

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C.
1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
GFA WORLD**

Applicant

FACTUM OF GREG ZENTNER

**Motion for Representation Order and Ancillary Relief
(Returnable June 21-22, 2021)**

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PART I - NATURE OF THE MOTION

1. This is a motion brought by Greg Zentner (“**Zentner**”), the proposed representative plaintiff in a class action (the “**Zentner Claim**”) brought against GFA World (“**GFA Canada**”) (the debtor in the within CCAA proceedings) for an order appointing Zentner as the representative of the class defined in the Zentner Claim (the “**Class**”), and authorizing Zentner to instruct Kalloghlian Myers LLP and McKiggan Hebert on behalf of the Class.
2. The motion is brought under Rule 10.01 of the *Rules of Civil Procedure* and section 11 of the CCAA.
3. GFA Canada is one of several related defendants named in the Zentner Claim. Also named are its affiliate, Gospel for Asia, Inc. (“**GFA USA**”) (collectively, with GFA Canada, “**GFA**”), and four of GFA’s directors and officers. All the US-based Defendants have attorned to this Court’s jurisdiction for the adjudication of the Zentner Claim.
4. GFA describes itself as a Christian charity serving the poorest of the poor in South Asia, mainly those in India. The core allegation in the Zentner Claim is that the Defendants defrauded thousands of individuals and churches from across Canada who collectively donated millions to GFA Canada by diverting those funds to improper purposes.
5. The Zentner Claim was commenced in February 2020, four months before GFA Canada filed for CCAA protection. The Zentner Claim was started in Nova Scotia under that province’s *Class Proceedings Act, 2007* (the “**Nova Scotia CPA**”). As such, while the Zentner Claim will be adjudicated by this Court as part of the within CCAA proceedings, the substantive law of Nova Scotia will apply, including the Nova Scotia CPA and its requirements for certification.

6. This Court cannot make an order under the Nova Scotia CPA. Zentner therefore also seeks, as part of the representation order, that the Court declare that the criteria for certification under the Nova Scotia CPA are satisfied. This would include defining the common issues. A proposed list of common issues is set out in **Schedule “C”** to this Factum.

7. GFA Canada has brought its own summary judgment motion for an order dismissing the Zentner Claim on limitation grounds. That motion is to be heard at the same time as Zentner’s motion. This Factum does not address GFA Canada’s limitation argument. Those submissions will be made in Zentner’s Reply Factum, to be delivered after GFA Canada has delivered its written submissions in support of its motion.

PART II - OVERVIEW

A. Representation Order

8. The need for a representation order cannot be reasonably disputed. GFA Canada’s CCAA filing cannot achieve its stated objective without one.

9. This is not a typical CCAA case. There are no secured creditors, nor is there a DIP lender. GFA Canada’s assets significantly exceed its liabilities. It does not need to restructure its balance sheet. Instead, the sole purpose of the proceedings, as stated by GFA Canada when it filed for CCAA protection and as confirmed by the Monitor in its Initial Report, is to *facilitate the “expeditious and efficient” adjudication of the Zentner Claim.*

10. This unique purpose was the basis for the negotiations that led to the parties signing a Litigation and Mediation Process Agreement in October of 2020, which in turn was the basis for the Litigation and Mediation Process Order, dated October 28, 2020 (the “**Litigation and Mediation Process Order**”), in which this Court: (1) ordered that “the Zentner Claim shall be

heard and determined by this Court within these CCAA proceedings”; and (2) set an expedited timetable that would see the case come to trial within a year.

11. This Court cannot adjudicate the Zentner Claim without a representation order having first been granted. The claim is brought on behalf of a disparate group of unrepresented class members from across the country. These class members need a legal representative who is authorized to instruct representative counsel appointed to act on their behalf.

B. Certification

12. All the certification criteria set out in section 7(1) of the Nova Scotia CPA are satisfied:

- (a) **Cause of Action:** the Zentner Claim properly pleads the elements of fraud, breach of fiduciary duty, negligent misrepresentation, unjust enrichment and conspiracy.
- (b) **Identifiable Class:** there is an objectively identifiable class proposed in the Zentner Claim.
- (c) **Common Issues:** the Zentner Claim raises issues common to the Class, including: Did the Defendants act dishonestly? Did the Defendants make false representations in GFA Canada’s fundraising and solicitation materials? If so, did the Defendants have knowledge that those representations were false? Did the Defendants’ conduct cause the Class to suffer a loss?
- (d) **Preferrable Procedure:** Resolution of the common issues raised by the Zentner Claim through a common issues trial is preferable to the alternative, which would involve thousands of individual trials or claims hearings conducted as part of a CCAA claims process.
- (e) **Suitable Representative Plaintiff:** Zentner: (i) would fairly represent the Class; (ii) has produced a viable litigation plan; and (iii) has no conflict of interest with any other member of the Class in relation to the common issues.

13. Put simply, it has been almost a year since GFA Canada sought CCAA protection. When it did so, GFA Canada explicitly told this Court and GFA Canada’s stakeholders (including the Zentner Claim’s class members) that the CCAA proceedings would be used to facilitate the

expeditious and efficient adjudication of the Zentner Claim. The relief sought on this motion is the first necessary step towards achieving that goal.

PART III - FACTS

A. GFA Canada

14. GFA Canada is headquartered in Stoney Creek, Ontario. It is part of the worldwide Gospel for Asia network (the “**GFA syndicate**”) that is overseen by its founder, K.P. Yohannan, and GFA USA, based in Wills Point, Texas. The GFA syndicate operates in various countries, including Canada, the United States, the United Kingdom, Germany and India under various names including “Gospel for Asia”, “GFA” and “Believers Eastern Church”.

15. Members of the GFA syndicate, such as GFA Canada, solicit donations from individuals and churches within their geographical area. These donations are then purportedly transferred to other syndicate members or “agents” based in India and other parts of South Asia where the funds are allegedly used to support charitable projects. Believers Eastern Church (sometimes known as BEC) and trusts created and controlled by BEC are the primary Indian agents that were purportedly used in relation to the donations made to GFA Canada that are at issue in the Zentner Claim.

16. The GFA syndicate’s fundraising efforts, including those undertaken by GFA Canada, are conducted through in-person solicitations, the GFA websites, on social media and in various mailings and radio broadcasts.

17. GFA Canada made two critical promises to donors in its fundraising efforts. Those promises are at the center of the Zentner Claim:

- (1) the ability of donors to direct the specific charitable purpose that their donation would be used to support (the “**Donor Designation Promise**”); and

- (2) the promise that 100% of all donations designated by donors for a purpose in “the mission field” or “the field” would actually be spent in the field (the “**100% Guarantee**”).

i. The Donor Designation Promise

18. GFA allows donors to direct the specific charitable purpose that their donation will be used to support. Donors can choose from any of 179 different donation categories, including everything from “Jesus wells” to water buffaloes. For example, GFA Canada solicits donations for bicycles (\$10 each), chickens (\$11 per pair) and blankets (\$12 each). At other times, solicitations are made for particular items, such as “emergency grams” sent in the wake of natural disasters soliciting donations for items related to disaster relief.

19. Zentner filed evidence from Cody Carnine, who was employed by GFA USA for 10 years and who was involved in preparing all the fundraising material for GFA USA and GFA Canada.¹ Mr. Carnine confirms that the Donor Designation Promise was a crucial component of all GFA’s solicitation efforts. Mr. Carnine’s evidence is that GFA Canada’s solicitation material *always* contained solicitations for specific projects and allowed donors to identify which specific project they chose to support with their donation.² As Mr. Carnine explained, “[t]his was a central design feature of GFA’s solicitation efforts because it was a significant driver of ROI [return on investment, or in other words, the amount of donations received].”³

20. Mr. Carnine routinely evaluated the ROI associated with various charitable projects and “[t]he decision to highlight one specific project over another in the GFA solicitation material was made in large part based on that specific project’s proven ROI (i.e., the historical ability of that

¹ Carnine Affidavit, Plaintiff’s Reply Motion Record, Tab 3.

² Carnine Affidavit, para. 12, Plaintiff’s Reply Motion Record, Tab 3, p. 137.

³ Carnine Affidavit, para. 12, Plaintiff’s Reply Motion Record, Tab 3, p. 137, emphasis added.

specific project to elicit donations to GFA).”⁴ Using this approach, GFA Canada identified which designations most appealed to donors and thus maximized donations.⁵

21. The importance of the Donor Designation Promise is also evident from GFA’s internal documentation. GFA Canada uses volunteers to assist with its fundraising efforts. It provides them with a volunteer manual that is the “principal instruction” given to volunteers.⁶ The volunteer manual contains scripted presentations for volunteers to use in soliciting donations. Each of these scripts focuses on recruiting donations *for specific designations*. As conceded by Pat Emerick (GFA Canada’s President) on cross-examination, the manual provides no training or direction to volunteers to explain to donors that donations may not be used as designated.⁷

ii. The 100% Guarantee

22. The GFA syndicate, including GFA Canada, distinguished itself from other charities for many years by representing that 100% of the funds donated for use in the mission field would be used in the mission field, and would not be used for administrative costs, overhead or any other purpose.⁸ The 100% Guarantee featured prominently in GFA’s solicitation materials. An example of the 100% Guarantee is reproduced in **Schedule “D”** to this Factum. The tax receipts issued to donors by GFA Canada also referenced the guarantee, confirming that “[o]ne hundred-percent of all contributions designated for use on the mission field are sent to the mission field.”

⁴ Carnine Affidavit, para. 13, Plaintiff’s Reply Motion Record, Tab 3, p. 137.

⁵ Carnine Affidavit, para. 17, Plaintiff’s Reply Motion Record, Tab 3, p. 138.

⁶ Emerick Transcript, qq. 393-395, pp. 104-105, Plaintiff’s Supplemental Motion Record, Tab 1, p. 108-109. Volunteer Manual, Exhibit D to Emerick February 5, 2021 Affidavit, Defendants’ Motion Record, Vol. 1, Tab 1D, p. 58.

⁷ Emerick Transcript, qq. 412-414, pp. 108-109, Plaintiff’s Supplemental Motion Record, Tab 1, p. 112-113.

⁸ Morrison Affidavit, para. 39, Plaintiff’s Motion Record, Tab 4, pp. 56-57.

23. GFA stopped using the 100% Guarantee shortly after a class action was brought in the United States against GFA USA on behalf of American donors.⁹ That litigation is discussed below.

B. The Zentner Claim

24. Zentner and his wife live in the small town of Woodburn, Nova Scotia. They were regular donors to GFA Canada for many years.

25. The Zentner Claim is brought against the following defendants:¹⁰

- (a) GFA Canada;
- (b) GFA USA;
- (c) Kadappiliaril Punnose (KP) Yohannan (“**Yohannan**”), who is the founder and spiritual head of GFA and Believers Eastern Church, the former president and current president emeritus of GFA Canada, and who exercises control over the GFA syndicate;¹¹
- (d) Daniel Punnose (“**Punnose**”), who is Yohannan’s son as well as a director and officer of GFA USA, and former director and current director emeritus of GFA Canada;¹²
- (e) David Carroll (“**Carroll**”), who is the former CFO of GFA USA;¹³ and
- (f) Pat Emerick (“**Emerick**”), who is a director and current President of GFA Canada.¹⁴

26. The claim seeks \$100 million in damages for fraud, breach of fiduciary duty, negligent misrepresentation and conspiracy; \$50 million in punitive damages; and the return of \$20 million

⁹ Morrison Affidavit, para. 40, Plaintiff’s Motion Record, Tab 4, p. 57.

¹⁰ Notice of Action and Statement of Claim, Exhibit “R” to the Morrison Affidavit, Plaintiff’s Motion Record, Tab 4R, p. 203.

¹¹ Punnose September 15, 2020 Affidavit, paras. 3, 27, 31, Defendant’s Motion Record, Vol. 7, Tab 3, pp. 3453, 3459, 3460. Emerick February 5, 2021 Affidavit, para. 10 and 25, Defendant’s Motion Record, Vol. 1, Tab 1, pp. 3, 8.

¹² Emerick February 5, 2021 Affidavit, para. 10, 25, Defendant’s Motion Record, Vol. 1, Tab 1, p. 3. Punnose September 15, 2020 Affidavit, para. 1, Defendant’s Motion Record, Vol. 7, Tab 3, p. 3453.

¹³ Punnose September 15, 2020 Affidavit, para. 22, Vol. 7, Defendant’s Motion Record, Tab 3, p. 3458.

¹⁴ Emerick February 5, 2021 Affidavit, para. 1, Defendant’s Motion Record, Vol. 1, Tab 1, p. 1.

in donations made to GFA Canada that GFA USA has admitted was used towards construction of a 350-acre corporate headquarters and personal residence in Wills Point, Texas.

27. In simple terms, the Zentner Claim can be distilled down to the allegation that the Defendants knowingly allowed GFA Canada to break the Donor Designation Promise and the 100% Guarantee, and fraudulently misappropriated donations made to GFA Canada that were directed towards specific purposes in the mission field.

28. The case raises two fundamental questions. First, what did GFA Canada tell donors when it solicited funds about how donations would be spent? Second, how were the donations that were designated for use in the mission field actually spent?

29. None of the Defendants have filed a statement of defence.

C. The US Litigation

30. The Zentner Claim mirrors a similar case that was brought in the US against GFA USA on behalf of American donors. The US case was brought against many of the same defendants named in the Zentner Claim, and the two cases are based on the same core allegations.

31. The US claim was certified as a class action twice — once at the outset of the litigation, in a decision that was upheld by the US Court of Appeals for the Eighth Circuit, and then again as part of a settlement approval hearing.¹⁵

¹⁵ Memorandum Opinion and Order of Judge Timothy L. Brooks dated September 10, 2018, *Murphy v. Gospel for Asia, Inc.*, Case No. 5:17-cv-05035-ELW [Dkt. 134], published at 327 F.R.D. 227 (W.D. Ark. 2018); Judgment of the United States Court of Appeals for the Eighth Circuit dated October 16, 2016, *Murphy v. Gospel for Asia, Inc.*, Case No. 18-8012; Final Order and Judgment of Judge Erin L. Wiedemann dated June 26, 2016, *Murphy v. Gospel for Asia, Inc.*, Case No. 5:17-cv-05035-ELW [Dkt. 249].

32. The US defendants agreed to settle for US \$37 million, and GFA USA agreed to extensive governance reforms, including independent, outside Board supervision.¹⁶

33. It is noteworthy that the US case was certified twice, with the initial certification order being upheld on appeal, because the test for class certification in the US is higher than in Canada.¹⁷

34. The certification orders were granted despite GFA USA's argument that individual issues predominated over any common issues. The US courts repeatedly rejected this argument because of the Donor Designation Promise, the 100% Guarantee and the fact that, quoting from Judge Brooks' initial certification decision, "regardless of the medium or the way in which the putative class members donated, all putative class members here are individuals who specifically designated that their donations should be directed to the field and to particular field projects."¹⁸

D. GFA Canada's CCAA Filing

35. GFA Canada filed for CCAA protection in response to the Zentner Claim. Quoting from Emerick's affidavit filed in support of the initial CCAA order, the CCAA proceedings will provide an "expeditious and efficient process for allowing GFA Canada to deal with the historic claims and issues so that it can move forward."¹⁹

¹⁶ US Settlement Agreement, Exhibit 2 to the cross-examination of Bruce Morrison, Plaintiff's Supplemental Motion Record, Tab 5B, p. 1047.

¹⁷ Among other things, the US test for certification requires predominance, while predominance is explicitly excluded from the test for commonality by the Nova Scotia CPA. Fed. R. Civ. P. 23(b)(3) ("A class action may be maintained if ... the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members[.]"); *Hollick v. Toronto (City)*, 2001 SCC 68, para. 30. Under the the Nova Scotia CPA, at the preferability stage, the court must only *consider* whether the common issues predominate over issues affecting individual members — this factor is not dispositive: *Endean v. Canadian Red Cross Society*, 1997 CanLII 2079 (B.C.S.C.), para. 35: "The question of whether individual issues predominate over common issues, which so permeates the American law on this subject, is expressly excluded as a relevant consideration by s. 4(1)(c) of the *Act*."

¹⁸ Memorandum Opinion and Order of Judge Timothy L. Brooks dated September 10, 2018, p. 20, *Murphy v. Gospel for Asia, Inc.*, Case No. 5:17-cv-05035-ELW [Dkt. 134], published at 327 F.R.D. 227 (W.D. Ark. 2018).

¹⁹ Emerick June 25, 2020 Affidavit, para. 10, Plaintiff's Reply Motion Record, Tab 2B, p. 55.

36. The Monitor's Initial Report confirmed that "the primary purpose of the CCAA proceedings is to allow GFA Canada the breathing space and flexibility needed to continue operations without disruption, while it participates in a claims hearing for the [Zentner Claim]."²⁰

37. Shortly after the initial filing, Zentner moved to terminate the CCAA proceedings because the class members had a controlling interest over the outcome and would never support a plan.

38. The parties resolved this motion after extensive negotiations facilitated by the Monitor, under terms set out in the Litigation and Mediation Process Agreement signed by all the Defendants.

39. The parties agreed that: (1) this Court will adjudicate the Zentner Claim as part of the CCAA Proceeding; (2) the parties will participate in an ongoing mediation of the Zentner Claim; (3) GFA USA and the individual defendants domiciled in the US will attorn to the jurisdiction of this Court; and (4) a Fall 2021 trial date would be requested.²¹

40. That agreement was the basis for the subsequent Litigation and Mediation Process Order, issued by this Court on October 28, 2020.

E. There is Already Extensive Evidence Suggesting the Defendants' Misconduct

41. Based only on the evidence that is available to date (i.e., before the parties have completed any documentary or oral discovery), there is a significant and credible basis to believe that: (1) GFA Canada did not abide by the Donor Designation Promise or the 100% Guarantee; and (2)

²⁰ Report of the Proposed Monitor, June 26, 2020, para. 3, Exhibit A to the affidavit of Natasha Kruitwagen, Plaintiff's Reply Motion Record, Tab 2A, p. 27.

²¹ Litigation and Mediation Process Agreement dated October 3, 2020, Exhibit S to the Morrison Affidavit, Plaintiff's Motion Record, Tab 4S, p. 222.

donations made to GFA Canada were knowingly misdirected by the Defendants for their benefit.

This evidence is set out in **Schedule “E”** to this Factum. In summary:

- (a) **GFA Canada takes no steps to confirm that donations are used as designated.** Emerick admitted on cross-examination that GFA Canada does not receive reports from its Indian agents containing any detail regarding what specific designations or preferences that Canadian donor funds were spent towards or whether any specific designations were honored.²²
- (b) **GFA Canada’s Indian agents provided GFA Canada’s auditors with backdated financial documents.** GFA Canada’s expert forensic accountant admitted on cross-examination that the Indian “financial statements” that GFA Canada purports to have relied upon in support of the conclusion that Canadian donations were used as designated: (i) were not actually financial statements; and (ii) were prepared many years *after* they were allegedly relied on.²³ In the forensic accountant’s own words: this caused him “concern” and it should “raise a red flag”. He concluded, “*I did not notice that before. [...] And I don't have an explanation for that.*”²⁴
- (c) **GFA India keeps two sets of books for certain years.** GFA India kept two sets of financial reports for certain years. For 2013, the discrepancy in revenue between these conflicting financial reports was \$3.5 million. These conflicting financial reports were put to GFA Canada’s forensic accounting expert on cross-examination. He admitted that: (i) he had not seen these conflicting reports before; (ii) they would change his opinion and conclusion; and (iii) they created significant concern.²⁵
- (d) **GFA Canada does not comply with Canadian charity law.** CRA requires Canadian charities using foreign intermediaries to: (i) take extensive measures to direct and control the use of Canadian funds when carrying out activities through intermediaries; and (ii) comply with extensive record keeping obligations. GFA Canada does not comply with these requirements. Further, CRA has also advised GFA Canada that source documents relating to purported charitable activities outside Canada are being improperly maintained in India rather than Canada.²⁶

²² Emerick Transcript, qq. 191-193, 200, pp. 53, 55, Plaintiff’s Supplemental Motion Record, Tab 1, pp. 57, 59.

²³ Harington Transcript, qq. 361, 396-425, pp. 86-87, 96-103, Plaintiff’s Supplemental Motion Record, Tab 2, pp. 250-251, 260-267.

²⁴ Harington Transcript, qq. 403-404, p. 98, Plaintiff’s Supplemental Motion Record, Tab 2, p. 262.

²⁵ Harington Transcript, qq. 449-450, p. 108, Plaintiff’s Supplemental Motion Record, Tab 2, p. 272.

²⁶ Letter from CRA to Pat Emerick dated March 19, 2019, Exhibit HH to the Morrison Affidavit, Plaintiff’s Motion Record, Tab 4HH, p. 304. Morrison Affidavit, paras. 135-140, Plaintiff’s Motion Record, Tab 4, pp. 77-79.

- (e) **Yohannan terminated two GFA Canada directors who asked for additional financial disclosure.** After they asked to review financial statements and other reports, Yohannan immediately terminated two GFA Canada directors.²⁷
- (f) **No money sent to India for seven years.** During the years 2007 to 2013 inclusive, GFA Canada collected \$76,704,495 from Canadian donors who designated that their donations be used in the field, including for urgent humanitarian relief. None of that money was transferred to India until September 2014, when it was suddenly transferred to India after complaints surfaced against GFA USA.²⁸
- (g) **Large discrepancies between GFA Canada's reporting to CRA and GFA India's reporting to Indian authorities.** From 2007 to 2013 inclusive, GFA Canada transferred \$78,164,254 in Canadian donations to GFA India's RBC account in Canada. GFA Canada reported to CRA in its annual charity returns that it had spent this money in India, which it had not. In India during this period, neither GFA India nor Believer's Eastern Church reported any foreign contributions from GFA Canada in their annual filings with the Indian tax authorities. Further, during this period the Indian *Foreign Contributions Regulation Act* prohibited Indian charities such as GFA India and Believers Eastern Church from receiving foreign contributions outside of India. All foreign contributions were to be received in India in a designated bank account. GFA Canada was complicit in this scheme, which allowed tens of millions of dollars to be held without oversight or detection by the Indian government or the public in either country.²⁹
- (h) **Sizable amounts of interest earned by Indian entities.** GFA India, Believers Eastern Church and other Indian GFA entities that received foreign contributions reported earning US\$80.6 million in *interest* on foreign contributions held in India between 2007 and 2014. This amount of interest could be generated only by large amounts of money on deposit in India, which is consistent with donations not being spent as designated, or at all.³⁰
- (i) **Ontario accounting regulator finds serious auditing irregularities in Canada.** The Chartered Professional Accountants of Ontario (CPAO), the regulatory body in Ontario for accountants, disciplined and criticized GFA Canada's auditors for falling below the generally accepted standards of practice. The CPAO was "*concerned*" that no attempt was made to ensure donations were "*spent as directed by donors*".³¹

²⁷ Morrison Affidavit, para. 92-96, Plaintiff's Motion Record, Tab 4, pp. 68-69.

²⁸ Harington Transcript, qq. 253-329, p. 61, Plaintiff's Supplemental Motion Record, Tab 2, pp. 224-240.

²⁹ Morrison Affidavit, paras. 108-118, 171, Plaintiff's Motion Record, Tab 4, pp. 68-69, 85

³⁰ Morrison Affidavit, para. 129, Plaintiff's Motion Record, Tab 4, p. 76.

³¹ CPA Ontario Disciplinary Committee Report, Exhibit Q to the Morrison Affidavit, Plaintiff's Motion Record, Tab 4Q, p. 193.

- (j) **GFA USA admits that Canadian donations were used to build the Texas compound.** On cross-examination, Emerick admitted that the US compound was paid for with Canadian donor funds. The funds were transferred by GFA Canada into GFA India's RBC bank account in Canada, and then transferred to GFA USA.³² Inexplicably, Emerick (GFA Canada's President and a director) conceded that he learned about this payment for the first time when it was disclosed in the US litigation against GFA USA.³³ Further, despite the significant size of this payment, in his affidavit filed on this motion Emerick provides evidence about the transfer *on information and belief*.³⁴ On cross-examination, Emerick could not even identify who told him this information — he simply “*could not recall*” who told him that *US\$20 million* of GFA Canada's donor-designated money was used to build a personal compound in Texas.³⁵
- (k) **Indian government revokes GFA charitable status and raids GFA's Indian operations.** In November 2020, the Indian Ministry of Finance disclosed that:
- (i) It had carried out searches of Believers Church's operations based on “credible information ... that the group has received donations from foreign countries ostensibly for helping the poor and the destitute and for evangelical purposes, *but was actually siphoning out such tax-exempted funds in cash to engage in unaccounted cash transactions for personal and other illegal expenses in real estate transactions.*”
 - (ii) “Believers Church's trusts “*exist only on paper and [were] used for routing the unaccounted funds and for accommodation transactions.*”
 - (iii) “It has been found that the *modus operandi* of the group is to *systemically inflate expenses with the help of other parties, who would return the inflated amount in cash through domestic hawala channels to the functionaries of the group.*”
 - (iv) “During the search action, *evidences have been found of systematic inflation of expenses in purchase of consumables, construction expenses, real estate development expenses, payment of salary, etc.*”
 - (v) “The search has led to unearthing of a number of real estate transactions involving unaccounted cash payments. Related documents such as sale agreements, etc have been seized.”
 - (vi) “The group has also inflated the price in real estate transactions to show as if the money received in donations is being spent on the activities of the trusts. *The evidence so far indicates that the siphoning of funds in cash*

³² Emerick Transcript, q. 448, pp. 119-120, Plaintiff's Supplemental Motion Record, Tab 1, pp. 123-124.

³³ Emerick Transcript, qq. 451-452, 457, pp. 119, 120, 122, Plaintiff's Supplemental Motion Record, Tab 1, pp. 124-125, 126.

³⁴ Emerick February 5, 2021 Affidavit, para. 85, Defendant's Motion Record, Vol. 1, Tab 1, p. 24.

³⁵ Emerick Transcript, q. 453, p. 121, Plaintiff's Supplemental Motion Record, Tab 1, p. 125.

may be running into the hundreds of crores of rupees [hundreds of millions of Canadian dollars].”³⁶

PART IV - ISSUES & LAW

Issue 1: Representation Order

42. The jurisdiction to make a representation order is found in Rule 10.01(f) of the *Rules of Civil Procedure* (which allows for a representation order “where it appears necessary or desirable” to make such an order) and section 11 of the CCAA (which grants the CCAA Court broad discretion to make “any order it considers appropriate in the circumstances”).³⁷ Representation orders have been granted in a range of CCAA proceedings. The case law reveals that several factors can be relevant to the assessment of whether to make such an order.³⁸

43. The most important factor here is the benefit that a representation order will have to GFA Canada and its ability to use these CCAA proceedings to facilitate the efficient adjudication of the Zentner Claim. Indeed, the Zentner Claim cannot be adjudicated by this Court without such an order. The claim is brought on behalf of a disparate group of unrepresented class members from across the country. They need a legal representative who is authorized to instruct representative counsel who is appointed to act on their behalf.

44. The fact that a representation order is a prerequisite to the adjudication of the Zentner Claim is ample justification for such an order. Moreover, many of the other factors cited in the case law also weigh in support:

³⁶ Ministry of Finance, Income Tax Department conducts searches in Kerala, November 6, 2020, Exhibit ZZ to the Morrison Affidavit, Plaintiff’s Motion Record, Tab 4ZZ, p. 664, emphasis added].

³⁷ [Canwest Publishing Inc., 2010 ONSC 1328](#), para. 21. [Urbancorp Toronto Management Inc., Re, 2016 ONSC 5426](#), para. 10. *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, Rule 10.01(f), Plaintiff’s Factum, Schedule “B”. *Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36, s. 11, Plaintiff’s Factum, Schedule “B”.

³⁸ See, for example, [Canwest Publishing Inc., 2010 ONSC 1328](#), para. 21.

- (a) **Vulnerable class:** the class members reside across Canada.³⁹ Their losses range from small to significant, but even where significant, the legal and expert costs of advancing these claims on an individual basis are not justified. The case has yet to be certified, rendering class members a particularly vulnerable group.⁴⁰
- (b) **Common issues:** the Zentner Claim raises fundamental common issues that can be determined efficiently at a common issues trial.
- (c) **Avoidance of multiple retainers:** a representation order will avoid a multiplicity of legal retainers that would be required if each class member that wanted to participate in the within proceedings was required to retain independent counsel.⁴¹
- (d) **Qualified representative and counsel:** Zentner is a qualified representative; Kalloghlian Myers LLP and McKiggan Hebert and are qualified representative counsel; and all are prepared to act on behalf of class members.⁴²

Issue 2: Certification

45. Section 7(1) of the Nova Scotia CPA states that the court shall certify a class proceeding if the following conditions are met:

- (a) the pleadings disclose or the notice of application discloses a cause of action;
- (b) there is an identifiable class of two or more persons that would be represented by a representative party;
- (c) the claims of the class members raise a common issue, whether or not the common issue predominates over issues affecting only individual members;
- (d) a class proceeding would be the preferable procedure for the fair and efficient resolution of the dispute; and
- (e) there is a representative party who
 - (i) would fairly and adequately represent the interests of the class,

³⁹ Emerick September 14, 2020 Affidavit, paras. 73-74, Defendant's Motion Record, Vol. 7, Tab 2, p. 3173.

⁴⁰ Morrison Affidavit, para. 71, Plaintiff's Motion Record, Tab 4, p. 64.

⁴¹ Canwest Publishing Inc., 2010 ONSC 1328, para. 24.

⁴² Affidavit of Gregory Zentner sworn November 26, 2020 ("**Zentner Affidavit**"), paras. 12-15, Plaintiff's Motion Record, Tab 3, pp. 43-44. Affidavit of Bryan Wall sworn February 10, 2021 ("**Wall Affidavit**"), paras. 18-19, Plaintiff's Reply Motion Record, Tab 1, p. 11. Morrison Affidavit, paras. 82-88, Plaintiff's Motion Record, Tab 4, pp. 66-67.

- (ii) has produced a plan for the class proceeding that sets out a workable method of advancing the class proceeding on behalf of the class and of notifying class members of the class proceeding, and
- (iii) does not have, with respect to the common issues, an interest that is in conflict with the interests of other class members.⁴³

46. In *Pro-Sys Consultants Ltd. v. Microsoft Corporation*, the Supreme Court of Canada confirmed that the test for certification is concerned with the *form* of the action.⁴⁴ The standard of proof is low: the plaintiff must show only “some basis in fact” for each of the certification requirements (except the cause of action requirement, for which the Rule 21 “plain and obvious” test applies).⁴⁵ This standard of proof is lower than a “balance of probabilities”.⁴⁶

A. Cause of Action

47. The Zentner Claim adequately pleads fraud, breach of fiduciary duty, negligent misrepresentation, unjust enrichment and conspiracy:

- (a) **Fraud:**⁴⁷ Zentner pleads that GFA Canada’s donation scheme was an elaborate fraud, used by GFA USA and the individual Defendants to enrich themselves. The Defendants knowingly made false statements that caused class members to donate.⁴⁸
- (b) **Breach of fiduciary duty:**⁴⁹ Zentner pleads that the Defendants breached their fiduciary duty to the Class by failing to use the donations for the purposes intended by class members.⁵⁰

⁴³ *Class Proceedings Act, 2007*, c. 28, s. 1., s. 7, Plaintiff’s Factum, Schedule “B”.

⁴⁴ *Pro-Sys Consultants Ltd. v. Microsoft Corporation*, 2013 SCC 57, paras. 99-100. *Hollick v. Toronto (City)*, 2001 SCC 68, paras. 16-26.

⁴⁵ *Pro-Sys Consultants Ltd. v. Microsoft Corporation*, 2013 SCC 57, para. 99. *Hollick v. Toronto (City)*, 2001 SCC 68, para. 25.

⁴⁶ *Pro-Sys Consultants Ltd. v. Microsoft Corporation*, 2013 SCC 57, 2013 SCC 57, para. 102.

⁴⁷ *Cannon v. Funds for Canada Foundation*, 2012 ONSC 399, paras. 184-193, leave to appeal dismissed 2012 ONSC 6101.

⁴⁸ Statement of Claim, para. 49, Plaintiff’s Motion Record, Tab 4R, pp. 216-217.

⁴⁹ See, e.g., *Pathak v. Sabha*, 2004 CanLII 10850 (Ont. S.C.J.), para. 29 citing *Ontario (Public Guardian and Trustee) v. Aids Society for Children (Ontario)*, [2001] O.J. No. 2170 (S.C.J.) per Cullity J.

⁵⁰ Statement of Claim, para. 52, Plaintiff’s Motion Record, Tab 4R, p. 217.

- (c) **Negligent misrepresentation:**⁵¹ Zentner pleads that: (i) there was a duty of care between class members and the Defendants; (ii) the representations that the donations would be used “100% in the field” and for specific purposes as designated were untrue; (iii) the Defendants acted negligently in making the representations; (iv) the Class reasonably relied on these misrepresentations; and (v) the Class suffered damages.⁵²
- (d) **Unjust enrichment:**⁵³ Zentner pleads that: (i) the Defendants were enriched by the donations made by the Class; (ii) there was a corresponding deprivation; and (iii) there was no juristic reason for the enrichment.⁵⁴
- (e) **Conspiracy:**⁵⁵ Zentner pleads that the Defendants engaged in a conspiracy to cause harm to the Class. He alleges that they agreed to act unlawfully, that the predominant purpose was to cause injury to the Class, and that the Class was injured.⁵⁶

48. Courts have repeatedly held that class actions against charities alleging fraud and misstatement should be certified.⁵⁷

B. Identifiable Class

49. Certification requires that there be an identifiable class of two or more persons. The Zentner Claim is brought on behalf of: “all persons in Canada who made donations to [GFA Canada] using donation codes 1000 to 4900 from January 1, 2006 to date that were not specifically directed for use of the ‘Home Team’ or ‘Home Office’”.

50. The Class is defined based on donation codes. Each donation to GFA Canada was tracked using donation codes that corresponded to the charitable project specified by the donor.⁵⁸ For

⁵¹ [Cannon v. Funds for Canada Foundation, 2012 ONSC 399](#), para. 179, leave to appeal dismissed 2012 ONSC 6101.

⁵² Statement of Claim, para. 51 [Plaintiff's Motion Record](#), Tab 4R, p. 217.

⁵³ [Cannon v. Funds for Canada Foundation, 2012 ONSC 399](#), para. 257, leave to appeal dismissed 2012 ONSC 6101.

⁵⁴ Statement of Claim, paras. 53-54, [Plaintiff's Motion Record](#), Tab 4R, p. 218.

⁵⁵ [Cannon v. Funds for Canada Foundation, 2012 ONSC 399](#), para. 201, leave to appeal dismissed 2012 ONSC 6101.

⁵⁶ Statement of Claim, paras. 55-56, [Plaintiff's Motion Record](#), Tab 4R, p. 218.

⁵⁷ [Cannon v. Funds for Canada Foundation, 2012 ONSC 399](#), leave to appeal dismissed 2012 ONSC 6101. [Robinson v. Rochester Financial Limited et al., 2010 ONSC 463](#), leave to appeal dismissed 2010 ONSC 1899.

⁵⁸ Morrison Affidavit, para. 67, [Plaintiff's Motion Record](#), Tab 4, p. 63.

example, the code for “Jesus Wells” is 2710. The code for “water buffalo” is 1507.⁵⁹ The Class is limited to all donor codes for specific designations to be used “in the field.”⁶⁰ This Class is objectively identifiable and rationally connected to the proposed common issues.⁶¹

C. Common Issues

51. This requirement does not involve an assessment of the merits of the case. What is required is an assessment of whether there is some basis in fact to conclude that the Zentner Claim raises common questions that could be answered at a common issues trial.⁶²

52. The common issues proposed by Zentner are set out in Schedule “C” to this Factum. Each of the proposed common issues are capable of common resolution and have been certified in prior cases involving the relevant causes of action.⁶³

53. There will be two central questions raised at the common issues trial: first, whether GFA Canada violated the Donor Designation’s Promise and the 100% Guarantee, and instead misdirected Canadian donations for the benefit of the Defendants; and second, what was the various Defendants’ knowledge of the true state of affairs and their participation in the fraud?

⁵⁹ Harington Report, Schedule 3(a), Defendant’s Motion Record, Vol. 9, Tab 12, pp. 4187-4193.

⁶⁰ Morrison Affidavit, paras. 67-68, Plaintiff’s Motion Record, Tab 4, p. 63.

⁶¹ [Cloud v. Canada \(Attorney General\), 2004 CanLII 45444 \(Ont. C.A.\)](#), para. 45, leave to appeal ref’d [2005] 1 S.C.R. vi.

⁶² [Pro-Sys Consultants Ltd. v. Microsoft Corporation, 2013 SCC 57](#), para. 110.

⁶³ See, e.g.: [Cannon v. Funds for Canada Foundation, 2012 ONSC 399](#), para. 379, leave to appeal dismissed 2012 ONSC 6101 (negligent misrepresentation, fraud, fraudulent misrepresentation, conspiracy, unjust enrichment, punitive damages). [Carom v. Bre-X Minerals Ltd., 2000 CanLII 16886 \(Ont. C.A.\)](#), paras. 27, 64-65 (negligent misrepresentation, fraudulent misrepresentation, conspiracy, breach of *Competition Act*, punitive damages). [Green v. Canadian Imperial Bank of Commerce, 2014 ONCA 90](#), Schedule “B”, aff’d 2015 SCC 60, (negligent misrepresentation, statutory liability). [Fantl v. Transamerica Life Canada, 2016 ONCA 633](#) (negligent misrepresentation, breach of contract). [Ramdath v. George Brown College of Applied Arts and Technology, 2010 ONSC 2019](#), para. 103 (negligent misrepresentation, breach of contract, breach of *Consumer Protection Act 2002*). [Hickey-Button v. Loyalist College of Applied Arts & Technology, 2006 CanLII 20079 \(Ont. C.A.\)](#), para. 53 (negligent misrepresentation). [Heyde v Theberge Developments Limited, 2017 ONSC 1574](#), para. 79, (negligent misrepresentation, fraudulent misrepresentation, unjust enrichment and others).

These core issues, which focus on the Defendants' conduct and knowledge, are common to the Class, and their resolution will significantly advance the adjudication of the Zentner Claim.

54. The Defendants filed extensive expert and lay evidence that the issue of reliance as an element of negligent misrepresentation is an individual, and not a common, issue. The jurisprudence is clear that this is not a barrier to a common determination of the non-reliance based common issues, which are common to the Class.⁶⁴

55. Indeed, the CPA specifically states: “[t]he court shall not refuse to certify a proceeding as a class proceeding by reason only that [...] the relief claimed includes a claim for damages that would require individual assessment after determination of the common issues”.⁶⁵ Thus, the existence of individual issues is explicitly not a bar to certification.

56. The Court of Appeal for Ontario conducted the appropriate analysis in *Carom v. Bre-X Minerals Ltd.* That case was a securities misrepresentation class action alleging negligent and fraudulent misstatements. The motion judge had certified the claims for fraudulent misrepresentation and conspiracy, but he refused to certify the claim for negligent misrepresentation for two reasons: (1) reliance was an individual issue; and (2) a class proceeding was not the preferable procedure for certifying that claim. The Court of Appeal reversed. It did so for four reasons:

- (a) **The certification bar is not high and does not require absolutely identical issues of fact or law.** There was a conscious attempt by the legislature “to avoid setting the bar for certification too high” which is necessary to realize the procedural objectives of the CPA, namely promoting access to justice and judicial economy, which would not be realized if there was a requirement that the

⁶⁴ *Carom v. Bre-X Minerals Ltd.*, 2000 CanLII 16886 (Ont. C.A.) (“**Bre-X**”), para. 51.

⁶⁵ *Class Proceedings Act, 2007*, c. 28, s. 1., s. 10(a), Plaintiff's Factum, Schedule “B”.

prospective plaintiffs in a class action present absolutely identical issues of fact or law.

- (b) **Certification permitted where common issues only resolve part of the claim.** Certification should be ordered if the resolution of the common issues would advance the litigation. Resolution through the class proceeding of the entire action, or even resolution of particular legal claims in the action, is not required.
- (c) **No reason to treat negligent and fraudulent misrepresentation differently.** There was no principled basis for treating the claims for negligent and fraudulent misrepresentation differently on the question of certification.
- (d) **Factual overlap for negligent and fraudulent misrepresentation.** There was substantial overlap of factual issues common to both torts, which both required a determination of the existence of misstatements and the defendants' knowledge.⁶⁶

57. In summary, where the focus of the proposed common issues is on the conduct and knowledge of the defendants, the action should be certified, even when the issue of reliance may be individual.⁶⁷ As stated by Justice MacPherson in *Bre-X*, “*the conduct, especially the reliance, of the plaintiffs stays on the sidelines at this juncture in the litigation.*”⁶⁸

58. The same is true here. The trial of the common issues will focus on the Defendants' fraudulent conduct, the existence of misstatements and the Defendants' knowledge. As confirmed by the Court of Appeal in *Bre-X*, although Class Members' individual reliance may lead to individual issues, this is not a bar to certification.

D. Preferable Procedure

59. Section 7(1)(d) of the Nova Scotia CPA requires that a class proceeding be the “preferable procedure for the resolution of the common issues.”

⁶⁶ [Carom v. Bre-X Minerals Ltd., 2000 CanLII 16886 \(Ont. C.A.\)](#), paras. 10, 30, 39, 41, 42, 45-46, 49.

⁶⁷ [Carom v. Bre-X Minerals Ltd., 2000 CanLII 16886 \(Ont. C.A.\)](#), para. 51.

⁶⁸ [Carom v. Bre-X Minerals Ltd., 2000 CanLII 16886 \(Ont. C.A.\)](#), para. 51.

60. In *AIC Limited v. Fischer*, the Supreme Court emphasized that the preferability analysis is a comparative one that must consider whether the proposed class action will achieve the goals of class action legislation as compared to other means of resolving the claim. This requires a consideration of whether the process is fair and will provide claimants with a just and effective remedy.⁶⁹ *Fischer* requires this Court to consider: (1) the barriers to access to justice; (2) the potential of a class action to address those barriers; and (3) the alternatives to a class action, including how well the alternatives address the relevant barriers and how the two proceedings compare. As the Supreme Court noted, the most common barrier to access to justice is an economic one.

61. Turing to this case, a class proceeding is the preferable way to resolve the common issues:

- (a) **Individual claims do not justify cost of individual actions.** The amounts at stake for each class member are low — suggested donations are as low as \$3 per designation, and the GFA Canada website default donation options are \$25, \$50, \$150 and \$300.00.⁷⁰ As a result, this action raises extensive access to justice concerns of a vulnerable class of donors. It is not feasible, economical, or fair to require tens of thousands of individual proceedings to determine the same issue. It would also run counter to judicial efficiency to determine the same issue each time in separate individual proceedings, which could lead to inconsistent results on the same issue.
- (b) **A common determination is most expeditious and efficient procedure.** A common determination will lead to the most expeditious determination of the legal issues. A class proceeding will lead to the least costly determination of the issues. This class proceeding offers the potential for access to justice and judicial economy that no alternative procedure could provide.
- (c) **Behaviour modification will be achieved:** Behaviour modification is one of the three goals of class proceedings.⁷¹ In the US Action, GFA USA agreed to significant governance reforms, including requiring independent board members, board training, publishing of annual reports “of all work accomplished with donated funds”, reforms

⁶⁹ *AIC Limited v. Fischer*, 2013 SCC 69 (“*Fischer*”), para. 24.

⁷⁰ See, e.g., Solicitation forms, Exhibit F to the Emerick February 5, 2021 Affidavit, *Defendant’s Motion Record*, Vol. 3, Tab 1F, pp. 1523, 1541, 1547, 1622. Website excerpts, Exhibits K and L to the affidavit of Brian Hebert sworn December 16, 2020, Responding Motion Record of Greg Zentner (Motion for Claims Process Order), Tabs 1K and 1L, pp. 273, 275.

⁷¹ *AIC Limited v. Fischer*, 2013 SCC 69, para. 8.

to solicitations, and the provision of verified financial information relating to financial status.⁷² Similar reforms are sought here, and thus behaviour modification is an important goal of these proceedings.

62. The only alternative proposed by the Defendants is a CCAA claims process in which each donor would have to file and individually prove a claim.⁷³ The barriers to access to justice presented by this scenario are enormous, and if implemented, will in practice defeat the ability of donors to advance claims. The Defendant's position is essentially, "no litigation is preferable to collective litigation". Such arguments must not be given any effect.⁷⁴

63. Returning to *Bre-X*, the Court of Appeal observed that even where reliance is an individual issue, a class proceeding is still the preferable procedure for misrepresentation claims:

- (a) **The CPA should be used as much as possible.** "[T]here is substantial merit in trying to utilize the CPA to deal with as many issues as possible."
- (b) **Resolution of the entire action not necessary for certification.** "[T]he fact that determination of some of the common issues relevant to the claim in negligent misrepresentation (or indeed the other three claims) will not resolve the entire litigation is not determinative. Certification can be the preferable procedure in situations far short of final resolution of the lawsuit."
- (c) **The trial will focus on the defendants' conduct.** "The major common issue in this action is the knowledge and conduct of the Bre-X insiders. [...] The answers to some of these questions may become complicated. Moreover, different answers may be required for different defendants. However, the complications are offset by two overarching considerations. [...] the presence and the stories of the plaintiffs are not required for the first stage of the lawsuit. The focus is on the defendants, their knowledge and their conduct. The determination of these matters, although perhaps difficult, will move the litigation forward."⁷⁵

⁷² US Settlement Agreement, s. 4.3, Exhibit 2 to the cross-examination of Bruce Morrison, Plaintiff's Supplemental Motion Record, Tab 5B, pp. 1066-1068.

⁷³ Notice of Motion, GFA World Motion Record (Motion for Claims Process Order), Tab 1.

⁷⁴ 1176560 Ontario Limited et al. v. The Great Atlantic and Pacific Company of Canada Limited, 2002 CanLII 6199 (Ont. S.C.J.), para. 45, aff'd [2004] O.J. No. 865 (Div. Ct.).

⁷⁵ Carom v. Bre-X Minerals Ltd., 2000 CanLII 16886 (Ont. C.A.), paras. 8, 56, 62. See also Green v. Canadian Imperial Bank of Commerce, 2014 ONCA 90, paras. 98-105, aff'd 2015 SCC 60.

64. These principles apply equally here. A class proceeding should be certified where it can advance the Plaintiff's claims based on an adjudication of the Defendants' conduct and knowledge, and despite any individual issues remaining following the common issues trial.

65. The Court of Appeal for Ontario's most recent analysis of the preferability criteria in the context of reliance-based claim is *Fantl v. Transamerica Life Canada*. There, the Court reiterated the principles from *Bre-X*, adding:

- (a) **Resolution of the common issues will substantially advance the litigation.** “[T]he resolution of the common issues of duty of care, truth or falsity of the representation and negligence would go a long way towards the determination of the appellant’s liability and would significantly advance the claim of every class member.” “If the common issues are resolved in favour of the defendant, that will be the end of the matter. If they are resolved in favour of the class, a class proceeding can provide a framework for the resolution of the individual issues.”
- (b) **Need for individual assessments not a bar to certification.** “While damages might be a more complex individual issue, s. 6.1 of the CPA expressly provides that the need for individual assessments of damages is not, in itself, a bar to certification.”
- (c) **Class proceeding addresses barriers to access to justice and promotes efficient resolution.** “[A] class action in this proceeding has the potential to address the barriers to access to justice and can promote the resolution of claims that cannot be efficiently litigated through individual proceedings or by alternatives such as joinder.”
- (d) **Negligent misrepresentation claims often certified.** “[C]laims involving a single representation, a uniform set of representations, or even separate representations having a common import have been certified, notwithstanding individual issues of reliance and damages [citations omitted].” This conclusion applies with greater force when, as here (and in *Bre-X*), “some of the necessary heavy lifting on the misrepresentation common issues will be shared with” the other certified common issues.⁷⁶

66. Finally, it is the norm in class actions that there may be some individual issues of reliance and damages remaining after the resolution of the common issues. This is explicitly provided for

⁷⁶ [Fantl v. Transamerica Life Canada, 2016 ONCA 633](#), paras. 19, 39, 41, 42, 43.

under section 30 of the Nova Scotia CPA, which grants the court wide powers to design the least expensive and most expeditious method of determining any remaining individual issues.⁷⁷ Thus, even if a common issues trial will be followed by individual assessments, certification is still preferable where threshold issues can be decided as common issues with common evidence.

E. Suitable Representative Plaintiff

67. The proposed representative plaintiff must: (1) be capable of adequately and fairly represent the interests of the class; (2) not have a conflict of interest with other members of the class in relation to the common issues; and (3) have a workable litigation plan.⁷⁸ The adequacy of a proposed representative plaintiff involves the court's inquiry into the motivation of the plaintiff and the competence of class counsel. The proposed representative plaintiff need not be "typical" of the class but must be "adequate" in the sense that they share a common interest with the other Class Members and they would "vigorously prosecute" the claim.⁷⁹

68. Zentner satisfies all these criteria. He falls within the class definition. He has a significant stake in the action. He has confirmed that he understands the proceedings and will provide instructions to counsel and participate in the litigation as required. He does not have any conflict of interest.⁸⁰ In short, he is perfectly suited to act as representative plaintiff.

⁷⁷ *Class Proceedings Act, 2007*, c. 28, s. 30, Plaintiff's Factum, Schedule "B". See also: [Lundy v. VIA Rail Canada Inc., 2015 ONSC 7063](#). [Brazeau v. Canada \(Attorney General\), 2021 ONSC 1828](#) (individual issues processes designed by the courts).

⁷⁸ *CPA*, s. 5(1)(e), Plaintiff's Factum, Schedule "B".

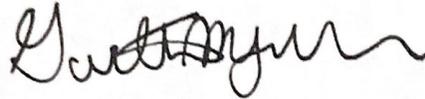
⁷⁹ [Campbell v. Flexwatt, 1997 CanLII 4111 \(B.C. C.A.\)](#), paras. 75-76, leave to appeal to S.C.C. ref'd at [1998] S.C.C.A. No. 13.

⁸⁰ Zentner Affidavit, paras. 9-18, [Plaintiff's Motion Record](#), Tab 3, pp. 42-45.

PART V - ORDER REQUESTED

69. Zentner requests an order in the form of the draft order attached as Schedule “F”.

ALL OF WHICH IS RESPECTFULLY SUBMITTED



Paul Guy / Garth Myers / John McKiggan / Brian Hebert

Lawyers for the Plaintiff, Gregory Zentner

SCHEDULE “A” - LIST OF AUTHORITIES

1. [*1176560 Ontario Limited et al. v. The Great Atlantic and Pacific Company of Canada Limited*, 2002 CanLII 6199 \(Ont. S.C.J.\)](#)
2. [*AIC Limited v. Fischer*, 2013 SCC 69](#)
3. [*Brazeau v. Canada \(Attorney General\)*, 2021 ONSC 1828](#)
4. [*Campbell v. Flexwatt*, 1997 CanLII 4111 \(B.C. C.A.\)](#)
5. [*Cannon v. Funds for Canada Foundation*, 2012 ONSC 399](#)
6. [*Canwest Publishing Inc.*, 2010 ONSC 1328](#)
7. [*Carom v. Bre-X Minerals Ltd.*, 2000 CanLII 16886 \(Ont. C.A.\)](#)
8. [*Cloud v. Canada \(Attorney General\)*, 2004 CanLII 45444 \(Ont. C.A.\)](#)
9. [*Endean v. Canadian Red Cross Society*, 1997 CanLII 2079 \(B.C.S.C.\)](#)
10. [*Fantl v. Transamerica Life Canada*, 2016 ONCA 633](#)
11. [*Green v. Canadian Imperial Bank of Commerce*, 2014 ONCA 90](#)
12. [*Heyde v Theberge Developments Limited*, 2017 ONSC 1574](#)
13. [*Hickey-Button v. Loyalist College of Applied Arts & Technology*, 2006 CanLII 20079 \(Ont. C.A.\)](#)
14. [*Hollick v. Toronto \(City\)*, 2001 SCC 68](#)
15. [*Lundy v. VIA Rail Canada Inc.*, 2015 ONSC 7063](#)
16. [*Pathak v. Sabha*, 2004 CanLII 10850 \(Ont. S.C.J.\)](#)
17. [*Pro-Sys Consultants Ltd. v. Microsoft Corporation*, 2013 SCC 57](#)
18. [*Ramdath v. George Brown College of Applied Arts and Technology*, 2010 ONSC 2019](#)
19. [*Robinson v. Rochester Financial Limited et al.*, 2010 ONSC 463](#)
20. [*Urbancorp Toronto Management Inc., Re*, 2016 ONSC 5426](#)

US Judgments

21. Memorandum Opinion and Order of Judge Timothy L. Brooks dated September 10, 2018, *Murphy v. Gospel for Asia, Inc.*, Case No. 5:17-cv-05035-ELW [Dkt. 134], published at 327 F.R.D. 227 (W.D. Ark. 2018)
22. Judgment of the United States Court of Appeals for the Eight Circuit dated October 16, 2016, *Murphy v. Gospel for Asia, Inc.*, Case No. 18-8012
23. Final Order and Judgment of Judge Erin L. Wiedemann dated June 26, 2016, *Murphy v. Gospel for Asia, Inc.*, Case No. 5:17-cv-05035-ELW [Dkt. 249]

SCHEDULE “B” – RELEVANT STATUTES

Class Proceedings Act, 2007, c. 28, s. 1.

Certification by the court

7 (1) The court shall certify a proceeding as a class proceeding on an application under Section 4, 5 or 6 if, in the opinion of the court,

- (a) the pleadings disclose or the notice of application discloses a cause of action;
- (b) there is an identifiable class of two or more persons that would be represented by a representative party;
- (c) the claims of the class members raise a common issue, whether or not the common issue predominates over issues affecting only individual members;
- (d) a class proceeding would be the preferable procedure for the fair and efficient resolution of the dispute; and
- (e) there is a representative party who
 - (i) would fairly and adequately represent the interests of the class,
 - (ii) has produced a plan for the class proceeding that sets out a workable method of advancing the class proceeding on behalf of the class and of notifying class members of the class proceeding, and
 - (iii) does not have, with respect to the common issues, an interest that is in conflict with the interests of other class members.

(2) In determining whether a class proceeding would be the preferable procedure for the fair and efficient resolution of the dispute, the court shall consider

- (a) whether questions of fact or law common to the class members predominate over any questions affecting only individual members;
- (b) whether a significant number of the class members have a valid interest in individually controlling the prosecution of separate proceedings;
- (c) whether the class proceeding would involve claims or defences that are or have been the subject of any other proceedings;
- (d) whether other means of resolving the claims are less practical or less efficient;
- (e) whether the administration of the class proceeding would create greater difficulties than those likely to be experienced if relief were sought by other means; and
- (f) any other matter the court considers relevant.

(3) Notwithstanding subsection (1), where an application is made to certify a proceeding as a class proceeding in order that a settlement will bind the members of a settlement class, the court shall not certify the proceeding as a class proceeding unless the court approves the settlement. 2007, c. 28, s. 7.

Certain matters not bar to certification

10 The court shall not refuse to certify a proceeding as a class proceeding by reason only that

- (a) the relief claimed includes a claim for damages that would require individual assessment after determination of the common issues;
- (b) the relief claimed relates to separate contracts involving different class members;
- (c) different remedies are sought for different class members;
- (d) the number of class members or the identity of each class member is not ascertained or may not be ascertainable; or
- (e) the class includes a subclass whose members have claims that raise common issues not shared by all class members. 2007, c. 28, s. 10.

Court may determine conduct of class proceeding

15 The court may at any time make any order it considers appropriate respecting the conduct of a class proceeding to ensure its fair and expeditious determination and, for that purpose, may impose on one or more of the parties the terms or conditions the court considers appropriate. 2007, c. 28, s. 15.

Determination of issues affecting certain individuals

30 (1) Where the court determines common issues in favour of a class or subclass and determines that there are issues, other than those that may be determined under Section 35, that are applicable only to certain individual class or subclass members, the court may

- (a) determine those individual issues in further hearings presided over by the judge who determined the common issues or by another judge of the court;
- (b) appoint one or more persons, including, without limiting the generality of the foregoing, one or more independent experts, to conduct a reference into those individual issues under the Civil Procedure Rules and report back to the court; or
- (c) with the consent of the parties, direct that those individual issues be determined in any other manner.

(2) The court may give any necessary directions relating to the procedures that shall be followed in conducting hearings, references and determinations under subsection (1).

(3) In giving directions under subsection (2), the court shall choose the least expensive and most expeditious method of determining the individual issues that, in the opinion of the court, is consistent with justice to the class or subclass members and the parties and, in doing so, the court may

(a) dispense with any procedural step that it considers unnecessary; and

(b) authorize any special procedural steps, including steps relating to discovery, and any special rules, including rules relating to admission of evidence and means of proof, that it considers appropriate.

(4) The court shall set a reasonable time within which individual class or subclass members may make claims under this Section in respect of the individual issues.

(5) A class or subclass member who fails to make a claim within the time set under subsection (4) shall not later make a claim under this Section in respect of the individual issues applicable to that member except with leave of the court.

(6) The court may grant leave under subsection (5) if, in the opinion of the court,

(a) there are apparent grounds for relief;

(b) the delay was not caused by any fault of the person seeking the relief; and

(c) the defendant would not suffer substantial prejudice if leave were granted.

(7) Unless otherwise ordered by the court making a direction under clause (1)(c), a determination of issues made in accordance with that clause is deemed to be an order of the court.

Rules of Civil Procedure, R.R.O. 1990, Reg. 194

RULE 10 REPRESENTATION ORDER

REPRESENTATION OF AN INTERESTED PERSON WHO CANNOT BE ASCERTAINED

Proceedings in which Order may be Made

10.01 (1) In a proceeding concerning,

- (a) the interpretation of a deed, will, contract or other instrument, or the interpretation of a statute, order in council, regulation or municipal by-law or resolution;
- (b) the determination of a question arising in the administration of an estate or trust;
- (c) the approval of a sale, purchase, settlement or other transaction;
- (d) the approval of an arrangement under the *Variation of Trusts Act*;
- (e) the administration of the estate of a deceased person; or
- (f) any other matter where it appears necessary or desirable to make an order under this subrule,

a judge may by order appoint one or more persons to represent any person or class of persons who are unborn or unascertained or who have a present, future, contingent or unascertained interest in or may be affected by the proceeding and who cannot be readily ascertained, found or served. R.R.O. 1990, Reg. 194, r. 10.01 (1).

Companies' Creditors Arrangement Act, R.S.C., 1985, c. C-36

General power of court

11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

SCHEDULE “C” – PROPOSED COMMON ISSUES

I. Civil Fraud

- (1) Did the Defendants, or any of them, deprive the Class Members of their property by dishonest means?

II. Negligent Misstatement

- (2) Did the Defendants owe a duty of care to the Class?
- (3) If so, did the Defendants breach that duty of care by making untrue, inaccurate or misleading representations to the Class?
- (4) If so, did the Defendants act negligently in making these representations?
- (5) If so, was reliance on these representations reasonable?
- (6) If so, what damages, if any, are payable by the Defendants, or any of them, to the Class?

III. Breach of Fiduciary Duty

- (7) Did the Defendants owe a fiduciary duty to the Class?
- (8) If so, did the Defendants breach that fiduciary duty?
- (9) If so, what damages, if any, are payable by the Defendants, or any of them, to the Class?

IV. Unjust Enrichment

- (10) Were the Defendants, or any of them, unjustly enriched?
- (11) If so, have Class members suffered a corresponding deprivation?
- (12) If so, was there a juristic reason for the enrichment?
- (13) If not, what damages, if any, are payable by the Defendants, or any of them, to the Class?

V. Conspiracy

- (14) Did the Defendants, or any of them, conspire to harm the Class?
- (15) If so, did the Defendants, or any of them, act in furtherance of that conspiracy?
- (16) If so, was the predominant purpose of the conspiracy to harm the Class?

- (17) Alternatively, did the conspiracy involve unlawful acts?
- (18) Did the Defendants, or any of them, know that the conspiracy would likely cause injury to the Class?
- (19) Did the Class suffer any economic loss on account of the conspiracy?
- (20) If so, what damages, if any, are payable by the Defendants, or any of them, to the Class?

VI. Equitable Fraud

- (21) Was there a fiduciary or special relationship between the Defendants, or any of them, and the Class Members?
- (22) If so, was the Defendants' conduct, having regard to this special relationship between the parties, unconscionable?
- (23) If so, what damages, if any, are payable by the Defendants, or any of them, to the Class?

VII. Punitive Damages

- (24) Are the Defendants, or any of them, liable to pay punitive or exemplary damages having regard to the nature of their conduct and if so, what amount and to whom?

SCHEDULE “D” – GFA CANADA’S 100% GUARANTEE



Gospel for Asia is firmly committed to good stewardship of the funds entrusted to us by our friends and donors. Since the ministry began, we have sent 100% percent of what you give toward sponsoring a missionary or child to the field. We remain committed to sending to the mission field 100 percent of every contribution so designated.

Gospel for Asia conducts our ministry with the highest standards of financial accountability in managing the funds entrusted to us by God's people. This has been our practice from the beginning.

SCHEDULE "E" – EVIDENCE OF THE DEFENDANTS' MISCONDUCT

A. GFA Canada Takes No Steps to Confirm Donations Are Used as Designated

1. On cross-examination, Emerick, GFA Canada's President and a Director, admitted that GFA Canada receives no reports or confirmations that Canadian donations are used on specific donations or preferences.⁸¹ GFA Canada raises money from Canadian donors and then deposits the funds into GFA Canada's Indian agents' bank accounts in Canada.⁸² Yet despite the centrality of the Donor Designation Promise to its fund raising efforts, GFA Canada now admits that it has no controls in place to confirm that the millions of dollars it collects are actually spent as designated by donors.

2. On cross-examination, Emerick was asked what steps GFA Canada takes to ensure that donations were used as designated. He admitted that the reports GFA Canada receives from its agents in the field lack the level of detail showing that donations were used as designated:

191 Q. So you send money to the field and you indicate what the designation or preference is; in other words what the money was raised for. We're agreed on that, correct?

A. Yes.

192 Q. Do you receive a corresponding report from the field indicating that the money was spent on the purposes for which it was raised?

A. We do.

193 Q. *So I have seen reports indicating that money was spent, but it does not contain the level of detail indicating that it was spent on the purposes for which it was raised. You do get that level of detail?*

A. *We do not.*⁸³

200 Q. *But the reports that you receive from the field, do not contain a level of detail indicating what specific designation or preference it was spent on?*

⁸¹ Emerick Transcript, qq. 191-193, p. 53, Plaintiff's Supplemental Motion Record, Tab 1, p. 57.

⁸² Harington Transcript, q. 283, p. 66, Plaintiff's Supplemental Motion Record, Tab 2, p. 230. Punnose Transcript, q. 275, p. 121, Plaintiff's Supplemental Motion Record, Tab 3, p. 852.

⁸³ Emerick Transcript, qq. 191-193, p. 53, Plaintiff's Supplemental Motion Record, Tab 1, p. 57.

A. *That is correct. [...]*⁸⁴

B. GFA Canada Admitted that its Auditors Were Provided with Backdated Indian Audits

3. GFA Canada's initial evidence on this motion was that it relied on its Indian agent, Believers Eastern Church, to spend Canadian donor's money as directed by Canadian donors, and to audit those expenditures annually. Critically, GFA Canada claimed that it had received letters from independent accountants in India (the "**Indian Audit Letters**") each year purporting to confirm that the Indian accountants had audited the expenditures.

4. Further, GFA Canada said that those Indian Audit Letters were the basis for the Canadian auditors of GFA Canada relying upon the audits done in India as confirmation that donor funds were in fact spent appropriately by the Indian agents.

5. Finally, GFA Canada's forensic accounting expert, Andy C. Harington, had relied upon the Indian Audit Letters in preparing his report. He testified that he received the Indian Audit Letters from the Canadian auditors, who advised him that they relied on the Indian Audit Letters each year in the preparation of GFA Canada's annual audited financial statements.⁸⁵ Harington confirmed that he relied on the Indian Audit Letters in preparing his expert report, and he said they gave him confidence in the reliability of GFA Canada's financial reporting.

6. All this evidence about the assurance provided by the Indian Audit Letters fell apart on cross-examination. To begin with, and perhaps tellingly, GFA Canada had not included the actual Indian Audit Letters in evidence through any of its evidence-in-chief, which itself was voluminous.

⁸⁴ Emerick Transcript, qq. 191-193, 200, pp. 53, 55, Plaintiff's Supplemental Motion Record, Tab 1, pp. 57, 59.

⁸⁵ Harington Report, para. 70, Defendant's Motion Record, Vol. 9, Tab 12, p. 4164. Harington Transcript, qq. 98-103, 388-396, pp. 25-26, 94-97, Plaintiff's Supplemental Motion Record, Tab 2, pp. 189-191, 258-261.

Instead, the alleged Indian Audit Letters were and put to Harrington by Zentner's counsel during cross-examination.

7. Harrington realized for the first time that the Indian Audit Letters, which he had previously assumed were performed in respect of the five-year period from 2010 to 2014 and relied upon during that time period by the Canadian auditors, were in fact *all dated May 31, 2019*, many years after the underlying events. In other words, the story about the Canadian auditors contemporaneously relying upon the Indian Audit Letters could not be true.

8. Harrington agreed. In his words, this caused him "*concern*" and it should "*raise a red flag*". He continued, "*I did not notice that before. [...] And I don't have an explanation for that.*"⁸⁶

397 Q. Now you would agree with me that if the statements that were prepared for the years ended in December 31, 2012, if that report was only prepared in 2019, it could not have been relied upon by the Canadian auditors, correct?

A. Sorry, in respect of 2012, that was only prepared in 2019?

398 Q. Correct.

A. Yes, that's correct.

399 Q. That would be a problem, correct?

A. A little bit late, I think.

400 Q. So it couldn't have been relied on, if it was prepared in 2019? It couldn't have been relied upon the Canadian auditors to prepare the 2012 statements, correct?

A. Yes I think that is right.

401 Q. [...] So, here we're back into tab 6 again with the information that you relied upon, and I think the Canadian auditors gave to you, correct tab 6, all right. So I just want to take you to the statements for 2012, which we identified earlier, and this is all in Exhibit 2. Now you identified this at page 171 as the audit report for March 31, 2012, correct?

⁸⁶ Harrington Transcript, qq. 405, 427, 428, p. 98, 103-104, Plaintiff's Supplemental Motion Record, Tab 2, pp. 98, 267-268.

- A. Correct.
- 401 Q. Okay. On page 2, we see that this report is dated May 31, 2019; do you see that?
- A. I did not notice that before.
- 402 Q. Okay.
- A. And I don't have an explanation for that.
- 404 Q. And if we look at the year 2013, that's at page 175.
- A. Yes.
- 405 Q. Over to page 174. That's also dated May 31, 2019; do you see that?
- A. I see that.
- 406 Q. And if we look at page 179, and over to page 180, again, this is for the March 2014 year-end. It's also dated May 31, 2019, correct?
- A. A. I did not notice that before, correct.
407. Q. So it's your evidence today that as a forensic investigator, you didn't notice the date on these financial audited statements until today, until just now?
- A. These are not audited statements to be clear, that is just correspondence from auditors to auditors and I did not notice that.
408. Q. Okay. All right. Now does that cause you any concerns about the conclusions you drew and the reliance that you placed on these statements as having been given contemporaneously?
- A. Yes, it does -- I don't know what was provided contemporaneously. It doesn't cause me any concern with the overall numbers were the same, because we can confirm something at any point in time --
- 409 Q. But you said?
- MR. ISHAI: Wait, let the witness finish. Go ahead Mr. Harington.
- A. But it does, I know there were communications from GFA India to GFA Canada, but it does -- I don't know what was provided to the auditors contemporaneously.
- 410 Q. Okay. Well, in your report, though -- so if in your report you represent that these were given to the auditors contemporaneously, that's wrong, correct?
- A. In respect of those years that is wrong, and I can't say what was given.
- 425 Q. So you would agree with me that as a forensic investigator coming to your project with a skeptical professional scepticism, if you saw that the auditors had told you one thing that couldn't be true, that would raise a red flag with you, correct, something for further investigation?

A. Yes. [...] ⁸⁷

9. Further, one of GFA India's purported Indian "auditors" was never independent: he is a member of the Management Board of the Believers Church Residential School. ⁸⁸

C. GFA India Withheld a Second Set of Financial Letters from Indian Auditors from its Own Forensic Accounting Expert That Report Different Revenues and Expenditures

10. GFA Canada had asked Harington to compare donations collected from Canadian donors with the funds that were sent to, and ultimately spent in, India. To do so, Harington was provided with the Indian Audit Letters. These were prepared by Kallukalam and Co. for the fiscal years ending December 31, 2007 and December 31, 2008, and by Thomas Cherian for the fiscal year ended March 31, 2010 and for the subsequent fiscal years ending March 31. ⁸⁹ Harington states that he relied on the figures in these Indian Audit Letters in support of his conclusions.

11. On cross-examination, Zentner's counsel put to Harington another "audit letter" for 2013. Instead of the 2013 letter prepared by Cherian that Harington has relied upon, this one was prepared by Kallukalam and Co. ⁹⁰ Harington had not seen it before.

12. Harington admitted that the revenue reported in the Kallukalam audit letter was markedly different from that in the Cherian letters for the same period. The discrepancy was approximately *\$3.5 million*:

⁸⁷ Harington Transcript, qq. 396-410, 425, pp. 96-99, Plaintiff's Supplemental Motion Record, Tab 2, pp. 260-263.

⁸⁸ Morrison Affidavit, para. 123, Plaintiff's Motion Record, Tab 4, p. 74.

⁸⁹ Letters from Indian accountants, Exhibit 2 to the Harington cross-examination, Plaintiff's Supplemental Motion Record, Tab 2B, pp. 477-521.

⁹⁰ Receipts and Disbursement Statements of Gospel for Asia International, July 7, 2014, Exhibit FF to the Morrison Affidavit, Plaintiff's Motion Record, Tab 4FF, p. 298.

Accountant	Year-End 2013 Revenue
Kallukalam	\$11,705,050 ⁹¹
Cherian	\$15,239,898 ⁹²
Difference:	\$3,534,848

13. When confronted with this conflicting evidence, Harington could not explain it. He agreed that if he had these conflicting financial reports, it would have changed his analysis:

- 451 Q. Now you would agree with me that if you had had this document when you prepared your report, your report may well have been different?
- A. Yes, I can't tell you how different it would have been, but I would have looked to understand what this difference was.⁹³

D. GFA Canada Does Not Comply with Canadian Charity Law

14. CRA allows Canadian charities to conduct work through foreign intermediaries in other countries. However, CRA mandates robust record keeping obligations in such cases. GFA Canada has not complied with these obligations.

15. An intermediary is an agent or organization in a foreign country with whom a Canadian charity contracts to carry out its work either alone or jointly with the Canadian entity.⁹⁴ The intermediary must report to the Canadian charity how their money was spent.⁹⁵ The Canadian entity must also take measures to direct and control the use of its resources when carrying out activities through an intermediary.⁹⁶ A Canadian charity “must maintain a record of steps taken to

⁹¹ Receipts and Disbursement Statements of Gospel for Asia International, July 7, 2014, Exhibit FF to the Morrison Affidavit, Plaintiff's Motion Record, Tab 4FF, p. 299.

⁹² Harington Report, Schedule 8, Defendant's Motion Record, Vol. 9, Tab 12, p. 4198.

⁹³ Harington Transcript, qq. 451-452, pp. 108-109. Plaintiff's Supplemental Motion Record, Tab 2, pp. 272-273.

⁹⁴ Morrison Affidavit, para. 132, Plaintiff's Motion Record, Tab 4, p. 76.

⁹⁵ Morrison Affidavit, para. 132, Plaintiff's Motion Record, Tab 4, p. 76.

⁹⁶ Morrison Affidavit, para. 135, Plaintiff's Motion Record, Tab 4, p. 77.

direct and control the use of its resources”.⁹⁷ CRA provides extensive guidance on the content of these records and steps, including specific documentation requirements.⁹⁸

16. GFA Canada stated each year that its financial resources were spent on programs outside Canada under an intermediary arrangement.⁹⁹ Yet GFA Canada admits that it receives no reporting from its Indian agents on the use of funds as designated.¹⁰⁰ Thus, GFA Canada does not comply with its CRA obligations.

17. CRA has also identified significant concerns about GFA Canada’s activities outside Canada. In March 2019, CRA wrote to GFA Canada identifying many areas of non-compliance that it found in its recent audit. Most importantly, CRA found that GFA Canada’s “*source documents relating to support the activities outside of Canada, are maintained at the headquarters in India.*”¹⁰¹ These documents are required to be maintained in Canada.

E. Yohannan Dismisses Canadian Directors Who Ask For Financial Statements

18. Yohannan dismissed Gary Cluley and Robert Thiessen, two GFA Canada directors, immediately after they asked to review financial statements and other financial reports.

19. Garry Cluley was a retired RCMP officer and a Director of GFA Canada between 2013 and 2015.¹⁰² While Cluley was a Director, GFA Canada held only one official meeting each year,

⁹⁷ Morrison Affidavit, para. 135, Plaintiff’s Motion Record, Tab 4, p. 77.

⁹⁸ Morrison Affidavit, para. 135-137, Plaintiff’s Motion Record, Tab 4, pp. 77-78.

⁹⁹ Morrison Affidavit, para. 134, Plaintiff’s Motion Record, Tab 4, p. 77.

¹⁰⁰ Emerick Transcript, qq. 191-193, 200, p. 53, Plaintiff’s Supplemental Motion Record, Tab 1, p. 57.

¹⁰¹ Letter from CRA to Pat Emerick dated March 19, 2019, Exhibit HH to the Morrison Affidavit, Plaintiff’s Motion Record, Tab 4HH, pp. 304-305.

¹⁰² Morrison Affidavit, para. 92, Plaintiff’s Motion Record, Tab 4, p. 68.

at which time a financial report was read aloud. GFA Canada's directors were not given printed copies of the financial reports or any other financial statements to review.¹⁰³

20. In July 2015, Mr. Cluley asked to see the joint ministry agreement for GFA International, and the financial statements and audits for the GFA International joint venture for the previous five years.¹⁰⁴ Mr. Cluley believed that he was satisfying his "fiduciary responsibilities as a Board Member."¹⁰⁵ Mr. Cluley then asked to see these documents on several additional occasions.¹⁰⁶ The last request was made on December 8, 2015. In response, Emerick assured him that he would provide Mr. Cluley with these records.¹⁰⁷

21. Rather than provide Mr. Cluley with this documentation, the day after, December 9, 2015, Mr. Cluley received a letter from Yohannan notifying him that "the expiration of your term has arrived."¹⁰⁸ Yohannan purported to terminate Mr. Cluley based on section 4.02 of the bylaws. Yet the bylaws included no section 4.02.¹⁰⁹

22. On December 8, 2015, Yohannan also terminated another GFA Canada Director, Robert Thiessen. Thiessen is an overseer of a group of Mennonite churches in British Columbia and was a member of GFA Canada's Board of Directors from 2013 to 2015.¹¹⁰ Thiessen had also requested GFA Canada financial information. After this request, he was immediately terminated by

¹⁰³ Morrison Affidavit, para. 92, Plaintiff's Motion Record, Tab 4, p. 68.

¹⁰⁴ Morrison Affidavit, para. 93, Plaintiff's Motion Record, Tab 4, p. 68.

¹⁰⁵ Letter from Garry Cluley to GFA USA and GFA Canada Boards of Directors, Exhibit W to the Morrison Affidavit, Plaintiff's Motion Record, Tab 4W, p. 253.

¹⁰⁶ Morrison Affidavit, para. 94, Plaintiff's Motion Record, Tab 4, p. 69.

¹⁰⁷ Morrison Affidavit, para. 95, Plaintiff's Motion Record, Tab 4, p. 69.

¹⁰⁸ Morrison Affidavit, para. 96, Plaintiff's Motion Record, Tab 4, p. 69. Letter from K.P. Yohannan to Garry Cluley dated December 8, 2015, Exhibit T to the Morrison Affidavit, Plaintiff's Motion Record, Tab 4T, p. 226.

¹⁰⁹ Morrison Affidavit, para. 98, Plaintiff's Motion Record, Tab 4, p. 69.

¹¹⁰ Morrison Affidavit, para. 100, Plaintiff's Motion Record, Tab 4, p. 70.

Yohannan.¹¹¹ Emerick confirmed under cross-examination that the Board did not vote on Mr. Cluley's removal. The decision was made by Yohannan.¹¹²

F. None of the \$76.7 Million Collected from Donors in the Years 2007 to 2013 was Sent to India During that Time

23. Harington explained that GFA Canada's Indian agent, Believers Eastern Church, set up two bank accounts in Canada under the name Gospel for Asia - India ("GFA India"). Harington testified that at the beginning of 2007 GFA India had just over \$14 million in its Canadian Bank accounts.¹¹³

24. Harington then gave evidence under cross-examination as to: (1) the amounts *collected* by GFA Canada from Canadian donors who had designated that their donations be used in India; (2) the amounts *deposited* by GFA Canada into GFA India's Canadian bank accounts; and (3) the amounts *actually sent to India* by GFA India and GFA Canada:

- (a) For 2007, GFA Canada collected \$8.635 million in donations to be used "in the field". GFA Canada deposited \$10.152 million into GFA India's Canadian bank accounts. In 2007, *no money was transferred to India*.¹¹⁴
- (b) For 2008, GFA Canada collected \$9.386 million in donations to be used "in the field". GFA Canada deposited \$10.332 million in GFA India's Canadian bank accounts. *No money was transferred to India*. However, \$22 million was sent to Hong Kong where it was held and eventually transferred to India 8 years later in 2016.¹¹⁵
- (c) For 2009, GFA Canada collected \$9.410 million in donations to be used "in the field". GFA Canada deposited \$10.865 million into GFA India's Canadian bank accounts. In 2009, GFA India transferred \$13.6623 million to India.¹¹⁶

¹¹¹ Morrison Affidavit, para. 96, Plaintiff's Motion Record, Tab 4, p. 69. Letter from K.P. Yohannan to Garry Cluley dated December 8, 2015, Exhibit T to the Morrison Affidavit, PMR, Tab 4T, p. 226.

¹¹² Emerick Transcript, qq. 347-349, p. 94, Plaintiff's Supplemental Motion Record, Tab 1, p. 98.

¹¹³ Harington Transcript, qq. 259-260, p. 61, Plaintiff's Supplemental Motion Record, Tab 2, p. 225.

¹¹⁴ Harington Transcript, qq. 253-275, pp. 60-65, Plaintiff's Supplemental Motion Record, Tab 2, pp. 224-229.

¹¹⁵ Harington Transcript, qq. 276-284, pp. 65-67, Plaintiff's Supplemental Motion Record, Tab 2, pp. 229-231.

¹¹⁶ Harington Transcript, qq. 285-291, pp. 67-68, Plaintiff's Supplemental Motion Record, Tab 2, pp. 231-232.

However, this was less than the \$14 million that GFA India already had in its bank accounts at the beginning of 2007.

- (d) For 2010, GFA Canada collected \$9.761 million in donations to be used “in the field”. GFA Canada deposited \$9.222 million into GFA India’s Canadian bank accounts. *No money was transferred to India.*¹¹⁷
- (e) In 2011, GFA Canada collected \$10.883 million in donations to be used “in the field”. GFA Canada deposited \$9.585 million into GFA India’s Canadian bank accounts. *No money was transferred to India.*¹¹⁸
- (f) In 2012, GFA Canada collected \$13.825 million in donations to be used “in the field”. GFA Canada deposited \$12.752 million into GFA India’s Canadian bank accounts. *No money was transferred to India.*¹¹⁹
- (g) In 2013, GFA Canada collected \$14.803 million in donations to be used “in the field”. GFA Canada deposited \$15.254 million into GFA India’s Canadian bank account. *No money was transferred to India,*¹²⁰ but GFA India transferred \$20.5 million from GFA India’s Canadian bank account to GFA USA.¹²¹

25. In summary, then, *from 2007-2013, \$76.703 million was collected from Canadian donors to be used “in the field”, but none of that money was actually sent to India during that time.* The only money sent to India during that time was the original \$14 million that was already on hand before the \$76.703 million was collected.

26. The next time money actually flowed to India was in September 2014, when GFA India transferred \$33 million.¹²² This coincided with allegations made against GFA US by former employees.

¹¹⁷ Harington Transcript, qq. 295-297, p. 69, Plaintiff’s Supplemental Motion Record, Tab 2, p. 233.

¹¹⁸ Harington Transcript, qq. 304-311, pp. 71-72, Plaintiff’s Supplemental Motion Record, Tab 2, pp. 235-236.

¹¹⁹ Harington Transcript, qq. 312-316, pp. 72-73, Plaintiff’s Supplemental Motion Record, Tab 2, pp. 236-237.

¹²⁰ Harington Transcript, qq. 317-325, pp. 73-75, Plaintiff’s Supplemental Motion Record, Tab 2, pp. 73-75.

¹²¹ Harington Transcript, qq. 328-329, p. 76, Plaintiff’s Supplemental Motion Record, Tab 2, p. 240.

¹²² Harington Transcript, q. 327, pp. 75-76, Plaintiff’s Supplemental Motion Record, Tab 2, pp. 239-240.

G. Discrepancies in GFA Canada's alleged transfers to India

27. There are significant discrepancies between: (1) the amounts reported by GFA Canada to CRA as having been sent by GFA Canada to India; and (2) the amount GFA India and Believers Eastern Church reported to Indian authorities as having been received.

28. In total, according to Harrington's testimony during cross-examination, GFA Canada deposited \$78.1 million from 2007 and 2013 into GFA India's Canadian bank accounts. Each year, GFA Canada filed an annual charity return with CRA showing the amounts collected from Canadian donors, and the amounts expended in India for the previous fiscal year.

29. During this same period, neither GFA India nor Believers Eastern Church, nor any other related entity reported to the Indian authorities having received *any funds* from Canada.

30. These amounts seem to correspond with the amounts reported in the Indian Audit Letters provided to Harrington for that period which were prepared years after the fact, which raises the possibility that they were generated after the fact to correspond with the Canadian CRA reporting. This is supported by the fact one undisclosed audit letter for the year 2013 is inconsistent with the CRA reporting for that year. Harrington calculated the difference to be \$3.5 million.¹²³

H. Massive Amounts of Interest Earned by Indian Entities

31. Four GFA related Indian entities that received funds from foreign contributions reported massive amounts of interest earned on foreign contributions. They reported earning US\$80.6 million *in interest* between 2007 and 2014. To amass this amount of interest shows that these

¹²³ Morrison Affidavit, para. 121, Plaintiff's Motion Record, Tab 4, p. 74. Letter from Tony C. Kallukalam to GFA International dated July 7, 2014, Exhibit FF to the Morrison Affidavit, Plaintiff's Motion Record, Tab 4FF, pp. 298-299.

entities held massive amounts of cash in India, which is consistent with the conclusion that Canadian donations were not spent, let alone spent as designated.¹²⁴

I. CPAO Regulator Found Extensive Auditing Irregularities in Canada

32. The Chartered Professional Accountants of Ontario (CPAO) is the regulatory body in Ontario for accountants. In June 2018, the CPAO's disciplinary committee issued a report on Taylor Leibow, GFA Canada's auditor, in relation to the firm's audit work for GFA Canada. The report stated (emphasis added):

- (a) "The Committee is concerned that *there was no attempt whatsoever to ensure that the funds were being spent as directed by the donors* or that appropriate disclosure was made in this regard."
- (b) "[Subcommittee No. 3 of the Professional Conduct Committee] has concerns regarding a number of issues raised by the complainant about GFA Canada's audited F/S [financial statements] prepared by the member."
- (c) "For example, the Indian entities FC-6 forms and the GFA joint ministry audited F/S allegedly show much lower donations from Canada than is reported in GFA's F/S."
- (d) "[Taylor Leibow] ought to have had a better understanding of [GFA Canada], including how the entities were interrelated and how the overall organization functioned, including the flow of funds."
- (e) "The Committee is also concerned that professional skepticism was lacking in this audit and that, as a result you may not have carried out a sufficiently robust risk assessment."
- (f) "The Canadian and U.S. entities should have been identified as related parties, and the appropriate related party disclosure ought to have been made in the financial statements."¹²⁵

¹²⁴ Morrison Affidavit, para. 129, Plaintiff's Motion Record, Tab 4, p. 76.

¹²⁵ June 28, 2018 CPA Ontario Disciplinary Committee Report, Exhibit Q to the Morrison Affidavit, Plaintiff's Motion Record, Tab 4Q, pp. 193-201.

33. GFA Canada's financial statements do not address the fact that while they show significant payments being made by GFA Canada to India, the filings in India for the corresponding years showed no money coming in from GFA Canada.¹²⁶

J. Concerns Raised by The Evangelical Council for Financial Accountability

34. The Evangelical Council for Financial Accountability ("ECFA") is an evangelical organization formed to ensure that Christian organizations that are raising money from donors meet certain basic ethical standards. GFA USA was one of the founding members.

35. In 2015, the ECFA sanctioned GFA USA after an ECFA audit determined that GFA was not meeting ECFA's financial and ethical standards.¹²⁷

36. The ECFA's review identified 17 "*compliance issues*", including:

- (a) improper use of field-generated funds to satisfy designated foreign contributions;¹²⁸
- (b) excessive cash balances totalling \$259 million from donor-restricted gifts raised in response to gift solicitations that communicated urgent field needs held in partner field accounts;¹²⁹
- (c) long delays in sending funds to the field, despite purported urgent field needs;¹³⁰

¹²⁶Summary of Gospel for Asia CRA T-3010 Forms, Exhibit DD to the Morrison Affidavit, Plaintiff's Motion Record, Tab 4DD, p. 249. Gospel for Asia/Believers Church Form FC-6 Income Reporting Summary, Exhibit DD to the Morrison Affidavit, Plaintiff's Motion Record, Tab 4DD, p. 296. Morrison Affidavit, paras. 114-118, Plaintiff's Motion Record, Tab 5, pp. 72-73.

¹²⁷ Morrison Affidavit, para. 164, Plaintiff's Motion Record, Tab 4, p. 84.

¹²⁸ Letter from ECFA to K.P. Yohannan dated September 2, 2015, Exhibit NN to the Morrison Affidavit, Plaintiff's Motion Record, Tab 4NN, p. 350.

¹²⁹ Letter from ECFA to K.P. Yohannan dated September 2, 2015, Exhibit NN to the Morrison Affidavit, Plaintiff's Motion Record, Tab 4NN, p. 351.

¹³⁰ Letter from ECFA to K.P. Yohannan dated September 2, 2015, Exhibit NN to the Morrison Affidavit, Plaintiff's Motion Record, Tab 4NN, p. 352.

- (d) concerns with the level of urgency communicated to donors contrasted with reserves held by foreign field partners and delays in sending funds to the field;¹³¹
- (e) insufficient direction and control over funds granted to foreign entities: GFA did not exercise any direct control over field partners;¹³²
- (f) GFA solicited funds for narrower purposes than its purported eventual expenditure of funds, and donations were raised for specific items but were “pooled for expenditure purposes instead of expending them for the purposes raised”;¹³³
- (g) GFA’s financial statements:
 - (i) falsely reported transactions with foreign partners, including a US\$20 million payment from the related-party GFA India that was not disclosed in GFA’s financial statements;¹³⁴
 - (ii) incorrectly reported accrued field support as a liability instead of temporarily restricted net assets, contrary to Generally Accepted Accounting Principals;¹³⁵
- (h) GFA inappropriately used US\$20 million originally received from GFA India as gifts from donors restricted for the field to build its headquarters in Texas:

“Reallocating gifts donated for field purposes contradicts GFA’s claim that 100 percent of funds are sent to the field. In fact, a significant amount of donations restricted for the field made a circuitous trip back to GFA and were used for the headquarters construction, as though they had never gone to the field.”¹³⁶
- (i) GFA inappropriately and incorrectly disclaims control over its field partners in India, despite that “GFA staff has significant influence on the operations and decisions of GFA field partners.”¹³⁷

¹³¹ Letter from ECFA to K.P. Yohannan dated September 2, 2015, Exhibit NN to the Morrison Affidavit, Plaintiff’s Motion Record, Tab 4NN, pp. 352-353.

¹³² Letter from ECFA to K.P. Yohannan dated September 2, 2015, Exhibit NN to the Morrison Affidavit, Plaintiff’s Motion Record, Tab 4NN, p. 353.

¹³³ Letter from ECFA to K.P. Yohannan dated September 2, 2015, Exhibit NN to the Morrison Affidavit, Plaintiff’s Motion Record, Tab 4NN, pp. 353-354.

¹³⁴ Letter from ECFA to K.P. Yohannan dated September 2, 2015, Exhibit NN to the Morrison Affidavit, Plaintiff’s Motion Record, Tab 4NN, p. 354.

¹³⁵ Letter from ECFA to K.P. Yohannan dated September 2, 2015, Exhibit NN to the Morrison Affidavit, Plaintiff’s Motion Record, Tab 4NN, p. 355.

¹³⁶ Letter from ECFA to K.P. Yohannan dated September 2, 2015, Exhibit NN to the Morrison Affidavit, Plaintiff’s Motion Record, Tab 4NN, p. 354.

¹³⁷ Letter from ECFA to K.P. Yohannan dated September 2, 2015, Exhibit NN to the Morrison Affidavit, Plaintiff’s Motion Record, Tab 4NN, pp. 355-356.

- (j) GFA sent \$287,000 in cash to India, contrary to US Department of Homeland Security disclosure obligations, and ECFA was unable to determine whether there was any sound basis for these cash transfers (particularly because GFA reports transferring \$50 million from the US to India per year in any event);¹³⁸ and
- (k) GFA's board did not exercise adequate governance oversight, raising "serious questions" about GFA's compliance with ECFA Standards.¹³⁹

37. Finally, ECFA disclosed that GFA had provided ECFA with inaccurate information; GFA provided late disclosures; and ECFA learned "significant information" from sources unrelated to GFA that it "should have learned directly from GFA."¹⁴⁰

K. GFA Admits in US Litigation that Canadian Donations Used to Build Compound

38. In a 2017 hearing in the US Action, GFA USA at first claimed that GFA USA received US\$20 million for the construction of the Texas Compound from Believer's Church in India.¹⁴¹

39. Yet evidence eventually emerged that the funds did not come from India, but from Canada. At a 2018 hearing, GFA USA stated that the funds came from GFA Canada's "Indian bank account", and this account was not in India, but was a separate account located at the same local RBC branch in Hamilton where GFA Canada banks.¹⁴²

40. On cross-examination in the context of the within motion, Emerick admitted that the US compound was paid for with Canadian donor funds. The funds were first sent from GFA Canada

¹³⁸ Letter from ECFA to K.P. Yohannan dated September 2, 2015, Exhibit NN to the Morrison Affidavit, Plaintiff's Motion Record, Tab 4NN, p. 36.

¹³⁹ Letter from ECFA to K.P. Yohannan dated September 2, 2015, Exhibit NN to the Morrison Affidavit, Plaintiff's Motion Record, Tab 4NN, p. 356.

¹⁴⁰ Letter from ECFA to K.P. Yohannan dated September 2, 2015, Exhibit NN to the Morrison Affidavit, Plaintiff's Motion Record, Tab 4NN, pp. 357-358.

¹⁴¹ Emerick Transcript, q. 477, p. 126, Plaintiff's Supplemental Motion Record, Tab 1, p. 130.

¹⁴² Morrison Affidavit, paras. 184-185, Plaintiff's Motion Record, Tab 4, pp. 89-90.

to GFA India's RBC bank account in Canada, and then from GFA India's RBC bank account in Canada to GFA USA.¹⁴³

41. Emerick admits that he learned about this for the first time in the US litigation.¹⁴⁴ Yet despite the size of this payment and his position and President of GFA Canada and a Director, Emerick's affidavit provides only evidence based *on information and belief* about the mechanisms of this transfer.¹⁴⁵

42. Emerick could not identify who told him this information — he simply “could not recall” who told him that US\$20 million of GFA Canada's money was used to build a compound in Texas while he was President and a member of the GFA Canada Board of Directors.¹⁴⁶

43. Emerick admits that at first, GFA US claimed that these funds came from an anonymous donation.¹⁴⁷ Emerick admits that this story changed.¹⁴⁸ Now, GFA Canada's sole explanation for the propriety of this transaction is that “[its] field partner in Asia had the resources with which to cover” spending money in accordance with Canadian designations, and that GFA Canada received reports of that being accomplished.¹⁴⁹ However, as noted above, this too is false. Emerick admitted that these reports do not indicate how Canadian donations were *actually spent*.¹⁵⁰

¹⁴³ Emerick Transcript, q. 449, p. 120, Plaintiff's Supplemental Motion Record, Tab 1, p. 124.

¹⁴⁴ Emerick Transcript, q. 453, p. 121, Plaintiff's Supplemental Motion Record, Tab 1, p. 125.

¹⁴⁵ Emerick February 5, 2021 Affidavit, paras. 81-86, Defendant's Motion Record, Tab 1, pp. 23-24.

¹⁴⁶ Emerick Transcript, q. 454, p. 121, Plaintiff's Supplemental Motion Record, Tab 1, p. 125.

¹⁴⁷ Emerick Transcript, q. 477, p. 126, Plaintiff's Supplemental Motion Record, Tab 1, p. 130.

¹⁴⁸ Emerick Transcript, q. 478, p. 126, Plaintiff's Supplemental Motion Record, Tab 1, p. 130.

¹⁴⁹ Emerick Transcript, q. 475, p. 126, Plaintiff's Supplemental Motion Record, Tab 1, p. 130.

¹⁵⁰ Emerick Transcript, qq. 191-193, p. 53, Plaintiff's Supplemental Motion Record, Tab 1, p. 57.

L. GFA's Corpus Fund Holds Millions of Dollars in India

44. In India, GFA has reported a "Corpus Fund" (otherwise known as a rainy-day fund) established for the purpose of "future considerations".¹⁵¹ Under Indian law, foreign donors must give their permission for their donations to be used in a Corpus Fund. Yet GFA Canada never solicited donor money in Canada or elsewhere for corpus purposes.¹⁵² Emerick conceded this on cross-examination.¹⁵³ Indeed, the existence of the Corpus Fund conflicts with GFA Canada's appeal that it requires donations to meet an urgent and immediate need.¹⁵⁴

M. Phantom Offices in Canada

45. GFA Canada registered many corporations indicating head offices that do not exist. In 2015 and 2016, GFA Canada registered five corporations under the *Canada Not-for-profit Corporations Act*.¹⁵⁵ The corporate profiles for these corporations show head office addresses in Hamilton, Ontario. Yet at these premises, there is no evidence of any offices for these corporations.¹⁵⁶

N. Indian Government Revokes GFA Charitable Status, Raids of GFA's Indian Operations

46. In 2017, the Indian government revoked the charitable registration of Believers Church, Ayana Charitable Trust (formerly GFA India), Last Hour Ministries and Love India.¹⁵⁷ Yet despite the revocation of its charitable status entitling it to receive foreign contributions in India, GFA Canada continues to report that Believers Church is its agent in India for distributing money donated in Canada.

¹⁵¹ Morrison Affidavit, para. 180, Plaintiff's Motion Record, Tab 4, pp. 88-89.

¹⁵² Morrison Affidavit, para. 180, Plaintiff's Motion Record, Tab 4, pp. 88-89.

¹⁵³ Emerick Transcript, qq. 388-389, pp. 103-104, Plaintiff's Supplemental Motion Record, Tab 1, pp. 107-108.

¹⁵⁴ Morrison Affidavit, para. 182, Plaintiff's Motion Record, Tab 4, p. 89.

¹⁵⁵ Morrison Affidavit, para. 155, Plaintiff's Motion Record, Tab 4, p. 82.

¹⁵⁶ Morrison Affidavit, para. 158, Plaintiff's Motion Record, Tab 4, p. 83.

¹⁵⁷ Morrison Affidavit, para. 178, Plaintiff's Motion Record, Tab 4, p. 88.

47. In November 2020, agents from the Indian Revenue Authority raided Yohannan's residence and the Believers Church headquarters seizing millions of Rupees in cash and computers and records. The raids followed the Indian government's revocation of Believers Church's permission to receive foreign funds earmarked for charity. Indian authorities suspected that GFA continued to send large sums of foreign money to Believers Church.

48. The Kerala newspaper reported on November 6, 2020 in an article titled "IT dept seizes Rs 5 cr from Believers church; claims Rs 6000 cr received as foreign aid":

- (a) "The Income Tax department has uncovered a huge financial scam under the Believers Church."¹⁵⁸
- (b) "Trusts formed under Believers Church have received Rs 6000 cr [CAD\$998 million] from abroad within the last 5 years. As per the law, the foreign fund received for charity must be used only for that purpose and the details must be informed to the government. But the Believers Church has invested the foreign fund in [sic] real estate sector. Irregularities were also found in the accounts produced, reported the IT department."¹⁵⁹

49. On November 5, 2020, Times Now News, India reported the following in an article titled, "Kerala: Income Tax raid at home, officers of Believers Church's KP Yohannan; 'Rs 54L cash, phones seized'":

- (a) "In 2017, the Ministry of Home Affairs had barred the Believers Church and three other associated NGOs from accepting foreign funds."¹⁶⁰

¹⁵⁸ Biju Pankaj, IT dept seizes Rs 5 cr from Believers church; claims Rs 6000 cr received as foreign aid, Mathrubhumi News, November 6, 2020, Exhibit XX to the Morrison Affidavit, Plaintiff's Motion Record, Tab 4XX, p. 652.

¹⁵⁹ Biju Pankaj, IT dept seizes Rs 5 cr from Believers church; claims Rs 6000 cr received as foreign aid, Mathrubhumi News, November 6, 2020, Exhibit XX to the Morrison Affidavit, Plaintiff's Motion Record, T4XX, p. 653.

¹⁶⁰ Kerala: Income Tax raid at home, officers of Believers Church's KP Yohannan; 'Rs 54L cash, phones seized', Times Now News, November 5, 2020, Exhibit YY to the Morrison Affidavit, Plaintiff's Motion Record, Tab 4YY, p. 659.

- (b) “The Income Tax department on Thursday conducted raids at the residence and offices of KP Yohannan, the founder and director of Gospel for Asia and also the metropolitan bishop of Believers Church.”¹⁶¹
- (c) “As per reports, the officials confiscated Rs 54 lakh [CAD\$90,000] from the boot of a vehicle parked in the premises and also seized a few phones.”¹⁶²
- (d) “Reports suggest the raids were initiated on the inputs regarding alleged tax evasion and Foreign Exchange Management Act (FEMA) violations by the Thiruvalla-based Church.”¹⁶³
- (e) “Officials said simultaneous raids were being carried out at the residences and offices of several persons associated with the Church in Kerala as well as outside the state.”¹⁶⁴

50. On November 6, 2020, the Indian Ministry of Finance issued a press release titled, “Income tax Department conducts searches in Kerala”. The Ministry of finance disclosed:

- (a) “The Income Tax Department has carried out search and seizure operations on 05.11.2020 in the case of a well-known self-styled evangelist of Thiruvalla in Kerala and his group of various trusts that enjoy exemption under the Income-tax Act, 1961 as charitable/religious trusts.”¹⁶⁵
- (b) “The searches were carried out as credible information was received that the group has received donations from foreign countries ostensibly for helping the poor and the destitute and for evangelical purposes, but was actually siphoning out of such tax-exempted funds in cash to engage in unaccounted cash transactions for personal and other illegal expenses in real estate transactions.”¹⁶⁶

¹⁶¹ Kerala: Income Tax raid at home, officers of Believers Church’s KP Yohannan; ‘Rs 54L cash, phones seized, Times Now News, November 5, 2020, Exhibit YY to the Morrison Affidavit, Plaintiff’s Motion Record, Tab 4YY, p. 659.

¹⁶² Kerala: Income Tax raid at home, officers of Believers Church’s KP Yohannan; ‘Rs 54L cash, phones seized, Times Now News, November 5, 2020, Exhibit YY to the Morrison Affidavit, Plaintiff’s Motion Record, Tab 4YY, p. 659.

¹⁶³ Kerala: Income Tax raid at home, officers of Believers Church’s KP Yohannan; ‘Rs 54L cash, phones seized, Times Now News, November 5, 2020, Exhibit YY to the Morrison Affidavit, Plaintiff’s Motion Record, Tab 4YY, p. 659.

¹⁶⁴ Kerala: Income Tax raid at home, officers of Believers Church’s KP Yohannan; ‘Rs 54L cash, phones seized, Times Now News, November 5, 2020, Exhibit YY to the Morrison Affidavit, Plaintiff’s Motion Record, Tab 4YY, p. 659.

¹⁶⁵ Ministry of Finance, Income tax Department conducts searches in Kerala, November 6, 2020, Exhibit ZZ to the Morrison Affidavit, Plaintiff’s Motion Record, Tab 4ZZ, p. 664.

¹⁶⁶ Ministry of Finance, Income tax Department conducts searches in Kerala, November 6, 2020, Exhibit ZZ to the Morrison Affidavit, Plaintiff’s Motion Record, Tab 4ZZ, p. 664.

- (c) “The group operates about 30 trusts, registered across the country, and most of them exist only on paper and have been found to be used for routing the unaccounted funds and for accommodation transactions.”¹⁶⁷
- (d) “It has been found that the *modus operandi* of the group is to systemically inflate expenses with the help of other parties, who would return the inflated amount in cash through domestic hawala channels to the functionaries of the group.”¹⁶⁸
- (e) “During the search action, evidences have been found of systematic inflation of expenses in purchase of consumables, construction expenses, real estate development expenses, payment of salary, etc.”¹⁶⁹
- (f) “The search has led to unearthing of a number of real estate transactions involving unaccounted cash payments. Related documents such as sale agreements, etc have been seized.”¹⁷⁰
- (g) “The group has also inflated the price in real estate transactions to show as if the money received in donations is being spent on the activities of the trusts. The evidence so far indicates that the siphoning of funds in cash may be running into the hundreds of crores of rupees.”¹⁷¹
- (h) “Unexplained cash of approximately Rs. 6 crore [CAD\$997,845.60] has also been found during the search, including RS 3.85 crore in a place of worship in Delhi.”¹⁷²

¹⁶⁷ Ministry of Finance, Income tax Department conducts searches in Kerala, November 6, 2020, Exhibit ZZ to the Morrison Affidavit, Plaintiff’s Motion Record, Tab 4ZZ, p. 664.

¹⁶⁸ Ministry of Finance, Income tax Department conducts searches in Kerala, November 6, 2020, Exhibit ZZ to the Morrison Affidavit, Plaintiff’s Motion Record, Tab 4ZZ, p. 664.

¹⁶⁹ Ministry of Finance, Income tax Department conducts searches in Kerala, November 6, 2020, Exhibit ZZ to the Morrison Affidavit, Plaintiff’s Motion Record, Tab 4ZZ, p. 664.

¹⁷⁰ Ministry of Finance, Income tax Department conducts searches in Kerala, November 6, 2020, Exhibit ZZ to the Morrison Affidavit, Plaintiff’s Motion Record, Tab 4ZZ, p. 664.

¹⁷¹ Ministry of Finance, Income tax Department conducts searches in Kerala, November 6, 2020, Exhibit ZZ to the Morrison Affidavit, Plaintiff’s Motion Record, Tab 4ZZ, p. 664.

¹⁷² Ministry of Finance, Income tax Department conducts searches in Kerala, November 6, 2020, Exhibit ZZ to the Morrison Affidavit, Plaintiff’s Motion Record, Tab 4ZZ, p. 664.

SCHEDULE “F” DRAFT ORDER

Court File No. CV-20-00643091-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE
JUSTICE HAINEY

_____, THE _____
DAY OF _____, 2021

**IN THE MATTER OF THE COMPANIES’ CREDITORS ARRANGEMENT
ACT, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF GFA WORLD**

REPRESENTATION ORDER

THIS MOTION made by Gregory Zentner (“**Zentner**”), the Plaintiff in a proposed class action against the Applicant and others, for an order appointing Zentner as representative for those persons described in **Appendix A** hereto (collectively, the “**Class**”), for the purposes of these proceedings and any related or ensuing receivership, bankruptcy or other insolvency proceeding that may be brought in respect of the Applicant (the “**Insolvency Proceedings**”), was heard this day on the Commercial List by video conference via Zoom.

ON READING the Motion Record of Zentner and on hearing the submissions of counsel to Zentner and other parties,

2. **THIS COURT ORDERS THAT** further service of the Notice of Motion and Motion Record on any party not already served is hereby dispensed with, such that this motion was properly returnable today.

3. **THIS COURT ORDERS THAT** Gregory Zenter is hereby appointed as representative (the “**Representative**”) of the Class in respect of all claims to be made by the Class in the Insolvency Proceedings (the “**Claims**”) and declares that the criteria for certification under the Nova Scotia *Class Proceedings Act*, 2007, c. 28, s. 1 are satisfied.
4. **THIS COURT ORDERS THAT** McKiggan Hebert and Kalloghlian Myers LLP are hereby appointed as representative counsel (the “**Representative Counsel**”) to the Representative in the Insolvency Proceedings for any issues affecting the Class Members arising out of the Claims.
5. **THIS COURT ORDERS THAT** the questions to be answered at the common issues trial of the Claims are those set out in **Appendix B**.
6. **THIS COURT ORDERS THAT** notice of the granting of this Order shall be provided to Class Members [to be disseminated with the notice of the Claims Procedure Order].
7. **THIS COURT ORDERS** that the Representative shall be at liberty and is authorized at any time to apply to this Court for advice and directions in the discharge or variation of his powers and duties.

APPENDIX A TO REPRESENTATION ORDER

DEFINITION OF CLASS MEMBERS

All persons in Canada who made donations to GFA World using donation codes 1000 to 4900 from January 1, 2006 to date that were not specifically directed for use of the “Home Team” or “Home Office”.

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED**

Court File No. CV-20-00643091-CL

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF GFA WORLD**

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**FACTUM
(MOTION FOR REPRESENTATIVE ORDER AND
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