- a. With respect to the POP Village DIL Mortgage Loans (or alternatively the First POP Village DIL Mortgage Loan and the ~~Second POP Village CEF Mortgage Loan, as amended by the 2014 Mortgage Transfer~~ District – DIL Transfer of Mortgage) in the manner set out in paras. 169a. and 170a herein, and in acting as the subagent of DIL and the manager of the DIL Trusts when it was in a conflict of interest with the beneficiaries of the DIL Trusts as set out in para. 170a herein,
- b. With respect to the Strathmore Loan, in the manner set out in paras. 169b and 174**0**b

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herein, and in acting as the subagent of DIL and the manager of the DIL Trust when it was in a conflict of interest with the beneficiaries of the DIL Trusts as set out in para. ~~170~~169b herein,

all of which caused the Plaintiffs and putative AB DIL Class and Sub-class and Extraprovincial DIL Class members to suffer damages and loss.

186. In the alternative, at all times material to these proceedings ABC District acted as the sub-agent of DIL, which was the agent of Concentra in the operation and administration of the DIL Trusts. The acts, omissions and breaches of duty of ABC District as set out herein occurred within the normal course of the business of Concentra and/or DIL, and were within the actual or ostensible authority granted to ABC District by Concentra and/or DIL. Accordingly, Concentra is vicariously liable for the acts, omissions and breaches of duty of ABC District as set out herein.

N. Liability of ABC District Directors

(i) The 2008 ABC District Directors

187. The 2008 ABC District Directors had the same fiduciary duties, trust duties and duty of care as ABC District had to the beneficiaries of the DIL Trusts in its capacity as sub-agent to DIL and the manager of the DIL Trusts, as set out in paras. 167 and 171 herein.

188. The 2008 ABC District Directors, or one or more or all of them, knew or were reckless or willfully blind to the fact that the Strathmore Loan contravened the mandate of the ABC District Church Extension Program and the terms of the DIL Trusts as set out in paras. 50, 56 and 63 herein, and the Loan Eligibility Policies, the Loan Conditions and the Loan Criteria as set out in paras. 66 – 69 herein, in the manner set out in paras. 141 - 144 herein.

189. Despite this knowledge, the 2008 ABC District Directors, or one or more or all of them, in breach of their trust and fiduciary duties and duty of care to the beneficiaries of the DIL Trusts, rendered assistance to ABC District, DIL and Concentra in the breach of the DIL Trusts by authorizing, directing and approving the Strathmore Loan for the financial benefit of ABC District in its own capacity in order to obtain operating capital and funds with which to meet its obligations to the beneficiaries of the CEF Trust, and not for the benefit of the beneficiaries of the DIL Trusts.

190. Further, the 2008 ABC District Directors failed to disclose to the beneficiaries of the DIL Trusts the matters set out in paras. 168b and 188-189 herein.

191. As a result of the foregoing, the Plaintiffs and putative AB DIL Class and Extraprovincial DIL Class members have suffered damages and loss.

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(b) The 2011 and/or 2014 ABC District Directors

192. The 2011 and/or 2014 ABC District Directors had the same fiduciary duties, trust duties and duty of care as ABC District had to the beneficiaries of the DIL Trusts as sub-agent to DIL and manager of the DIL Trust, as set out in para. 184~~5~~ herein.
193. The 2011 District H Officers and Directors and/or the 2014 District H Officers and Directors, or one or more or all of them, knew or were willfully blind or reckless as to the fact that the POP Village DIL Mortgage Loan(s) ~~and/or alternatively the First POP Village DIL Mortgage Loan~~ and the 2014 Mortgage Transfer contravened the mandate of the ABC District Church Extension Program and the terms of the DIL Trust as set out in paras. 50, 56 and 63 herein, and the Loan Eligibility Policies, the Loan Conditions and the Loan Criteria, as set out in paras. 66 – 69 herein, in the manner set out in para. 121 herein.
194. Despite this knowledge, the 2011 and/or 2014 ABC District Officers and Directors, or one or more or all of them, in breach of their trust and fiduciary duties and duty of care to the beneficiaries of the DIL Trusts, rendered assistance to Concentra, DIL and/or ABC District in the breach of the DIL Trusts by authorizing, directing and approving the execution, funding and registration of the POP Village DIL Mortgage Loan(s) and/or the First POP Village DIL Mortgage Loan and the 2014 Mortgage Transfer in second and third priority to the ~~First POP Village CEF Mortgage Loan District – ECHS Mortgage~~, for the financial benefit of the Prince of Peace Congregation and ECHS, and in order to protect ABC District's own interest in the ~~First POP Village CEF Mortgage Loan District – ECHS Mortgage~~, and not for the benefit of the beneficiaries of the DIL Trust.
195. Further, the 2011 and/or 2014 ABC District Directors failed to disclose to the beneficiaries of the DIL Trusts the facts and matters set out in paras. 172(a) herein.
196. Further, despite their knowledge of the facts and matters set out in paras. ~~195 – 196~~ ~~197–198~~ herein, and despite their knowledge that the POP Village DIL Mortgage Loans would be uncollectable in the event that ECHS defaulted on the Loans, and despite their knowledge that the Strathmore Loan had not been secured by a mortgage and that by reason of the 6.5 year delay in registration would not be collectible in the event that it defaulted on the Loan, and despite knowing that ABC District, DIL and Encharis were insolvent and planning to seek protection from their creditors pursuant to the CCAA Proceedings, the 2014 ABC District Directors or one or more or all of them continued to encourage and accept deposits to the DIL Trusts by the Plaintiffs and putative BC DIL Class and Extraprovincial DIL Class members, up to and including December 31, 2014.
197. As a result of the facts and matters set out herein, the Plaintiffs and putative AB DIL Class and Extraprovincial DIL Class members have suffered damages and loss.

O. Liability of LCC and LCCFM

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(a) As Joint Enterprisers with DIL and District

198. As participants in the joint enterprise that is the ABC District’s Church Extension program, of which the DIL Trust is a component along with the CEF Trust, as set out in para. 57 herein, LCC and/or LCCFM are jointly and severally liable to the Plaintiffs and putative Class members along with ABC District and DIL for ABC District’s and DIL’s breaches of the DIL Trusts, breaches of fiduciary duty and negligence as set out in paras. 172 and 185 herein.

(b) For Rendering Knowing Assistance to Breach of Trust and Breach of Fiduciary Duty

199. In the alternative, LCC and/or LCCFM knew of or were willfully blind or reckless to the breaches of trust and breaches of fiduciary duty committed by Concentra, DIL and/or ABC District as set out in paras. 168, 172 and 185 herein, and knowingly assisted in those breaches of trust and breaches of fiduciary duty by:

- a. reviewing and approving the POP Village DIL Mortgages, or alternatively the First POP Village DIL Mortgage Loan and the 2014 Mortgage Transfer, and the Strathmore Loan; and
- b. allowing the ABC District to continue to operate the ABC District Church Extension Fund program despite the failure of ABC District and DIL to comply with and apply the Loan Eligibility Policies, the Loan Conditions and the Loan Criteria,
 - (i) with respect to the POP Village DIL Mortgage Loans or alternatively the First POP Village DIL Mortgage Loan and the 2014 Mortgage Transfer, as set out in para. 121 herein; and
 - (ii) with respect to the Strathmore Loan, in the manner set out in para. 141 - 144 herein; and
- c. permitting the ABC District to manage and operate the ABC District Church Extension Program in circumstances where it was acting in a conflict of its duties to the beneficiaries of the DIL Trust, its duties to the beneficiaries of the CEF Trusts, and its interests as a debtor to DIL on its own behalf and its interests as a creditor to ECHS on its own behalf.

200. As a result of the foregoing the Plaintiff and putative AB DIL Class and Extraprovincial DIL Class have suffered damages and loss for which LCC and LCCFM are jointly and severally liable along with Concentra, DIL and ABC District.

(c) Vicarious Liability for Acts and Omissions of ABC District

201. In the alternative, at all times material to these proceedings the ABC District acted as the agent of LCC and/or LCCFM in the operation and administration of the ABC District’s Church Extension Program as set out in paras. 50, 56 and 63 herein. The acts, omissions and breaches of duty of ABC District as set out in para. 184 – 185 herein occurred within

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the normal course of the business of LCC and/or LCCFM's Church Extension Program, and were within the actual or ostensible authority granted to ABC District by LCC and/or LCCFM. Accordingly, LCC and/or LCCFM are vicariously liable for the acts, omissions and breaches of duty of ABC District set out herein.

P. Liability of Chowne, Williams and Prowse Chowne: Rendering Knowing Assistance to Breach of Trust and Breach of Fiduciary Duty

202. In January 2006, Chowne and Prowse Chowne were the solicitors for ABC District in respect of the District – ECHS Mortgage POP Village CEF Mortgage Loan.
203. In 2008, Chowne and Prowse Chowne were the solicitors for both ABC District and DIL in respect of the Strathmore Loan.
204. Chowne and Prows Chowne knew, or were willfully blind or reckless as to the following facts:
- a. ABC District was both the manager of the DIL Trust and the borrower from the DIL Trust in respect of the Strathmore Loan;
 - b. ABC District and DIL shared common directors;
 - c. In breach of their duties of trust and fiduciary duties to the beneficiaries of the DIL Trusts, Concentra and DIL had failed to prepare a form of mortgage for execution by ABC District to secure the Strathmore Loan; or alternatively,
 - d. In breach of its duty of trust and fiduciary duties to the beneficiaries of the DIL Trusts, ABC District had failed to execute a form of mortgage to secure the Strathmore Loan; and
 - e. The Strathmore Loan was unsecured at the time that the proceeds of the Loan were advanced from DIL to ABC District.
205. Chowne and Prowse Chowne knowingly assisted in breaches of fiduciary duty and breaches of trust by Concentra, ABC District and DIL to the beneficiaries of the DIL Trusts by facilitating the Strathmore Loan when it knew, or was willfully blind or reckless as to the matters set out in para. 204 herein, and accordingly are jointly and severally liable with Concentra, ABC District and/or DIL for those breaches.
206. In November 2011, Chowne and Prowse Chowne were the solicitors for both ABC District and DIL in respect of the POP Village DIL Mortgage Loans (or alternatively, the First POP Village DIL Mortgage Loan), and the First ABC District – DIL Priority Agreement.
207. In the alternative, in November 2011 Chowne and Prowse Chowne were the solicitors for both ABC District and DIL in respect of the First POP Village DIL Mortgage Loan and the First ABC District – DIL Priority Agreement, and counsel for ABC District in respect of the Second POP Village CEF Mortgage Loan, and in November 2014, Williams and Prowse Chowne were counsel to both ABC District and

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DIL in respect of the 2014 Mortgage Transfer and the Second ABC District – DIL Priority Agreement.

208. Chowne, Williams and Prowse Chowne knew, or were willfully blind or reckless as to the following facts:

- a. ABC District was the manager of the DIL Trusts and the subagent to DIL, which was the agent of the trustee Concentra;
- b. ABC District held the ~~First POP Village CEF Mortgage Loan~~ District – ECHS Mortgage over the POP Village Lands, in the amount of \$45,000,000.00;
- c. ABC District was a party adverse in interest to DIL by way of the priority of the District – ECHS Mortgage ~~POP Village CEF Mortgage Loan~~ over any subsequent secured loans granted to ECHS by DIL in respect of the POP Village Lands;
- d. Any mortgage granted by DIL to ECHS which was secured by the POP Village Lands and registered in second or third priority after the District – ECHS Mortgage ~~First POP Village CEF Mortgage~~ was at risk of being uncollectible as a result of inadequate equity in the POP Village Lands and the insolvency of ECHS; and
- e. The POP Village DIL Mortgage Loans, or alternatively the First POP Village DIL Mortgage Loan and the 2014 Mortgage Transfer, contravened the mandate of the ABC District Church Extension Fund and the terms of the DIL Trusts as set out in paras. 50, 56 and 63 herein, and the Loan Eligibility Policies, the Loan Conditions and the Loan Criteria as set out in paras. 66 – 69 herein, and in the manner set out in paras. 121 and 141 - 144 herein.

209. Further, Chowne, Williams and Prowse Chowne knowingly assisted and facilitated Concentra's, ABC District's and DIL's breaches of their trust and fiduciary duties to the beneficiaries of the DIL Trusts, including the Plaintiffs and the putative class members, as set out in paras. 471— 172a and 484— 185a herein, by:

- a. Preparing and registering the POP Village DIL Mortgage Loans, or alternatively, the First POP Village DIL Mortgage Loan and the 2014 Mortgage Transfer, when they know or were reckless or willfully blind to the fact that they which contravened the mandate of the ABC District Church Extension Program and the terms of the DIL Trusts as set out in paras. 50, 56 and 63 herein, and the Loan Eligibility Policies, the Loan Conditions and the Loan Criteria as set out in paras. 66 – 69 herein, and in the manner set out in para. 121 and 141 - 144 herein; and
- b. By registering the POP Village DIL Mortgage Loans or alternatively the First POP Village DIL Mortgage Loan and the 2014 Mortgage Transfer when they knew or were willfully blind or reckless as to the absence of the First and/or Second ABC District – DIL Priority Agreement, or any priority agreement, that would have ensured that the POP Village DIL Mortgage Loans, or alternatively the First POP Village DIL Mortgage Loan and the 2014 Mortgage Transfer,

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were registered in priority to the First POP Village CEF Mortgage,

all of which caused damages and loss to the Plaintiffs and the putative members of the AB DIL Class and the Extraprovincial DIL Class.

210. Accordingly, Chowne, Williams and Prowse Chowne are jointly and severally liable along with the ABC District, DIL and Concentra for the damages and loss caused to the Plaintiffs and putative AB DIL Class and Extraprovincial DIL Class members as a result of those breaches of duty.
211. Further, at all times material to this proceeding Chowne and Williams were acting in the ordinary course of the business of Prowse Chowne LLP and/or with the authority of their partners therein. Accordingly, Prowse Chowne LLP is vicariously liable for Chowne's and Williams' breaches of duty and wrongful acts as set out herein.
212. In the alternative, Prowse Chowne LLP had actual knowledge of the wrongful conduct of Williams and Chowne as set out herein, or was reckless or willfully blind thereto. Therefore, Prowse Chowne is liable to the Plaintiffs and putative AB DIL Class and Extraprovincial DIL Class members for the conduct of Chowne and Williams as set out herein.

Q. Liability of ECHS: Knowing Receipt of Monies Acquired in Breach of Trust

213. ECHS knew, or ought to have known, or was willfully blind or reckless as to the fact that the POP Village DIL Mortgage Loans, or alternatively the First POP Village DIL Mortgage Loan, contravened the intent and mandate of the ABC District Church Extension Fund Program and the terms of the DIL Trusts as set out in paras. 50, 56 and 63 herein, and the Loan Eligibility Policies, the Loan Criteria and the Loan Conditions as set out in paras. 66 – 69 herein, in the manner set out in paras. 121 and 141 - 144 herein.
214. Despite this knowledge, ECHS willingly accepted and received the proceeds of the POP Village DIL Mortgage Loans (or alternatively the First POP Village DIL Mortgage Loan) from DIL, which has caused the ~~BC~~ AB DIL Class and the Extraprovincial DIL Class to suffer damages and loss.
215. ECHS holds the proceeds of the POP Village DIL Mortgage Loans (or alternatively the First POP Village DIL Mortgage Loan) paid to it in breach of the DIL Trusts on a constructive trust for the beneficiaries of the DIL Trusts, including the Plaintiff.

R. Liability of 2011 ECHS Directors

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216. The 2011 ECHS Directors knew or ought to have known or were willfully blind or reckless as to the fact that:
- a. the proceeds of the POP Village DIL Mortgage Loans (or alternatively the First POP Village DIL Mortgage Loan) were monies acquired in breach of the DIL Trusts;
 - b. that there was insufficient equity in the POP Village Lands to secure the POP Village DIL Mortgage Loans (or alternatively the First POP Village DIL Mortgage Loan); and
 - c. ECHS was insolvent and unable to repay the POP Village DIL Mortgage Loans.
217. However, the 2011 ECHS Directors, or one or more or all of them, knowingly accepted and received the Loan proceeds on behalf of ECHS, and/or rendered knowing assistance to the breach of the DIL Trust by seeking and negotiating the Loan(s) which caused the beneficiaries of the DIL Trusts, including the Plaintiffs and putative ~~BC~~ AB DIL Class and Extraprovincial DIL Class members, damages and loss.

S. Liability of Taman and Bishop & McKenzie: Rendering Knowing Assistance to Receipt of Monies Acquired in Breach of Trust

218. At all times material to these proceedings Taman was a member of the POP Congregation, the Chairman of the POP Congregation's Housing Committee responsible for advancing the POP Village development, counsel for both ABC District and ECHS and a director, officer, like official or principal of both ABC District and ECHS.
219. Taman knew, or was reckless or willfully blind to the fact that the use of DIL Trusts monies to finance the development of the POP Village Lands contravened the intent and purpose of the ABC District Church Extension Program and the terms of the DIL Trusts as set out in paras. 50, 56 and 63 and the Loan Eligibility Policies, Loan Criteria and Loan Conditions as set out in paras. 66 – 69, in the manner set out in para. 121.
220. By advising ECHS with respect to the POP Village DIL Mortgage Loans (or alternatively the First POP Village DIL Mortgage Loan) and negotiating those Loan(s) with ABC District and DIL, Taman rendered knowing assistance to ECHS's knowing receipt of DIL Trusts monies acquired in breach of the DIL Trusts, which caused the Plaintiffs and putative AB DIL Class and Extraprovincial DIL Class members to suffer damages and loss.
221. Further, at all times material to this proceeding Taman was acting in the ordinary course of the business of Bishop & McKenzie or with the authority of his partners therein. Accordingly, Bishop & McKenzie is vicariously liable for Taman's breaches of duty and wrongful acts as set out herein.
222. In the alternative, Bishop & McKenzie had actual knowledge of the wrongful conduct of Taman as set out herein, or was reckless or willfully blind thereto. Therefore, Bishop & McKenzie is liable to the Plaintiffs and putative AB DIL Class and Extraprovincial DIL Class members for the wrongful conduct of Taman as set out herein.

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REMEDY SOUGHT

223. The Plaintiffs claim on their own behalf and on behalf of the AB DIL Class and the Extraprovincial DIL Class, the following relief:

- a. In respect of the Strathmore Loan, and jointly and severally:
 - (i) As against the Defendants Concentra, ~~DIL, ABC District~~, LCC and LCCFM, jointly and severally:
 1. Damages for breach of fiduciary duty;
 2. Damages for breach of trust;
 3. Damages for negligence;
 4. An order for restitution;
 5. An accounting;
 6. A constructive trust;
 7. Pre-judgment interest in accordance with the *Judgment Interest Act*;
 8. Costs of this proceeding; and
 9. Such further and other relief as this Court deems just.
 - (ii) As against the Defendants ~~the 2008 ABC District Directors, the 2008 DIL Officers and Directors~~, Chowne, Prowse Chowne, LCC and LCCFM:
 1. Damages for rendering knowing assistance to a breach of trust;
 2. Damages for rendering knowing assistance to a breach of fiduciary duty;
 3. A constructive trust;
 4. An accounting;
 5. Pre-judgment interest in accordance with the *Judgment Interest Act*;
 6. Costs of this proceeding; and
 7. Such further and other relief as this Court deems just.
- b. In respect of the ~~First~~ POP Village DIL Mortgage Loans, and jointly and severally:
 - (i) As against the Defendants Concentra, ~~DIL, ABC District~~, LCC and LCCFM, jointly and severally:
 1. Damages for breach of trust;
 2. Damages for breach of fiduciary duty;
 3. Damages for negligence;
 4. An order for restitution;
 5. A constructive trust;
 6. An accounting;
 7. Pre-judgment interest in accordance with the *Judgment Interest Act*;
 8. Costs of this proceeding; and
 9. Such further and other relief as this Court deems just.
 - (ii) As against the Defendants ~~the 2011 DIL Officers and Directors, the 2011 ABC District Directors~~, Chowne and Prowse Chowne, jointly and severally:
 1. Damages for rendering knowing assistance to a breach of trust;
 2. Damages for rendering knowing assistance to a breach of fiduciary duty;
 3. An accounting;

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4. A constructive trust;
 5. Prejudgment interest in accordance with the *Judgment Interest Act*;
 6. Costs of this proceeding; and
 7. Such further and other relief as this Court deems just.
- (iii) ~~As against ECHS:~~
- ~~1. Damages for knowing receipt of monies acquired in breach of trust;~~
 - ~~2. An accounting;~~
 - ~~3. A constructive trust;~~
 - ~~4. An order for restitution;~~
 - ~~5. Prejudgment interest in accordance with the *Judgment Interest Act*;~~
 - ~~6. Costs of this proceeding; and~~
 - ~~7. Such further and other relief as this Court deems just.~~
- (iv) As against the 2011 ECHS Directors, Taman and Bishop & McKenzie:
1. Damages for rendering knowing assistance to a breach of trust;
 2. An accounting;
 3. A constructive trust;
 4. Prejudgment interest in accordance with the *Judgment Interest Act*;
 5. Costs of this proceeding; and
 6. Such further and other relief as this Court deems just.
- c. In the alternative to (b) above, in respect of the First POP Village DIL Mortgage Loan and the 2014 Mortgage Transfer, and jointly and severally:
- (i) As against the Defendants Concentra, DIL, ABC District, LCC and LCCFM, jointly and severally:
1. Damages for breach of trust;
 2. Damages for breach of fiduciary duty;
 3. Damages for negligence;
 4. A constructive trust;
 5. An accounting;
 6. Pre-judgment interest in accordance with the *Judgment Interest Act*;
 7. Costs of this proceeding; and
 8. Such further and other relief as this Court deems just.
- (ii) As against the Defendants the 2011 DIL Officers and Directors, the 2011 ABC District Directors, Chowne and Prowse Chowne, jointly and severally:
1. Damages for rendering knowing assistance to a breach of trust;
 2. Damages for rendering knowing assistance to a breach of fiduciary duty;
 3. An accounting;
 4. A constructive trust;
 5. Prejudgment interest in accordance with the *Judgment Interest Act*;
 6. Costs of this proceeding; and
 7. Such further and other relief as this Court deems just.
- (iii) ~~As against ECHS:~~
- ~~1. Damages for knowing receipt of monies acquired in breach of trust;~~

- ~~2. An accounting;~~
 - ~~3. A constructive trust;~~
 - ~~4. An order for restitution;~~
 - ~~5. Prejudgment interest in accordance with the *Judgment Interest Act*;~~
 - ~~6. Costs of this proceeding; and~~
 - ~~7. Such further and other relief as this Court deems just.~~
- (iv) As against the 2011 ECHS Directors, Taman and Bishop & McKenzie:
1. Damages for rendering knowing assistance to a breach of trust;
 2. An accounting;
 3. A constructive trust;
 4. Prejudgment interest in accordance with the *Judgment Interest Act*;
 5. Costs of this proceeding; and
 6. Such further and other relief as this Court deems just.
- (v) As against the 2014 ABC District Officers and Directors, the 2014 DIL Directors, Chowne, Williams and Prowse Chowne, jointly and severally:
1. Damages for rendering knowing assistance to a breach of trust;
 2. Damages for rendering knowing assistance to a breach of fiduciary duty;
 3. A constructive trust;
 4. An accounting;
 5. Pre-judgment interest in accordance with the *Judgment Interest Act*;
 6. Costs of this proceeding; and
 7. Such further and other relief as this Court deems just.

PIERRINGER AGREEMENT

224. On March 24, 2021, the Plaintiffs entered into a Pierringer Agreement with DIL, ABC District, the 2008 ABC District Directors, the 2008 DIL Officers and Directors, the 2011 DIL Officers and Directors, the 2011 ABC District Directors, ECHS, the 2011 ECHS Directors, the 2014 ABC District Officers and Directors, and the 2014 DIL Directors (the "Settling Parties") whereby the Plaintiffs agreed to discontinue their claims against the Settling Parties.

225. Accordingly, and pursuant to the terms of the Pierringer Agreement and the Order of the Court dated November 25, 2021 dismissing this Action as against the Settling Parties and which is no longer appealable, the Plaintiffs hereby expressly waive any right to recover from Concentra, LCC, LCCFM, Williams, Chowne, Prowse Chowne, Taman and Bishop & McKenzie (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 Settling Parties for which any of the Non-Settling Parties might reasonably be entitled to claim contribution, indemnity or an apportionment against the 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. All liability of the the Non-Settling Parties to the Plaintiffs for any claims for which the Non-Settling Parties could seek contribution or indemnification from a Settling Party is hereby extinguished.

NOTICE TO THE DEFENDANTS

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Edmonton, Alberta, AND serving your statement of defence or a demand for notice on the Plaintiff' address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.

SCHEDULE “C”

APPROVAL NOTICE

DIL Representative Action

*Reid Glenn et al v. Concentra Trust et al,
ABQB 1801 - 03538*

If you are a DIL Depositor in the Lutheran Church – Canada, Alberta British Columbia District Investment Ltd. (“DIL”) RRSP/RRIF/TFSA Fund (the “DIL Fund”), and as a result sustained damage to your investments, this notice may affect your legal rights. Please read it carefully.

On (date), the Court approved a partial settlement (the “Settlement”) of the class action *Reid Glenn et al v. Concentra Trust et al* (the “DIL Representative Action”). The DIL Representative Action concerns the alleged mismanagement of DIL Depositors’ funds in the DIL Fund. A copy of the court’s Approval and Certification Order and of the terms of the Settlement, as set out in the Settlement Agreement referenced in the Approval and Certification Order, can be found on Class Counsel’s website (www.smrlaw.ca). Except to the extent that they are set out in or modified by the Approval and Certification Order and the previous Notice Approval Order in this Action, the definitions set out in the Settlement Agreement apply to and are incorporated into this Notice.

Who is Eligible to participate in the Settlement?

To be eligible to participate in the Settlement, you must be a member of the Settlement Class, which is defined as follows:

- a. people resident in Alberta, and the estates of such people where applicable, who on January 2, 2015 were depositors to The Lutheran Church – Canada, Alberta and British Columbia District Investments Ltd. and who elected or are deemed to have elected to participate in and had not opted out of the Representative Action referred to in Article 5.1 of the Amended Amended Plan of Arrangement of DIL prepared and sanctioned in the CCAA Proceedings (the “DIL Plan”) in the manner set out in Art. 5.7 of that Plan prior to the commencement of the DIL Representative Action; and
- b. people resident outside of Alberta, and the estates of such people where applicable, who on January 2, 2015 were depositors to The Lutheran Church – Canada, Alberta and British Columbia District Investments Ltd. and who elected or are deemed to have elected to participate in and who had not opted out of the Representative Action referred to in Article 5.1 of the DIL Plan in the manner set out in Art. 5.7 of that Plan prior to the commencement of the Representative Action.

If you are a member of the DIL Representative Action Class **you will automatically be included** in this Representative Action and are not required to take any further steps at this

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stage.

The Terms of the Proposed Settlement

Under the Settlement Agreement, members of the Representative Action Class will be entitled to payment of the following amounts by the Settling Defendants.

The total settlement amount under the settlement and the portion thereof allocated as between this DIL Representative Action (the “Settlement Funds”) and the District Representative Action is accessible through the computer portal as described below. Each member of the Representative Action Class will be paid a proportionate share of the Settlement Funds, calculated as follows:

**Total
Settlement
Funds**

\$to remain
undisclosed but still
part of the
calculation

**LESS District
Settlement
Allocation**

\$to remain
undisclosed but still
part of the
calculation

**DIL
Settlement
Allocation**

\$to remain
undisclosed but still
part of the
calculation

LESS

\$* to augment the existing litigation holdback, to cover costs associated with the settlement approval process which are not incurred by the time of distribution, potential future costs and disbursements in the Representative Action and to protect the Representative Plaintiffs in this Action against potential adverse court costs, or in

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such other amount as the court may direct.

LESS

\$* estimated class counsel legal fees plus 5% GST, subject to approval by the Court.

LESS

\$* Estimated third party professional fees related to court approval of the Settlement Agreement and distribution of the Settlement Funds

Your share of the Distribution is proposed to be determined proportionately as follows:

Net Amount of Settlement Funds available for distribution:

\$to remain undisclosed but still part of the calculation

Multiplied by the following fraction:

Total amount of each member’s “Remaining Claim”*
divided by
the Total Amount of all Representative Action Class members’ Remaining Claims*

*as determined by the Monitor in the CCAA Proceedings.

Your share of the Settlement Funds is calculated to be \$*, subject to adjustments made by the Claims Administrator. To view the amount of your share as updated from time to time, subject to adjustments, go to (insert website) (the “Portal”) and input your personalized passcode (insert personalized passcode).

The information in the Portal is confidential and is not to be divulged except to anyone assisting

SCHEDULE “C”

you with computer access and/or your professional advisors on a confidential basis.

A copy of the Settlement Agreement can be found on Class Counsel’s website: www.smrlaw.ca

UNLESS AN APPEAL OF THE SETTLEMENT APPROVAL ORDER IS FILED, YOUR SHARE OF THE SETTLEMENT FUNDS SHALL BE PAID TO YOU AS FOLLOWS:

(A) Class members born in 1950 or later and who hold or have held a registered account (RRSP or TFSA) with Canada Life (formerly Great West Life) established during the course of the CCAA Proceedings (a “Successor Account”): payment of your portion of the settlement funds will be made by electronic transfer to your Successor Account no later than February 15, 2022. Inactive Successor Accounts will be re-activated for this purpose. If this applies to you, you do not need to do anything else to receive your payment;

(B) Class members:

- a. born in 1950 or later who have never held a Successor Account, or
- b. born in 1949 or earlier,

may elect to receive payment of their proportionate share of the Settlement Funds in one of the following ways, by indicating their election through the Portal or in writing using the enclosed DIL Representative Action Settlement Funds Payment Election Form and received by the Claims Administrator at the address below **no later than March 1, 2022:**

- a. a cheque made payable to you and mailed by regular mail no later than April 1, 2022 to your last known mailing address according to records maintained by the Monitor in the CCAA Proceedings, with requisite financial reporting to the Canada Revenue Agency (CRA) and associated statutory withholdings performed and paid to the CRA by the Settlement Administrator, MNP Ltd.; or
- b. an electronic transfer to a registered account (RRSP or RRIF) of your choosing no later than April 1, 2022, as directed by the Class member through the Portal.

(C) Deceased class members:

- a. Where there is an open Successor Account in respect of the deceased class member, payment of settlement funds will be made to that Account for the benefit of the class member’s designated beneficiary(ies) no later than February 15, 2022; or alternatively,
- b. Where there is no open Successor Account, and upon notification of the Settlement Administrator by the deceased’s class member’s

SCHEDULE "C"

Personal Representative that the class member is deceased, and provision of certified copies of the class member's death certificate and grant of probate through the Portal no later than March 1, 2022¹, payment of settlement funds shall be made by cheque made payable to the deceased class member's Estate mailed by regular mail no later than April 1, 2022 to the address provided by the Legal Representative, with requisite financial reporting to the CRA and associated statutory withholdings performed and paid to the CRA by the Settlement Administrator MNP Ltd.

Please note: your election as to how you will choose to receive your settlement payment may trigger income tax consequences. Neither Errin A. Poyner, Sugden McFee & Roos LLP nor MNP Ltd. are providing any income tax advice to the members of the DIL Representative Action Class. Please consult your own tax advisor before making any election.

Funds for any settlement payments unclaimed after six months from the date of mailing of this Notice or cheques uncashed after 6 months from the date of mailing will be added to the litigation fund referenced above.

Please direct any questions concerning this Approval Notice to:

SUGDEN McFEE & ROOS LLP (Class Counsel)

Attention: Errin A. Poyner
700 – 375 Water Street,
Vancouver, B.C. V6B 5C6
Tel: 604-687-7700 Fax: 604-687-5596
Email: dilrepaaction@smrlaw.ca
For further information go to www.smrlaw.ca

MNP LLP (Claims Administrator)

Attention: Rick Anderson 1500,
640 – 5 Ave SW
Calgary, AB T2P 3G4
Tel: 403-538-3187
Email: dillccsettlement@mnp.ca
For further information: www.mnp.ca/dillccsettlement

¹ If this Approval Notice has been addressed to the deceased class member's Estate, the class member's Personal Representative is not required to provide certified copies of the death certificate and grant of probate to the Claims Administrator. Payment will be made as set out in para. (c) above.

SCHEDULE "C"

**DIL REPRESENTATIVE ACTION
SETTLEMENT FUNDS PAYMENT ELECTION FORM**

I, _____, a member of the DIL Representative Action Class, hereby elect to receive my proportionate share of the Settlement Funds payable to the Class in his proceeding as follows (please check only one option below):

_____ By mail to my last known mailing address as determined by reference to the records held by the Monitor in the CCAA Proceedings, or alternatively to the following address:

_____.

_____ By electronic transfer to the following RRSP or RRIF Account:

Name of account holder: _____

Telephone number of account holder: _____

Date of birth: _____

Social Insurance Number: _____

Name of Financial Institution: _____

Address of Financial Institution (branch): _____

Account number: _____

Date: _____

Signed: _____

Print name:

IMPORTANT INFORMATION BELOW, PLEASE NOTE:

Please return your completed and signed Election Form to the Settlement Administrator MNP Ltd. Attention; Rick Anderson at 640 – 5 Avenue W, Calgary AB T2P 3G4 no later than March 1, 2022. Election Forms received after March 1, 2022 or which are unsigned or do not indicate an election will be disregarded and your payment will be made by cheque delivered by regular mail to your last known mailing address determined in accordance with the records kept by the Monitor in the CCAA Proceedings.

Your election as to how you will choose to receive your settlement payment may trigger income tax consequences. Neither Errin A. Poyner, Sugden McFee & Roos LLP nor MNP Ltd. are providing any income tax advice to the members of the DIL Representative Action Class in this or any other matter. Please consult your own tax advisor before making any election.

The funds for any cheques remaining uncashed 6 months following the date of issuance will be added to the DIL Representative Action Class Litigation Fund.

SCHEDULE "C"