IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 15
Acerus Pharmaceuticals Corporation, *et al.*,	Case No. 23-10111 ( )
Debtors in a foreign proceeding.[1]	(Joint Administration Requested)

VERIFIED PETITION FOR (I) RECOGNITION OF FOREIGN MAIN PROCEEDINGS, (II) RECOGNITION OF FOREIGN REPRESENTATIVE, (III) RECOGNITION OF INITIAL ORDER AND AMENDED AND RESTATED INITIAL ORDER, AND (IV) RELATED RELIEF UNDER CHAPTER 15 OF THE BANKRUPTCY CODE

Acerus Pharmaceuticals Corporation, in its capacity as the duly-appointed foreign representative (the "**Foreign Representative**") for the above-captioned debtors (collectively, the "**Debtors**"), subject to the proceedings (the "**Canadian Proceedings**") currently pending before the Ontario Superior Court of Justice (Commercial List) (the "**Canadian Court**"), initiated pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (as amended, the "**CCAA**"), filed chapter 15 petitions for each of the Debtors (the Chapter 15 petitions, together with this Verified Petition, the "**Petitions for Recognition**"), and respectfully states as follows:

RELIEF REQUESTED

1. The Foreign Representative has commenced these chapter 15 cases as ancillary proceedings to the Canadian Proceedings and respectfully files this Verified Petition contemporaneously with the required accompanying documentation pursuant to section 1504 and 1515 of title 11 of the United States Code (the "**Bankruptcy Code**").

[1] The Debtors in these chapter 15 proceedings, together with the last four digits of their business identification numbers are: Acerus Pharmaceuticals Corporation (6891); Acerus Biopharma Inc. (0687); Acerus Labs Inc. (0126); and Acerus Pharmaceuticals USA, LLC (9089). The location of the Debtors' headquarters and the Debtors' foreign representative is: 205-7025 Langer Drive, Mississauga, Ontario, Canada.

2. The Foreign Representative requests that this Court enter an order, substantially in the form of the Proposed Order attached hereto as **Exhibit A**, pursuant to sections 105(a), 362, 363, 364, 365, 1504, 1507, 1509, 1510, 1515, 1517, 1520, and 1521 of the Bankruptcy Code (collectively, the "**Relief Requested**") that:

a. recognizes the Canadian Proceedings as foreign main proceedings pursuant to section 1517(b)(1) of the Bankruptcy Code, or in the alternative as foreign nonmain proceedings pursuant to section 1517(b)(2) of the Bankruptcy Code;

b. recognizes the Foreign Representative as a "foreign representative" as defined in section 101(24) of the Bankruptcy Code in respect of the Canadian Proceedings;

c. gives full force and effect in the United States to the Amended and Restated Initial Order, including any and all extensions or amendments thereof authorized by the Canadian Court and extending the protections of the Amended and Restated Initial Order to the Debtors on a final basis;

d. grants the Debtors all of the relief afforded pursuant to section 1520 of the Bankruptcy Code, including but not limited to the "automatic stay" under section 362 of the Bankruptcy Code, which shall apply with respect to the Debtors and the Debtors' property that is now or in the future located within the territorial jurisdiction of the United States;

e. extends on a final basis (pursuant to section 1521(a)(6) of the Bankruptcy Code) the relief granted under the Provisional Relief Order (as defined below) and grants such further additional relief requested herein and as otherwise authorized by sections 1507 and 1521 of the Bankruptcy Code, as applicable, as the Court deems necessary;[2] and

f. provides such other and further relief as the Court deems just and proper.

<u>JURISDICTION AND VENUE</u>

3. The United States Bankruptcy Court for the District of Delaware (the "**Court**") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012.

[2] The Debtors anticipate the Amended and Restated Initial Order (as defined below) will be entered approximately ten (10) days from the entry of the Initial Order in a form substantially similar to the form attached to the *Motion for Provisional Relief Pursuant to Section 1519 of the Bankruptcy Code* as <u>Exhibit 2</u>.

4. Recognition of a foreign proceeding and other matters under chapter 15 of the Bankruptcy Code are core matters under 28 U.S.C. § 157(b)(2)(P).

5. These chapter 15 cases have been properly commenced pursuant to section 1504 of the Bankruptcy Code by the filing of the Petitions for Recognition of the Canadian Proceedings in accordance with section 1515 of the Bankruptcy Code.

6. The Foreign Representative confirms its consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") and rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**") to the entry of final orders or judgments by the Court to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

7. Venue in this district is proper under 28 U.S.C. § 1410.

BACKGROUND

8. On January 26, 2023, the Debtors commenced proceedings under the CCAA to initiate restructuring proceedings under the supervision of the Canadian Court. The same day, the Canadian Court entered an initial order (the "**Initial Order**") appointing Ernst & Young, Inc. as monitor of the Debtors and authorizing Acerus Pharmaceuticals Corporation to act as Foreign Representative of the Debtors.

9. On the date hereof (the "**Petition Date**"), the Foreign Representative filed petitions under chapter 15 of the Bankruptcy Code for recognition of the Canadian Proceedings, thereby commencing the Debtors' chapter 15 cases.

10. Also on the Petition Date, the Foreign Representative filed that certain *Motion for Provisional Relief Pursuant to Section 1519 of the Bankruptcy Code* (the "**Provisional Relief**

Motion") seeking entry of an order (the "**Provisional Relief Order**") granting the relief requested in the Provisional Relief Motion shortly after the commencement of these chapter 15 cases.

11. The Foreign Representative anticipates that the Canadian Court will enter an amended and restated Initial Order (the "**Amended and Restated Initial Order**") on or around February 4, 2023. A description of the relief provided in the Initial Order and a description of the proposed relief set forth in the Amended and Restated Initial Order is set forth below and in the Provisional Relief Motion filed contemporaneously herewith.

12. Additional information about the Debtors' business and operations, the events leading up to the filing of the Petition for Recognition, and the facts and circumstances surrounding the Canadian Proceedings and these chapter 15 cases are set forth in the contemporaneously filed *Declaration of Naveed Z. Manzoor in Support of the Debtor's Verified Petition for (I) Recognition of Foreign Main Proceedings, (II) Recognition of Foreign Representative, and (III) Debtors' Motion for Certain Provisional Relief* (the "**Manzoor Declaration**"). The Manzoor Declaration is incorporated herein by reference.

BASIS FOR RELIEF REQUESTED

13. Chapter 15 of the Bankruptcy Code is designed to promote cooperation and comity between courts in the United States and foreign courts, to protect and maximize the value of a debtor's assets and to facilitate the rehabilitation and reorganization of businesses. The relief afforded to a foreign debtor under chapter 15 is intended to avoid disruptions that could otherwise derail a debtor's restructuring in its home country.

14. Consistent with these principles, the Foreign Representative commenced ancillary proceedings for the Debtors under chapter 15 of the Bankruptcy Code to obtain recognition of the Canadian Proceedings, and certain related relief. The Foreign Representative believes that these chapter 15 cases will complement the Debtors' primary proceedings in Canada to ensure the

effective and economic administration of the Debtors' restructuring efforts and prevent adverse actions in the United States. Further, the Foreign Representative submits that recognition of the Canadian Proceedings and the related relief requested herein will not undermine the rights that United States creditors typically would enjoy in a chapter 11 proceeding. *See* Manzoor Declaration, ¶ 62.

I. The Debtors Are Eligible for Chapter 15 Relief.

15. Section 109(a) of the Bankruptcy Code provides that "only a person that resides or has a domicile, a place of business, or property in the United States . . . may be a debtor under this title." Courts have applied section 109(a) of the Bankruptcy Code to chapter 15 eligibility. *See, e.g., Drawbridge Special Opp. Fund LP v. Barnett (In re Barnett)*, 737 F.3d 238, 247 (2d Cir. 2013).[3] Decisions interpreting section 109(a) of the Bankruptcy Code as applied to foreign debtors under other chapters of the Bankruptcy Code unanimously hold that a debtor satisfies the section 109 requirement even when it only has a nominal amount of property in the United States. *See GMAM Inv. Funds Trust I v. Globo Comunicacoes e Partipacoes S.A. (In re Globo Comunicacoes e Partipacoes S.A.)*, 317 B.R. 253, 249 (S.D.N.Y. 2004) (stating that courts have repeatedly found that there is "'virtually no formal barrier' to having federal courts adjudicate foreign debtors' bankruptcy proceedings") (citing *In re Aerovias Nacionales de Colombia S.A. (In re Avianca)*, 303 B.R. 1, 9 (Bankr. S.D.N.Y. 2003)); *see also In re Global Ocean Carriers Ltd*., 251 B.R. 31, 38-39 (Bankr. D. Del. 2000) (holding that approximately $10,000 in a bank account and the unearned portions of retainers provided to local counsel constituted a sufficient property interest for chapter

[3] Although a limited number of courts have held section 109(a) of the Bankruptcy Code is inapplicable to chapter 15 eligibility (*see, e.g., In re Bemarmara Consulting A.S.,* Case No. 13-13037(KG) (Bankr. D. Del. Dec. 17, 2013)), the Third Circuit has not ruled on the issue and the Debtors nonetheless satisfy the requirement of section 109.

11 purposes). Effectively, if a debtor has any property in the United States, section 109(a) of the Bankruptcy Code is satisfied.

16. Each of the Debtors is eligible to be a debtor under section 109(a) of the Bankruptcy Code because they have property in the United States in the form of unearned portions of retainer provided to local counsel. Additionally, Debtor Acerus Pharmaceuticals USA, LLC is a Delaware limited liability company with its principal assets located in the United States. *See* Manzoor Declaration, ¶ 66. For these reasons, the Debtors satisfy the requirements under section 109(a) of the Bankruptcy Code.

II. The Canadian Proceedings Should Be Recognized as Foreign Main Proceedings.

17. Section 1517(a) of the Bankruptcy Code provides that, after notice and hearing, a court shall enter the Order recognizing a foreign proceeding as a foreign main proceeding if (a) such foreign proceeding is a foreign main proceeding within the meaning of section 1502(4) and 1517(b)(1) of the Bankruptcy Code, (b) the foreign representative applying for recognition is a person or body, and (c) the petition meets the requirements of section 1515 of the Bankruptcy Code. *See* 11 U.S.C. § 1517. As explained below, the Canadian Proceedings, the Foreign Representative, and the Verified Petition satisfy all of the foregoing requirements.

A. The Canadian Proceedings are Foreign Proceedings.

18. Section 101(23) of the Bankruptcy Code defines a "foreign proceeding" as the following:

> a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation.

19. Courts have held that a "foreign proceeding" is one:

a. in which "acts and formalities [are] set down in law so that courts, merchants and creditors can know them in advance, and apply them evenly in practice;"

b. that has either a judicial or an administrative character;

c. that is collective in nature, in the sense that the proceeding considers the rights and obligations of all creditors;

d. that is located in a foreign country;

e. that is authorized or conducted under a law related to insolvency or the adjustment of debt, even if the debtor that has commenced such proceedings is not actually insolvent;

f. in which the debtor's assets and affairs are subject to the control or supervision of a foreign court or other authority competent to control or supervise a foreign proceeding; and

g. which proceeding is for the purpose of reorganization or liquidation.

See In re Ashapura Minechem Ltd., 480 B.R. 129, 136 (S.D.N.Y. 2012) (citing *In re Betcorp Ltd*., 400 B.R. 266, 277 (Bankr. D. Nev. 2009)); *see also In re Overnight and Control Comm'n of Avánzit, S.A*., 385 B.R. 525, 533 (Bankr. S.D.N.Y. 2008) (discussing factors). As set forth in the Manzoor Declaration and the contemporaneously filed *Declaration of Lee Nicholson as Canadian Counsel to the Debtors in Support of the Debtor's Chapter 15 Petitions and Requests for Certain Related Relief Under Chapter 15 of the Bankruptcy Code* (the "**Nicholson Declaration**"), the Canadian Proceedings satisfy such requirements and, therefore, qualify as "foreign proceedings" for purposes of section 101(23) of the Bankruptcy Code.

20. *First*, the Canadian Proceedings are proceedings commenced pursuant to the CCAA, a Canadian law that governs corporate reorganizations and provides for an arrangement of a company's financial obligations. *See* CCAA § 44(a–e). For purposes of chapter 15 recognition, "the hallmark of a 'proceeding' is a statutory framework that constrains a company's actions and that regulates the final distribution of a company's assets." *Betcorp*, 400 B.R. at 278. Because the

Canadian Proceedings operate under such statutory framework, they satisfy the first factor of section 101(23) of the Bankruptcy Code.

21. *Second*, the Canadian Proceedings are judicial in character. A reorganization proceeding is judicial in character whenever a "court exercises its supervisory powers." *In re ABC Learning Ctrs. Ltd.*, 445 B.R. 318, 328 (Bankr. D. Del. 2010). Here, the Debtors intend to pursue a restructuring transaction that may include, among other things, a sale process, disclaiming certain contracts and leases, and compromising claims for pre-petition amounts due.

22. *Third*, the Canadian Proceedings are collective in nature in that all affected creditors are allowed to participate. In *Betcorp*, for instance, the bankruptcy court discussed the contrasts between a true collective proceeding, where such proceeding "considers the rights and obligations of all creditors" and a non-collective proceeding, such as a "receivership remedy instigated at the request, and for the benefit, of a single secured creditor." *See* 400 B.R. at 281. Here, the Debtors have commenced the Canadian Proceedings after consultation with various parties in interest. In addition, affected creditors are entitled to intervene in the Canadian Court as the Debtors pursue a value-maximizing restructuring process. Importantly, the Canadian Proceedings will not prohibit any of the Debtors' creditors from participating in the Debtors' restructuring efforts.

23. *Fourth*, the Canadian Proceedings, including the Canadian Court, are located in a foreign country, namely in Canada in the Province of Ontario.

24. *Fifth*, as described above, the CCAA, which governs the Canadian Proceedings, relates to the adjustment of debt. Here, the Debtors intend to utilize the CCAA and Canadian Proceedings to evaluate a plan of reorganization, including, potentially, a court supervised sales process for the benefit of creditors.

25. *Sixth,* the Canadian Proceedings subject the Debtors' assets and affairs to the supervision of the Canadian Court during the pendency of the proceedings.

26. *Finally*, the objective of the Canadian Proceedings is to evaluate a plan of reorganization and a potential sale of the Debtors' assets. Any potential plan of reorganization would allow the Debtors to use the CCAA to deleverage the Debtors' balance sheets and, among other things, would permit the Debtors to renegotiate unfavorable executory contracts and/or disclaim such contracts if negotiations prove unsuccessful. Additionally, the Debtors also intend to evaluate and pursue, as appropriate, the sale of assets under court supervision for the benefit of creditors. Therefore, the Foreign Representative submits that the Debtors have commenced the Canadian Proceedings for the purpose of reorganization, as required by section 101(23) of the Bankruptcy Code.

27. Since the Canadian Proceedings satisfy all of the criteria required by section 101(23) of the Bankruptcy Code, they are foreign proceedings. United States courts have recognized collective proceedings similar to the Canadian Proceedings as "foreign proceedings" on numerous occasions. *See, e.g., In re Tervita Corp*., No. 16-12920 (MEW) (Bankr. S.D.N.Y. Dec. 2, 2016) (recognizing a Canadian arrangement as a foreign proceeding); *In re Essar Steel Algoma*, No. 14-11730 (KJC) (Bankr. D. Del. Jul. 21, 2014) (same); *In re Mega Brands Inc*., No. 10-10485 (CSS) (Bankr. D. Del. Mar. 23, 2010) (same); *In re Towergate Fin. plc*, No. 15-10509 (Bankr. S.D.N.Y. Mar. 27, 2015) (recognizing a U.K. scheme of arrangement as a foreign proceeding); *In re Hellas Telecom. (Luxembourg) V*, No. 10-13651 (Bankr. D. Del. Dec. 13, 2010) (same).

B. The Canadian Proceedings are Foreign Main Proceedings.

28. The Canadian Proceedings should be recognized as "foreign main proceedings" as defined in section 1502(4) of the Bankruptcy Code. A foreign proceeding must be recognized as

a "foreign main proceeding" if it is pending in the country where the debtor has its center of its main interests. 11 U.S.C. § 1517(b). The term "center of main interests" ("**COMI**") is not defined in the Bankruptcy Code. COMI, however, has been equated to a debtor's principal place of business. *See In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd.*, 374 B.R. 122, 129 (Bankr. S.D.N.Y. 2007), *aff'd*, 389 B.R. 325 (S.D.N.Y. 2008). Courts have a identified certain factors that are relevant in determining a debtor's COMI, including: (a) the location of the debtor's headquarters; (b) the location of those persons or entities that actually manage the debtor (which, in certain instances, could be the headquarters of a holding company); (c) the location of the debtor's primary assets; and (d) the location of the majority of the debtor's creditors or of a majority of the creditors who would be affected by the case. *See In re SPhinX, Ltd.*, 351 B.R. 103, 117 (Bankr. S.D.N.Y. 2006). In the absence of evidence to the contrary, a debtor's registered office is presumed to be the debtor's COMI. *See* 11 U.S.C. § 1516(c).

29. Here, under all the relevant criteria, Ontario, Canada is the Debtors' COMI. As set forth in the Manzoor Declaration:

a. the Debtors' worldwide operations are overseen by and report to the Chief Executive Officer of APC located at their headquarters in Ontario, Canada;

b. a large part of the Debtors' senior management team is located in Ontario, Canada;

c. a large part of the Debtors' creative, strategic and key operating decisions and key policy decisions are made by and/or subject to approval from the Debtors' senior management located in Ontario, Canada;

d. key human resources decisions pertaining to payroll budgets and augmentation or reduction of employee headcount as per the approved budget, are subject to the approval of the Debtors' senior management located in Ontario, Canada;

e. the Debtors' key accounting decisions and all plans, budgets and financial projections are subject to the approval of the Debtors' senior management located in Ontario, Canada;

f. the Debtors' planning, budgeting, management of tax, treasury and cash management and preparation of financial projections is done from Ontario, Canada;

g. all material and/or long-term contracts and expenses are subject to the approval of the Debtors' senior management located in Ontario, Canada;

h. marketing and business development initiatives are overseen from the Head Office in Ontario, Canada;

i. corporate governance and regulatory compliance for the Debtors is overseen from its management team located in Ontario, Canada; and

j. senior management and all sales, manufacturing and operations staff report to their respective senior executives, who, ultimately, report to APC's Chief Executive Officer, who is based in Ontario, Canada.

See Manzoor Declaration ¶ 68.

30. A significant part of the Debtors' stakeholders are located in Canada, including nearly all of the Debtors' employees,[4] all of its landlords, and its lenders. In addition, many of the Debtors' large contracts are governed by Canadian law, and the Debtors headquarters are located in Mississauga, Ontario, Canada. *See* Manzoor Declaration, ¶ 69.

31. Based on these facts, the Debtors have substantially more ties to Canada than to any other country. Therefore, the Debtors' COMI is Canada and, as such, the Canadian Proceedings should be recognized as foreign main proceedings.

C. The Chapter 15 Cases Have Been Commenced by a Duly Authorized Foreign Representative.

32. Section 1517 of the Bankruptcy Code provides that a "foreign representative" shall apply for recognition of the foreign proceeding. Section 101(24) of the Bankruptcy Code defines "foreign representative":

> The term "foreign representative" means a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the

[4] A single employee is located in the United States.

> debtor's assets or affairs or to act as a representative of such foreign proceeding.

11 U.S.C. § 101(24).

33. Pursuant to the Initial Order, the Court authorized the appointment of Acerus Pharmaceuticals Corporation, as the Foreign Representative, authorized and empowered the Foreign Representative to act as a foreign representative in respect of the Canadian Proceedings, and authorized the Foreign Representative to file the chapter 15 cases in the United States for the purpose of having the Canadian Proceedings recognized. *See* Initial Order, ¶¶ 55-56.

III. The Verified Petition Satisfies the Requirements under Section 1515 of the Bankruptcy Code.

34. These chapter 15 cases were duly and properly commenced by filing the Verified Petition, accompanied by all fees, documents, and information required by the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure, including: (a) a corporate ownership statement containing the information described in Bankruptcy Rule 7007.1; (b) a list containing (i) the names and addresses of all persons or bodies authorized to administer foreign proceedings of the Debtors, (ii) all parties to litigation pending in the United States in which the Debtors are a party at the time of the commencement of the chapter 15 cases, and (iii) all entities against whom provisional relief is being sought under section 1519 of the Bankruptcy Code; and (c) a statement identifying all of the Debtors' foreign proceedings that are known to the Foreign Representative; (d) a certified copy of the Initial Order.

35. Because the Verified Petition satisfies section 1517 of the Bankruptcy Code, the Court should recognize the Canadian Proceedings in these chapter 15 cases. Moreover, granting recognition will promote the United States public policy of respecting foreign proceedings as articulated in, inter alia, sections 1501(a) and 1508 of the Bankruptcy Code and further cooperation between courts to the maximum extent possible as mandated by section 1525(a) of the Bankruptcy

Code. Thus, these circumstances satisfy the conditions for mandatory recognition of the Canadian Proceedings under section 1517 of the Bankruptcy Code.

IV. The Discretionary Relief Requested Is Necessary and Appropriate to Effect the Restructuring Transactions and Should Be Granted

36. The recognition of a foreign proceeding as a foreign main proceeding results in automatic application (pursuant to section 1520(a) of the Bankruptcy Code) of certain Bankruptcy Code provisions to a debtor and its property within the territorial jurisdiction of the United States, and pursuant to section 1521 of the Bankruptcy Code, certain discretionary relief is available in respect of both foreign main proceedings and foreign non-main proceedings. Discretionary relief available under section 1521(a) of the Bankruptcy Code in both foreign main and foreign non-main proceedings is available upon the determination of a bankruptcy court that such relief is necessary to effectuate the purpose of chapter 15 and to protect the debtor's assets or the interests of creditors, and may include:

a. staying the commencement or continuation of an individual action or proceeding concerning the debtor's assets, rights, obligations or liabilities to the extent they have not been stayed under section 1520(a) of the Bankruptcy Code;

b. staying execution against the debtor's assets to the extent it has not been stayed under section 1520(a) of the Bankruptcy Code;

c. suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under section 1520(a) of the Bankruptcy Code;

d. entrusting the administration or realization of all or a part of a debtor's assets in the United States to the foreign representative;

e. extending any relief granted under section 1519(a) of the Bankruptcy Code ; and

f. granting any additional relief that may be available to a trustee (including relief available under section 364 of the Bankruptcy Code), except for relief available under sections 522, 544, 545, 547, 548, 550, and 724(a) of the Bankruptcy Code.

(In addition to section 1521 of the Bankruptcy Code, section 1507 of the Bankruptcy Code provides that upon recognition of a foreign proceeding as either a foreign main or foreign non-main proceeding, a bankruptcy court "may provide additional assistance to a foreign representative under this title or under other laws of the United States", and section 105(a) of the Bankruptcy Code provides that the "court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.")

37. When considering whether to entrust the distribution of all or part of a debtor's assets to a foreign representative, a bankruptcy court must determine that the interests of creditors in the United States are sufficiently protected. 11 U.S.C. § 1521(b).

38. In connection with recognition of the Canadian Proceedings, the Foreign Representative seeks, pursuant to section 1521(a)(6) of the Bankruptcy Code, the extension on a final basis of all the provisional relief granted in the Provisional Relief Order, including the relief granted in the Provisional Relief Order in respect of sections 361, 362, 364 and 365(e) of the Bankruptcy Code. The Foreign Representative respectfully submits that such relief is warranted under sections 105(a), 1507 and 1521 of the Bankruptcy Code and the general principles of comity that underpin chapter 15.

39. The Foreign Representative requests the Court exercise its discretion under sections 105, 1507, and 1521 of the Bankruptcy Code to provide for, among other things, the extension on a final basis of all the relief granted in the Provisional Relief Order (including the relief granted pursuant to section 1519(a)(3) of the Bankruptcy Code), and:

a. Authorize the Debtors to incur, as needed, the undrawn balance of the DIP Facility (as defined in the DIP Facility Agreement) up to the Maximum Loan Amount (as defined in the DIP Facility Agreement), provide that any such additional advances made in accordance with the DIP Facility Agreement be secured by the DIP Lender's Charge, and find and determine that any such additional advances shall have been made in "good faith" as contemplated by section 364(e) of the Bankruptcy Code.

b. Entrust the administration, realization, and distribution of all of the Debtors' assets in the United States to the Foreign Representative pursuant to sections 1521(a)(5) and 1521(b) of the Bankruptcy Code.

c. Grant, pursuant to section 1521(a)(7) of the Bankruptcy Code, any Provisional Relief (as defined in the Provisional Relief Motion) not granted pursuant to the Provisional Relief Order.

40. The granting of such relief is consistent with the goals of international cooperation and assistance to foreign courts embodied in chapter 15 of the Bankruptcy Code, and is a necessary to effectuate the Canadian Proceedings and Restructuring Transactions. If granted, such relief would promote all of the legislatively enumerated objectives of section 1501(a) of the Bankruptcy Code.

41. Indeed, the Initial Order expressly authorizes the Foreign Representative to apply for foreign recognition and approval of the Canadian Proceedings in the United States pursuant to chapter 15 of the Bankruptcy Code and requests the aid and recognition of courts in the United States to give effect to the Initial Order and assist the Foreign Representative in carrying out the terms of the Initial Order. *See* Initial Order ¶¶ 57-58; 61.

42. Thus, in addition to the reasons set forth above, this Court should give full force and effect in the United States to the Initial Order and the Amended and Restated Initial Order under well-established principles of international comity and specifically pursuant to sections 105(a), 1507, and 1521 of the Bankruptcy Code.

43. Fair and efficient administration of the Canadian Proceedings that protects all parties in interest requires that all creditors be bound by the terms of the Canadian Proceedings and restructuring transactions as sanctioned by the Canadian Court. *See Victrix S.S. Co., S.A. v. Salen Dry Cargo A.B.*, 825 F.2d 709, 714 (2d Cir. 1987) ("The equitable and orderly distribution of a debtor's property requires assembling all claims against the limited assets in a single proceeding; if all creditors could not be bound, a plan of reorganization would fail."); *In re Energy Coal S.P.A.*, 582 B.R. 619, 626–27 (Bankr. D. Del. 2018) (acknowledging the broad principles of comity applied by United States courts in both recognition of foreign bankruptcies and post-recognition relief granted to foreign representatives). If the Debtors are able to stay actions against their property and businesses in the Canadian Proceedings, there is a risk that certain of the Debtors' contractual counterparties or other parties in interest could bring or continue to pursue proceedings in the United States against the Debtors or other parties (such as the Debtors' directors and officers) protected by the Initial Order and the Amended and Restated Initial Order. If such parties can effectively evade the terms of the Initial Order and Amended and Restated Initial Order, and attempt to derail the restructuring transactions by commencing actions in the United States, the Debtors and others involved would be required to defend any such proceedings and deplete the resources of the restructured business and prejudice its reorganized value. Therefore, relief requested by the Debtors is required to prevent individual creditors acting to frustrate the purposes of the restructuring process, disregarding the binding Initial Order and Amended and Restated Initial Order, the foremost of which is the fair and efficient administration of the Canadian Proceedings and restructuring transactions to maximize value for all creditors.

NOTICE

44. The Foreign Representative will provide notice of this Motion in accordance with the procedures set forth in the *Motion for Order (A) Scheduling Hearing on Recognition of Chapter*

15 Petitions and (B) Specifying Form and Manner of Service of Notice, filed contemporaneously herewith. In light of the nature of the relief requested, the Foreign Representative requests that this Court find that no further notice is required.

[*Remainder of page intentionally left blank.*]

WHEREFORE, for the reasons set forth herein, the Foreign Representative respectfully requests that this Court enter an order, substantially in the form attached hereto as **Exhibit A** (i) granting the relief requested herein and (ii) granting the Foreign Representative and the Debtors such other and further relief as the Court deems proper and just.

Dated: January 29, 2023
Wilmington, Delaware

Respectfully submitted,

BENESCH, FRIEDLANDER, COPLAN & ARONOFF LLP

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Counsel to the Foreign Representative

VERIFICATION OF PETITION

I, Naveed Z. Manzoor, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury under the laws of the United States of America as follows:

I am the Chief Restructuring Officer of Acerus Pharmaceuticals Corporation, the authorized foreign representative for the Debtors. As such, I have full authority to verify the foregoing Verified Petition on behalf of the Debtors.

I have read the foregoing Verified Petition, and I am informed and believe that the factual allegations contained therein are true and accurate to the best of my knowledge, information and belief.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: January 29, 2023
Oakville, Ontario

Naveed Z. Manzoor

Naveed Z. Manzoor
CRO of Acerus Pharmaceuticals Corporation

<u>Exhibit A</u>

Proposed Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 15
Acerus Pharmaceuticals Corporation, *et al.,*	Case No. 23-10111 ( )
Debtors in a foreign proceeding.[1]	(Jointly Administrated) Re: D.I. __

ORDER GRANTING VERIFIED PETITION
FOR (I) RECOGNITION OF FOREIGN
MAIN PROCEEDINGS, (II) RECOGNITION OF
FOREIGN REPRESENTATIVE, (III) RECOGNITION OF
INITIAL ORDER AND AMENDED AND RESTATED INITIAL ORDER,
AND (IV) RELATED RELIEF UNDER CHAPTER 15 OF THE BANKRUPTCY CODE

Upon consideration of the *Verified Petition for (I) Recognition of Foreign Main Proceedings (II) Recognition of Foreign Representative, (III) Recognition of Initial Order and Amended and Restated Initial Order, and (IV) Related Relief Under Chapter 15 of the Bankruptcy Code* [DI. -] (together with the chapter 15 petitions filed for each of the Debtors, the "**Petitions for Recognition**"), the Manzoor Declaration, the Nicholson Declaration, and the Provisional Relief Motion (together with the Petitions for Recognition, the Manzoor Declaration, and the Nicholson Declaration, the "**Chapter 15 Pleadings**"), each filed January 29, 2023, by or on behalf of the Foreign Representative, Acerus Pharmaceuticals Corporation, in its capacity as the duly appointed foreign representative of the above captioned debtors (the "**Debtors**"), in a voluntary restructuring proceeding (the "**Canadian Proceedings**") under the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 (as amended, the "**CCAA**"), pending before the Ontario Superior Court of Justice Commercial List (the "**Canadian Court**"), initiated pursuant to the

[1] The Debtors in these chapter 15 proceedings, together with the last four digits of their business identification numbers are: Acerus Pharmaceuticals Corporation (6891); Acerus Biopharma Inc. (0687); Acerus Labs Inc. (0126); and Acerus Pharmaceuticals USA, LLC (9089). The location of the Debtors' headquarters and the Debtors' foreign representative is: 205-7025 Langer Drive, Mississauga, Ontario, Canada.

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 (as amended, the "**CCAA**"), and it appearing that the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012; and it appearing that venue is proper before this Court pursuant to 28 U.S.C. § 1410; and the Court having considered and reviewed the Chapter 15 Pleadings and having held a hearing to consider the relief requested in the Petitions for Recognition (the "**Hearing**"); and it appearing that timely notice of the filing of the Chapter 15 Pleadings and the Hearing has been given pursuant to the *Order (A) Scheduling Recognition Hearing and (B) Specifying Form and Manner of Service of Notice* and that no other or further notice need be provided; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

THIS COURT HEREBY FINDS AND DETERMINES THAT:

A. The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. These cases were properly commenced pursuant to sections 1504, 1509 and 1515 of the title 11 of the United States Code (the "**Bankruptcy Code**").

C. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012.

D. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P).

E. Venue is proper in this district pursuant to 28 U.S.C. § 1410.

F. The Canadian Proceedings are "foreign proceedings" within the meaning of section 101(23) of the Bankruptcy Code.

G. The Canadian Proceedings are pending in Canada, which is the country in which the Debtors have their center of main interests and, as such, the Canadian Proceedings are "foreign main proceedings" within the meaning of sections 1502(4) and 1517(b)(1) of the Bankruptcy Code and are entitled to recognition as foreign main proceedings in respect of each of the Debtors.

H. The Foreign Representative, Acerus Pharmaceuticals Corporation, is a "person," as such term is defined in section 101(41) of the Bankruptcy Code, has been duly appointed by the Debtors and has been declared by the Canadian Court as authorized to act as the "foreign representative" with respect to the Canadian Proceedings within the meaning of section 101(24) of the Bankruptcy Code.

I. The Petitions for Recognition meet all of the requirements set forth in section 1515 of the Bankruptcy Code and Bankruptcy Rules 1007(a)(4) and 2002(q).

J. The Canadian Proceedings are entitled to recognition by the Court pursuant to section 1517(a) of the Bankruptcy Code and the Debtors have satisfied the eligibility requirements of section 109(a) of the Bankruptcy Code, as applicable.

K. The Debtors and the Foreign Representative are entitled to all of the relief set forth in section 1520 of the Bankruptcy Code.

L. Appropriate notice of the filing of, and the Hearing on, the Petitions for Recognition was given, which notice is deemed adequate for all purposes, and no other or further notice need be given.

M. The relief granted hereby is necessary and appropriate, in the interests of the public and of international comity, not inconsistent with the public policy of the United States, warranted pursuant to sections 105(a), 362, 363, 364, 365, 1507(a), 1509(b)(2)-(3), 1520, 1521, 1522 and 1525 of the Bankruptcy Code, and will not cause hardship to creditors of the Debtors or other parties in interests that is not outweighed by the benefits of granting that relief.

N. The relief granted hereby is necessary to effectuate the purposes and objectives of chapter 15 and to protect the Debtors and the interests of their creditors and other parties in interest.

O. Absent the relief granted hereby, the Debtors and their directors and officers may be subject to the prosecution of judicial, quasi-judicial, arbitration, administrative or regulatory actions or proceedings in connection with the Canadian Proceedings or otherwise against the Debtors and their directors and officers or their property, thereby interfering with and causing harm to, the Debtors, their creditors, and other parties in interest in the Canadian Proceedings and, as a result, the Debtors, their creditors and such other parties in interest would suffer irreparable injury for which there is no adequate remedy at law.

P. Absent the requested relief, the efforts of the Debtors, the Canadian Court and the Foreign Representative in conducting the Canadian Proceedings and effecting their restructuring or sale process therein may be thwarted by the actions of certain creditors, a result that will obstruct the purposes of chapter 15 as reflected in section 1501(a) of the Bankruptcy Code.

Q. Absent the requested relief, the Debtors would be unable to incur the undrawn balance of the DIP Facility (as defined in the DIP Facility Agreement) up to the Maximum Loan Amount (as defined in the DIP Facility Agreement).

R. Each of the injunctions contained in this Order (i) is within the Court's jurisdiction, (ii) is essential to the success of the Debtors' restructuring in the Canadian Proceedings, (iv) confers material benefits on, and is in the best interests of, the Debtors and their creditors, and (v) is important to the overall objectives of the Debtor' restructuring.

S. The findings and determinations set forth in that certain *Order Granting Provisional Relief* [D.I. __] (the "**Provisional Relief Order**"), including without limitation the findings and determinations pursuant to section 364(e) of the Bankruptcy Code, are confirmed on a final basis and incorporated by reference.

NOW THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Petitions for Recognition and the Relief Requested are granted as set forth herein, and any objections thereto are overruled with prejudice.

2. The Canadian Proceedings are granted recognition with respect to each of the Debtors as foreign main proceedings (as defined in section 1502(4) of the Bankruptcy Code) pursuant to sections 1517(a) and (b)(1) of the Bankruptcy Code.

3. Acerus Pharmaceuticals Corporation is recognized as the "foreign representative" as defined in section 101(24) of the Bankruptcy Code in respect of the Canadian Proceedings.

4. The Debtors and the Foreign Representative are granted all of the relief set forth in section 1520 of the Bankruptcy Code including, without limitation, the application of the protection afforded by the automatic stay under section 362(a) of the Bankruptcy Code to the Debtors and to the Debtors' property that is now within or in the future is located within the territorial jurisdiction of the United States.

5. Any and all Provisional Relief (as defined in the Provisional Relief Motion) not granted in the Provisional Relief Order, if any, is hereby granted pursuant to section 1521(a)(7)

of the Bankruptcy Code.

6. The Foreign Representative is authorized to operate the business of the Debtors that is the subject of the Canadian Proceedings and exercise the powers of a trustee to the extent provided by 11 U.S.C. § 1520(a)(3).

7. The Initial Order or the Amended and Restated Initial Order (to the extent it supersedes the Initial Order), including any and all existing and future extensions, amendments, restatements, and/or supplements authorized by the Canadian Court, are hereby given full force and effect, on a final basis, with respect to the Debtors and the Debtors' property that now or in the future is located within the territorial jurisdiction of the United States.

8. Pursuant to 11 U.S.C. § 1521(a)(1)-(3), all persons and entities, other than the Foreign Representative and his representatives and agents, are hereby enjoined (to the extent they have not been stayed under section 1520(a)) from:

a. execution against any of the Debtors' and their directors and officers (the "Protected Parties") assets;

b. the commencement or continuation, including the issuance or employment of process, of a judicial, quasi-judicial, administrative, regulatory, arbitral, or other action or proceeding, or to recover a claim, including, without limitation, any and all unpaid judgments, settlements or otherwise against the Debtors and other Protected Parties, which in either case is in any way related to, or would interfere with, the administration of the Debtors' estates in the Canadian Proceedings;

c. taking or continuing any act to create, perfect or enforce a lien or other security interest, setoff or other claim against the Debtors or other Protected Parties or any of their property or proceeds thereof;

d. transferring, relinquishing or disposing of any property of the Debtors to any person or entity (as that term is defined in section 101(15) of the Bankruptcy Code) other than the Foreign Representative;

e. commencing or continuing an individual action or proceeding concerning the Debtors' or other Protected Parties' assets, rights, obligations or liabilities; and

f. declaring or considering the filing of the Canadian Proceedings or these chapter 15 cases a default or event of default under any agreement, contract or arrangement;

provided, in each case, that such injunctions shall be effective solely within the territorial jurisdiction of the United States; and provided further that nothing herein shall: (x) prevent any entity from filing any claims against the Debtors in the Canadian Proceedings or (y) prevent any entity from seeking relief from the Canadian Court in the Canadian Proceedings or this Court in these Chapter 15 Cases, as applicable, for relief from the injunctions contained in the Order.

9. Pursuant to 11 U.S.C. §§ 1521(a)(5) and 1521(b), the administration, realization, and distribution of the Debtors' assets within the territorial jurisdiction of the United States is entrusted to the Foreign Representative and the Foreign Representative is hereby established as the exclusive representative of the Debtors in the United States.

10. Pursuant to 11 U.S.C. §§ 1521(a)(6) of the Bankruptcy Code , all prior relief granted to the Debtors, the Foreign Representative, and the DIP Lender by this Court pursuant to the Provisional Relief Order shall be extended and shall remain in full force and effect, on a final basis.

11. The Debtors are authorized to incur, as needed, the undrawn balance of the DIP Facility (as defined in the DIP Facility Agreement) up to the Maximum Loan Amount (as defined in the DIP Facility Agreement), and any such additional advances made in accordance with the DIP Facility Agreement shall be secured by the DIP Lender's Charge. Any such additional advances shall be deemed to have been made in "good faith" as contemplated by section 364(e) of the Bankruptcy Code.

12. The Foreign Representative, the Debtors and their respective agents are authorized to serve or provide any notices required under the Bankruptcy Rules or local rules of

this Court.

13. No action taken by the Foreign Representative, the Debtors, or their respective successors, agents, representatives, advisors, or counsel in preparing, disseminating, applying for, implementing, or otherwise acting in furtherance of or in connection with the Canadian Proceedings, this order, these chapter 15 cases, or any adversary proceeding herein, or any further proceeding commenced hereunder, shall be deemed to constitute a waiver of the rights or benefits afforded such persons under sections 306 and 1510 of the Bankruptcy Code.

14. Notwithstanding any provision in the Bankruptcy Rules to the contrary, including, but not limited to, Bankruptcy Rules 7062 and 1018, (i) this Order shall be effective immediately and enforceable upon its entry; (ii) the Foreign Representative and the DIP Lender are not subject to any stay in the implementation, enforcement or realization of the relief granted in this Order; and (c) the Foreign Representative and the Debtors are authorized and empowered, and may in their discretion and without further delay, take any action and perform any act necessary to implement and effectuate the terms of this Order.

15. A copy of this Order shall be served (i) within five business days of entry of this order, by electronic mail to the extent email addresses are available and otherwise by U.S. mail, overnight or first-class postage prepaid, upon the Notice Parties (as defined in the *Motion for Order (A) Scheduling Hearing on Recognition of Chapter 15 Petitions and (B) Specifying Form and Manner of Service of Notice*) and such other entities as the Court may direct. Such service shall be good and sufficient service and adequate notice for all purposes.

16. The Court shall retain jurisdiction with respect to the enforcement, amendment, or modification of this Order, any request for additional relief and any request by an entity for relief from the provisions of this Order, for cause shown, that is properly commenced and within

the jurisdiction of the Court.

17. This Order shall be effective and enforceable immediately upon entry and shall constitute a final order within the meaning of 28 U.S.C. § 158(a).