Court File No. CV-23-00693595-00CL

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 ACERUS PHARMACEUTICALS CORPORATION, ACERUS BIOPHARMA INC., ACERUS LABS INC., AND ACERUS PHARMACEUTICALS USA, LLC

Applicants

MOTION RECORD
(SISP APPROVAL AND EXTENSION TO STAY OF PROCEEDINGS)
(RETURNABLE MARCH 9, 2023)

March 2, 2023

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Elizabeth Pillon (LSO #35638M)
Tel: (416) 869-5623
Email: lpillon@stikeman.com

Lee Nicholson (LSO #66412I)
Tel: (416) 869-5604
Email: leenicholson@stikeman.com

Philip Yang (LSO #82084O)
Tel: (416) 869-5593
Email: pyang@stikeman.com

Lawyers for the Applicants

TO: THE SERVICE LIST

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Applicants

SERVICE LIST
(as at February 23, 2023)

STIKEMAN ELLIOTT LLP 5300 Commerce Court West 199 Bay Street Toronto, ON M5L 1B9 Lawyers for the Applicants	**Elizabeth Pillon** Tel: 416-869-5623 Email: lpillon@stikeman.com **Lee Nicholson** Tel: 416-869-5604 Email: leenicholson@stikeman.com **Philip Yang** Tel: 416-869-5593 Email: pyang@stikeman.com
ERNST & YOUNG INC. 100 Adelaide Street West EY Tower Toronto, ON M5H 0B3 Court-appointed Monitor of the Applicants	**Alex Morrison** Tel: 416-941-7743 Email: Alex.F.Morrison@parthenon.ey.com **Michael Hayes** Tel: 416-575-9089 Email: Michael.Hayes@parthenon.ey.com **Allen Yao** Tel: 416-943-3470 Email: Allen.Yao@parthenon.ey.com

FASKEN MARTINEAU DUMOULIN LLP Bay-Adelaide Centre 333 Bay Street, Suite 2400 P.O. Box 20 Toronto, ON M5H 2T6 Lawyers for the Monitor	**Stuart Brotman** Tel: 416-865-5419 Email: sbrotman@fasken.com **Dylan Chochla** Tel: 416-868-3425 Email: dchochla@fasken.com **Mitch Stephenson** Tel: 416-868-3502 Email: mstephenson@fasken.com
BORDEN LADNER GERVAIS LLP Bay Adelaide Centre, East Tower 22 Adelaide Street West, Suite 3400 Toronto, ON M5H 4E3 Lawyers for First Generation Capital Inc. (“**FGC**”) and FGC in its capacity as the DIP Lender	**Alex MacFarlane** Tel: 416-367-6305 Email: AMacFarlane@blg.com **Howard S. Silverman** Tel: 416-367-6119 Email: hsilverman@blg.com
ATTORNEY GENERAL OF CANADA DEPARTMENT OF JUSTICE Ontario Regional Office, Tax Law Section 120 Adelaide Street West, Suite 400 Toronto, ON M5H 1T1 Attorney General of Canada on behalf of Her Majesty the Queen in Right of Canada as represented by the Minister of National Revenue	**Diane Winters** General Counsel Tel: 647-256-7459 Email: diane.winters@justice.gc.ca
CANADA REVENUE AGENCY 1 Front Street West Toronto, ON M5J 2X6	**Pat Confalone** Tel: 416-954-6514 Email: pat.confalone@cra-arc.gc.ca **Kay Singh** Email: kay.singh@cra-arc.gc.ca
HER MAJESTY IN RIGHT OF ONTARIO REPRSENTED BY THE MINISTER OF FINANCE – INSOLVENCY UNIT Ontario Ministry of Finance – Legal Services Branch 11-177 Bay Street Toronto, ON M5G 2C8	**Leslie Crawford** Email: leslie.crawford@ontario.ca

MINISTRY OF FINANCE Ministry of the Attorney General (Ontario) Collections Branch – Bankruptcy and Insolvency Unit 6-33 King Street West Oshawa, ON L1H 8H5	Tel: 1-866-668-8297 Email: insolvency.unit@ontario.ca
TORONTO STOCK EXCHANGE 300-100 Adelaide Street West Toronto, ON M5H 1S3	**Kai Chu** Tel: 416-947-4349 Email: Kai.Chu@tmx.com
ONTARIO SECURITIES COMMISSION 20 Queen Street West, 20th Floor Toronto, ON M5H 3S8	**Amaki Otuteye** Email: aotuteye@osc.gov.on.ca
CHAITONS LLP 5000 Yonge Street North York, ON M2N 7E9 Lawyers for the Ontario Securities Commission	**Maya Poliak** Tel: 416-218-1161 Email: maya@chaitons.com
DLA PIPER (CANADA) LLP Suite 6000, 1 First Canadian Place PO Box 367, 100 King St W Toronto, ON M5X 1E2 Lawyers for Syneos Health Commercial Services, LLC	**Edmond Lamek** Tel: 416-365-3444 Email: edmond.lamek@dlapiper.com
DAOUST VUKOVICH LLP 20 Queen Street West Suite 3000 Toronto, ON, M5H 3R3 Lawyers for The Canada Life Assurance Company	**Gasper Galati** Tel: 416-598-7050 Email: ggalati@dv-law.com **Phillip Wallner** Tel: 416-597-0830 Email: pwallner@dv-law.com
NORTON ROSE FULBRIGHT CANADA LLP 222 Bay Street, Suite 3000 Toronto ON M5K 1E7 **BUCHALTER LAW FIRM** 18400 Von Karman Avenue, Suite 800 Irvine, California 92612-0514 USA Lawyers for McKesson Corporation, on behalf of itself and certain corporate affiliates	**Jennifer Stam** Tel: 416-202-6707 Email: pwjennifer.stam@ nortonrosefulbright.com **Jeffrey K. Garfinkle** Tel: 949-760-1121 Email: jgarfinkle@buchalter.com

CHIESA SHAHINIAN & GIANTOMASI PC 105 Eisenhower Parkway Roseland, NJ 07068 USA Lawyers for Cardinal Health	**Scott A. Zuber** Tel: 973-530-2046 Email: szuber@csglaw.com **Terri Freedman** Tel: 973-530-2152 Email: tfreedman@csglaw.com

E-Service List

lpillon@stikeman.com; leenicholson@stikeman.com; pyang@stikeman.com; Alex.F.Morrison@parthenon.ey.com; Allen.Yao@parthenon.ey.com; Michael.Hayes@parthenon.ey.com; sbrotman@fasken.com; dchochla@fasken.com; mstephenson@fasken.com; AMacFarlane@blg.com; hsilverman@blg.com; diane.winters@justice.gc.ca; pat.confalone@cra-arc.gc.ca; kay.singh@cra-arc.gc.ca; leslie.crawford@ontario.ca; insolvency.unit@ontario.ca; Kai.Chu@tmx.com; aotuteye@osc.gov.on.ca; maya@chaitons.com; edmond.lamek@dlapiper.com; ggalati@dv-law.com; pwallner@dv-law.com; jennifer.stam@nortonrosefulbright.com; jgarfinkle@buchalter.com; szuber@csglaw.com; tfreedman@csglaw.com;

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Applicants

I N D E X

TAB 1

Court File No. CV-23-00693595-00CL

ONTARIO
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Applicants

NOTICE OF MOTION
(SISP Approval and Extension to Stay of Proceedings)

Acerus Pharmaceuticals Corporation, Acerus Biopharma Inc., Acerus Labs Inc., and Acerus Pharmaceuticals USA, LLC (the "**Applicants**") will make a motion before the Honourable Justice Kimmel of the Ontario Superior Court of Justice (Commercial List) on **Thursday, March 9, 2023 at 12:00 p.m.**, or as soon after that time as the Motion can be heard, via Zoom videoconference.

PROPOSED METHOD OF HEARING: The Motion is to be heard

[ ] In writing under subrule 37.12.1(1);

[ ] In writing as an opposed motion under subrule 37.12.1(4);
[ ] In person;
[ ] By telephone conference;
[X] By video conference.

at the following location:

Coordinates to be provided

THE MOTION IS FOR

1. If necessary, an Order abridging the time for service of this Notice of Motion and Motion Record and dispensing with service on any person other than those served;

2. An Order substantially in the form attached at Tab 3 of the Motion Record of the Applicants (the "**SISP Order**")[1]:

   (a) approving a sale and investment solicitation process in a form substantially similar to the form attached as Schedule "A" to the SISP Order (the "**SISP**");

   (b) authorizing the Applicants and the Monitor to immediately commence the SISP; and

   (c) authorizing and directing the Applicants, Ernst & Young Inc. ("**EY**"), in its capacity as the Court-appointed monitor of the Applicants (in such capacity, the "**Monitor**"), the Court-appointed Chief Restructuring Officer ("**CRO**"), and the Applicants', Monitors and CRO's respective affiliates, partners, employees, advisors and agents (collectively, the "**Assistants**") to take any and all actions as may be necessary or desirable to implement and carry out the SISP in accordance with its terms and the SISP Order;

3. An Order granting an extension of the Stay of Proceedings until and including May 19, 2023; and

4. Such further and other relief as may be required to advance the Applicants' restructuring and that this Honourable Court may deem just.

[1] Capitalized terms used herein and not otherwise defined herein have the meanings ascribed to them in the Affidavit of Naveed Z. Manzoor sworn March 2, contained at Tab 2 of the Motion Record of the Applicants.

5. **THE GROUNDS FOR THE MOTION ARE**

Background

(a) The Applicants carry on business as a specialized pharmaceutical company focused on the commercialization and development of prescription health products, with a focus on urology and men's health. Facing a severe liquidity crisis, the Applicants sought protection under the CCAA pursuant to the Initial Order issued on January 26, 2023;

(b) Prior to the granting of the Initial Order, on September 21, 2022, APC retained EY and FAAN Advisors ("**FAAN**") to administer a sales and investment solicitation process for the rights to Natesto and Noctiva as part of its pre-filing strategic process (the "**Pre-Filing SISP**");

(c) Ultimately, the Pre-Filing SISP did not lead to any actionable transaction in advance of the commencement of the CCAA Proceedings;

(d) Among other things, the Initial Order:

(i) granted an initial 10-day Stay of Proceedings in favour of the Applicants, the Monitor, and the Directors and Officers;

(ii) appointed EY as Monitor;

(iii) appointed FAAN to act as CRO, through the services of Naveed Z. Manzoor and other employees or agents of FAAN (as applicable);

(iv) approved the Applicants' ability to borrow under the DIP Facility pursuant to the DIP Facility Agreement entered into on January 26, 2023 with the

DIP Lender, of which the Applicants were permitted to draw up to a maximum amount of US$500,000 during the initial Stay of Proceedings; and

(v) granted the Administration Charge, the Directors' Charge, and the DIP Lender's Charge;

(e) On February 3, 2023, the Applicants sought and obtained the ARIO which, *inter alia*:

(i) extended the Stay of Proceedings to and including April 5, 2023;

(ii) approved a key employee retention plan (the "**KERP**");

(iii) increased the amounts which may be borrowed by the Applicants under the DIP Facility Agreement to US $7,000,000, secured by an increase to the DIP Lender's Charge; and

(iv) increased the Administration Charge granted the KERP Charge;

(f) The Applicants, as foreign representatives, commenced ancillary recognition proceedings pursuant to Chapter 15 of the US Bankruptcy Code, in the State of Delaware on January 29, 2023. A provisional recognition order was granted by Judge Mary F. Walrath on January 31, 2023;

(g) On February 27, 2023, the US Bankruptcy Court entered an order which, *inter alia*, recognized the CCAA Proceedings as foreign main proceedings and gave full force and effect to the orders entered in the CCAA Proceedings;

(h) The Companies require a comprehensive restructuring transaction (in the form of an investment or sale of the Companies' business and/or assets). While the Pre-Filing SISP did not lead to an actionable transaction, the Companies, the Monitor, and the CRO believe it would be appropriate to undertake a further SISP under the supervision of this Court with the benefit of the Stay of Proceedings. It is also a requirement of the DIP Facility Agreement that a SISP acceptable to the DIP Lender be commenced;

The SISP[2]

(i) The SISP is intended to solicit interest in the opportunity (the "**Opportunity**") for a sale of or investment in all or part of the Applicants' assets (the "**Property**", which includes Noctiva, Natesto, Strendra (avanafil), Lidbree, Tefina, TriVair and all other products of the Applicants (the "**Products**")) and business operations (the "**Business**"). During the SISP, the Companies will continue operating in the normal course;

(j) The SISP was designed to be broad and flexible. Accordingly, the SISP contemplates one or more of a restructuring, recapitalization, or other form of reorganization of the business and affairs of the Applicants as a going concern or a sale of all, substantially all or one or more components of the Property and the Companies' Business;

(k) The Monitor, with the assistance of the Applicants and the CRO will conduct the SISP;

[2] Capitalized terms used herein and not otherwise defined have the meanings ascribed to them in the SISP.

(l) The proposed SISP will proceed in one phase. The SISP contemplates six key milestones and deadlines. A brief summary of the SISP is set out below:

(i) *Notification Process*. By no later than March 14, 2023, being five (5) days[3] following issuance of the SISP Order, notice of the SISP will be provided to Known Potential Bidders identified by the Monitor, with the assistance of the Applicants. The Monitor will prepare and provide a Teaser Letter describing the Opportunity and an NDA, which will be sent by the Monitor to all Known Potential Bidders;

(ii) *Monitor will post a Notice in the Globe & Mail, and the Applicants will issue a press release in respect of the SISP, by no later than March 14, 2023, being five (5) days from the SISP Order;*

(iii) *Due Diligence Materials*. Due diligence materials and information relating to the Applicants, the Property and the Business will be provided to Potential Bidders through an electronic data room;

(iv) *Potential Bidders and Formal Binding Offers.* Potential Bidders that wish to make a formal offer to purchase or make an investment in the Applicants or its Property or Business shall submit a binding offer (a "**Bid**") to the Monitor by no later than the Bid Deadline on April 28, 2023 at 5:00 p.m. (Toronto Time), being fifty (50) days following issuance of the SISP Order, or such later date as may be communicated by the Monitor to Potential Bidders through a Bid Deadline Letter;

[3] All references to days are considered calendar days unless otherwise specified.

(v) *Monitor Notify Bidders on Whether its Bid Constitutes a Qualified Bid.* Following the Bid Deadline, the Monitor, the Applicants, and the CRO will assess the Bids received. The Applicants, in consultation with the Monitor and the CRO, will designate the most competitive Bids and designate Qualified Bids. The Monitor shall cause each Bidder to be notified in writing as to whether their Bid is a Qualified Bid, within five (5) business days of the Bid Deadline, being no later than May 5, 2023;

(vi) *Monitor Determines if Auction Necessary and Advise Qualified Bidders*. If the Monitor receives one or more Bids that are designated as Qualified Bids, the Applicants, in consultation with the Monitor and the CRO, may (a) select one or more of such Qualified Bids as Successful Bids, with or without negotiation of Qualified Bids with Qualified Bidders; or (b) direct such Qualified Bidders to participate in an Auction to be conducted and administered by the Monitor, with the assistance of the Applicants. Instructions to participate in the Auction which will take place via video conferencing, along with the Initial Bid, will be provided to Qualified Bidders in writing not less than two (2) business days, being May 5, 2023, prior to the commencement of the Auction;

(vii) *Auction*. No later than 5:00 p.m. (Eastern Standard Time) on the business day prior to the Auction, each Qualified Bidder must inform the Monitor whether it intends to participate in the Auction. The Auction (if necessary) will proceed on May 9, 2023, being sixty-one (61) days following issuance of the SISP Order;

(viii) *Sale Approval Hearing*. By no later than May 19, 2023, being no later than seventy-one (71) days following issuance of the SISP Order, the Applicants will make a motion to this Court to approve the sale to the Successful Bidder;

(m) The flexibility afforded to the Monitor and the Applicants, the enhanced role of the Monitor, and the stakeholder consultation contemplated by the SISP will ensure that the Applicants' restructuring proceeds in a way that maximizes stakeholder value. This flexibility is critical to the Applicants' ability to maximize stakeholder recovery given, among other things, the complexities associated with licensing and the regulatory environment in the pharmaceutical industry and the Applicants' liquidity constraints;

(n) The proposed SISP is appropriate and reasonable in the circumstances and provides a fair and efficient means of canvassing the market for the Property and/or Business;

(o) It is a requirement of the DIP Facility Agreement that a SISP acceptable to the DIP Lender be commenced;

(p) The Monitor and the DIP Lender are supportive of the SISP and believes that it is in the best interests of the Applicants and its stakeholders;

Extension of the Stay of Proceedings

(a) Pursuant to the ARIO, the Stay of Proceedings was extended to April 5, 2023. Since the granting of the ARIO, the Applicants have acted in good faith and with due diligence to, among other things, stabilize its business, negotiate, and liaise with its key customers, and prepare the SISP, all with the oversight of the Monitor;

(b) The SISP contemplates a Bid Deadline of April 28, 2023 and an outside date of May 19, 2023 to hear the Sale Approval Motion. By extending the Stay of Proceedings from April 5, 2023 to May 19, 2023 (being the outside date for the Sale Approval Motion), the Applicants can direct its resources towards a successful SISP without returning to this Court to seek an extension to the Stay of Proceedings while in the middle of the proposed SISP;

(c) The updated cash flow forecast prepared by the Applicants and reviewed by the Monitor reflects that the Applicants are expected to maintain liquidity and fund operations up to May 19, 2023;

(d) The Monitor is supportive of the proposed extension to the Stay of Proceedings to May 19, 2023 and believes it will not materially prejudice any creditor;

Other Grounds

(a) The provisions of the CCAA, including but not limited to Section 11.4 of the CCAA, and the inherent and equitable jurisdiction of this Honourable Court;

(b) Section 106 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43, as amended;

(c) Rules 1.04, 1.05, 2.03, 3.02, 16 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and

(d) Such further and other grounds as counsel may advise and this Court may permit.

6. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Motion:

(a) The Affidavit of Naveed Z. Manzoor, sworn March 2, 2023, and the Exhibits attached thereto;

(b) The Second Report of the Monitor and the Appendices attached thereto; and

(c) Such further and other documentary evidence as counsel may advise and this Court may permit.

March 2, 2023

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West, 199 Bay Street
Toronto, ON M5L 1B9

Elizabeth Pillon (LSO #35638M)
Tel: (416) 869-5623
Email: lpillon@stikeman.com

Lee Nicholson (LSO #66412I)
Tel: (416) 869-5604
Email: leenicholson@stikeman.com

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Applicants

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

NOTICE OF MOTION

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Elizabeth Pillon (LSO #35638M)
Tel: (416) 869-5623
Email: lpillon@stikeman.com

Lee Nicholson (LSO #66412I)
Tel : (416) 869-5604
Email: leenicholson@stikeman.com

Philip Yang (LSO #82084O)
Tel: (416) 869-5593
Email: pyang@stikeman.com

Lawyers for the Applicants

TAB 2

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Applicants

AFFIDAVIT OF NAVEED Z. MANZOOR
(Sworn March 2, 2023)

I, **NAVEED Z. MANZOOR**, of the Town of Oakville, in the Province of Ontario, **MAKE OATH AND SAY**:

1. I am the current Chief Restructuring Officer ("**CRO**") of Acerus Pharmaceuticals Corporation ("**APC**" or the "**Company**"), Acerus Biopharma Inc. ("**ABI**"), Acerus Labs Inc. ("**ALI**"), and Acerus Pharmaceuticals USA, LLC ("**APL**") (collectively, the "**Applicants**" or the "**Companies**") through FAAN Advisors ("**FAAN**"), effective January 26, 2023. Prior to that, I was the Chief Financial Officer of APC effective November 20, 2022 and the Chief Strategy Officer of APC from August 22, 2022 to November 20, 2022. As such, I have been responsible for administration of APC's finances and have assisted the Company with pursuing strategic alternatives. Accordingly, I have personal knowledge of the Applicants and the matters set out below. Where I have relied on information from others, I state the source of such information and verily believe it to be true.

2. I swear this affidavit in support of a motion by the Companies for an Order pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), *inter alia*:

a. approving a sale and investment solicitation process in a form substantially similar to the form attached as Schedule "A" to the Order at Tab 3 of the Motion Record of the Applicants (the "**SISP**", and the Order being the "**SISP Order**");

b. authorizing the Applicants and the Monitor to immediately commence the SISP;

c. authorizing and directing the Applicants, Ernst & Young Inc. ("**EY**"), in its capacity as the Court-appointed monitor of the Applicants (in such capacity, the "**Monitor**"), the Court-appointed Chief Restructuring Officer ("**CRO**"), and the Applicants', Monitors and CRO's respective affiliates, partners, employees, advisors and agents (collectively, the "**Assistants**") to take any and all actions as may be necessary or desirable to implement and carry out the SISP in accordance with its terms and the SISP Order;

d. granting an extension of the Stay of Proceedings (as defined herein) until and including May 19, 2023; and

e. such further and other relief as this Honourable Court deems just.

3. All capitalized terms not otherwise defined herein have the meanings ascribed to them in the affidavit of Naveed Z. Manzoor, sworn January 25, 2023 (the "**Initial Manzoor Affidavit**") in support of the Applicants' CCAA proceedings (the "**CCAA Proceedings**"). A copy of the Initial Manzoor Affidavit, without Exhibits, is attached hereto as **Exhibit "A"**.

4. All references to currency in this affidavit are references to United States dollars, unless otherwise indicated.

I. BACKGROUND

5. The Applicants are one corporate group which carries on business as a pharmaceutical company based in Mississauga, Ontario. Facing a severe liquidity crisis, the Applicants sought

protection under the CCAA pursuant to an order (the "**Initial Order**") on January 26, 2023. The facts underlying the Applicants' liquidity crisis and need for CCAA protection are set out in the Initial Manzoor Affidavit and are not repeated herein.

6. Prior to the granting of the Initial Order, on September 21, 2022, APC retained EY and FAAN to administer a sales and investment solicitation process for the rights to Natesto and Noctiva as part of its strategic review of capital and business alternatives (the "**Pre-Filing SISP**"). Further details of the Pre-Filing SISP are outlined herein. The Applicants and Monitor seek to continue and expand upon the Pre-Filing SISP as part of the SISP process being sought at the upcoming hearing.

7. Ultimately, the Pre-Filing SISP did not lead to any actionable transaction in 2022. Accordingly, the Applicants filed for protection under the CCAA.

8. The Applicants sought the Initial Order on January 26, 2023. Among other things, the Initial Order:

a. granted an initial 10-day stay of proceedings in favour of the Applicants, the Monitor, and the Directors and Officers (the "**Initial Stay of Proceedings**");

b. appointed EY as Monitor;

c. appointed FAAN to act as CRO, through the services of Naveed Z. Manzoor and other employees or agents of FAAN (as applicable);

d. approved the Applicants' ability to borrow under the DIP Facility pursuant to the DIP Facility Agreement entered into on January 26, 2023 with the DIP Lender, of which the Applicants were permitted to draw up to a maximum amount of US $500,000 during the Initial Stay of Proceedings; and

e. granted the Administration Charge, the Directors' Charge, and the DIP Lender's Charge.

9. On February 3, 2023, the Applicants sought and obtained an amended and restated initial order (the "**ARIO**"), which, *inter alia*:

a. extended the Initial Stay of Proceedings to and including April 5, 2023 (the "**Stay of Proceedings**");

b. approved a key employee retention plan (the "**KERP**");

c. increased the amounts which may be borrowed by the Applicants under the DIP Facility Agreement to US $7,000,000, secured by an increase to the DIP Lender's Charge; and

d. increased the Administration Charge and granted the KERP Charge.

10. Copies of the Initial Order and the ARIO are attached hereto as **Exhibit "B"** and **Exhibit "C"**, respectively.

11. On January 31, 2023, Judge Mary F. Walrath for the United States Bankruptcy Court for the District of Delaware (the "**US Bankruptcy Court**") entered the Order Granting Provisional Relief Pursuant to Section 1519 of the Bankruptcy Code (the "**Provisional Relief Order**"), granting provisional, injunctive, and related relief, including but not limited to, granting recognition and giving effect in the United States to the Initial Order and giving effect to the ARIO that was anticipated at the time to be entered into on or about February 3, 2023. A copy of the Provisional Relief Order is attached hereto as **Exhibit "D"**.

12. On February 27, 2023, the US Bankruptcy Court entered an order which, *inter alia*, recognized the CCAA Proceedings as foreign main proceedings and gave full force and effect to the orders entered in the CCAA Proceedings (the "**Final Recognition Order**"). A copy of the Final Recognition Order is attached hereto as **Exhibit "E"**.

A. Discussions with Various Stakeholders

13. Since the issuance of the ARIO, the Applicants, with the assistance of the CRO, and under the supervision of the Monitor, have engaged in discussions with certain vendors, customers, and other key stakeholders with respect to the Applicants' continued operations in the CCAA Proceedings.

14. The Applicants are continuing the distribution of Natesto in the United States and Canadian markets. The Applicants use a third-party logistics company and distributor, McKesson Speciality Care Distribution LLC ("**McKesson**") to assist with the distribution of Natesto in the United States and Canada.

15. McKesson initially raised concerns in relation to the language of the proposed recognition order in the US Bankruptcy Court and the manner in which this may affect the ongoing distribution arrangements between McKesson and Acerus. The Applicants, in conjunction with the Monitor and the CRO, have been negotiating a resolution with McKesson to address their underlying concerns and so that Natesto can continue to be distributed in the United States and Canada, and the corresponding funds owing between the Applicants and McKesson entities may continue to flow between the parties.

16. On February 23, 2023, APC and McKesson, together with its affiliated companies (the "**McKesson Group**"), reached a resolution and entered into an agreement (the "**McKesson Agreement**"). Pursuant to the McKesson Agreement, APC and the McKesson Group agreed, among other things, that the parties would continue their business relationship in the ordinary course in accordance with the terms of the agreements governing their business relationship (and consistent with past practice). The parties agreed to honour and satisfy all obligations, including permitting all setoffs, recoupment and netting, whether prior to or subsequent to the date of the

Initial Order and/or Provisional Relief Order. The McKesson Agreement ensures that critical distribution channels will remain in place, and net funds owing to Acerus will be paid.

17. The Applicants with the assistance of the Monitor have also been in discussions with other service providers which provide: (a) “co-paying” support and infrastructure in the United States which assists patients with respect to the purchase of Natesto product; and (b) trial testing in respect of the Natesto product in the United States. To the extent that the Monitor has not been directly involved in these discussions, the Applicants have continually provided updates in respect of same.

18. Additionally, among others, the Applicants, with the assistance of the Monitor have responded to information requests from Canada Revenue Agency with respect to audit requests.

B. DIP Facility

19. To date, the DIP Lender has advanced a total $**2 million** to APC and APL. This quantum of the advance was contemplated by the cash flow forecast attached as **Appendix “E”** to the First Report of the Monitor dated February 2, 2023.

20. The Applicants have subsequently prepared an updated cash flow forecast which will be attached to the Second Report of the Monitor (the “**Updated Cash Flow Forecast**”). The Updated Cash Flow Forecast reflects that the Applicants are expected to have sufficient funds and maintain liquidity to fund operations up to May 19, 2023, in accordance with the available funding under the DIP Facility.

21. The DIP Lender has been consulted in respect of the terms and timing of the SISP, is aware of the steps taken to date in respect of the SISP, and what is proposed in the balance of the SISP to be implemented, as described further herein. The DIP Lender supports the relief being sought in the proposed SISP Order.

C. The Pre-Filing SISP Process

22. While the Pre-Filing SISP did not lead to an actionable transaction, the Companies, the Monitor, and the CRO believe it would be appropriate to undertake a further brief SISP under the supervision of this Court with the benefit of the Stay of Proceedings. It is also a requirement of the DIP Facility Agreement that a SISP acceptable to the DIP Lender be commenced.

23. As noted above, the Pre-Filing SISP was previously run to identify potential bidders and investors. During the course of the Pre-Filing SISP, the Applicants together with EY assembled a list of approximately one-hundred-and-thirteen (113) potential buyers and investors (the "**Prospective Bidders**"). EY also canvassed its global network which led to a number of discussions with strategics throughout the globe.

24. Subsequently, the Applicants, with the assistance of EY, prepared a *teaser document* and a confidential information memorandum and sent both to the Prospective Bidders. A data room was also set up which included information in respect of the Applicants and its products, to assist Prospective Bidders (the "**Data Room**"). The Data Room was available to Prospective Bidders who had signed non-disclosure agreements.

25. Over the course of the Pre-Filing SISP, various parties signed non-disclosure agreements and reviewed the confidential information memorandum and information provided in the Data Room. EY received submissions from various parties indicating formal interest. However, no actionable transactions were concluded by the end of the Pre-Filing SISP.

26. Since the granting of the Initial Order, the Monitor has continued discussions with the parties who had previously expressed interest. The purpose of these discussions is to update them on the status of these CCAA proceedings and assess their continued interest in the Applicants' assets and operations.

D. Proposed SISP

27. With the benefit of the steps taken and information learned from the Pre-Filing SISP, the Applicants, in consultation with the Monitor and the CRO, have developed the SISP, attached as Schedule "A" to the draft Order provided at Tab 3 of the Applicants' Motion Record.

28. The SISP is intended to solicit interest in the opportunity (the "**Opportunity**") for a sale of or investment in all or part of the Applicants' assets (the "**Property**", which includes the drugs Noctiva, Natesto, Strendra (avanafil), Lidbree, Tefina, TriVair and all other products of the Applicants (the "**Products**")) and business operations (the "**Business**"). During the SISP, the Companies will continue operating in the normal course.

29. The Company has determined, and it is my belief, that the SISP is a critical step towards a successful restructuring of the Companies and an appropriate available option to attempt to maximize the Companies' value for all stakeholders.

II. THE SISP

30. Capitalized terms used in this section and not otherwise defined have the meanings ascribed to them in the SISP.

A. Overview

31. The SISP provides that the Monitor, with the assistance of the Applicants and the CRO, will solicit interest in, and opportunities for, an acquisition or refinancing of the Applicants' business or a sale of the assets and/or business of the Applicants, in whole or in part. The SISP was designed to be broad and flexible. Accordingly, the SISP contemplates one or more of a restructuring, recapitalization, or other form of reorganization of the business and affairs of the

Applicants as a going concern or a sale of all, substantially all or one or more components of the Property and the Companies' Business.

32. The SISP will proceed in one phase. The SISP contemplates six (6) key milestones and deadlines, which milestones and deadlines may be extended or amended by the Companies, with the prior written approval of the Monitor.

Milestone	**Deadline**
Publish notice of SISP and deliver Teaser Letter and NDA to Known Potential Bidders	Five (5) days[1] following issuance of the SISP Order March 14, 2023
Bid Deadline	Fifty (50) days following issuance of SISP Order April 28, 2023
Monitor to notify each Bidder in writing as to whether its Bid constitutes a Qualified Bid	Within five (5) business days following the Bid Deadline No later than May 5, 2023
Monitor to notify each Qualified Bidder on whether an Auction will take place	Two (2) business days prior to the commencement of the Auction No later than May 5, 2023
Auction Date (if required)	Sixty-one (61) days following issuance of SISP Order May 9, 2023
Hearing of the Sale Approval Motion	No later than seventy-one (71) days following issuance of SISP Order

[1] All references to days are considered calendar days unless otherwise specified.

	No later than May 19, 2023

33. The milestones referred to in the above table are described in detail below. I understand that the milestones are also supported by the Monitor. The Monitor and the CRO believe that the milestones of the proposed SISP provide prospective bidders with sufficient time to participate in the SISP, especially considering that the SISP is, in essence, a continuation of the Pre-Filing SISP which began in September 2022 and continued through December 2022.

B. Notification Process

34. The SISP requires the Monitor, with the assistance of the Applicants, to prepare a list of Known Potential Bidders. These include:

a. parties that have approached the Applicants or the Monitor indicating an interest in the Opportunity;

b. local and international strategic and financial parties who the Monitor, in consultation with the Applicants, believe may be interested in purchasing all or part of the Business or Property or investing in the Applicants pursuant to the SISP; and

c. any other parties that showed an interest in the Applicants and/or their assets by way of the previous Pre-Filing SISP, in each case whether or not such party has submitted a letter of intent or similar document.

35. The Monitor and Applicants will apprise the market of the SISP by arranging for notice of the SISP (the "**Notice**") to be published in The Globe and Mail (*National Edition*), and any other newspaper or journal that the Monitor considers appropriate, if any. Additionally, the Applicants will issue a press release with Canada Newswire or any other comparable newswire entity, setting

out the information contained in the Notice and such other relevant information that the Monitor considers appropriate.

36. The Monitor, in consultation with the Applicants and the CRO, will prepare:

a. a process summary (the "**Teaser Letter**"), describing the Opportunity, outlining the process under the SISP and inviting recipients of the Teaser Letter to express their interest pursuant to the SISP;

b. a form non-disclosure agreement (the "NDA"); and

c. the Monitor will, in consultation with the Applicants, coordinate all reasonable questions for information and due diligence, including access to the Data Room.

37. The Monitor will send the Teaser Letter and NDA to each Known Potential Bidder by no later than five (5) days following issuance of the SISP Order, being March 14, 2023. The Teaser Letter and the NDA will also be sent by the Monitor to any other party who requests a copy of the Teaser Letter and NDA or who is identified to the Monitor as a potential bidder as soon as reasonably practicable.

C. Potential Bidders and Formal Binding Offers

38. Each Potential Bidder must provide the Monitor with an NDA executed by it and a letter setting forth the identity of, and contact information for, such Potential Bidder, in addition to any other information that the Monitor may reasonably request. Parties who do so will be granted access to an electronic Data Room containing due diligence materials and information relating to the Applicants, the Property and the Business as the Monitor, in consultation with the Applicants, deems appropriate.

39. Selected due diligence materials may be withheld from certain Potential Bidders if the Monitor and the Applicants determine such information to represent proprietary or sensitive competitive information or if such disclosure could impair the Applicants or their Business or the integrity of the SISP.

40. Potential Bidders that wish to make a formal offer to purchase or make an investment in the Applicants or their Property or Business shall submit a binding offer (a "**Bid**") to the Monitor by the Bid Deadline on April 28, 2023 at 5:00 p.m. (Toronto Time), being fifty (50) days following issuance of the SISP Order or such later date as may be communicated by the Monitor to Potential Bidders through a Bid Deadline Letter.

41. Following the Bid Deadline, the Monitor, the Applicants, and the CRO will assess the Bids received. The Applicants, in consultation with the Monitor and the CRO, will designate the most competitive Bids that comply with the following requirements, among others (the "**Qualified Bids**"):

a. the Bid is a binding offer to acquire all, substantially all, or a portion of the Property or the shares of the Applicants pursuant to a reverse vesting order (a "**Sale Proposal**"), and/or a binding offer to make an investment in, restructure, reorganize or refinance the Business or the Applicants (an "**Investment Proposal**");

b. the Bid must include a duly authorized and executed definitive transaction document;

c. the Bid must include a letter stating that the Bidder's offer is irrevocable until approval of the Successful Bid(s) by the Court, provided that if such Bidder is selected as the Successful Bidder, its offer shall remain irrevocable until the closing of the transaction contemplated by such Bid;

d. the Bid must include written evidence of a firm, irrevocable commitment for financing or other evidence of the Bidder's ability to consummate the proposed transaction that will allow the Monitor and Applicants to make a determination as to the Bidder's financial and other capabilities to consummate the proposed transaction;

e. for a Sale Proposal, the Bid must include, among other things, a commitment by the Bidder to provide a non-refundable deposit in the amount of not less 10% of the purchase price offered upon the Bidder being selected as the Successful Bidder; and

f. for an Investment Proposal, the Bid must include, among other things, a commitment by the Bidder to provide a non-refundable deposit in the amount of not less than 10% of the total new investment contemplated in the Bid upon the Bidder being selected as the Successful Bidder.

42. The Monitor, in consultation with the Applicants, may (a) waive strict compliance with any one or more of the requirements set out herein and deem such non-compliant Bids to be a Qualified Bid; and (b) aggregate separate Bids from unaffiliated Bidders to create one Qualified Bid.

43. The Monitor shall notify each Bidder in writing as to whether its Bid constituted a Qualified Bid within five (5) business days of the Bid Deadline, being no later than May 5, 2023, or at such later time as it deems appropriate.

44. The Monitor, in consultation with the Applicants, may extend the Bid Deadline. Any such extension of the Bid Deadline shall be communicated to Potential Bidders by a bid deadline extension letter (a "**Bid Deadline Letter**") from the Monitor delivered by email and posted on the Monitor's case website.

D. Selection of Successful Bid

45. The Applicants, in consultation with the Monitor and the CRO will evaluate Bids based upon several factors including, without limitation:

a. the purchase price and the net value of the consideration provided by such Bid (with the value of any non-cash consideration being determined by the Applicants in their business judgment, in consultation with the Monitor and CRO);

b. the identity, circumstances and ability of the Bidder to successfully complete such transactions;

c. the proposed transaction documents;

d. factors affecting the speed, certainty and value of the transaction;

e. the assets and liabilities included or excluded from the Bid,

f. any related restructuring costs;

g. the manufacturing capabilities of the Bidder; and

h. the likelihood and timing of consummating such transaction.

46. At any stage of the SISP, the Monitor, in consultation with the Applicants, may ascribe monetary values to non-monetary terms in any Bid, Qualified Bid, Initial Bid, or Overbids for the purposes of assessing and/or valuing such bids, including without limitation, the value to be ascribed to any liabilities or contracts to be assumed or not assumed.

47. If the Monitor receives one or more Bids that are designated as Qualified Bids, the Applicants, in consultation with the Monitor and the CRO, may (a) select one or more of such

Qualified Bids as the successful bid (the "**Successful Bid(s)**", and the Qualified Bidder(s) making such bid, the "**Successful Bidders(s)**"), with or without negotiation of Qualified Bids with Qualified Bidders; or (b) direct such Qualified Bidders to participate in an Auction to be conducted and administered by the Monitor, with the assistance of the Applicants, in accordance with the terms of the SISP.

E. Auction

48. Following the evaluation of the Qualified Bid(s), the Applicants, in consultation with the Monitor and CRO must determine whether the Auction will be held not less than two (2) business days prior to the commencement of the Auction. Instructions to participate in the Auction, along with the Initial Bid, will be provided to Qualified Bidders in writing not less than two (2) business days, being May 5, 2023, prior to the commencement of the Auction. No later than 5:00 p.m. (Toronto time) on the business day prior to the Auction, each Qualified Bidder must inform the Monitor whether it intends to participate in the Auction. The Monitor will then promptly thereafter inform in writing to each Qualified Bidder who has expressed its intent to participate in the Auction (the "**Auction Participants**") of the identity of all other Qualified Bidders that have indicated their intent to participate in the Auction.

49. The Auction (if necessary) shall proceed on May 9, 2023, being sixty-one (61) days following issuance of the SISP Order and shall be governed by the following procedures, as may be supplemented by the Monitor:

a. *Participation at the Auction*. Unless otherwise agreed to in writing by the Monitor, only the Applicants, the CRO, the Auction Participants, the Monitor and each of their respective advisors will be entitled to attend the Auction,

b. *No Collusion*. Each Auction Participant shall be required to confirm on the record at the Auction that: (i) it has not engaged in any collusion with respect to the Auction and the SISP; and (ii) its bid and each subsequent Overbid (as defined below) is a good-faith bona fide offer, which, if accepted by the Applicants on the record of the Auction forms a binding agreement between the parties;

c. *Minimum Overbid*. The Auction shall begin with the Qualified Bid that represents the highest or otherwise best Qualified Bid as determined by the Applicants, in consultation with, and with the approval of, the Monitor and CRO (the "**Initial Bid**"), and any bid made at the Auction by a Auction Participant subsequent to the Monitor's announcement of the Initial Bid (each, an "**Overbid**"), must proceed in minimum additional increments of $100,000 or as otherwise declared by the Monitor during the Auction with the approval of the Applicants;

d. *Bidding Disclosure*. The Auction shall be conducted such that all Overbids will be made and received in one group video-conference, on an open basis, and all Auction Participants will be entitled to be present for all bidding with the understanding that the true identity of each Auction Participant will be fully disclosed to all other Auction Participants and that all material terms of each subsequent bid will be fully disclosed to all other Auction Participants throughout the entire Auction;

e. *Bidding Conclusion*. The Auction shall continue in one or more rounds and will conclude after each Auction Participant has had and refused the opportunity to submit an Overbid with full knowledge of the then-existing highest Qualified Bid(s) or Overbid(s), at which time the Monitor will declare the Auction to be concluded;

f. *No Post-Auction Bids*. No Overbids will be considered for any purpose after the Monitor has declared the Auction to be concluded; and

g. *Auction Procedures*. The Monitor, in consultation with the Applicants, shall be at liberty to set additional procedural rules for the Auction as it sees fit.

50. During the Auction, the Applicants, in consultation with the Monitor, will (a) review Qualified Bids and Overbids, as the case may be, considering the factors set out in paragraph 45 above with respect to the selection of the Successful Bid from the Bids received; and (b) identify the highest or otherwise best Qualified Bid or Overbid received at any given time during the Auction, being the Successful Bid(s), and the Qualified Bidder(s) making such bid the Successful Bidder(s).

F. Sale Approval Hearing

51. The Successful Bidder(s) shall complete and execute all agreements, contracts, instruments or other documents evidencing and containing the terms and conditions upon which the Successful Bid(s) was made within two (2) business days of the Successful Bid(s) being selected as such, unless extended by the Monitor, in consultation with the Applicants.

52. At the hearing of the motion to approve any transaction with the Successful Bidder(s), being no later than May 19, 2023, being no later than seventy-one (71) days following issuance of the SISP Order (the "**Sale Approval Motion**"), the Applicants shall seek, among other things, approval from the Court to consummate the Successful Bid(s). All the Qualified Bids other than the Successful Bid(s), if any, shall be deemed to be rejected by the Applicants on and as of the date of approval of the Successful Bid(s) by the Court.

G. Potential of Stalking Horse Bid

53. Notwithstanding anything to the contrary in the SISP, the Applicants, in consultation with, and with the approval of, the Monitor, may attempt to negotiate a stalking horse bid (a "**Stalking Horse Bid**") prior to the Bid Deadline to provide certainty for the Applicants during the SISP. If

the Applicants, in consultation with, and with the approval of, the Monitor, accept a Stalking Horse Bid, such Stalking Horse Bid will be subject to approval by this Court and the Applicants shall bring a motion before this Court on notice to the service list in these CCAA Proceedings seeking the approval of the Stalking Horse Bid, together with approval of necessary amendments to the SISP. All Potential Bidders will be promptly informed of any Court approval of a Stalking Horse Bid and any related amendments to the SISP

H. Secured Creditors' Participation in the SISP

54. The Secured Creditor and DIP Lender, FGC, has not concluded at this time whether it will be participating in the SISP as a potential bidder. Pending formal confirmation of its intentions, the SISP provides for mechanisms to provide the competitive integrity of the SISP. Pursuant to the SISP, to the extent any secured creditor is or is related to a Potential Bidder, the Monitor and the Applicants shall not provide such secured lender with information that might create an unfair advantage or jeopardize the integrity of the SISP unless such secured creditor confirms irrevocably in writing to the Monitor that it shall not submit or participate directly or indirectly in the submission of a Bid.

I. SISP Approval

55. The SISP was developed by the Applicants, in consultation with the Monitor and the CRO. As previously mentioned, the SISP is intended to provide a flexible, fair, and efficient structure for canvassing the market for the Property and/or Business.

56. The flexibility afforded to the Monitor and the Applicants, the enhanced role of the Monitor, and the stakeholder consultation contemplated by the SISP will ensure that the Applicants' restructuring proceeds in a way that maximizes stakeholder value. This flexibility is critical to the Applicants' ability to maximize stakeholder recovery given, among other things, the complexities

associated with licensing and the regulatory environment in the pharmaceutical industry and the Applicants' liquidity constraints.

57. I am advised that the Monitor is supportive of the proposed SISP.

58. Further, it is a requirement of the DIP Facility Agreement that a SISP acceptable to the DIP Lender be commenced. I understand that the DIP Lender is supportive of the proposed SISP.

59. In light of the foregoing, I believe that the proposed SISP is appropriate and reasonable in the circumstances and provides a fair and efficient means of canvassing the market for the Property and/or Business. Further, I believe that it provides the appropriate degree of oversight and consultation to ensure that the SISP proceeds fairly and in the best interests of the Applicants and its stakeholders without unduly tempering its efficiency.

III. Extension to Stay or Proceedings

60. Pursuant to the ARIO, the Stay of Proceedings was extended to April 5, 2023. Since the granting of the ARIO, the Applicants have acted in good faith and with due diligence to, among other things, stabilize its business, negotiate, and liaise with its key vendors and customers, and prepare the SISP, all with the oversight of the Monitor.

61. The SISP contemplates a Bid Deadline of April 28, 2023 and an outside date of May 19, 2023 to hear the Sale Approval Motion. By extending the Stay of Proceedings from April 5, 2023 to May 19, 2023 (being the outside date for the Sale Approval Motion), the Applicants can direct its resources towards a successful SISP without returning to this Court to seek an extension to the Stay of Proceedings while in the middle of the proposed SISP.

62. The Cash Flow Forecast also reflects that the Applicants are expected to maintain liquidity and fund operations up to May 19, 2023.

63. If the SISP is approved, the Applicants believe an extension to the Stay of Proceedings to May 19, 2023 is appropriate and reasonable in the circumstances.

64. I understand that the Monitor is supportive of the proposed extension to the Stay of Proceedings to May 19, 2023 and believes it will not materially prejudice any creditor.

65. I swear this Affidavit in support of the Applicants' motion for the SISP Approval Order and an extension to the Stay of Proceedings and for no other or improper purpose.

SWORN REMOTELY via videoconference, by Naveed Z. Manzoor stated as being located in the Town of Oakville, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on this 2nd day of March, 2023, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:
Philip Y
36124C4218DD47C

A Commissioner for Taking Affidavits, etc.
PHILIP YANG

DocuSigned by:
Naveed Z. Manzoor
090E0FC3FAE4473

NAVEED Z. MANZOOR

This is Exhibit "A" referred to in the Affidavit of Naveed Z. Manzoor
sworn by Naveed Z. Manzoor of the Town of Oakville,
in the Province of Ontario, before me at the City of Toronto,
in the Province of Ontario, on March 2, 2023
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.

DocuSigned by:

Philip Y

36124C4218DD47C...

Commissioner for Taking Affidavits

Philip Yang

Court File No.

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 ACERUS PHARMACEUTICALS CORPORATION, ACERUS BIOPHARMA INC., ACERUS LABS INC., AND ACERUS PHARMACEUTICALS USA, LLC

Applicants

AFFIDAVIT OF NAVEED Z. MANZOOR
(Sworn January 25, 2023)

I, **NAVEED Z. MANZOOR**, of the Town of Oakville, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS**:

1. I am the current Chief Financial Officer ("**CFO**") of Acerus Pharmaceuticals Corporation ("**APC**" or the "**Company**") and proposed Chief Restricting Officer ("**CRO**"). I was appointed CFO of the Company effective November 20, 2022. Previously, from August 22, 2022 to November 20, 2022, I was the Chief Strategy Officer of APC. As such, I have been responsible for administration of APC's finances and have assisted the Company with pursuing strategic alternatives. Accordingly, I have personal knowledge of the Applicants and the matters set out below. Where I have relied on information from others, I state the source of such information and verily believe it to be true.

2. I swear this affidavit in support of an Application by APC, Acerus Biopharma Inc. ("**ABI**"), Acerus Labs Inc. ("**ALI**"), and Acerus Pharmaceuticals USA, LLC ("**APL**") (collectively, the "**Applicants**" or the "**Companies**") for an Order (the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), *inter alia*:

a. abridging the time for service of the Application and the materials filed in support thereof, and dispensing with further service thereof;

b. declaring that the Applicants are parties to which the CCAA applies;

c. appointing Ernst & Young Inc. ("**EY**" or the "**Proposed Monitor**") as an officer of this Court to monitor the assets, business, and affairs of the Applicants (once appointed in such capacity, the "**Monitor**");

d. staying, for an initial period of not more than ten (10) days (the "**Stay of Proceedings**"), all proceedings and remedies taken or that might be taken in respect of the Applicants, the Monitor or the Directors and Officers (as defined below), or affecting the Applicants' business or Applicants' current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (collectively, the "**Property**"), except with the written consent of the Applicants and the Monitor, or with leave of this Court;

e. approve the execution by the Applicants of a debtor-in-possession facility loan agreement (the "**DIP Facility Agreement**") entered into on January 25, 2023 with First Generation Capital Inc. ("**FGC**"), pursuant to which FGC (in such capacity, the "**DIP Lender**") will provide an initial amount of $500,000 which may be advanced to the Applicants during the initial 10-day stay period, which will be made available to APC and APL during these CCAA proceedings (the "**DIP Facility**") in order to finance the Companies' capital requirements and other general corporate purposes, post-filing expenses and costs;

f. approving the appointment of FAAN Advisors Group Inc. ("**FAAN**") to act as Chief Restructuring Officer ("**CRO**") through services to be provided by Naveed Z. Manzoor, and other employees or agents of FAAN (as applicable) pursuant to an engagement letter dated January 25, 2023 (the "**CRO Engagement Letter**"), and authorizing FAAN to exercise and perform the powers, responsibilities and duties set out therein;

g. sealing the unredacted CRO Engagement Letter;

h. authorizing APC to act as foreign representative of the Companies and to seek recognition of these proceedings in the United States under Chapter 15 of the United States Bankruptcy Code, 11 U.S. Code § 1501-1532; and

i. granting the following priority charges against the Property:

    i. an Administration Charge (as defined below) in favour of the CRO in respect of its monthly work fee, the Monitor, counsel to the Monitor, and counsel to the Applicants in the initial amount of C$150,000;

    ii. grant the DIP Lender's Charge to secure the initial advance under the DIP Facility Agreement; and

    iii. the Directors' Charge (as defined below) in favour of the Directors and Officers in the initial amount of C$200,000.

3. If the Initial Order is granted, the Applicants intend to return to Court within ten (10) days (the "**Comeback Hearing**") to seek approval of an Amended and Restated Initial Order ("**ARIO**"), which, among other things, may:

a. extend the Stay of Proceedings;

b. increasing the amounts which may be borrowed by the Applicants under the DIP Financing Agreement to $7,000,000, which, together with the other obligations of the

Applicants under the DIP Financing Agreement will be secured by the DIP Lenders' Charge;

c. approve the key employee retention plan (the "**KERP**") and granting a Court-ordered priority charge against the Property for security for payments under the KERP (the "**KERP Charge**");

d. seal the unredacted KERP;

e. authorize APC to incur no further expenses in relation to the Securities Filings (as defined below) and declare that none of the directors, officers, employees, and other representatives of the Companies, the CRO, or the Monitor (and its directors, officers, employees and representatives) shall have any personal liability for any failure by the Applicants to make Securities Filings;

f. granting the following priority charges (collectively, the "**Charges**") against the Property:

    i. an Administration Charge in favour of the CRO, the Monitor, counsel to the Monitor, and counsel to the Applicants in the increased amount of C$300,000;

    ii. grant the DIP Lender's Charge in favour of the DIP Lender;

    iii. the Directors' Charge in favour of the Directors and Officers which amount shall remain at C$200,000; and

    iv. the KERP Charge in favour of the key employees referenced in the KERP up to the maximum amount of C$455,250.

g. seek such other relief as may be required to advance the Applicants' restructuring.

4. All references to currency in this affidavit are references to United States dollars, unless otherwise indicated.

I. OVERVIEW

5. APC is a pharmaceutical company whose head office is located in Mississauga, Ontario. Directly and through its subsidiaries ABI, ALI, and APL (the "**Subsidiaries**"), APC holds intellectual property rights over pharmaceutical products, and various methods of treatment and manufacturing, and carries on a business researching, trialling, and bringing said products to market for distribution. APC's primary market is the United States, but APC also does business in Canada, has partners located internationally and continues to explore business opportunities globally through licensing and partnerships.

6. APC's two most valuable assets have been its right, title and interest in the prescription medications Natesto and Noctiva. Currently, APC is seeking to recommence manufacturing of Noctiva for sales in the United States, as well as possible regulatory approvals internationally, but these steps are lengthy and costly, and the Companies have not had sufficient revenue to finance the restart of the manufacture of the drug. In addition, in order to continue selling Natesto, the Companies are required to complete clinical trials as well as pay various fees to third parties, which has been challenging in light of the Companies' financial performance. The Companies' net cash flow deficiency and losses arising from operations have been funded by FGC, which has funded just under $50 million to APC since April 2021. Without significantly improving the Companies' liquidity situation and right-sizing its capital structure, APC will likely not be able to produce and sell the Natesto product and will be prevented from producing commercial batches of Noctiva and from launching the product in the market.

7. To address these issues, as further described in this affidavit, since September 2022, APC commenced a formal strategic review process to explore, review, and evaluate a broad range of

strategic alternatives focused on ensuring its financial liquidity, including but not limited to, possible debt or equity financing, asset sale, merger and acquisition, or licensing transactions (the "**Pre-Filing Strategic Process**"). As part of these initiatives, APC established a committee of independent directors to supervise the Pre-Filing Strategic Process and engaged EY, together with an affiliated firm, Ernst & Young Orenda Corporate Finance Inc. ("**EYO**") to act as financial advisor in respect of the Pre-Filing Strategic Process. FAAN was also engaged to assist in this regard.

8. Despite the Pre-Filing Strategic Process, APC has been unsuccessful in its efforts to secure an actionable transaction and is now insolvent. Without the protection of the CCAA and the relief available thereunder, the Companies will be forced to shut-down operations, which would be extremely detrimental to the Companies' employees, suppliers, and customers. CCAA protection will provide the Companies with additional time to maintain its operations while consulting with its stakeholders regarding a potential restructuring or conducting a court-supervised sales process.

9. Each of the boards of directors of the Canadian Applicants has authorized this CCAA application.

II. THE APPLICANTS

A. Corporate Structure

10. APC was incorporated under the Ontario Business Corporations Act ("**OBCA**") on July 15, 2009 and operates out of its registered head office at 205-7025 Langer Drive, Mississauga, Ontario. FGC holds approximately 89.3% of outstanding shares in APC. Copies of APC's corporate profile report dated January 11, 2023 and the Management's Discussion & Analysis of

Acerus Pharmaceuticals Corporation dated November 14, 2022 (the "**MD&A**") are attached hereto as **Exhibit "A"** and **Exhibit "B"** , respectively.

11. APC is a publicly traded company whose shares are traded on the Toronto Stock Exchange (the "**TSX**") under the ticker "*ASP*" and the OTCQB Exchange in the United States under the ticker "*ASPCF*".

12. APC holds the intellectual property rights relating to two pharmaceutical products, Lidbree and Avanafil.

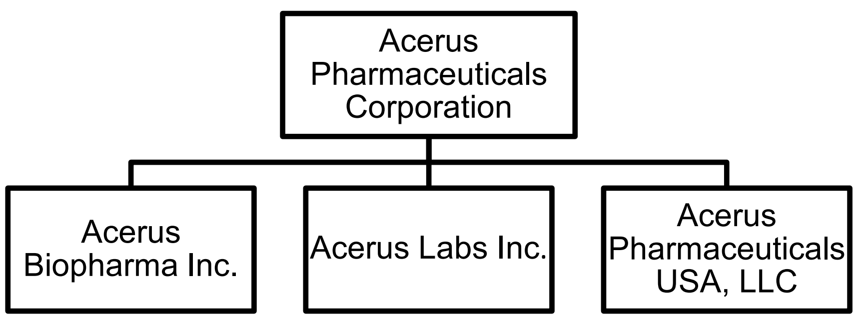
13. ABI is a wholly owned subsidiary of APC. ABI was continued under the OBCA on November 8, 2017 (formerly incorporated under the laws of Barbados), with a registered head office at 2486 Dunwin Drive,[1] Mississauga, Ontario. ABI holds the intellectual property rights relating to Natesto, and two further pharmaceutical products, Tefina and TriVair. ABI is the owner or licensee, as applicable, of the intellectual property required for the conduct of such businesses. A copy of ABI's corporate profile report dated January 11, 2023 is attached hereto as **Exhibit "C"**.

14. ALI is a wholly owned subsidiary of APC. ALI was formed under the OBCA on June 19, 2017, with a registered head office at 2486 Dunwin Drive, Mississauga, Ontario. ALI is the principal operating entity of the business of the Company relating to certain early-stage research and developments projects, including research projects related to the intranasal delivery of various botanical and synthetic cannabinoids formulations, and is the owner of the intellectual property required for the conduct of such businesses. A copy of ALI's corporate profile report dated January 11, 2023 is attached hereto as **Exhibit "D"**.

[1] This address is no longer active.

15. APL is a wholly owned subsidiary of APC. APL is formed under the laws of the State of Delaware. On March 7, 2022, APC, Lazarus Merger Sub, Inc., APL (formerly “**Serenity Pharmaceuticals LLC**”), and securityholders of Serenity Pharmaceuticals LLC entered into a plan and merger agreement dated February 25, 2022 (the “**Serenity Acquisition Agreement**”). Pursuant to the Serenity Acquisition Agreement, APL was acquired by APC, making APL a wholly owned subsidiary of APC. APL owns the intellectual property rights to Noctiva.

16. APC and each of the Subsidiaries are one corporate group, which are operated and controlled by the management of APC at its head office in Mississauga, Ontario. Each of the Subsidiaries are financially dependent upon APC as APC funds their respective cash flow requirements. Below is a corporate chart showing the structure of the Applicants.



B. Business and Operations of the Companies

i. Overview

17. The Applicants carry on business as a specialized pharmaceutical company focused on the commercialization and development of prescription health products, with a focus on urology and men’s health.

18. As set out below, the Companies’ primary products are (a) Natesto, which is currently the sole source of revenue for the Companies; and (b) Noctiva, which is currently not in distribution.

19. Each of the Companies' pharmaceutical product portfolios are briefly described:

a. ***Natesto*** is a patented prescription treatment in the form of a nasal gel for testosterone replacement therapy in males diagnosed with hypogonadism. All intellectual property rights and interests in Natesto are owned by ABI, including the intellectual property protection in respect of Natesto in the United States through to 2034. Natesto has received regulatory approval and is currently being distributed in Canada, the United States, South Korea, and Taiwan. Natesto is manufactured in Germany.

b. ***Noctiva*** is a patented prescription treatment for nocturnal polyuria that has received regulatory approval in the United States. Noctiva is currently not in distribution. All intellectual property rights and interests in Noctiva are owned by APL, including the intellectual property in respect of Noctiva across the world expected to expire beginning in 2023 and ending in 2030. These intellectual property rights include the patent rights registered with the Canadian Intellectual Property Office.

c. ***Avanafil*** is used for the treatment of erectile dysfunction. Avanafil has received regulatory approval in the United States and the European Union. However, APC has the exclusive right to license and distribute Avanafil in Canada only. Accordingly, APC is not currently distributing Avanafil. Subject to the availability of funds and other considerations, APC will be required to resubmit a New Drug Submission to Health Canada.

d. ***Lidbree*** is a topical anaesthesia for moderate acute pain. Lidbree has received regulatory approval in the European Union. However, APC only has the exclusive right to license and distribute Lidbree in Canada. There are currently no plans to seek regulatory approval and bring this product to market in Canada.

e. ***Tefina*** is a nasal, low-dose gel formulation of testosterone to treat female sexual dysfunction. Tefina is still in development and has not received regulatory approval from any country. Intellectual property rights and interests in Tefina are owned by ABI. There are currently no plans to seek regulatory approval and bring this product to market.

f. ***TriVair*** is a disposable single-unit dose dry powder inhalation technology platform. TriVair is still in development and has not received regulatory approval from any country. Intellectual property rights and interests in TriVair are owned by ABI. Pursuant to an intellectual property rights and development agreement, the TriVair technology is currently licensed to a third party who has the primary responsibility for developing this technology. ABI is entitled to certain milestone payments and royalty payments in respect of the agreement, the quantum and timing of which are highly uncertain at this stage.

20. As set out above, the Applicants primary products are (a) Natesto, which is currently being sold in the United States, Canada, and certain Asian countries; and (b) Noctiva, which is not currently in distribution.

ii. Natesto

21. Natesto has received approval from:

a. the United States Food and Drug Administration (the "**FDA**") for sale in the United States since May 2014 and was first sold in July 2016;

b. Health Canada for sale in Canada since January 2016 and was first sold in October 2016;

c. South Korea's Ministry of Food and Drug Safety for sale in South Korea since June 2018; and

d. Taiwan's Food and Drug Administration for sale in Taiwan since2020.

22. While Natesto has only received regulatory approval and is being distributed in the countries listed above, APC has entered into license, development, promotion, and supply agreements for Natesto in several additional countries.

23. While ABI owns the intellectual property rights to Natesto, commercial activities in respect of Natesto are carried out by APC on behalf of ABI.

24. For the nine months ended September 30, 2022, APC generated net revenues of approximately $2,121,000 from sales of Natesto in the United States, $45,000 in Canada, and $134,000 from the rest of the world.

25. Previously, APC had an agreement with Aytu Bioscience Inc. ("**Aytu**") whereby Aytu was licensed to commercialize Natesto in the United States. However, on April 1, 2021, APC bought back all remaining rights for Natesto from Aytu (the "**Aytu Buyback Agreement**"). Pursuant to the Aytu Buyback Agreement, APC agreed to a termination fee of US$7.5 million paid over 30 monthly installments beginning April 15, 2021. APC also repurchased Aytu's entire unsold inventory as at March 31, 2021. As described below, $2.25 million in arrears is currently owing to Aytu pursuant to the Aytu Buyback Agreement.

26. Additionally, APC previously outsourced all marketing and sales activities related to Natesto in the United States. APC entered into a master commercial services agreement with Syneos (the "**Syneos MSA**") to be APC's commercialization partner in the United States relating to Natesto in May 2019. The Syneos MSA provided that Syneos would provide services to APC

to commercialize Natesto in the United States. As described below, approximately $3.6 million is owing to Syneos under the Syneos MSA.

27. The Companies currently rely exclusively on contract manufacturing organizations and third-party logistics companies to manufacture and distribute Natesto.

iii. Noctiva

28. Noctiva has received approval from the FDA. APC has a development agreement in place with Renaissance Lakewood, LLC ("**Renaissance**"), a contract manufacturing organization, and has advanced negotiations for a supply agreement. However, given APC's financial uncertainty, the supply agreement has not been executed. Accordingly, Noctiva is not currently being manufactured or commercialized.

29. APC anticipates that it will depend on a single contract manufacturing organization for the manufacturing and supply of Noctiva. The development and commercialization of Noctiva will likely require significant additional capital and management attention.

30. The Companies are targeting the United States as the priority market for commercializing Noctiva. Licensing agreements would be considered for countries across the rest of the world. Subject to additional financing in the near future and APC developing a sales and licensing strategy, commercial batches of Noctiva may be produced in the United States as early as the fourth quarter of 2023.

31. APC has paid Renaissance approximately $1.2 million to date as well as purchased approximately $500,000 in raw materials for the production of Noctiva. As stated above, APC's financial uncertainty has delayed the launch of Noctiva.

iv. Banking Arrangements

32. In the ordinary course of business, the Companies use a cash management system (the "**Cash Management System**") to, among other things, collect funds and pay expenses associated with its operations. This Cash Management System provides the Companies with the ability to efficiently and accurately track and control corporate funds and to ensure cash availability.

33. As part of this Cash Management System, the Companies maintain seven bank accounts, which are summarily described below:

a. Royal Bank of Canada: USD operating account for each of APC, ABI, and ALI;

b. Royal Bank of Canada: CAD operating account for each of APC, ABI, and ALI; and

c. Royal Bank of Canada (Georgia): USD operating account for APC.

v. Employees

34. APC, directly and through its Subsidiaries, currently employs/contracts ten people. Nine of these individuals are employed/contracted in Canada, and one is employed in the United States. Details regarding APC's workforce are as follows:

	Canada	United States
Full Time / Part Time	9 Full Time	1 Full Time
Salaried / Contract	6 Salaried, 3 Contract	1 Salaried
Pay Period	Bi-monthly	Bi-monthly
Total Monthly Payroll	153,000	30,000
Total Global Monthly Payroll	**$183,000**	

35. Through its benefits provider, Agile Benefits, the Applicants sponsor a group benefit plan offering health care, dental care, short-term disability and long-term disability benefits for all of its employees.

36. The Applicants do not have any unionized employees or registered pension plans.

III. FINANCIAL POSITION OF THE APPLICANTS

37. Copies of the Companies' audited consolidated financial statements for the fiscal years ended December 31, 2020 and December 31, 2021 are attached hereto as **Exhibit** "**E**", and **Exhibit** "**F**", respectively.

38. A copy of the Companies' unaudited interim consolidated financial statements for the nine months ended September 30, 2022 (the "**Financial Statements**") is attached hereto as **Exhibit** "**G**".

A. Assets

39. As appears from the Financial Statements, as at September 30, 2022, the assets of the Companies had a net book value of approximately $47,670,000 and consisted of the following:

Asset Type	Value ($)
Cash	3,020,000
Trade and other receivables	1,131,000
Inventory	5,120,000
Prepaid and other assets	1,145,000
Current Assets	**10,416,000**
Property and equipment (net)	338,000
Right of use asset	279,000

Intangible assets (net)	36,637,000
Non-Current Assets	**37,254,000**
Total Assets:	**47,670,000**

B. Liabilities

40. As appears from the Financial Statements, as at September 30, 2022, the liabilities of the Companies had an unaudited book value of approximately $61,565,000 and consisted of the following:

Liability Type	Value ($)
Accounts payable and accrued liabilities	8,559,000
Provisions	2,118,000
Deferred cash consideration	750,000
Termination fee payable	4,002,000
Current portion of long-term debt	--
Current portion of lease liability	23,000
Current Liabilities:	**15,452,000**
Termination fee payable	--
Lease liability	286,000
Long-term debt	43,872,000
Promissory note	1,950,000
Derivative financial instruments	5,000
Non-Current Liabilities:	**46,113,000**
Total Liabilities:	**61,565,000**

41. As appears from the above, the Companies' current and long-term liabilities combined exceed the net book value of its current and long-term assets such that, on a balance sheet test, the Companies are insolvent.

42. There is also virtually no revenue stream at any of the Subsidiaries. Accordingly, the Companies cannot meet its obligations as they become due.

IV. THE COMPANIES' DEBT STRUCTURE

A. The FGC Note

43. As set out above, FGC is the majority shareholder of APC. The President and CEO of FGC is Ian Ihnatowycz, who serves as Chairperson of APC's Board of Directors.

44. On April 29, 2021, APC entered into a $15 million secured loan facility (the "**FGC Facility**") that FGC made available by way of advances under a secured promissory note between APC and FGC (as amended and restated, the "**FGC Note**"). Pursuant to the FGC Note, APC granted a security interest in substantially all of its present and after-acquired property in favour of FGC.

45. From December 2021 through December 2022, the FGC Note was amended and restated on several occasions. The principal effect of such amendments and restatements was to gradually increase the amount loaned under the FGC Facility from $15 million to $47.945 million, with the total amount outstanding on the FGC Facility being $47.945 million as at the date of this affidavit. A copy of the most recent restated FGC Note dated March 30, 2022 (the "**Third Amended and Restated FGC Note**") is attached hereto as **Exhibit "H"**.

46. As set forth above, the amounts advanced pursuant to the FGC Facility have been used to fund the operations of the Applicants for the past two (2) years. Funds advanced under the FGC Facility bear interest at a fixed rate of 8% per annum and the FGC Facility is repayable in

full by December 31, 2024. Prior to December 31, 2024, cash payments of interest or principal repayments are subject to certain exceptions related to APC's market capitalization. The FGC Facility can be repaid in full or in part without limitation. The FGC Facility matures on December 31, 2024.

B. Second FGC Loan

47. On December 21, 2022, APC and APL, as borrowers, and FGC, as lender, entered into a loan agreement (the "**FGC Loan Agreement**"), pursuant to which FGC made $2 million non-revolving credit facility available to APC and APL (the "**Second FGC Facility**"). The Second FGC Facility has been fully funded. A copy of the FGC Loan Agreement is attached hereto as **Exhibit "I"**.

48. The Second FGC Facility bears interest at a rate of 8% per annum which was subject to approval from the TSX. The terms of the FGC Loan Agreement triggered the requirement for TSX approval because (a) APC is a "**non-exempt**" issuer for the purposes of Part V of the TSX Company Manual; (b) FGC is an insider of APC; and (c) the interest payable pursuant to the FGC Loan Agreement together with interest paid pursuant to the FGC Facility within the past six months, in aggregate, was greater than 10% of APC's market capitalization at that time.

49. On January 10, 2023, the TSX confirmed they have received no complaints from shareholders and approved the Second FGC Facility subject to APC and APL delivering customary closing deliverables (the "**TSX Approval**"). The Second FGC Facility does not require any principal or interest payments until the Second FGC Facility matures on December 31, 2024. A copy of the TSX Approval is attached hereto as **Exhibit "J"**.

50. APC and APL's obligations under the Second FGC Facility are guaranteed by each of the Companies and all present and future subsidiaries of APC and APL. On December 21, 2022, the

Companies each executed an unlimited guarantee and indemnity in favour of FGC (the "**Guarantees**"). The Guarantees guaranteed the obligations owing under the FGC Facility and the Second FGC Facility. Copies of the Guarantees are collectively attached hereto as **Exhibit "K"**.

51. In addition, in connection with the Second FGC Facility, FGC required obligations in respect of both the FGC Facility and the Second FGC Facility to be secured by, among other things:

a. general security agreements dated December 21, 2022, executed by APC, ALI, and ABI in favour of FGC;

b. a share pledge agreement dated December 21, 2022, executed by APC in favour of FGC;

c. a pledge agreement dated December 21, 2022, executed by APC in favour of FGC;

d. a patent security agreement dated December 21, 2022, executed by APL in favour of FGC;

e. a trademark security agreement dated December 21, 2022, executed by APL in favour of FGC; and

f. a pledge and security agreement dated December 21, 2022, executed by APL in favour of FGC (collectively, the "**Security**").

52. As at the date of this affidavit, FGC is the Applicants' only secured creditor. Copies of a certified PPSA search against the Applicants with a currency date of January 19, 2023, and a report listing all UCC-1 financing statements filed in respect of the commercial property of ABI dated January 20, 2023 are attached hereto **Exhibit "L"** and **Exhibit "M"**, respectively.

C. Unsecured Debt

i. Serenity Acquisition and Promissory Note

53. As set out above, pursuant to the Serenity Acquisition Agreement, APL was acquired by APC. As part of the purchase consideration paid by APC in its acquisition of APL, APC delivered a promissory note to the former securityholders of APL in the amount of approximately US$4.91 million on March 7, 2022 (the "**Serenity Note**"). The Serenity Note bears interest equal to the applicable federal rate for short-term instruments published by the Internal Revenue Service.

54. The Serenity Note was amended and restated on June 6, 2022, one day prior to its original maturity date of June 7, 2022 (the "**Amended and Restated Serenity Note**"). After several extensions, on September 30, 2022, APC and the former securityholders of APL agreed to an amendment to the First Amended Serenity Note (the "**Amendment to the Amended and Restated Serenity Note** "). Pursuant to the Second Amended Serenity Note, the principal amount of the note would be increased from US$4.91 million to US$7.75 million, representing principal and accrued interest, and that repayment would be made in thirteen quarterly payments commencing from the calendar quarter immediately following the calendar quarter in which APC achieves the first commercial sale of Noctiva in the United States. Copies of the Amended and Restated Serenity Note and the Amendment to the Amended and Restated Serenity Note are collectively attached hereto as **Exhibit "N"**.

55. A success fee owing to Torreya Capital LLC ("**TCL**") in respect of the of APL acquisition also remains outstanding. TCL was to be paid a success fee of 10% of all consideration earned by SPL up to its first US$12.5 million of aggregate consideration, with TCL earning 3% of aggregate consideration earned above this amount. As certain the consideration payable under the Serenity Acquisition Agreement (i.e. the Serenity Note) was deferred, the success fee was also deferred.

56. Pursuant to the Serenity Acquisition Agreement, there is additional contingent share consideration due to the former securityholders of APL. Upon achievement of the first commercial sale of Noctiva, 803,715,000 of APC's common shares (~32.595% of the total issued and outstanding shares) are to be issued to the former securityholders of APL. Additionally, two contingent share payment tranches of $5 million worth of common shares each are payable if Noctiva net annual revenues in the United States and Canada reach: (a) $100 million before December 31, 2026; and (b) $150 million annually on or before December 13, 2028

ii. Employee Liabilities

57. While the Companies are current with respect to its payment of payroll and the remittance of employee source reductions, its ability to meet its payroll obligations is contingent on the granting of the relief sought in the Initial Order and the ARIO.

58. As at the date of this affidavit, APC and its Subsidiaries owe its employees approximately $112,000 for outstanding vacation pay.

iii. Other Unsecured Claims

59. In addition to the aforementioned claims, the Applicants' other unsecured claims include the following:

a. *Accounts Payable*: As at December 31, 2022, the Companies owed approximately $7.9 million on accounts payable, broken down by entity as follows: $0.4 million for ABI; $0.5 million for APL; and $7 million for APC.

b. *Natesto Related Payables*: As at December 31, 2022, APC owed approximately $6 million to Natesto-related payables. The bulk of which (approximately $3.6 million) is owed to Syneos for its services provided to sell Natesto in the marketplace.

c. *Aytu Buyback Agreement:* As at January 15, 2023, APC is nine payments in arrears amounting to $2.25 million in respect of its obligations pursuant to the Aytu Buyback Agreement.

D. Contingent Liabilities

i. Schenk Litigation

60. Valeant Pharmaceuticals International, Inc. and Valeant International Bermuda ("**Valeant**") are defendants in Ontario Superior Court of Justice Action No. CV-11-438382, which claims a declaration that Valeant is contractually obligated to compensate the plaintiff, Reiner Schenk ("**Schenk**") pursuant to the terms of a contract between Schenk and Biovail Corporation in the amount of $10 million (the "**Schenk Litigation**").

61. Valeant commenced a third party claim against, among others, APC, claiming contribution, indemnity and other relief over to the full extent that Valeant may be held liable to Schenk, and damages for breach of fiduciary duty, breach of contract and intentional interference with economic relations in any amount for which Valeant is found liable to Schenk (the "**Third Party Claim**"). APC has defended the Third Party Claim, denying any liability to Valeant.

62. Prior to these CCAA proceedings, the Applicants were in discussions regarding a possible settlement of the Schenk Litigation.

ii. Jones Day Litigation

63. On December 11, 2019, Jones Day commenced an action in the New York State Supreme Court against APL, and certain members of its senior management (which are current or former directors of APC and no longer part of the management of APL), for alleged unpaid legal bills in the amount of approximately $5.3 million. On September 21, 2020, APL filed an answer with

counterclaims against Jones Day. APL's counterclaim alleges breach of contract in connection with Jones Day's representation of APL in a prior lawsuit, fraud in respect of certain billing issues and malpractice. Also on September 21, 2020, the former senior management members filed a motion to dismiss Jones Day's complaint as against them.

64. On August 31, 2022, the senior management members of APL filed a motion for summary judgment to dismiss Jones Day's complaint against them. On September 8, 2022, Jones Day filed a motion to amend its complaint to add APC as a new defendant.

65. APL and the senior management members opposed the motion to amend because it seeks to both add APC as a defendant and also pierce APL's corporate veil to seek damages against the senior management members. APL's motion for summary judgment and Jones Day's motion to amend its complaint are both pending. Decisions on both motions will likely be issued in early 2023.

66. A provision of $2.118 million was recorded as at September 30, 2022 as a contingent liability to provide for a conservative estimate of anticipated costs of discovery, legal fees and other costs and potential settlement.

67. In the event that this Court grants the relief requested by the Applicants, the Companies intend to initiate Chapter 15 proceedings in the United States Bankruptcy Court which would stay the litigation proceedings commenced by Jones Day.

V. THE COMPANIES' FINANCIAL DIFFICULTIES

68. As described above, the Companies are experiencing significant cash flow issues that will continue to jeopardize its ability to pursue its strategic plans and product plans, especially in relation to the manufacture and distribution of Noctiva and commercialization of Natesto. As of

September 30, 2022 the Applicants had negative cash flow for the fiscal year of nearly $18.6 million from operating activities and losses continued to the end of 2022.

69. Working to advance Natesto through the COVID-19 pandemic resulted in a net-loss in respect of Natesto. Health care provider offices were closed for a significant period from 2020 through 2021, resulting in patient volumes declining significantly. As a result, prescription growth through this period was blunted.

70. Additionally, the significant costs associated with sales and marketing to develop the market for Natesto in the United States resulted in significant losses for the Companies and are a primary reason behind the Companies' financial difficulties.

71. At the same time, the Companies have incurred further debt in its acquisition of APL. While the acquisition of APL was a strategic growth opportunity, it has resulted in significant additional current and long-term debt to the Companies' balance sheet.

72. Further, the clinical development and testing of drug candidates are a long, expensive, and uncertain process. The Applicants have incurred substantial expense for and devoted a significant amount of time to pre-clinical testing and clinical trials. Given the nature of the Companies' business and product pipeline, the Companies will continue to incur research and development ("**R&D**") expenses in the future and R&D expenditures are expected to increase as further clinical studies are initiated to obtain regulatory approvals.

73. To fund these expenses along with other operating expenses, the Applicants have no readily available revenue stream other than Natesto sales, which were only approximately $3 million in 2022. As described above, to date losses have been funded since April 30, 2021 by FGC, which has advanced $49.945 million to the Applicants. However, FGC is no longer willing to make further advances to the Applicants outside of these CCAA proceedings.

74. These financial challenges have also resulted in the Companies losing a number of key employees from 2021 through 2022 resulting in certain operational turmoil and difficulties. The key employees who have resigned during this time frame include: (a) the former Senior Vice President of the United States Commercial sector who was the overall leader of United States sales and marketing; (b) the former Vice President of Sales who was the leader of the Companies' sales efforts in the United States; (c) the former Senior Director of United States Trades who was the leader of United States wholesale distribution activities; (d) the former Senior Director of Technical Operations who was the leader of the Companies' manufacturing activities and oversaw work with contract manufacturing organizations; (e) the former Product Manager of Canada who was the brand leader for Natesto in Canada; (f) the former Senior Corporate Counsel who was responsible for leading the United States commercial payor administration; (g) the former Chief Financial Officer who was the senior finance lead for the Companies resigned in November 2022; and (h) a former member of APC's board of directors resigned in December 2022.

VI. THE PRE-FILING STRATEGIC PROCESS

75. In order to address, the Applicants liquidity situation, throughout 2022, APC undertook numerous efforts to raise additional capital. APC reached out to numerous investors in the pharmaceutical industry in an attempt to raise additional capital that would allow the Companies to implement their plans to grow sales of Natesto and develop and commercialize Noctiva. Despite these efforts, APC was unable to find a workable financing transaction.

76. On September 21, 2022, APC announced that it was commencing a strategic review of capital and business alternatives, including but not limited to, possible debt or equity financing, asset sale, merger & acquisition, or licensing transactions (the "**Strategic Review Press Release**"). The Pre-Filing Strategic Process broadened the scope of APC's previous efforts to

raise additional capital. As part of this initiative, APC established a committee of independent directors (the "**Independent Committee**") to supervise the Pre-Filing Strategic Process. EY and EYO were also engaged as the independent financial advisor to the Companies, and FAAN was also engaged and I was appointed as the Chief Strategy Officer to assist in the strategic review. A copy of the Strategic Review Press Release is attached hereto as **Exhibit "O"**.

77. As part of the Pre-Filing Strategic Process, EYO reached out to various financial and strategic parties as part of this process in order to develop a sale, financing or licensing transaction. While EYO received interest and advanced with multiple parties, the process did not lead to any actionable transaction.

78. If the Initial Order is granted, the Applicants, with the proposed Monitor, intend to recommence certain discussions with parties about completing a transaction for particular assets or drugs in the context of these CCAA proceedings and the Applicants also intend to develop a sale and investment solicitation process that will be brought to the Court for approval. The contemplated sale and investment solicitation process will allow the Applicants to pursue available restructuring or sale opportunities in respect of their business and assets to maximize value for stakeholders.

VII. RELIEF SOUGHT

A. Stay of Proceedings

79. As set out above, the Companies are expected to continue to experience significant liquidity constraints in the weeks and months ahead and are unable to meet many their contractual obligations as they become due.

80. The Companies urgently require the Stay of Proceedings to protect the value of the Companies' business which will allow them to:

a. obtain the funding necessary to continue operations;

b. concurrently explore various restructuring options such as:

   i. seeking additional financing or refinancing;

   ii. running a sales investment solicitation process for part or substantially all the Companies' assets; and

   iii. negotiating with stakeholders.

81. As set out in the cash flow projection (the "**Cash Flow Statement**") that was prepared by the Applicants and reviewed by the Proposed Monitor for the period from the date of filing to April 9, 2023, a copy of which is attached hereto as **Exhibit** "**P**", the Companies expect that, with the funds to be advanced under the DIP Facility Agreement, it will have sufficient cash to fund its projected operating costs during such period.

82. The Companies therefore requests a Stay of Proceedings for an initial period of ten days (the "**Stay Period**"), and, if granted by this Court, the Companies will subsequently request at the Comeback Hearing an extension of the Stay Period until April 5, 2023.

B. Appointment of EY as Monitor

83. The proposed Initial Order contemplates that EY will act as Monitor in the Applicants' CCAA proceedings. EY has consented to act as Monitor of the Applicants in these CCAA proceedings, subject to Court approval. A copy of EY's consent to act dated January 24, 2023 is attached hereto as **Exhibit "Q"**.

84. EY is a trustee within the meaning of section 2 of the Bankruptcy and Insolvency Act (as amended) and is not subject to any of the restrictions on who may be appointed as Monitor set out in section 11.7(2) of the CCAA.

85. EY has extensive experience in matters of this nature and is therefore well-suited to this mandate. EY has provided no accounting or auditing advice to the Companies. Fees payable to EY pursuant to its engagement letter are based on hours worked multiplied by normal hourly rates. EY is not entitled to any success-based or other contingency-based fee with respect to any of the services provided, including assisting with the Pre-Filing Strategic Process.

86. I am advised by Mr. Alex Morrison of EY that the Proposed Monitor is supportive of the relief being sought by the Companies in the draft Initial Order, as described in this affidavit. Mr. Morrison has also advised me that the Proposed Monitor will be filing a pre-filing Monitor's report in respect of such relief. If appointed as Monitor, EY will also file a report in respect of the relief to be sought at the Comeback Hearing.

C. Approval of FAAN as CRO

87. APC and FAAN executed the CRO Engagement Letter on January 25, 2023. Attached hereto as **Exhibit "R"** is a redacted copy of the CRO Engagement Letter. Only the amount of the monthly work fee and success fee in the CRO Engagement Letter have been redacted as I believe disclosure of such amounts could impact my ability to negotiate competitive rates on future engagements. An unredacted copy will be filed as part of the Confidential Supplement to the Proposed Monitor's pre-filing Monitor's report.

88. The unredacted CRO Engagement Letter is proposed to be sealed as it contains commercially sensitive and personal information that, if disclosed, could be detrimental to the

CRO's ability to obtain market rates in future engagements. The redactions in the CRO Engagement Letter were designed to only protect commercially sensitive information.

89. The pharmaceutical industry is heavily regulated and complex. Accordingly, the success of APC's restructuring requires leadership with substantial experience and knowledge. It is for this reason that I, through FAAN's appointment as CRO, have been proposed to manage the restructuring. Since 2016, FAAN has been appointed as CRO in several other CCAA proceedings involving significant and complex restructuring and sale transactions. I also have a background as a Licensed Insolvency Trustee. I believe this expertise will assist the Applicants with their operations during the CCAA proceedings and improve the chance of a going-concern solution for the benefit of the Applicants and their stakeholders.

90. Pursuant to the CRO Engagement letter, the CRO would be empowered to, among other things:

a. assisting the Companies in the required preparations for potentially commencing CCAA proceedings;

b. serving as the Companies' primary contact with and providing information to the Proposed Monitor and other professionals involved in the CCAA proceedings regarding the business and affairs of the Companies;

c. assisting in the preparation of and evaluating the Companies-prepared projected cash flows and financing requirements in the context of its planned CCAA proceedings;

d. negotiating with prospective purchasers and other interested parties during the Companies' sale and investment solicitation process in the CCAA proceedings;

e. managing the CCAA proceedings on the Companies' behalf, including dealing with the administration of financing including updating forecasts and information that may be required for financing, and dealing with any insolvency related claims and reconciliation process during the CCAA;

f. dealing with other key stakeholders including employees lenders, vendors and suppliers;

g. providing information to and serving as a contact with the Companies' Canadian and United States legal advisors;

h. participating in the Companies' management and executive team;

i. making decisions with respect to the day-to-day aspects of the management and operations of the Companies' business;

j. overseeing the Companies' finance department, including acting a signing authority over the Companies' bank accounts;

k. overseeing the Companies' accounts payable payment processing; and

l. other such other services as requested or directed by the Companies' board of directors, which services are to be agreed to by FAAN and not duplicative of work others are performing for the Companies.

I understand that the Proposed Monitor is satisfied with the qualifications, expertise, and experience of FAAN, and supports the Applicants' retention of FAAN as CRO pursuant to the terms of the CRO Engagement Letter.

D. Administration Charge

91. The Initial Order provides for a Court-ordered charge in favour of the CRO, the Proposed Monitor, counsel to the Proposed Monitor, and the Applicants' counsel over all of the Property of the Applicants in order to secure payment of their respective fees and disbursements incurred in connection with services rendered in respect of the Applicants up to a maximum amount of C$150,000 (the "**Administration Charge**"). The amount of the Administration Charge is proposed to be increased to C$300,000 at the Comeback Hearing. The Administration Charge is proposed to rank ahead of and have priority over all of the other Charges and the DIP Lender's Charge (as defined below).

92. The Applicants requires the expertise, knowledge, and continued participation of the proposed beneficiaries of the Administration Charge during these CCAA proceedings in order to complete a successful restructuring. Each of the beneficiaries of the Administration Charge will have distinct roles in the Applicants' restructuring.

93. The Applicants and the Proposed Monitor worked collaboratively to estimate the quantum of the Administration Charge required. I believe that the Administration Charge is fair and reasonable in the circumstances. I understand that the Proposed Monitor is also of the view that the Administration Charge is fair and reasonable in the circumstances.

E. DIP Facility and DIP Lender's Charge

94. As appears from the Cash Flow Statement prepared by the Companies and reviewed by the Proposed Monitor, the Companies expect the need for interim financing to fund these CCAA proceedings.

95. In order to fund the operations of the Companies during these CCAA proceedings, the Applicants commenced negotiations with FGC to provide debtor-in-possession financing. Based

on the results of the Pre-Filing Strategic Process, which included solicitation of potential third-party financing, and the available collateral to secure any DIP financing, the Applicants did not believe any third parties would be interested in providing such financing.

96. Following negotiations with FGC, on January 25, 2023, APC and APL, as co-Borrowers (in such capacity, the "**Borrowers**"), and FGC, in its capacity as DIP Lender, entered into the DIP Facility Agreement. The Independent Committee, in consultation with myself, the proposed Monitor, and the Applicants' legal counsel, independently reviewed and considered the proposed DIP Facility Agreement and it approved following their deliberations. Ian Ihnatowycz did not participate in any vote or resolution approving the DIP Facility Agreement. A copy of the DIP Facility Agreement is attached hereto as **Exhibit "S"**.

97. The DIP Facility Agreement provides for a super-priority, interim, non-revolving credit facility up to a maximum principal amount of US$7,000,000. The interest rate applicable to advances under the DIP Facility is 8% per annum, calculated and compounded monthly and payable on the Maturity Date (as defined below).

98. Within the initial 10-day stay period, the Applicants are requesting authority to draw up to a maximum amount of US$500,000 under the DIP Facility Agreement (the "**Initial Advance**"). As shown in the Cash Flow Statement, given their liquidity situation, the Applicants likely will require this Initial Advance under the DIP Facility Agreement to continue operating in the ordinary course within the initial 10-day stay period. Additionally, if there are any issues or delays in collecting receipts or unexpected required expenditures within the initial 10-day stay period, the Initial Advance provides certainty to the Applicants and its stakeholders.

99. The DIP Facility Agreement is conditional, among other things, upon the granting of a priority charge over the Property in favour of the DIP Lender to secure the amounts borrowed under the DIP Facility (the "**DIP Lender's Charge**"). In accordance with the DIP Facility

Agreement, the DIP Facility is to be used during these CCAA proceedings for the following purposes:

a. to pay fees and expenses associated with the DIP Facility (including without limitation certain expenses, fees of the Monitor, compensation of the CRO, and legal fees of counsel to the DIP Lender, the Borrowers, and the Monitor;

b. to pay other general corporate expenses and operating costs of the Borrowers, including the Borrowers' expenses and operating costs in the CCAA proceedings pursuant to a budget prepared by APC and the Monitor and as agreed to by the DIP Lender; and

c. to fund such other costs and expenses as agreed to by the DIP Lender, in writing.

100. The DIP Facility is also conditional upon FAAN being appointed as CRO.

101. The DIP Facility is subject to customary covenants, conditions precedent, and representations and warranties made by the Borrowers to DIP Lender. Per the DIP Facility Agreement, the DIP Loan must be repaid in full by the date (the "**Maturity Date**") that is the earliest of:

a. December 31, 2024;

b. the date on which the ARIO expires without being extended or on which the CCAA Proceeding is terminated or dismissed; and

c. an event of default in respect of which the DIP Lender has elected to accelerate the Applicants' obligations pursuant to the DIP Loan (as defined below).

102. The DIP Facility Agreement provides, among other things, that the DIP Facility is contingent on the granting of a priority charge over the Property of the Applicants in favour of the

DIP Lender (the "**DIP Lender's Charge**"). The proposed Initial Order and ARIO contemplate that the DIP Lender's Charge will rank subordinate only to the Administration Charge.

103. The DIP Lender's Charge will secure all of the credit advanced under the DIP Loan, however, during the initial 10-day stay period the Applicants are only authorized to borrow a maximum of $500,000. The DIP Lender's Charge will not secure obligations incurred prior to these CCAA proceedings.

104. As the DIP Facility will be provided by FGC, who already benefits from a first ranking security interest, I do not expect any material prejudice to any of other existing creditor of the Companies should the Court approve the DIP Facility Agreement and the proposed DIP Lender's Charge.

105. The Proposed Monitor is supportive of the approval of the DIP Facility Agreement and corresponding DIP Lender's Charge. Accordingly, I believe that it is appropriate in the circumstances for this Court to approve the DIP Facility Agreement and the DIP Lender's Charge.

F. Directors' Charge

106. The Initial Order seeks a Directors' Charge over the Property to indemnify the directors and officers of the Companies (the "**Directors and Officers**") in respect of liabilities they may incur as Directors and Officers during these proceedings, up to a maximum principal amount of $200,000 (the "**Directors' Charge**"). The continuing support and insight of the Directors and Officers will preserve the value of the Applicants' business.

107. I am advised by the Applicants' legal counsel and believe that, in certain circumstances, directors can be held liable for certain obligations of a company, including those owing to employees and government entities, which may include unpaid accrued wages, unpaid accrued

vacation pay, unremitted source deductions, health taxes, workers' compensation and other payroll related obligations.

108. I am advised that APC maintains director and officer liability insurance (the "**D&O Policy**"), and that APC has granted contractual indemnities in favour of its directors and officers. However, the economic value of contractual indemnities granted by an entity that is insolvent is questionable, and I understand that the D&O Policy may include contractual contingencies and uncertainty associated with possible coverage related issues.

109. Although the Applicants intend to comply with applicable laws with respect to matters affecting it, the failure to complete a restructuring creates the prospect of personal liabilities for the Directors and Officers.

110. Notably, the proposed Initial Order provides that the Directors and Officers will only have recourse to the Directors' Charge as a "back-stop" in the event that the D&O Policy (which I believe covers most typical director and officer liabilities) is not available or applicable.

111. The Proposed Monitor supports the amount sought for the Directors' Charge. I believe that in these circumstances, the requested Directors' Charge is reasonable and adequate given, notably, the complexity of the Companies' business and the corresponding potential exposure of the Companies' Directors and Officers to personal liability, especially in the present context. The amount of the Directors' Charge is not proposed to increase at the Comeback Hearing.

112. Absent approval by this Court of the Directors' Charge in the amounts set out above, I have been advised that some or all of the Companies' Directors and Officers may resign, which would, in all likelihood, render these CCAA proceedings much more challenging, and possibly much more costly, to the detriment of the Companies' creditors and other stakeholders.

G. KERP

113. The Companies have certain key employees (the “**Key Employees**”), who perform roles critical to advancing the Applicants’ restructuring, including various institutional knowledge related to the Companies’ business and operations. As described above, certain senior members of management resigned prior to these CCAA proceedings in light of the Companies’ financial performance. Accordingly, the Applicants have worked with their advisors to develop a key employee retention plan (the “**KERP**”) to provide three (3) Key Employees if they maintain their roles through the Applicants’ restructuring. The maximum aggregate amount payable under the KERP is C$455,250. However, there are no guaranteed payments under the KERP. Payments under the KERP are due only upon certain triggers or milestones in the Applicants’ restructuring, which include:

a. upon closing of the sale of one or more of the Applicants’ drugs;

b. upon the completion of the production of a commercial batch of Noctiva; and

c. upon the completion of a sale or restructuring transaction in respect of substantially all of the Applicants’ assets or operations.

114. The compensation committee (the “**Compensation Committee**”) of APC’s board of directors, in consultation with FAAN, EY and the Companies’ legal counsel, reviewed, commented on and modified the terms of the KERP in order to ensure that those employees subject to the KERP were properly incentivized to maximize the Applicants’ operational success and their chance at a going-concern solution for the benefit of the Companies and their stakeholders.

115. If the KERP were not approved, I believe it is likely that the Key Employees will consider other employment options. Finding qualified individuals to replace them would have been disruptive, difficult and time consuming, particularly given the Key Employees institutional

knowledge related to the business. I also believe that the Key Employees will be critical in connection with any sales and investment solicitation process conducted by the Applicants in the future and will be required in connection with any third party's due diligence related to the Applicants and their drugs.

H. Authorization to Incur no Further Costs in Connection with Securities Filings

116. At the initial hearing for the commencement of these CCAA proceedings, the Applicants will not be seeking authorization to dispense with securities filing requirements.

117. At the Comeback Hearing, the Applicants will seek authorization to dispense with certain securities filing requirements. In particular, the Applicants seek authorization for the Companies to incur no further expenses in relation to any filings (including financial statements), disclosures, core or non-core documents, restatements, amendments to existing filings, press releases or any other actions (collectively, the "**Securities Filings**") that may be required by any federal, provincial, or other law respecting securities or capital markets in Canada, or by the rules and regulations of a stock exchange, including without limitation, the *Securities Act* (Ontario), RSO 1990 c S. 5 and comparable statutes enacted by other provinces of Canada, the Canadian Securities Exchange ("**CSE**") Policies 1-10 and other rules, regulations and policies of the CSE.

118. In my view, incurring the time and costs associated with preparing the Security Filings will detract from the Companies' successful restructuring. Further, there is no prejudice to stakeholders given that detailed financial information and other information regarding the Companies will continue to be made publicly available through the materials filed in these CCAA proceedings.

I. Ranking of the Charges

119. The proposed ranking of the Administration Charge and the Directors' Charge pursuant to the Initial Order is as follows:

a. an Administration Charge in favour of the CRO, the Monitor, counsel to the Monitor, and counsel to the Applicants in the initial amount of $150,000;

b. the DIP Lender's Charge; and

c. the Directors' Charge in favour of the Directors and Officers in the amount of $200,000.

120. The proposed ranking of the Charges pursuant to the ARIO is as follows:

a. an Administration Charge in favour of the CRO, the Monitor, counsel to the Monitor, and counsel to the Applicants in the increased amount of $300,000;

b. the DIP Lender's Charge;

c. the Directors' Charge in favour of the Directors and Officers in the amount of $200,000.

d. the KERP Charge in favour of the key employees referenced in the KERP up to the maximum amount of C$455,250.

121. Pursuant to the proposed Initial Order, the Administration Charge and the Directors' Charge on the Property would rank in priority to all other security interests, trusts, liens, charges, encumbrances and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any person, notwithstanding the order of perfection or attachment, except for any secured creditor of the Companies who does not receive notice of this Application. The proposed ARIO contemplates that the Charges would rank ahead of all Encumbrances on a subsequent motion on notice to those persons likely to be affected thereby.

J. Chapter 15 Proceeding

122. Should the Initial Order be granted, the Companies intend to initiate Chapter 15 proceedings in the United States Bankruptcy Court seeking, among other things: (a) recognition of this CCAA proceeding as a foreign main proceeding pursuant to the United States Bankruptcy Code; (b) recognition and enforcement of the Initial Order; and (c) other appropriate relief under the Bankruptcy Code.

123. The Companies are connected to the United States as: (a) APL is a Delaware corporation; (b) the litigation between APC, APL and Jones Day is proceeding in the New York State Supreme Court; and (c) Noctiva is one of the two main assets of the Companies and the intellectual property rights to same are owned by APL.

124. The proposed Initial Order also provides that APC will be appointed as the “foreign representative” for the purposes of the Chapter 15 proceedings.

125. The Chapter 15 proceedings are necessary to ensure that if the Initial Order is granted, this Court’s stay of proceedings is recognized and enforced in the United States generally and the New York State Supreme Court in particular.

126. The Proposed Monitor agrees that recognition of the proposed Initial Order in the United States, including the Stay of Proceedings, is necessary to preserve the going concern value of the Companies’ business. The Proposed Monitor has reviewed the circumstances and agrees that Canada is the centre of main interest for the Companies.

VIII. CONCLUSION

127. For the reasons set out above, I believe that it is in the interest of the Companies, and other stakeholders of the Companies that they be granted protection under the CCAA in accordance with the terms of the proposed Initial Order and the terms of the proposed ARIO.

128. I swear this Affidavit in support of the Applicants' application pursuant to the CCAA and for no other or improper purpose.

SWORN REMOTELY via videoconference, by Naveed Z. Manzoor stated as being located in the Town of Oakville, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on this 25 day of January, 2023, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.	)))))))	
DocuSigned by: Philip Y 36124C4218DD47C...	)))	DocuSigned by: Naveed Z. Manzoor 090F0FC3FAE4473...
A Commissioner for Taking Affidavits, etc. PHILIP YANG	)	**NAVEED Z. MANZOOR**

This is Exhibit "B" referred to in the Affidavit of Naveed Z. Manzoor
sworn by Naveed Z. Manzoor of the Town of Oakville,
in the Province of Ontario, before me at the City of Toronto,
in the Province of Ontario, on March 2, 2023
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.

DocuSigned by:

Philip Y

36124C4218DD47C...

Commissioner for Taking Affidavits

Philip Yang

Court File No. CV-23-00693595-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	THURSDAY, THE 26TH DAY
	)	
JUSTICE OSBORNE	)	OF JANUARY, 2023

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

AND IN THE MATTER OF PLAN OF COMPROMISE OR ARRANGEMENT OF ACERUS PHARMACEUTICALS CORPORATION,
ACERUS BIOPHARMA INC., ACERUS LABS INC. AND ACERUS PHARMACEUTICALS USA, LLC.

Applicants

INITIAL ORDER

THIS APPLICATION, made by Acerus Pharmaceuticals Corporation, Acerus Biopharma Inc., Acerus Labs Inc. and Acerus Pharmaceuticals USA, LLC (collectively, the "**Applicants**"), for an initial order pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day by judicial videoconference via Zoom.

ON READING the affidavit of Naveed Manzoor sworn January 25, 2023 (the "**Manzoor Affidavit**") and the Exhibits thereto, the pre-filing report of Ernst & Young Inc. ("**EY**"), in its capacity as proposed monitor of the Applicants dated 25, 2023 (the "**Pre-Filing Repor**t"), the consent of EY to act as the Monitor (the "**Monitor**"), on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants, counsel for EY, counsel for First Generation Capital Inc. ("**FGC**"), and counsel for the DIP Lender (as defined below),

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies.

POSSESSION OF PROPERTY AND OPERATIONS

3. **THIS COURT ORDERS** that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property. The Applicants are authorized and empowered to continue to retain and employ their employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

4. **THIS COURT ORDERS** that the Applicants shall be entitled to continue to utilize their existing central cash management system currently in place or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person or Persons (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under any plan of arrangement or compromise under the CCAA with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

5. **THIS COURT ORDERS** that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order subject to compliance with the DIP Budget (as defined in the DIP Facility Agreement), as may be amended from time to time:

(a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and

(b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.

6. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicants shall be entitled, subject to compliance with the DIP Budget, as may be amended from time to time, but not required to pay all reasonable expenses incurred by the Applicants in carrying on their Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance and security services; and

(b) payment for goods or services actually supplied to the Applicants following the date of this Order.

7. **THIS COURT ORDERS** that the Applicants shall, in accordance with legal requirements, remit or pay:

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

(b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and

(c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

8. **THIS COURT ORDERS** that, from and after the date of this Order, the Applicants shall not make any payments pursuant to this Order other than those contemplated by the DIP Budget, as may be amended from time to time, and subject to permitted variances under the DIP Facility Agreement (as defined below), or upon further Order of this Court.

9. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of this date; (b) to grant no security interests, trust, liens, mortgages, charges or encumbrances upon or in respect of any of the Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

10. **THIS COURT ORDERS** that the Applicants shall, subject to such requirements as are imposed by the CCAA, have the right to continue negotiations with stakeholders in an effort to pursue restructuring options for the Applicants including without limitation all avenues of refinancing of their Business or Property, in whole or in part, subject to prior approval of this Court being obtained before any material refinancing.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

11. **THIS COURT ORDERS** that until and including February 4, 2023, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting their Business or their Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting their Business or their Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

12. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicants or the Monitor, or affecting their Business or their Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (a) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (c) prevent the filing of any registration to preserve or perfect a security interest, or (d) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

13. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

14. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses, email addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

15. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

16. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

17. **THIS COURT ORDERS** that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

18. **THIS COURT ORDERS** that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of $200,000, as security for the indemnity provided in paragraph 17 of this Order. The Directors' Charge shall have the priority as set out in paragraphs 46 and 48 herein.

19. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the

benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 17 of this Order.

APPROVAL AND SEALING OF THE CRO ENGAGEMENT LETTER

20. **THIS COURT ORDERS** that the agreement dated as of January 23, 2023 pursuant to which the Applicants have engaged FAAN Advisors, ("**FAAN**"), to act as Chief Restructuring Officer (the "**CRO**") through the services of Naveed Manzoor ("**Manzoor**") and other employees or agents of FAAN (as applicable), an unredacted copy of which is attached as Confidential Exhibit "B" to the Pre-Filing Report as may be amended by the parties thereto with the consent of the Monitor (the "**CRO Engagement Letter**"), and the appointment of the CRO pursuant to the terms thereof, are hereby approved, including, without limitation, the payment of the fees and expenses contemplated thereby.

21. **THIS COURT ORDERS** that, during the Stay Period, the CRO is authorized to exercise and perform the powers, responsibilities and duties as described in the CRO Engagement Letter and subject to the terms thereof, together with such other powers, responsibilities and duties as may be agreed upon by the CRO and the Applicants, in consultation with the DIP Lender (collectively, the "**CRO Powers**"). In exercising the CRO Powers, the CRO shall be deemed to be acting for and on behalf of the Applicants and not its personal or corporate capacity.

22. **THIS COURT ORDERS** that the CRO, Manzoor, or such other employees or agents of FAAN, shall not be, or deemed to be a director, officer or employee of the Applicants.

23. **THIS COURT ORDERS** that the CRO shall not, as a result of the performance of its obligations and duties in accordance with the terms of the CRO Engagement Letter and this Order, be deemed to be in Possession (as defined below) of any of the Property within the meaning of any Environmental Legislation (as defined below); provided, however, if the CRO is nevertheless later found to be in Possession of any Property, then the CRO, as the case may be, shall be deemed to be a Person who has been lawfully appointed to take, or has lawfully taken, possession or control of such Property for the purposes of section 14.06(1.1)(c) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") and shall be entitled to the benefits and protections in relation to Applicants and such Property as provided by section 14.06(2) of the BIA to a "trustee" in relation to an insolvent Person and its property.

24. **THIS COURT ORDERS** that the CRO shall not have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any Person from and after the date of this Order except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct on the part of the CRO, provided further that in no event shall the liability of the CRO exceed the quantum of the fees paid to the CRO.

25. **THIS COURT ORDERS** that no action or other proceeding shall be commenced directly, or by way of counterclaim, third party claim or otherwise, against or in respect of the CRO, and all rights and remedies of any Person against or in respect of the CRO are hereby stayed and suspended, except with the written consent of the CRO and the Monitor, or with leave of this Court on notice to the Applicants, the Monitor, the DIP Lender and the CRO. Notice of any such motion seeking leave of this Court shall be served upon the Applicants, the Monitor, the DIP Lender and the CRO at least ten (10) days prior to the return date of any such motion for leave.

26. **THIS COURT ORDERS** that the obligations of the Applicants to the CRO pursuant to the CRO Engagement Letter shall be treated as unaffected and may not be compromised in any Plan or proposal filed under the BIA in respect of the Applicants.

27. **THIS COURT ORDERS** that payment obligations of the Applicants to the CRO in respect of any fees and disbursements of the CRO shall be entitled to the benefit of and shall form part of the Administration Charge (as defined below) set out herein.

28. **THIS COURT ORDERS** that the unredacted copy of the CRO Engagement Letter included as Confidential Exhibit “B” to the Pre-Filing Report shall be sealed and kept confidential pending further order of this Court.

APPOINTMENT OF MONITOR

29. **THIS COURT ORDERS** that Ernst & Young Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor’s functions.

30. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Applicants' receipts and disbursements and the Applicants' compliance with the DIP Budget;

(b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

(c) assist the Applicants, to the extent required by the Applicants or the CRO, in their dissemination of financial and other information to the DIP Lender and its counsel on a weekly basis of financial and other information as agreed to between the Applicants and the DIP Lender, or as may reasonably be requested by the DIP Lender;

(d) advise the Applicants in their preparation of the Applicants' cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than weekly, or as may reasonably be requested by the DIP Lender;

(e) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;

(f) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and

(g) perform such other duties as are required by this Order or by this Court from time to time.

31. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

32. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act, 1999*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, the *Ontario Mining Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order, or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

33. **THIS COURT ORDERS** that that the Monitor shall provide any creditor of the Applicants and the DIP Lender with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

34. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

35. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a weekly basis. In addition, the Applicants are hereby authorized

to pay to the Monitor and counsel to the Monitor, retainers in the amounts of $150,000 and $50,000, respectively, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

36. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

37. **THIS COURT ORDERS** that the Applicants' counsel, the Monitor and its counsel and the CRO shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of $150,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority as set out in paragraphs 46 and 48 hereof.

DIP FINANCING

38. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to obtain and borrow under a credit facility from FGC, in its capacity as the debtor-in-possession lender (the "**DIP Lender**") in order to finance the Applicants working capital requirements, and other general corporate purposes and capital expenditures.

39. **THIS COURT ORDERS** that such credit facility shall be on the terms and subject to the conditions set forth in the DIP Facility Loan Agreement between the Applicants and the DIP Lender dated as of January 25, 2023, appended as Exhibit "S" to the Manzoor Affidavit (the "**DIP Facility Agreement**").

40. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to borrow, in accordance with the terms and conditions of the DIP Facility Agreement, interim financing of up to US$500,000 during the Stay Period.

41. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute and deliver such agreements, instruments, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively with the DIP Facility Agreement, the "**Definitive Documents**"), as may be contemplated by the DIP Facility Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the

Applicants are hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Definitive Documents (collectively, the "**DIP Obligations**") as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

42. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property as security for the DIP Obligations, which DIP Lender's Charge shall be in the aggregate amount of the DIP Obligations outstanding at any given time under the Definitive Documents. The DIP Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority as set out in paragraphs 46 and 48 hereof.

43. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the DIP Lender under this Order or at law, the DIP Lender shall not incur any liability or obligation as a result of the carrying out of the provisions of this Order, save and except for any gross negligence or willful misconduct on its part.

44. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

(a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;

(b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon three business days' notice to the Applicants, the CRO and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the DIP Lender to the Applicants against the obligations of the Applicants to the DIP Lender under the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and

(c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

45. **THIS COURT ORDERS AND DECLARES** that FGC and the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise under the CCAA, or any proposal filed under the BIA, with respect to any advances made by FGC, as secured lender to the Applicants, and under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

46. **THIS COURT ORDERS** that the priorities of the Administration Charge, the DIP Lender's Charge, and the Directors' Charge (collectively, the "**Charges**"), as among them, shall be as follows:

First - Administration Charge (to the maximum amount of $150,000);

Second – DIP Lender's Charge; and

Third - Directors' Charge (to the maximum amount of $200,000).

47. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be effective as against the Property and shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

48. **THIS COURT ORDERS** that the Charges shall constitute a charge on the Property and shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

49. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or the proposed amended and restated initial order included in the Applicants' Application Record if granted by the Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicants also obtain the

prior written consent of the CRO, the Monitor, the DIP Lender and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

50. **THIS COURT ORDERS** that the Directors' Charge, the Administration Charge, the Definitive Documents and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal, provincial or other statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

(a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Definitive Documents shall create or be deemed to constitute a breach by the Applicants of any Agreement to which they are a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicants entering into the DIP Facility Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and

(c) the payments made by the Applicants pursuant to this Order, the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

51. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property leases.

SERVICE AND NOTICE

52. **THIS COURT ORDERS** that the Monitor shall (a) without delay, publish in The Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (b) within five days after the date of this Order, (i) make this Order publicly available in the manner prescribed under the CCAA, (ii) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than $1000, and (iii) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of any individual persons who are creditors available.

53. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: www.ey.com/ca/acerus

54. **THIS COURT ORDERS** that the Applicants, the Monitor and their respective counsel are at liberty to serve or distribute this Order, and other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicants' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

55. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicants and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal

delivery or facsimile transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

COMEBACK MOTION

56. **THIS COURT ORDERS** that the comeback motion shall be heard at a date and time to be fixed by a Commercial List Judge, but in no event later than February 3, 2023.

FOREIGN PROCEEDINGS

57. **THIS COURT ORDERS** that the Applicant, Acerus Pharmaceuticals Corporation is hereby authorized and empowered, but not required, to act as the foreign representative (in such capacity, the "**Foreign Representative**") in respect of the within proceedings for the purpose of having these proceedings recognized and approved in a jurisdiction outside of Canada.

58. **THIS COURT ORDERS** that the Foreign Representative is hereby authorized to apply for foreign recognition and approval of these proceedings, as necessary, in any jurisdiction outside of Canada, including in the United States pursuant to chapter 15 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532.

GENERAL

59. **THIS COURT ORDERS** that the Applicants, the DIP Lender, or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their powers and duties hereunder.

60. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

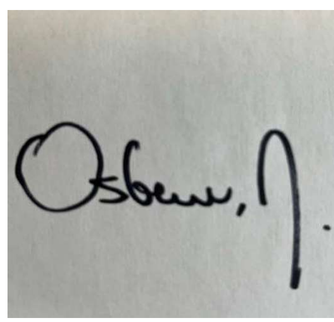
61. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby

respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

62. **THIS COURT ORDERS** that each of the Applicants and the Monitor shall be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

63. **THIS COURT ORDERS** that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

64. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.



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Court File No. CV-23-00693595-00CL

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

AND IN THE MATTER OF PLAN OF COMPROMISE OR ARRANGEMENT OF ACERUS PHARMACEUTICALS CORPORATION, ACERUS BIOPHARMA INC., ACERUS LABS INC. AND ACERUS PHARMACEUTICALS USA, LLC.

Applicants

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

INITIAL ORDER

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Elizabeth Pillon (LSO #35638M)
Tel: (416) 869-5623
Email: lpillon@stikeman.com

Lee Nicholson (LSO #66412I)
Tel : (416) 869-5604
Email: leenicholson@stikeman.com

Philip Yang (LSO #82084O)
Tel: (416) 869-5593
Email: pyang@stikeman.com

Lawyers for the Applicants

This is Exhibit “C” referred to in the Affidavit of Naveed Z. Manzoor
sworn by Naveed Z. Manzoor of the Town of Oakville,
in the Province of Ontario, before me at the City of Toronto,
in the Province of Ontario, on March 2, 2023
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.

DocuSigned by:

Philip Y

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Commissioner for Taking Affidavits
Philip Yang

Court File No. CV-23-00693595-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	FRIDAY, THE 3RD DAY
	)	
JUSTICE OSBORNE	)	OF FEBRUARY, 2023

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

AND IN THE MATTER OF PLAN OF COMPROMISE OR ARRANGEMENT OF ACERUS PHARMACEUTICALS CORPORATION,
ACERUS BIOPHARMA INC., ACERUS LABS INC. AND ACERUS PHARMACEUTICALS USA, LLC.

Applicants

AMENDED AND RESTATED INITIAL ORDER

THIS MOTION, made by Acerus Pharmaceuticals Corporation, Acerus Biopharma Inc., Acerus Labs Inc. and Acerus Pharmaceuticals USA, LLC (collectively, the "**Applicants**"), for an order amending and restating the initial order issued on January 26, 2023 (the "**Initial Filing Date**") and extending the stay of proceedings provided for therein was heard this day by judicial videoconference via Zoom.

ON READING the affidavit of Naveed Manzoor sworn January 25, 2023 (the "**Manzoor Affidavit**"), and the Exhibits thereto, the pre-filing report of Ernst & Young Inc. ("**EY**"), in its capacity as proposed monitor of the Applicants dated January 25, 2023 (the "**Pre-Filing Repor**t"), the first report of EY in its capacity as monitor (in such capacity, the "**Monitor**") dated February 1, 2023 (the "**First Report**"), the consent of EY to act as the Monitor, on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants, counsel for EY, counsel for First Generation Capital Inc. ("**FGC**"), counsel for the DIP Lender (as defined below) and such other parties as listed on the Counsel Slip, with no one else appearing although duly served as appears from the affidavits of service of Philip Yang, as filed,

APPLICATION

1. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies.

PLAN OF ARRANGEMENT

2. **THIS COURT ORDERS** that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

POSSESSION OF PROPERTY AND OPERATIONS

3. **THIS COURT ORDERS** that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property. The Applicants are authorized and empowered to continue to retain and employ their employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

4. **THIS COURT ORDERS** that the Applicants shall be entitled to continue to utilize their existing central cash management system currently in place or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person or Persons (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under any plan of arrangement or compromise under the CCAA with regard to any claims

or expenses it may suffer or incur in connection with the provision of the Cash Management System.

5. **THIS COURT ORDERS** that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after the Initial Filing Date subject to compliance with the DIP Budget (as defined in the DIP Facility Agreement), as may be amended from time to time:

(a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the Initial Filing Date, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and

(b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.

6. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicants shall be entitled, subject to compliance with the DIP Budget, as may be amended from time to time, but not required to pay all reasonable expenses incurred by the Applicants in carrying on their Business in the ordinary course after the Initial Filing Date, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance and security services; and

(b) payment for goods or services actually supplied to the Applicants following the Initial Filing Date.

7. **THIS COURT ORDERS** that the Applicants shall, in accordance with legal requirements, remit or pay:

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

(b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the Initial Filing Date, or where such Sales Taxes were accrued or collected prior to the Initial Filing Date but not required to be remitted until on or after the Initial Filing Date; and

(c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

8. **THIS COURT ORDERS** that, from and after the Initial Filing Date, the Applicants shall not make any payments pursuant to the Initial Filing Date other than those contemplated by the DIP Budget, as may be amended from time to time, and subject to permitted variances under the DIP Facility Agreement (as defined below), or upon further Order of this Court.

9. **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the Applicants shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to their landlord under the lease) or as otherwise may be negotiated between the Applicants and the landlord from time to time ("**Rent**"), for the period commencing from and including the Initial Filing Date, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the Initial Filing Date shall also be paid.

10. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of the Initial Filing Date; (b) to grant no security interests, trust, liens, mortgages, charges or

encumbrances upon or in respect of any of the Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

11. **THIS COURT ORDERS** that the Applicants shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as defined below), have the right to:

(a) permanently or temporarily cease, downsize or shut down any of their businesses or operations, and to dispose of redundant or non-material assets not exceeding $250,000 in any one transaction or $1,000,000 in the aggregate;

(b) terminate the employment of such of their employees or temporarily lay off such of their employees as they deem appropriate; and

(c) pursue all avenues of financing or refinancing, restructuring, selling, assigning or in any other manner disposing of and/or reorganizing the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material financing or refinancing, restructuring, sale, assignment, disposition or reorganization,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Applicants or the Business (the “**Restructuring**”).

12. **THIS COURT ORDERS** that the Applicants shall provide each of the relevant landlords with notice of the Applicants’ intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicants’ entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicants, or by further Order of this Court upon application by the Applicants on at least two (2) days’ notice to such landlord and any such secured creditors. If the Applicants disclaim the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for

in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicants' claim to the fixtures in dispute.

13. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

14. **THIS COURT ORDERS** that until and including April 5, 2023, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting their Business or their Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting their Business or their Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicants or the Monitor, or affecting their Business or their Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (a) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (c) prevent the filing of any registration to preserve or perfect a security interest, or (d) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

16. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

17. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses, email addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the Initial Filing Date are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

18. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the Initial Filing Date, nor shall any Person be under any obligation on or after the Initial Filing Date to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

KEY EMPLOYEE RETENTION PLAN

19. **THIS COURT ORDERS** that the Key Employee Retention Plan (the "**KERP**"), as described in the Manzoor Affidavit, an unredacted copy of which is attached as Confidential

Appendix "C" to the First Report, is hereby approved and the Applicants are authorized to make payments contemplated thereunder in accordance with the terms and conditions of the KERP.

20. **THIS COURT ORDERS** that payments made by the Applicants pursuant to this Order do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

21. **THIS COURT ORDERS** that the key employees referred to in the KERP (the "**Key Employees**") shall be entitled to the benefit of and are hereby granted a charge on the Property (the "**KERP Charge**"), which charge shall not exceed an aggregate amount of $455,250 to secure any payments to the Key Employees under the KERP. The KERP Charge shall have the priority as set out in paragraphs 51 and 53 herein.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

22. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the Initial Filing Date and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

23. **THIS COURT ORDERS** that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

24. **THIS COURT ORDERS** that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of $200,000, as security for the indemnity provided in paragraph 23 of this Order. The Directors' Charge shall have the priority as set out in paragraphs 51 and 53 herein.

25. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 23 of this Order.

APPROVAL OF THE CRO ENGAGEMENT LETTER

26. **THIS COURT ORDERS** that the agreement dated as of January 23, 2023 pursuant to which the Applicants have engaged FAAN Advisors, ("**FAAN**"), to act as Chief Restructuring Officer (the "**CRO**") through the services of Naveed Manzoor ("**Manzoor**") and other employees or agents of FAAN (as applicable), an unredacted copy of which is attached as Confidential Exhibit "B" to the Pre-Filing Report as may be amended by the parties thereto with the consent of the Monitor (the "**CRO Engagement Letter**"), and the appointment of the CRO pursuant to the terms thereof, are hereby approved, including, without limitation, the payment of the fees and expenses contemplated thereby.

27. **THIS COURT ORDERS** that, during the Stay Period, the CRO is authorized to exercise and perform the powers, responsibilities and duties as described in the CRO Engagement Letter and subject to the terms thereof, together with such other powers, responsibilities and duties as may be agreed upon by the CRO and the Applicants, in consultation with the DIP Lender (collectively, the "**CRO Powers**"). In exercising the CRO Powers, the CRO shall be deemed to be acting for and on behalf of the Applicants and not its personal or corporate capacity.

28. **THIS COURT ORDERS** that the CRO, Manzoor, or such other employees or agents of FAAN, shall not be, or deemed to be a director, officer or employee of the Applicants.

29. **THIS COURT ORDERS** that the CRO shall not, as a result of the performance of its obligations and duties in accordance with the terms of the CRO Engagement Letter and this Order, be deemed to be in Possession (as defined below) of any of the Property within the meaning of any Environmental Legislation (as defined below); provided, however, if the CRO is nevertheless later found to be in Possession of any Property, then the CRO, as the case may be, shall be deemed to be a Person who has been lawfully appointed to take, or has lawfully taken, possession or control of such Property for the purposes of section 14.06(1.1)(c) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") and shall be entitled to the benefits and protections in

relation to Applicants and such Property as provided by section 14.06(2) of the BIA to a "trustee" in relation to an insolvent Person and its property.

30. **THIS COURT ORDERS** that the CRO shall not have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any Person from and after the Initial Filing Date except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct on the part of the CRO, provided further that in no event shall the liability of the CRO exceed the quantum of the fees paid to the CRO.

31. **THIS COURT ORDERS** that no action or other proceeding shall be commenced directly, or by way of counterclaim, third party claim or otherwise, against or in respect of the CRO, and all rights and remedies of any Person against or in respect of the CRO are hereby stayed and suspended, except with the written consent of the CRO and the Monitor, or with leave of this Court on notice to the Applicants, the Monitor, the DIP Lender and the CRO. Notice of any such motion seeking leave of this Court shall be served upon the Applicants, the Monitor, the DIP Lender and the CRO at least ten (10) days prior to the return date of any such motion for leave.

32. **THIS COURT ORDERS** that the obligations of the Applicants to the CRO pursuant to the CRO Engagement Letter shall be treated as unaffected and may not be compromised in any Plan or proposal filed under the BIA in respect of the Applicants.

33. **THIS COURT ORDERS** that payment obligations of the Applicants to the CRO in respect of any fees and disbursements of the CRO shall be entitled to the benefit of and shall form part of the Administration Charge (as defined below) set out herein.

APPOINTMENT OF MONITOR

34. **THIS COURT ORDERS** that Ernst & Young Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

35. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Applicants' receipts and disbursements and the Applicants' compliance with the DIP Budget;

(b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

(c) assist the Applicants, to the extent required by the Applicants or the CRO, in their dissemination of financial and other information to the DIP Lender and its counsel on a weekly basis of financial and other information as agreed to between the Applicants and the DIP Lender, or as may reasonably be requested by the DIP Lender;

(d) advise the Applicants in its development of the Plan and any amendments to the Plan, and in the Restructuring;

(e) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;

(f) advise the Applicants in their preparation of the Applicants' cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than weekly, or as may reasonably be requested by the DIP Lender;

(g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;

(h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and

(i) perform such other duties as are required by this Order or by this Court from time to time.

36. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

37. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act, 1999*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, the *Ontario Mining Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order, or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

38. **THIS COURT ORDERS** that that the Monitor shall provide any creditor of the Applicants and the DIP Lender with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

39. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for

any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

40. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a weekly basis. In addition, the Applicants are hereby authorized to pay to the Monitor and counsel to the Monitor, retainers in the amounts of $150,000 and $50,000, respectively, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

41. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

42. **THIS COURT ORDERS** that the Applicants' counsel, the Monitor and its counsel and the CRO shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of $300,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority as set out in paragraphs 51 and 53 hereof.

DIP FINANCING

43. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to obtain and borrow under a credit facility from FGC, in its capacity as the debtor-in-possession lender (the "**DIP Lender**") in order to finance the Applicants working capital requirements, and other general corporate purposes and capital expenditures.

44. **THIS COURT ORDERS** that such credit facility shall be on the terms and subject to the conditions set forth in the DIP Facility Loan Agreement between the Applicants and the DIP Lender dated as of January 25, 2023, appended as Exhibit "S" to the Manzoor Affidavit (the "**DIP Facility Agreement**").

45. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to borrow, in accordance with the terms and conditions of the DIP Facility Agreement, interim financing of up to US$7,000,000 during the Stay Period.

46. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute and deliver such agreements, instruments, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively with the DIP Facility Agreement, the "**Definitive Documents**"), as may be contemplated by the DIP Facility Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Definitive Documents (collectively, the "**DIP Obligations**") as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

47. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property as security for the DIP Obligations, which DIP Lender's Charge shall be in the aggregate amount of the DIP Obligations outstanding at any given time under the Definitive Documents. The DIP Lender's Charge shall not secure an obligation that exists before the Initial Filing Date. The DIP Lender's Charge shall have the priority as set out in paragraphs 51 and 53 hereof.

48. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the DIP Lender under this Order or at law, the DIP Lender shall not incur any liability or obligation as a result of the carrying out of the provisions of this Order, save and except for any gross negligence or willful misconduct on its part.

49. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

(a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;

(b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon three business days' notice to the Applicants, the CRO and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the Definitive

Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the DIP Lender to the Applicants against the obligations of the Applicants to the DIP Lender under the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and

(c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

50. **THIS COURT ORDERS AND DECLARES** that FGC and the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise under the CCAA, or any proposal filed under the BIA, with respect to any advances made by FGC, as secured lender to the Applicants, and under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

51. **THIS COURT ORDERS** that the priorities of the Administration Charge, DIP Lender's Charge, Directors' Charge, and KERP Charge (collectively, the "**Charges**") as among them, shall be as follows:

First - Administration Charge (to the maximum amount of $300,000);

Second - DIP Lender's Charge;

Third - Directors' Charge (to the maximum amount of $200,000); and

Fourth – KERP Charge (to the maximum amount of $455,250).

52. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be effective as against the Property and shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

53. **THIS COURT ORDERS** that the Charges shall constitute a charge on the Property and shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

54. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicants also obtain the prior written consent of the CRO, the Monitor, the DIP Lender and the beneficiaries of the Administration Charge, Directors' Charge, KERP Charge, or further Order of this Court.

55. **THIS COURT ORDERS** that the Directors' Charge, the Administration Charge, the KERP Charge, the Definitive Documents and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal, provincial or other statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

(a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Definitive Documents shall create or be deemed to constitute a breach by the Applicants of any Agreement to which they are a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicants entering into the DIP Facility Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and

(c) the payments made by the Applicants pursuant to this Order, the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

56. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property leases.

SERVICE AND NOTICE

57. **THIS COURT ORDERS** that the Monitor shall (a) without delay, publish in The Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (b) within five days after the date of this Order, (i) make this Order publicly available in the manner prescribed under the CCAA, (ii) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than $1000, and (iii) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of any individual persons who are creditors available.

58. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: www.ey.com/ca/acerus

59. **THIS COURT ORDERS** that the Applicants, the Monitor and their respective counsel are at liberty to serve or distribute this Order, and other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicants' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

60. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicants and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

RELIEF FROM REPORTING OBLIGATIONS

61. **THIS COURT ORDERS** that the decision by the Applicants to incur no further expenses for the duration of the Stay Period in relation to any filings (including financial statements), disclosures, core or non-core documents, and press releases (collectively, the "**Securities Filings**") that may be required by any federal, provincial or other law respecting securities or capital markets in Canada, or by the rules and regulations of a stock exchange, including, without limitation, the *Securities Act* (Ontario), RSO 1990, c S.5 and comparable statutes enacted by other provinces of Canada, and the rules, regulations and policies of the Toronto Stock Exchange (collectively, the "**Securities Provisions**"), is hereby authorized, provided that nothing in this paragraph shall prohibit any securities regulator or stock exchange from taking any action or exercising any discretion that it may have of a nature described in section 11.1(2) of the CCAA as a consequence of the Applicants failing to make any Securities Filings required by the Securities Provisions during the Stay Period.

62. **THIS COURT ORDERS** that none of the directors, officers, employees, and other representatives of the Applicants, including without limitation the CRO, nor the Monitor shall have any personal liability for any failure by the Applicants to make any Securities Filings required by the Securities Provisions during the Stay Period, provided that nothing in this paragraph shall prohibit any securities regulator or stock exchange from taking any action or exercising any discretion that it may have of a nature described in section 11.1(2) of the CCAA as a consequence of such failure by the Applicants.

FOREIGN PROCEEDINGS

63. **THIS COURT ORDERS** that the Applicant, Acerus Pharmaceuticals Corporation is hereby authorized and empowered, but not required, to act as the foreign representative (in such capacity, the "**Foreign Representative**") in respect of the within proceedings for the purpose of having these proceedings recognized and approved in a jurisdiction outside of Canada.

64. **THIS COURT ORDERS** that the Foreign Representative is hereby authorized to apply for foreign recognition and approval of these proceedings, as necessary, in any jurisdiction outside of Canada, including in the United States pursuant to chapter 15 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532.

SEALING PROVISION

65. **THIS COURT ORDERS** that Confidential Exhibit "B" to the Pre-Filing Report and Confidential Appendix "C" to First Report is hereby sealed pending further order of the Court, and shall not form part of the public record.

SCHEDULING

66. **THIS COURT ORDERS** that a motion to extend the Stay Period shall be heard on April 4, 2023 at 10:00 a.m.

GENERAL

67. **THIS COURT ORDERS** that the Applicants, the DIP Lender, or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their powers and duties hereunder.

68. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

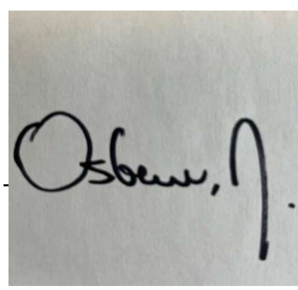
69. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and

to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

70. **THIS COURT ORDERS** that each of the Applicants and the Monitor shall be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

71. **THIS COURT ORDERS** that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

72. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the Initial Filing Date.



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Toronto Superior Court of Justice / Cour supérieure de justice

Court File No. CV-23-00693595-00CL

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

AND IN THE MATTER OF PLAN OF COMPROMISE OR ARRANGEMENT OF ACERUS PHARMACEUTICALS CORPORATION, ACERUS BIOPHARMA INC., ACERUS LABS INC. AND ACERUS PHARMACEUTICALS USA, LLC.

Applicants

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

AMENDED AND RESTATED INITIAL ORDER

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Elizabeth Pillon (LSO #35638M)
Tel: (416) 869-5623
Email: lpillon@stikeman.com

Lee Nicholson (LSO #66412I)
Tel : (416) 869-5604
Email: leenicholson@stikeman.com

Philip Yang (LSO #82084O)
Tel: (416) 869-5593
Email: pyang@stikeman.com

Lawyers for the Applicants

This is Exhibit “D” referred to in the Affidavit of Naveed Z. Manzoor
sworn by Naveed Z. Manzoor of the Town of Oakville,
in the Province of Ontario, before me at the City of Toronto,
in the Province of Ontario, on March 2, 2023
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.

DocuSigned by:

Philip Y

36124C4218DD47C...

Commissioner for Taking Affidavits
Philip Yang

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: Acerus Pharmaceuticals Corporation, *et al.,* Debtors in a foreign proceeding.[1]	Chapter 15 Case No. 23-10111 (MFW) (Jointly Administered) Re: D.I. 5

ORDER GRANTING PROVISIONAL RELIEF PURSUANT TO SECTION 1519 OF THE BANKRUPTCY CODE

Upon the motion for certain provisional and injunctive relief (the "**Motion**") filed by the foreign representative (the "**Foreign Representative**") of the above-captioned debtors (collectively, the "**Debtors**") seeking entry of an order granting provisional relief (the "**Order**") under the Bankruptcy Code to protect the Debtors and their property within the territorial jurisdiction of the United States pending recognition of the Debtors' proceedings currently pending in Canada pursuant to the CCAA (the "**Canadian Proceedings**"); and upon this Court's review and consideration of the Motion, Verified Petition, Manzoor Declaration, and the Nicholson Declaration;[2] this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, and 11 U.S.C. §§ 109 and 1501; consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P); venue being proper before this Court pursuant to 28 U.S.C. § 1410(1) and (3); appropriate, sufficient and timely notice of the Motion and the hearing thereon having been given pursuant to Bankruptcy Rules 1011(b) and 2002(q) and Local Rule 9013-1(m); and upon the record

[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] Capitalized terms used by not otherwise defined herein shall have the meanings ascribed to them in the Motion.

established at such hearing; and it appearing that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors; it appearing that the relief requested in the Motion is necessary and beneficial to the Debtors; and no objections or other responses having been filed that have not been overruled, withdrawn or otherwise resolved; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED 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. There is a substantial likelihood that the Foreign Representative will successfully demonstrate that the Canadian Proceedings constitute a "foreign main proceeding" as defined in section 1502(4) of the Bankruptcy Code and that the Court will determine that the additional relief sought herein, including the relief under sections 362, 364 and 365, is necessary to effectuate the purpose of chapter 15 and the assets of the Debtors and the interests of creditors as contemplated by section 1521 of the Bankruptcy Code.

C. The commencement or continuation of any action or proceeding in the United States against the Debtors should be enjoined pursuant to sections 105(a) and 1519 of the Bankruptcy Code to permit the expeditious and economical administration of the Canadian Proceedings, and such relief will either (a) not cause an undue hardship to other parties in interest or (b) any hardship to parties is outweighed by the benefits of the relief requested.

D. Consistent with findings by the Canadian Court and relief granted under the Initial Order and the Amended and Restated Initial Order, unless a preliminary injunction is issued with respect to the Debtors, and to the same extent provided in the Initial Order, there is a material risk that the Debtors' creditors or other parties-in-interest in the United States could use the Canadian Proceedings and these chapter 15 cases as a pretext to exercise certain remedies or to terminate executory contracts or unexpired leases with respect to the Debtors.

E. Such acts could (a) interfere with the jurisdictional mandate of this Court under chapter 15 of the Bankruptcy Code, (b) interfere with and cause harm to the Debtors' efforts to administer the Canadian Proceedings, (c) interfere with the Debtors' operations, and (d) undermine the Debtors' efforts to achieve an equitable result for the benefit of all of the Debtors' creditors. Accordingly, there is a material risk that the Debtors may suffer immediate and irreparable injury, and it is therefore necessary that the Court enter this Order.

F. The Initial Order provides for, among other things, certain charges and security in the Debtors' Property, including an Administration Charge, a Directors' Charge, and the DIP Lender's Charge. Further, the Initial Order authorizes the Debtors to borrow from the DIP Lender such amounts from time to time as the Debtors may consider necessary and desirable up to an aggregate principal amount not exceeding $500,000 (the "**Maximum First Tranche Amount**") on the terms and conditions set forth in the DIP Facility Agreement and provides that all of the Property of the Debtors is subject to the DIP Lender's Charge as security for the DIP Obligations (as defined in the DIP Facility Agreement).

G. Further, subject to entry by the Canadian Court, the Amended and Restated Initial Order will, among other things, authorize the Debtors to borrow from the DIP Lender such amounts from time to time as the Debtors may consider necessary and desirable up to an aggregate principal amount not to exceed $2,500,000 (inclusive of the Maximum First Tranche Amount) (the "**Maximum Second Tranche Amount**") and will provide that all of the Property of the Debtors is subject to the DIP Lender's Charge as security for the DIP Obligations (as defined in the DIP Facility Agreement).

H. Entry of an order of this Court recognizing and enforcing the Initial Order and the Amended and Restated Initial Order in the United States and applying the DIP Charges to the Debtors property located in the territorial jurisdiction of the United States, is necessary to give effect to the Interim Order and the Amended and Restated Initial Order as it relates to the Debtors and their Property in the United States and is required by the DIP Facility Agreement.

I. The Foreign Representative has demonstrated that the incurrence of the indebtedness under the DIP Facility and the granting of liens and charges negotiated in connection with the DIP Facility, as authorized by the Initial Order and extended, supplemented, or superseded by the Amended and Restated Initial Order, is necessary to prevent irreparable harm to the Debtors. Without such financing, the Debtors will be unable to continue operations and fund their restructuring proceedings, which will significantly impair the value of the Debtors and their assets. Further, the amount that the Debtors have been authorized to borrow pursuant to the Initial Order and Amended and Restated Initial Order (once approved), as applicable, is reasonably necessary for the continued operations of the Debtors in the ordinary course of business pending entry of the Recognition Order.

J. The Foreign Representative has demonstrated that the terms of the DIP Facility, as approved by the Initial Order and extended, supplemented, or superseded by the Amended and Restated Initial Order, are fair and reasonable and were entered into in good faith by the Debtors and the DIP Lender and that the DIP Lender would not have extended financing without the protections provided by section 364 of the Bankruptcy Code, made applicable by section 1519(a)(3) of the Bankruptcy Code. The Foreign Representative has demonstrated that the terms of the DIP Facility are reasonable under the circumstances.

K. The Foreign Representative has demonstrated that, in the interest of comity, the purpose of chapter 15 is carried out by granting recognition and giving effect to the Initial Order and, upon its entry by the Canadian Court, the Amended and Restated Initial Order.

L. The interest of the public will be served by this Court's entry of this Order.

M. The Foreign Representatives and the Debtors are entitled to the full protections and rights available pursuant to section 1519(a)(1)-(3) of the Bankruptcy Code.

BASED ON THE FOREGOING FINDINGS OF FACT AND AFTER DUE DELIBERATION AND SUFFICIENT CAUSE APPEARING THEREFORE, IT IS HEREBY ORDERED THAT:

1. Beginning on the Petition Date and continuing until the date of the entry of an order of this Court recognizing the Canadian Proceedings as "foreign main proceedings" as defined in section 1502(4) of the Bankruptcy Code and the Foreign Representative as a "foreign representative" as defined in section 101(24) of the Bankruptcy Code (unless otherwise extended pursuant to section 1519(b) of the Bankruptcy Code), with respect to the Debtors:

a. the Foreign Representative shall be the representative of the Debtors with full authority to administer the Debtors' assets and affairs in the United States.

b. section 361 of the Bankruptcy Code shall apply with respect to each of the Debtors and the property of each of the Debtors that is within the territorial jurisdiction of the United States.

c. section 362 of the Bankruptcy Code shall apply with respect to each of the Debtors and the property of each of the Debtors that is within the territorial jurisdiction of the United States. For the avoidance of doubt and without limiting the generality of the foregoing, this Order shall impose a stay within the territorial jurisdiction of the United States of:

i. the commencement or continuation, including the issuance or employment of process of, any judicial, administrative or any other action or proceeding involving or against the Debtors or their assets or proceeds thereof, or to recover a claim or enforce any judicial, quasi-judicial, regulatory, administrative or other judgment, assessment, order, lien or arbitration award against the Debtors or their assets or proceeds thereof, or to exercise any control over the Debtors' assets, located in the United States except as authorized by the Debtors in writing;

ii. the creation, perfection, seizure, attachment, enforcement, or execution of liens or judgments against the Debtors' property in the United States or from transferring, encumbering or otherwise disposing of or interfering with the Debtors' assets or agreements in the United States without the express consent of the Foreign Representative;

iii. any act to collect, assess, or recover a claim against any of the Debtors that arose before the commencement of the Debtors' chapter 15 cases; and

iv. the setoff of any debt owing to any of the Debtors that arose before the commencement of the Debtors' chapter 15 cases against any claim against of the Debtors.

d. section 364 of the Bankruptcy Code applicable with respect to each of the Debtors and the property of each of the Debtors that is within the territorial jurisdiction of the United States. For the avoidance of doubt and without limiting the generality of the foregoing, this Order, without limitation:

i. shall grant liens and security interests in the Debtors' Property located within the territorial jurisdiction of the United States pursuant to section 364(d)(1) of the Bankruptcy Code in respect of, and in accordance with, the Administration Charge, Directors' Charge and DIP Lender's Charge; and

ii. finds any loans made by the DIP Lender in accordance with the DIP Facility Agreement prior to the entry of the Recognition Order are extended in "good faith" as contemplated by 364(e) of the Bankruptcy Code, such that the validity of DIP Loans, and the priority of the DIP Lender's Charge in respect of the Debtors' Property located within the territorial jurisdiction of the United States shall not be affected by any reversal or modification of this Order on appeal or the entry of an order denying the Debtors' request for entry of the Recognition Order.

e. for counterparties to certain of the Debtors' executory contracts and unexpired leases section 365(e) of the Bankruptcy Code shall apply with respect to each of the Debtors and the property of each of the Debtors.

f. the Foreign Representative shall have the rights and protections to which the Foreign Representative is entitled under chapter 15 of the Bankruptcy Code, including, but not limited to, the protections limiting the jurisdiction of United States Courts over the Foreign Representative in accordance with section 1510 of the Bankruptcy Code and the granting of additional relief in accordance with sections 1519(a)(3) and 1521 of the Bankruptcy Code.

g. any and all landlords or other parties with a lease of premises to the Debtors located within the US are hereby prohibited from: taking any steps to cancel, terminate, or modify any lease for any reason, including non-payment of rent and/or due to any ipso facto clause described by section 365(e)(1) of the Bankruptcy Code; enforcing any "landlord lien", possessory lien or similar lien against any property of the Debtor(s); changing the locks or codes on any of the Debtor's premises; or commencing or continuing any eviction or similar proceedings; and

h. notwithstanding any provision in the Bankruptcy Rules to the contrary, (i) this Order shall be effective immediately and enforceable upon entry, (ii) the Foreign Representative is not subject to any stay in the implementation, enforcement, or realization of the relief granted in this Order, and (iii) the Foreign Representative is authorized and empowered, and may, in his discretion and without further delay, take any action and perform any act necessary to implement and effectuate the terms of the Provisional Relief Order.

2. The Foreign Representative, in connection with its appointment as the "foreign representative" in these cases, and the Debtors, is hereby granted the full protections and rights available pursuant to section 1519(a)(1)-(3) of the Bankruptcy Code.

3. Pursuant to sections 1519 and 364 of the Bankruptcy Code, to the extent authorized under the Initial Order and the Amended and Restated Initial Order, the Court grants, on a provisional basis, the Administration Charge, the Directors' Charge, and the DIP Lender's Charge on all the Debtors' Property located in the territorial jurisdiction of the United States in the same priority granted in the Canadian Proceedings.

4. The Initial Order (as entered by the Canadian Court), attached hereto as **Exhibit 1**, is hereby given full force and effect on a provisional basis with respect to the Debtors and their property located in the territorial jurisdiction of the United States, including, without limitation, the sections of the Initial Order (a) staying the commencement or continuation of any actions against the Debtors and their assets, (b) authorizing the financing provided under the DIP Facility Agreement; (c) granting the Directors' Charge, Administration Charge and DIP Lender's Charge, and (d) authorizing the Debtors to disclaim certain leases and other contractual agreements.

5. Upon entry of the Amended and Restated Initial Order by the Canadian Court in the Canadian Proceedings superseding the Initial Order, such entered Amended and Restated Initial Order, substantially in the form attached hereto as **Exhibit 2** (and as may be amended, modified, or supplemented prior to its approval by the Canadian Court in the Canadian Proceedings, which amended, modified, or supplemented version approved by the Canadian Court in the Canadian Proceedings shall be filed on the docket of these Chapter 15 Cases and served on the Notice Parties), shall be given full force and effect on a provisional basis, with respect to the Debtors and their property located in the territorial jurisdiction of the United States, including, without limitation, the provisions (a) already included in the Initial Order, and (b) with respect to the DIP Lender's Charge, any additional advances made in respect of the DIP Facility Agreement as authorized by the Amended and Restated Initial Order, and (c) granting relief with respect to lease and executory contract obligations of the Debtors.

6. Pending entry by this Court of the Recognition Order, the Foreign Representative and the Debtors are entitled to the benefits of, and may comply with, the terms and conditions of the DIP Facility Agreement, including, but not limited to, the payment of associated fees and expenses as they come due without further notice or order of this Court.

7. This Order shall be sufficient and conclusive notice and evidence of the grant, validity, perfection, and priority of the liens granted in the Canadian Proceedings as they apply to the Debtors and their property located in the territorial jurisdiction of the United States in respect of the Administration Charge, the Directors' Charge and the DIP Lender's Charge without the necessity of filing or recording this Order or any financing statement, mortgage, or other instrument or document which may otherwise be required under the law of any jurisdiction; provided that the Debtors are authorized to execute, and the DIP Lender may file or record, any financing statements, mortgages, other instruments or any other DIP Loan Documents (as defined in the DIP Facility Agreement) to further evidence the validity, perfection, and priority of the liens granted in the Canadian Proceedings as they apply to the Debtors and their property located in the territorial jurisdiction of the United States.

8. The DIP Facility Agreement has been negotiated in good faith between the Debtors and the DIP Lender. Any interim advances (in an aggregate amount not to exceed the Maximum Second Tranche Amount) made to the Debtors by the DIP Lender pursuant to the Initial Order or Amended and Restated Initial Order and the DIP Facility Agreement prior to this Court's determination on the Debtors' Verified Petition seeking recognition of the Canadian Proceedings as "foreign main proceedings," shall, pursuant to sections 1507, 1519(a)(3), and 105(a) of the Bankruptcy Code, be deemed to have been made by the DIP Lender in good faith, as that term is used in section 364(e) of the Bankruptcy Code, and the validity of the indebtedness, and the priority of the liens authorized by the Initial Order and the Amended and Restated Initial Order, made enforceable in the United States by this Order, shall not be affected by any reversal or modification of this Order on appeal or the entry of any order denying recognition of the Canadian Proceedings pursuant to section 1517 of the Bankruptcy Code.

9. Pursuant to Bankruptcy Rule 7065, the security provisions of rule 65(c) of the Federal Rules of Civil Procedure are waived.

10. Service in accordance with the procedures set forth in the Notice Procedures Motion shall be deemed good and sufficient service and adequate notice for all purposes. 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.

11. The banks and financial institutions with which the Debtors maintain bank accounts or on which checks are drawn or electronic payment requests made in payment of prepetition or postpetition obligations are authorized and directed to continue to service and administer the Debtors' bank accounts without interruption and in the ordinary course and to receive, process, honor and pay any and all such checks, drafts, wires and automatic clearing house transfers issued, whether before or after the Petition Date and drawn on the Debtors' bank accounts by respective holders and makers thereof and at the direction of the Foreign Representative or the Debtors, as the case may be.

12. The Foreign Representative is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order.

13. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

14. This Court shall retain jurisdiction with respect to the enforcement, amendment or modification of this Order, any requests for additional relief or any adversary proceeding brought in and through these chapter 15 cases, 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 this Court.

Dated: January 31st, 2023
Wilmington, Delaware

Mary F. Walrath

MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

Initial Order

Court File No./N° du dossier du greffe : CV-23-00693595-00CL

Court File No. CV-23-00693595-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	THURSDAY, THE 26TH DAY
	)	
JUSTICE OSBORNE	)	OF JANUARY, 2023

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

AND IN THE MATTER OF PLAN OF COMPROMISE OR ARRANGEMENT OF ACERUS PHARMACEUTICALS CORPORATION, ACERUS BIOPHARMA INC., ACERUS LABS INC. AND ACERUS PHARMACEUTICALS USA, LLC.

Applicants

INITIAL ORDER

THIS APPLICATION, made by Acerus Pharmaceuticals Corporation, Acerus Biopharma Inc., Acerus Labs Inc. and Acerus Pharmaceuticals USA, LLC (collectively, the "**Applicants**"), for an initial order pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day by judicial videoconference via Zoom.

ON READING the affidavit of Naveed Manzoor sworn January 25, 2023 (the "**Manzoor Affidavit**") and the Exhibits thereto, the pre-filing report of Ernst & Young Inc. ("**EY**"), in its capacity as proposed monitor of the Applicants dated 25, 2023 (the "**Pre-Filing Report**"), the consent of EY to act as the Monitor (the "**Monitor**"), on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants, counsel for EY, counsel for First Generation Capital Inc. ("**FGC**"), and counsel for the DIP Lender (as defined below),

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies.

POSSESSION OF PROPERTY AND OPERATIONS

3. **THIS COURT ORDERS** that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property. The Applicants are authorized and empowered to continue to retain and employ their employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

4. **THIS COURT ORDERS** that the Applicants shall be entitled to continue to utilize their existing central cash management system currently in place or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person or Persons (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under any plan of arrangement or compromise under the CCAA with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

5. **THIS COURT ORDERS** that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order subject to compliance with the DIP Budget (as defined in the DIP Facility Agreement), as may be amended from time to time:

(a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and

(b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.

6. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicants shall be entitled, subject to compliance with the DIP Budget, as may be amended from time to time, but not required to pay all reasonable expenses incurred by the Applicants in carrying on their Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance and security services; and

(b) payment for goods or services actually supplied to the Applicants following the date of this Order.

7. **THIS COURT ORDERS** that the Applicants shall, in accordance with legal requirements, remit or pay:

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

(b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and

(c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

8. **THIS COURT ORDERS** that, from and after the date of this Order, the Applicants shall not make any payments pursuant to this Order other than those contemplated by the DIP Budget, as may be amended from time to time, and subject to permitted variances under the DIP Facility Agreement (as defined below), or upon further Order of this Court.

9. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of this date; (b) to grant no security interests, trust, liens, mortgages, charges or encumbrances upon or in respect of any of the Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

10. **THIS COURT ORDERS** that the Applicants shall, subject to such requirements as are imposed by the CCAA, have the right to continue negotiations with stakeholders in an effort to pursue restructuring options for the Applicants including without limitation all avenues of refinancing of their Business or Property, in whole or in part, subject to prior approval of this Court being obtained before any material refinancing.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

11. **THIS COURT ORDERS** that until and including February 4, 2023, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting their Business or their Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting their Business or their Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

12. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicants or the Monitor, or affecting their Business or their Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (a) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (c) prevent the filing of any registration to preserve or perfect a security interest, or (d) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

13. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

14. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses, email addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

15. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

16. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

17. **THIS COURT ORDERS** that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

18. **THIS COURT ORDERS** that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of $200,000, as security for the indemnity provided in paragraph 17 of this Order. The Directors' Charge shall have the priority as set out in paragraphs 46 and 48 herein.

19. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the

benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 17 of this Order.

APPROVAL AND SEALING OF THE CRO ENGAGEMENT LETTER

20. **THIS COURT ORDERS** that the agreement dated as of January 23, 2023 pursuant to which the Applicants have engaged FAAN Advisors, ("**FAAN**"), to act as Chief Restructuring Officer (the "**CRO**") through the services of Naveed Manzoor ("**Manzoor**") and other employees or agents of FAAN (as applicable), an unredacted copy of which is attached as Confidential Exhibit "B" to the Pre-Filing Report as may be amended by the parties thereto with the consent of the Monitor (the "**CRO Engagement Letter**"), and the appointment of the CRO pursuant to the terms thereof, are hereby approved, including, without limitation, the payment of the fees and expenses contemplated thereby.

21. **THIS COURT ORDERS** that, during the Stay Period, the CRO is authorized to exercise and perform the powers, responsibilities and duties as described in the CRO Engagement Letter and subject to the terms thereof, together with such other powers, responsibilities and duties as may be agreed upon by the CRO and the Applicants, in consultation with the DIP Lender (collectively, the "**CRO Powers**"). In exercising the CRO Powers, the CRO shall be deemed to be acting for and on behalf of the Applicants and not its personal or corporate capacity.

22. **THIS COURT ORDERS** that the CRO, Manzoor, or such other employees or agents of FAAN, shall not be, or deemed to be a director, officer or employee of the Applicants.

23. **THIS COURT ORDERS** that the CRO shall not, as a result of the performance of its obligations and duties in accordance with the terms of the CRO Engagement Letter and this Order, be deemed to be in Possession (as defined below) of any of the Property within the meaning of any Environmental Legislation (as defined below); provided, however, if the CRO is nevertheless later found to be in Possession of any Property, then the CRO, as the case may be, shall be deemed to be a Person who has been lawfully appointed to take, or has lawfully taken, possession or control of such Property for the purposes of section 14.06(1.1)(c) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") and shall be entitled to the benefits and protections in relation to Applicants and such Property as provided by section 14.06(2) of the BIA to a "trustee" in relation to an insolvent Person and its property.

24. **THIS COURT ORDERS** that the CRO shall not have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any Person from and after the date of this Order except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct on the part of the CRO, provided further that in no event shall the liability of the CRO exceed the quantum of the fees paid to the CRO.

25. **THIS COURT ORDERS** that no action or other proceeding shall be commenced directly, or by way of counterclaim, third party claim or otherwise, against or in respect of the CRO, and all rights and remedies of any Person against or in respect of the CRO are hereby stayed and suspended, except with the written consent of the CRO and the Monitor, or with leave of this Court on notice to the Applicants, the Monitor, the DIP Lender and the CRO. Notice of any such motion seeking leave of this Court shall be served upon the Applicants, the Monitor, the DIP Lender and the CRO at least ten (10) days prior to the return date of any such motion for leave.

26. **THIS COURT ORDERS** that the obligations of the Applicants to the CRO pursuant to the CRO Engagement Letter shall be treated as unaffected and may not be compromised in any Plan or proposal filed under the BIA in respect of the Applicants.

27. **THIS COURT ORDERS** that payment obligations of the Applicants to the CRO in respect of any fees and disbursements of the CRO shall be entitled to the benefit of and shall form part of the Administration Charge (as defined below) set out herein.

28. **THIS COURT ORDERS** that the unredacted copy of the CRO Engagement Letter included as Confidential Exhibit "B" to the Pre-Filing Report shall be sealed and kept confidential pending further order of this Court.

APPOINTMENT OF MONITOR

29. **THIS COURT ORDERS** that Ernst & Young Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

30. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Applicants' receipts and disbursements and the Applicants' compliance with the DIP Budget;

(b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

(c) assist the Applicants, to the extent required by the Applicants or the CRO, in their dissemination of financial and other information to the DIP Lender and its counsel on a weekly basis of financial and other information as agreed to between the Applicants and the DIP Lender, or as may reasonably be requested by the DIP Lender;

(d) advise the Applicants in their preparation of the Applicants' cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than weekly, or as may reasonably be requested by the DIP Lender;

(e) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;

(f) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and

(g) perform such other duties as are required by this Order or by this Court from time to time.

31. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

32. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act, 1999*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, the *Ontario Mining Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order, or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

33. **THIS COURT ORDERS** that that the Monitor shall provide any creditor of the Applicants and the DIP Lender with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

34. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

35. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a weekly basis. In addition, the Applicants are hereby authorized

to pay to the Monitor and counsel to the Monitor, retainers in the amounts of $150,000 and $50,000, respectively, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

36. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

37. **THIS COURT ORDERS** that the Applicants' counsel, the Monitor and its counsel and the CRO shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of $150,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority as set out in paragraphs 46 and 48 hereof.

DIP FINANCING

38. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to obtain and borrow under a credit facility from FGC, in its capacity as the debtor-in-possession lender (the "**DIP Lender**") in order to finance the Applicants working capital requirements, and other general corporate purposes and capital expenditures.

39. **THIS COURT ORDERS** that such credit facility shall be on the terms and subject to the conditions set forth in the DIP Facility Loan Agreement between the Applicants and the DIP Lender dated as of January 25, 2023, appended as Exhibit "S" to the Manzoor Affidavit (the "**DIP Facility Agreement**").

40. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to borrow, in accordance with the terms and conditions of the DIP Facility Agreement, interim financing of up to US$500,000 during the Stay Period.

41. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute and deliver such agreements, instruments, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively with the DIP Facility Agreement, the "**Definitive Documents**"), as may be contemplated by the DIP Facility Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the

Applicants are hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Definitive Documents (collectively, the "**DIP Obligations**") as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

42. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property as security for the DIP Obligations, which DIP Lender's Charge shall be in the aggregate amount of the DIP Obligations outstanding at any given time under the Definitive Documents. The DIP Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority as set out in paragraphs 46 and 48 hereof.

43. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the DIP Lender under this Order or at law, the DIP Lender shall not incur any liability or obligation as a result of the carrying out of the provisions of this Order, save and except for any gross negligence or willful misconduct on its part.

44. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

(a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;

(b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon three business days' notice to the Applicants, the CRO and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the DIP Lender to the Applicants against the obligations of the Applicants to the DIP Lender under the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and

(c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

45. **THIS COURT ORDERS AND DECLARES** that FGC and the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise under the CCAA, or any proposal filed under the BIA, with respect to any advances made by FGC, as secured lender to the Applicants, and under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

46. **THIS COURT ORDERS** that the priorities of the Administration Charge, the DIP Lender's Charge, and the Directors' Charge (collectively, the "**Charges**"), as among them, shall be as follows:

First - Administration Charge (to the maximum amount of $150,000);

Second – DIP Lender's Charge; and

Third - Directors' Charge (to the maximum amount of $200,000).

47. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be effective as against the Property and shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

48. **THIS COURT ORDERS** that the Charges shall constitute a charge on the Property and shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

49. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or the proposed amended and restated initial order included in the Applicants' Application Record if granted by the Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicants also obtain the

prior written consent of the CRO, the Monitor, the DIP Lender and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

50. **THIS COURT ORDERS** that the Directors' Charge, the Administration Charge, the Definitive Documents and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal, provincial or other statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

(a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Definitive Documents shall create or be deemed to constitute a breach by the Applicants of any Agreement to which they are a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicants entering into the DIP Facility Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and

(c) the payments made by the Applicants pursuant to this Order, the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

51. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property leases.

SERVICE AND NOTICE

52. **THIS COURT ORDERS** that the Monitor shall (a) without delay, publish in The Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (b) within five days after the date of this Order, (i) make this Order publicly available in the manner prescribed under the CCAA, (ii) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than $1000, and (iii) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of any individual persons who are creditors available.

53. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: www.ey.com/ca/acerus

54. **THIS COURT ORDERS** that the Applicants, the Monitor and their respective counsel are at liberty to serve or distribute this Order, and other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicants' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

55. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicants and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal

delivery or facsimile transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

COMEBACK MOTION

56. **THIS COURT ORDERS** that the comeback motion shall be heard at a date and time to be fixed by a Commercial List Judge, but in no event later than February 3, 2023.

FOREIGN PROCEEDINGS

57. **THIS COURT ORDERS** that the Applicant, Acerus Pharmaceuticals Corporation is hereby authorized and empowered, but not required, to act as the foreign representative (in such capacity, the "**Foreign Representative**") in respect of the within proceedings for the purpose of having these proceedings recognized and approved in a jurisdiction outside of Canada.

58. **THIS COURT ORDERS** that the Foreign Representative is hereby authorized to apply for foreign recognition and approval of these proceedings, as necessary, in any jurisdiction outside of Canada, including in the United States pursuant to chapter 15 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532.

GENERAL

59. **THIS COURT ORDERS** that the Applicants, the DIP Lender, or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their powers and duties hereunder.

60. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

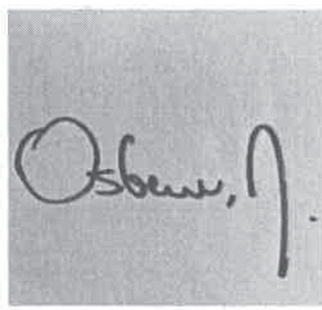
61. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby

respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

62. **THIS COURT ORDERS** that each of the Applicants and the Monitor shall be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

63. **THIS COURT ORDERS** that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

64. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.



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Electronically issued / Délivré par voie électronique : 26-Jan-2023
Toronto Superior Court of Justice / Cour supérieure de justice

Court File No. CV-23-00693595-00CL

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

AND IN THE MATTER OF PLAN OF COMPROMISE OR ARRANGEMENT OF ACERUS PHARMACEUTICALS CORPORATION, ACERUS BIOPHARMA INC., ACERUS LABS INC. AND ACERUS PHARMACEUTICALS USA, LLC.

Applicants

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

INITIAL ORDER

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Elizabeth Pillon (LSO #35638M)
Tel: (416) 869-5623
Email: lpillon@stikeman.com

Lee Nicholson (LSO #66412I)
Tel : (416) 869-5604
Email: leenicholson@stikeman.com

Philip Yang (LSO #82084O)
Tel: (416) 869-5593
Email: pyang@stikeman.com

Lawyers for the Applicants

EXHIBIT 2

Amended and Restated Initial Order

Court File No. ●

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	●, THE ● DAY
	)	
JUSTICE ●	)	OF ●, 2023

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

AND IN THE MATTER OF PLAN OF COMPROMISE OR ARRANGEMENT OF ACERUS PHARMACEUTICALS CORPORATION, ACERUS BIOPHARMA INC., ACERUS LABS INC. AND ACERUS PHARMACEUTICALS USA, LLC.

Applicants

AMENDED AND RESTATED INITIAL ORDER

THIS MOTION, made by Acerus Pharmaceuticals Corporation, Acerus Biopharma Inc., Acerus Labs Inc. and Acerus Pharmaceuticals USA, LLC (collectively, the "**Applicants**"), for an order amending and restating the initial order issued on January 26, 2023 (the "**Initial Filing Date**") and extending the stay of proceedings provided for therein was heard this day by judicial videoconference via Zoom.

ON READING the affidavit of Naveed Manzoor sworn January 25, 2023 (the "**Manzoor Affidavit**"), and the Exhibits thereto, the pre-filing report of Ernst & Young Inc. ("**EY**"), in its capacity as proposed monitor of the Applicants dated January 25, 2023 (the "**Pre-Filing Report**"), the first report of EY in its capacity as monitor (in such capacity, the "**Monitor**") dated ●, 2023 (the "**First Report**"), the consent of EY to act as the Monitor, on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants, counsel for EY, counsel for First Generation Capital Inc. ("**FGC**"), counsel for the DIP Lender (as defined below) and such other parties as listed on the Counsel Slip, with no one else appearing although duly served as appears from the affidavit of service of ● sworn ●, 2023,

APPLICATION

1. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies.

PLAN OF ARRANGEMENT

2. **THIS COURT ORDERS** that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “**Plan**”).

POSSESSION OF PROPERTY AND OPERATIONS

3. **THIS COURT ORDERS** that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the “**Business**”) and Property. The Applicants are authorized and empowered to continue to retain and employ their employees, consultants, agents, experts, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

4. **THIS COURT ORDERS** that the Applicants shall be entitled to continue to utilize their existing central cash management system currently in place or replace it with another substantially similar central cash management system (the “**Cash Management System**”) and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person or Persons (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under any plan of arrangement or compromise under the CCAA with regard to any claims

or expenses it may suffer or incur in connection with the provision of the Cash Management System.

5. **THIS COURT ORDERS** that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after the Initial Filing Date subject to compliance with the DIP Budget (as defined in the DIP Facility Agreement), as may be amended from time to time:

(a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the Initial Filing Date, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and

(b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.

6. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicants shall be entitled, subject to compliance with the DIP Budget, as may be amended from time to time, but not required to pay all reasonable expenses incurred by the Applicants in carrying on their Business in the ordinary course after the Initial Filing Date, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance and security services; and

(b) payment for goods or services actually supplied to the Applicants following the Initial Filing Date.

7. **THIS COURT ORDERS** that the Applicants shall, in accordance with legal requirements, remit or pay:

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

(b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the Initial Filing Date, or where such Sales Taxes were accrued or collected prior to the Initial Filing Date but not required to be remitted until on or after the Initial Filing Date; and

(c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

8. **THIS COURT ORDERS** that, from and after the Initial Filing Date, the Applicants shall not make any payments pursuant to the Initial Filing Date other than those contemplated by the DIP Budget, as may be amended from time to time, and subject to permitted variances under the DIP Facility Agreement (as defined below), or upon further Order of this Court.

9. **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the Applicants shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to their landlord under the lease) or as otherwise may be negotiated between the Applicants and the landlord from time to time ("**Rent**"), for the period commencing from and including the Initial Filing Date, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the Initial Filing Date shall also be paid.

10. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of the Initial Filing Date; (b) to grant no security interests, trust, liens, mortgages, charges or

encumbrances upon or in respect of any of the Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

11. **THIS COURT ORDERS** that the Applicants shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as defined below), have the right to:

(a) permanently or temporarily cease, downsize or shut down any of their businesses or operations, and to dispose of redundant or non-material assets not exceeding $250,000 in any one transaction or $1,000,000 in the aggregate;

(b) terminate the employment of such of their employees or temporarily lay off such of their employees as they deem appropriate; and

(c) pursue all avenues of financing or refinancing, restructuring, selling, assigning or in any other manner disposing of and/or reorganizing the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material financing or refinancing, restructuring, sale, assignment, disposition or reorganization,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Applicants or the Business (the "**Restructuring**").

12. **THIS COURT ORDERS** that the Applicants shall provide each of the relevant landlords with notice of the Applicants' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicants' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicants, or by further Order of this Court upon application by the Applicants on at least two (2) days' notice to such landlord and any such secured creditors. If the Applicants disclaim the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for

in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicants' claim to the fixtures in dispute.

13. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

14. **THIS COURT ORDERS** that until and including April 5, 2023, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting their Business or their Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting their Business or their Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicants or the Monitor, or affecting their Business or their Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (a) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (c) prevent the filing of any registration to preserve or perfect a security interest, or (d) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

16. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

17. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses, email addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the Initial Filing Date are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

18. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the Initial Filing Date, nor shall any Person be under any obligation on or after the Initial Filing Date to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

KEY EMPLOYEE RETENTION PLAN

19. **THIS COURT ORDERS** that the Key Employee Retention Plan (the "**KERP**"), as described in the Manzoor Affidavit, an unredacted copy of which is attached as Confidential

Exhibit **"[●]"** to the First Report, is hereby approved and the Applicants are authorized to make payments contemplated thereunder in accordance with the terms and conditions of the KERP.

20. **THIS COURT ORDERS** that payments made by the Applicants pursuant to this Order do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

21. **THIS COURT ORDERS** that the key employees referred to in the KERP (the "**Key Employees**") shall be entitled to the benefit of and are hereby granted a charge on the Property (the "**KERP Charge**"), which charge shall not exceed an aggregate amount of $455,250 to secure any payments to the Key Employees under the KERP. The KERP Charge shall have the priority as set out in paragraphs 51 and 53 herein.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

22. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the Initial Filing Date and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

23. **THIS COURT ORDERS** that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

24. **THIS COURT ORDERS** that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of $200,000, as security for the indemnity provided in paragraph 23 of this Order. The Directors' Charge shall have the priority as set out in paragraphs 51 and 53 herein.

25. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 23 of this Order.

APPROVAL OF THE CRO ENGAGEMENT LETTER

26. **THIS COURT ORDERS** that the agreement dated as of January 23, 2023 pursuant to which the Applicants have engaged FAAN Advisors, ("**FAAN**"), to act as Chief Restructuring Officer (the "**CRO**") through the services of Naveed Manzoor ("**Manzoor**") and other employees or agents of FAAN (as applicable), an unredacted copy of which is attached as Confidential Exhibit "B" to the Pre-Filing Report as may be amended by the parties thereto with the consent of the Monitor (the "**CRO Engagement Letter**"), and the appointment of the CRO pursuant to the terms thereof, are hereby approved, including, without limitation, the payment of the fees and expenses contemplated thereby.

27. **THIS COURT ORDERS** that, during the Stay Period, the CRO is authorized to exercise and perform the powers, responsibilities and duties as described in the CRO Engagement Letter and subject to the terms thereof, together with such other powers, responsibilities and duties as may be agreed upon by the CRO and the Applicants, in consultation with the DIP Lender (collectively, the "**CRO Powers**"). In exercising the CRO Powers, the CRO shall be deemed to be acting for and on behalf of the Applicants and not its personal or corporate capacity.

28. **THIS COURT ORDERS** that the CRO, Manzoor, or such other employees or agents of FAAN, shall not be, or deemed to be a director, officer or employee of the Applicants.

29. **THIS COURT ORDERS** that the CRO shall not, as a result of the performance of its obligations and duties in accordance with the terms of the CRO Engagement Letter and this Order, be deemed to be in Possession (as defined below) of any of the Property within the meaning of any Environmental Legislation (as defined below); provided, however, if the CRO is nevertheless later found to be in Possession of any Property, then the CRO, as the case may be, shall be deemed to be a Person who has been lawfully appointed to take, or has lawfully taken, possession or control of such Property for the purposes of section 14.06(1.1)(c) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") and shall be entitled to the benefits and protections in

relation to Applicants and such Property as provided by section 14.06(2) of the BIA to a "trustee" in relation to an insolvent Person and its property.

30. **THIS COURT ORDERS** that the CRO shall not have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any Person from and after the Initial Filing Date except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct on the part of the CRO, provided further that in no event shall the liability of the CRO exceed the quantum of the fees paid to the CRO.

31. **THIS COURT ORDERS** that no action or other proceeding shall be commenced directly, or by way of counterclaim, third party claim or otherwise, against or in respect of the CRO, and all rights and remedies of any Person against or in respect of the CRO are hereby stayed and suspended, except with the written consent of the CRO and the Monitor, or with leave of this Court on notice to the Applicants, the Monitor, the DIP Lender and the CRO. Notice of any such motion seeking leave of this Court shall be served upon the Applicants, the Monitor, the DIP Lender and the CRO at least ten (10) days prior to the return date of any such motion for leave.

32. **THIS COURT ORDERS** that the obligations of the Applicants to the CRO pursuant to the CRO Engagement Letter shall be treated as unaffected and may not be compromised in any Plan or proposal filed under the BIA in respect of the Applicants.

33. **THIS COURT ORDERS** that payment obligations of the Applicants to the CRO in respect of any fees and disbursements of the CRO shall be entitled to the benefit of and shall form part of the Administration Charge (as defined below) set out herein.

APPOINTMENT OF MONITOR

34. **THIS COURT ORDERS** that Ernst & Young Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

35. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Applicants' receipts and disbursements and the Applicants' compliance with the DIP Budget;

(b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

(c) assist the Applicants, to the extent required by the Applicants or the CRO, in their dissemination of financial and other information to the DIP Lender and its counsel on a weekly basis of financial and other information as agreed to between the Applicants and the DIP Lender, or as may reasonably be requested by the DIP Lender;

(d) advise the Applicants in its development of the Plan and any amendments to the Plan, and in the Restructuring;

(e) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;

(f) advise the Applicants in their preparation of the Applicants' cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than weekly, or as may reasonably be requested by the DIP Lender;

(g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;

(h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and

(i) perform such other duties as are required by this Order or by this Court from time to time.

36. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

37. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act, 1999*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, the *Ontario Mining Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order, or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

38. **THIS COURT ORDERS** that that the Monitor shall provide any creditor of the Applicants and the DIP Lender with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

39. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for

any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

40. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a weekly basis. In addition, the Applicants are hereby authorized to pay to the Monitor and counsel to the Monitor, retainers in the amounts of $150,000 and $50,000, respectively, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

41. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

42. **THIS COURT ORDERS** that the Applicants' counsel, the Monitor and its counsel and the CRO shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of $300,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority as set out in paragraphs 51 and 53 hereof.

DIP FINANCING

43. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to obtain and borrow under a credit facility from FGC, in its capacity as the debtor-in-possession lender (the "**DIP Lender**") in order to finance the Applicants working capital requirements, and other general corporate purposes and capital expenditures.

44. **THIS COURT ORDERS** that such credit facility shall be on the terms and subject to the conditions set forth in the DIP Facility Loan Agreement between the Applicants and the DIP Lender dated as of January 25, 2023, appended as Exhibit "S" to the Manzoor Affidavit (the "**DIP Facility Agreement**").

45. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to borrow, in accordance with the terms and conditions of the DIP Facility Agreement, interim financing of up to US$7,000,000 during the Stay Period.

46. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute and deliver such agreements, instruments, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively with the DIP Facility Agreement, the "**Definitive Documents**"), as may be contemplated by the DIP Facility Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Definitive Documents (collectively, the "**DIP Obligations**") as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

47. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property as security for the DIP Obligations, which DIP Lender's Charge shall be in the aggregate amount of the DIP Obligations outstanding at any given time under the Definitive Documents. The DIP Lender's Charge shall not secure an obligation that exists before the Initial Filing Date. The DIP Lender's Charge shall have the priority as set out in paragraphs 51 and 53 hereof.

48. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the DIP Lender under this Order or at law, the DIP Lender shall not incur any liability or obligation as a result of the carrying out of the provisions of this Order, save and except for any gross negligence or willful misconduct on its part.

49. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

(a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;

(b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon three business days' notice to the Applicants, the CRO and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the Definitive

Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the DIP Lender to the Applicants against the obligations of the Applicants to the DIP Lender under the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and

(c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

50. **THIS COURT ORDERS AND DECLARES** that FGC and the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise under the CCAA, or any proposal filed under the BIA, with respect to any advances made by FGC, as secured lender to the Applicants, and under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

51. **THIS COURT ORDERS** that the priorities of the Administration Charge, DIP Lender's Charge, Directors' Charge, and KERP Charge (collectively, the "**Charges**") as among them, shall be as follows:

First - Administration Charge (to the maximum amount of $300,000);

Second - DIP Lender's Charge;

Third - Directors' Charge (to the maximum amount of $200,000); and

Fourth – KERP Charge (to the maximum amount of $455,250).

52. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be effective as against the Property and shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

53. **THIS COURT ORDERS** that the Charges shall constitute a charge on the Property and shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

54. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicants also obtain the prior written consent of the CRO, the Monitor, the DIP Lender and the beneficiaries of the Administration Charge, Directors' Charge, KERP Charge, or further Order of this Court.

55. **THIS COURT ORDERS** that the Directors' Charge, the Administration Charge, the KERP Charge, the Definitive Documents and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal, provincial or other statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

(a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Definitive Documents shall create or be deemed to constitute a breach by the Applicants of any Agreement to which they are a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicants entering into the DIP Facility Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and

(c) the payments made by the Applicants pursuant to this Order, the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

56. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property leases.

SERVICE AND NOTICE

57. **THIS COURT ORDERS** that the Monitor shall (a) without delay, publish in The Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (b) within five days after the date of this Order, (i) make this Order publicly available in the manner prescribed under the CCAA, (ii) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than $1000, and (iii) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of any individual persons who are creditors available.

58. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: www.ey.com/ca/acerus

59. **THIS COURT ORDERS** that the Applicants, the Monitor and their respective counsel are at liberty to serve or distribute this Order, and other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicants' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

60. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicants and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

RELIEF FROM REPORTING OBLIGATIONS

61. **THIS COURT ORDERS** that none of the directors, officers, employees, or other representatives of the Applicants, including without limitation the CRO, nor the Monitor (and their respective directors, officers, employees or representatives) shall have any personal liability for the Applicants failure to file annual information forms, annual and quarterly management discussion and analysis, annual and quarterly financial statements (including related audits, reports, and certifications) for the Stay Period, which period may be extended pursuant to further Order of the Court. Notwithstanding the foregoing, the Applicants shall continue to advise the appropriate regulators of material updates in this proceeding.

62. **THIS COURT ORDERS** that the decision by the Applicants to incur no further expenses in relation to any filings (including financial statements), disclosures, core or non-core documents, restatements, amendments to existing filings, press releases or any other actions (collectively, the "**Securities Filings**") that may be required by any federal, provincial or other law respecting securities or capital markets in Canada, or by the rules and regulations of a stock exchange, including, without limitation, the Securities Act (Ontario), RSO 1990, c S.5 and comparable statutes enacted by other provinces of Canada, the CSE Policies 1-10 and other rules, regulations and policies of the Canadian Securities Exchange (collectively, the "**Securities Provisions**"), is hereby authorized, provided that nothing in this paragraph shall prohibit any securities regulator or stock exchange from taking any action or exercising any discretion that it may have of a nature described in section 11.1(2) of the CCAA as a consequence of the Applicants failing to make any Securities Filings required by the Securities Provisions.

63. **THIS COURT ORDERS** that none of the directors, officers, employees, and other representatives of the Applicants, including without limitation the CRO, nor the Monitor shall have any personal liability for any failure by the Applicants to make any Securities Filings required by the Securities Provisions.

FOREIGN PROCEEDINGS

64. **THIS COURT ORDERS** that the Applicant, Acerus Pharmaceuticals Corporation is hereby authorized and empowered, but not required, to act as the foreign representative (in such capacity, the "**Foreign Representative**") in respect of the within proceedings for the purpose of having these proceedings recognized and approved in a jurisdiction outside of Canada.

65. **THIS COURT ORDERS** that the Foreign Representative is hereby authorized to apply for foreign recognition and approval of these proceedings, as necessary, in any jurisdiction outside of Canada, including in the United States pursuant to chapter 15 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532.

SEALING PROVISION

66. **THIS COURT ORDERS** that Confidential Exhibit "B" to the Pre-Filing Report and Confidential Exhibit **"[●]"** to First Report is hereby sealed pending further order of the Court, and shall not form part of the public record.

GENERAL

67. **THIS COURT ORDERS** that the Applicants, the DIP Lender, or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their powers and duties hereunder.

68. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

69. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby

respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

70. **THIS COURT ORDERS** that each of the Applicants and the Monitor shall be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

71. **THIS COURT ORDERS** that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

72. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the Initial Filing Date.

Court File No. ●

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

AND IN THE MATTER OF PLAN OF COMPROMISE OR ARRANGEMENT OF ACERUS PHARMACEUTICALS CORPORATION, ACERUS BIOPHARMA INC., ACERUS LABS INC. AND ACERUS PHARMACEUTICALS USA, LLC.

Applicants

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

AMENDED AND RESTATED INITIAL ORDER

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Elizabeth Pillon (LSO #35638M)
Tel: (416) 869-5623
Email: lpillon@stikeman.com

Lee Nicholson (LSO #66412I)
Tel : (416) 869-5604
Email: leenicholson@stikeman.com

Philip Yang (LSO #82084O)
Tel: (416) 869-5593
Email: pyang@stikeman.com

Lawyers for the Applicants

This is Exhibit "E" referred to in the Affidavit of Naveed Z. Manzoor
sworn by Naveed Z. Manzoor of the Town of Oakville,
in the Province of Ontario, before me at the City of Toronto,
in the Province of Ontario, on March 2, 2023
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.

DocuSigned by:
Philip Y
38124C4218DD47C...

Commissioner for Taking Affidavits
Philip Yang

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: Acerus Pharmaceuticals Corporation, *et al.*, Debtors in a foreign proceeding.[1]	Chapter 15 Case No. 23-10111 (MFW) (Jointly Administered) Re: D.I. 4

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* [D.I. 4] (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. 25] (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).

Dated: February 27th, 2023
Wilmington, Delaware

MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

Court File No. CV-23-00693595-00CL

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

AND IN THE MATTER OF PLAN OF COMPROMISE OR ARRANGEMENT OF ACERUS PHARMACEUTICALS CORPORATION, ACERUS BIOPHARMA INC., ACERUS LABS INC. AND ACERUS PHARMACEUTICALS USA, LLC.

Applicants

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

AFFIDAVIT OF NAVEED Z. MANZOOR
(SWORN MARCH 2, 2023)

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Elizabeth Pillon (LSO #35638M)
Tel: (416) 869-5623
Email: lpillon@stikeman.com

Lee Nicholson (LSO #66412I)
Tel : (416) 869-5604
Email: leenicholson@stikeman.com

Philip Yang (LSO #82084O)
Tel: (416) 869-5593
Email: pyang@stikeman.com

Lawyers for the Applicants

TAB 3

Court File No. CV-23-00693595-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	THURSDAY, THE 9TH DAY
	)	
JUSTICE KIMMEL	)	OF MARCH, 2023

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

AND IN THE MATTER OF PLAN OF COMPROMISE OR ARRANGEMENT OF ACERUS PHARMACEUTICALS CORPORATION, ACERUS BIOPHARMA INC., ACERUS LABS INC. AND ACERUS PHARMACEUTICALS USA, LLC.

Applicants

ORDER

(SISP Approval and Extension to Stay of Proceedings)

THIS MOTION, made by Acerus Pharmaceuticals Corporation, Acerus Biopharma Inc., Acerus Labs Inc. and Acerus Pharmaceuticals USA, LLC (collectively, the "**Applicants**"), for an Order approving a sale and investment solicitation process was heard this day by judicial videoconference via Zoom.

ON READING the affidavit of Naveed Manzoor sworn March 2, 2023 (the "**Manzoor Affidavit**"), and the Exhibits thereto, the Second Report of Ernst & Young Inc. ("**EY**"), in its capacity as Court-appointed monitor of the Applicants (in such capacity, the "**Monitor**") dated March 2, 2023 (the "**Second Report**"), and on hearing the submissions of counsel for the Applicants, counsel for the Monitor, counsel for First Generation Capital Inc. ("**FGC**"), counsel for the FGC in its capacity as the DIP Lender, and such other parties as listed on the Counsel Slip, with no one else appearing although duly served as appears from the affidavits of service of Philip Yang, as filed,

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them under the Sale and Investment Solicitation Process attached hereto as Schedule "A" (the "**SISP**").

APPROVAL OF THE SALE AND INVESTMENT SOLICITATION PROCESS

3. **THIS COURT ORDERS** that the Applicants and the Monitor are authorized to immediately commence the SISP to solicit interest in the opportunity for a sale of or investment in all or part of the Applicants' assets (which includes Noctiva, Natesto, Strendra (avanafil), Lidbree, Tefina, TriVair) and all other products of the Applicants and business operations.

4. **THIS COURT ORDERS** that the SISP (subject to any amendments thereto that may be made in accordance therewith and with this Order) is hereby approved and the Applicants, the Monitor and the Chief Restructuring Officer (the "**CRO**"), and their respective affiliates, partners, employees, advisors and agents (collectively, "**Assistants**") are hereby authorized and directed to take any and all actions as may be necessary or desirable to implement and carry out the SISP in accordance with its terms and this Order.

5. **THIS COURT ORDERS** that each of the Monitor, the CRO, the Applicants, and their respective Assistants shall have no liability with respect to any and all losses, claims, damages or liability, of any nature or kind, to any person in connection with or as a result of performing their duties under the SISP, except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct of the Monitor, the CRO or the Applicants, as applicable, as determined by this Court.

6. **THIS COURT ORDERS** that the Monitor or the Applicants may from time to time apply to this Court to amend, vary or supplement this Order or to seek directions with respect to the SISP.

7. **THIS COURT ORDERS** that, pursuant to section 3(c) of the Electronic Commerce Protection Regulations, Reg. 81000-2-175 (SOR/DORS), the Monitor and the Applicants are authorized and permitted to send, or cause or permit to be sent, commercial electronic messages

to an electronic address of prospective bidders or offerors and to their advisors, but only to the extent required to provide information with respect to the SISP in these proceedings.

PROTECTION OF PERSONAL INFORMATION

8. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, the Monitor and the Applicants are authorized and permitted to disclose personal information of identifiable individuals ("**Personal Information**") to prospective bidders or offerors and to their advisors, including human resources and payroll information, records pertaining to the Applicants' past and current employees, and information on specific customers, but only to the extent desired or required to negotiate or attempt to complete a transaction under the SISP. Each prospective bidder or offeror to whom any Personal Information is disclosed shall maintain and protect the privacy of such Personal Information with security safeguards appropriate to the sensitivity of the Personal Information and as may otherwise be required by applicable federal or provincial legislation. Each prospective bidder or offeror to whom any Personal Information is disclosed shall also limit the use of such Personal Information to its participation in the SISP, and if it does not complete a sale, shall return all such information to the Applicants, or in the alternative destroy all such information. The Successful Bidder(s) shall maintain and protect the privacy of such information and, upon closing of the transaction contemplated in the Successful Bid(s), shall be entitled to use the personal information provided to it that is related to the assets and/or business acquired pursuant to the sale in a manner which is in all material respects identical to the prior use of such information by the Applicants, and shall return all other personal information to the Applicants, or ensure that all other personal information is destroyed.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

9. **THIS COURT ORDERS** that the Stay Period as referred to in the Amended and Restated Initial Order of Justice Osborne dated February 3, 2023 (the "**Amended and Restated Initial Order**") is extended, until and including May 19, 2023.

UNSEALING

10. **THIS COURT ORDERS** that paragraph 28 of the Initial Order of Justice Osborne dated January 26, 2023 (the "**Initial Order**") and paragraph 65 of Amended and Restated Initial Order are amended as follows:

Paragraph 28 of the Initial Order is hereby deleted.

Paragraph 65 of the Amended and Restated Initial Order is amended to state the following: "**THIS COURT ORDERS** that Confidential Appendix "C" to the First Report is hereby sealed pending further order of the Court, and shall not form part of the public record"

GENERAL

11. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

12. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

Schedule “A”

<u>SALE AND INVESTMENT SOLICITATION PROCESS</u>

Introduction

1. On January 26, 2023, Acerus Pharmaceuticals Corporation ("**Acerus**") and certain of its subsidiaries (collectively, the "**Applicants**") were granted an initial order (as amended or amended and restated from time to time, the "**Initial Order**") under the *Companies' Creditors Arrangement Act* (the "**CCAA**" and the "**CCAA Proceedings**") by the Ontario Superior Court of Justice (Commercial List) (the "**Court**"). The Initial Order (which was amended and restated on February 3, 2023), among other things:

   (a) stayed all proceedings against the Applicants, their assets and their respective directors and officers;

   (b) appointed Ernst & Young Inc. as the monitor of the Applicants (in such capacity, the "**Monitor**");

   (c) authorized the Applicants to enter into a debtor-in-possession financing facility (the "**DIP Facility**") with First Generation Capital Inc. (the "**DIP Lender**") pursuant to the DIP facility loan agreement dated January 26, 2023 (the "**DIP Facility Loan Agreement**"), as well as the related charge in favour of the DIP Lender (the "**DIP Charge**") over all of the Applicants' present and future assets, property and undertakings of every nature and kind whatsoever, and wherever situate including all proceeds thereof to secure the amounts outstanding under or in connection with the DIP Facility; and

   (d) authorized the Applicants to pursue all avenues of sale or investment of their assets or business, in whole or in part, subject to prior approval of the Court before any material sale or refinancing.

2. Further to the Applicants' restructuring efforts, the Monitor will, with the assistance of its advisors and the Applicants and its chief restructuring officer, FAAN Advisors Group Inc. (the "**CRO**"), conduct the sale and investment solicitation process (the "**SISP**") described herein pursuant to a Court order dated March 9, 2023 (the "**SISP Order**"). The SISP is intended to solicit interest in an acquisition or refinancing of the business or a sale of the assets and/or the business of the Applicants by way of merger, reorganization, recapitalization, primary equity issuance or other similar transaction. The Monitor, in consultation with the Applicants, intend to provide all qualified interested parties with an opportunity to participate in the SISP.

Opportunity

3. The SISP is intended to solicit interest in the opportunity (the "**Opportunity**") for a sale of or investment in all or part of the Applicants' assets (the "**Property**", which includes Noctiva, Natesto, Strendra (avanafil), Lidbree, Tefina, TriVair and all other products of the Applicants (the "**Products**")) and business operations (the "**Business**").

4. Except to the extent otherwise set forth in a definitive sale or investment agreement with the Successful Bidder (as defined below), any sale of the Property or investment in the Business will be on an "as is, where is" basis and without surviving representations or warranties of any kind, nature, or description by the Monitor, the Applicants, or any of their

respective agents, advisors or estates, and, in the event of a sale, all of the right, title and interest of the Applicants in and to the Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, financial and monetary claims charges, options and interests therein and thereon pursuant to Court order(s), to the extent that the Court deems it appropriate to grant such relief and except as otherwise provided in such Court order(s).

Role of the Monitor

5. The Monitor's responsibilities pursuant to the SISP include:

   (a) administering the SISP, in consultation with the Applicants;

   (b) consulting with the Applicants in connection with the bidding procedures included in this SISP and the closing of the transaction contemplated in the Successful Bid(s) (as defined below);

   (c) assisting the Applicants to facilitate information requests, including assisting the Applicants in preparing or modifying financial information to assist with the bidding procedures described in this SISP;

   (d) reporting to the Court in connection with the SISP, including the bidding process described in this SISP, and the closing of the transaction contemplated in the Successful Bid(s);

   (e) conducting an Auction (as defined below), if necessary, in accordance with the Auction procedures contemplated herein; and

   (f) assisting the Applicants with the closing of the transaction contemplated in the Successful Bid(s).

6. In consultation with the Applicants, the Monitor may seek Court approval of an amendment to the SISP or may seek the Court's directions in respect of the SISP.

Timeline

7. The following table sets out the key milestones under the SISP:

Milestone	**Deadline**
Deadline to publish notice of SISP, deliver Teaser Letter and NDA to Known Potential Bidders, and set up electronic data room	Five (5) days following issuance of the SISP Order March 14, 2023
Bid Deadline	Fifty (50) days following issuance of the SISP Order April 28, 2023

Monitor to notify each Bidder in writing as to whether its Bid constitutes a Qualified Bid	Within 5 business days following Bid Deadline No later than May 5, 2023
Monitor to notify each Qualified Bidder on whether an Auction will take place	Two (2) business days prior to the commencement of the Auction No later than May 5, 2023
Auction Date (if required)	Sixty-one (61) days following issuance of the SISP Order May 9, 2023
Hearing of the Sale Approval Motion	No later than seventy-one (71) days following issuance of the SISP Order, subject to the availability of the Court No later than May 19, 2023

8. Subject to any order of the Court, the dates set out in the SISP, including the Bid Deadline and Auction Date, may be amended or extended by the Monitor, in consultation with the Applicants.[1]

Solicitation of Interest: Notice of the SISP

9. As soon as reasonably practicable, but, in any event, by no later than five (5) days from the SISP Order:

    (a) the Monitor, in consultation with the Applicants, will prepare a list of potential bidders, including (i) parties that have approached the Applicants or the Monitor indicating an interest in the Opportunity, (ii) local and international strategic and financial parties who the Monitor, in consultation with the Applicants, believe may be interested in purchasing all or part of the Business or Property or investing in the Applicants pursuant to the SISP, and (iii) parties that showed an interest in the Applicants and/or their assets by way of the previous, out-of-court strategic review process, in each case whether or not such party has submitted a letter of intent or similar document (collectively, the "**Known Potential Bidders**");

    (b) the Monitor will cause a notice of the SISP (and such other relevant information that the Monitor, in consultation with the Applicants, considers appropriate) (the "**Notice**") to be published in The Globe and Mail (National Edition), and any other

[1] The term Applicants as referred to in paragraphs 8 to 40 shall be read to include the Chief Restructuring Officer, Naveed Z. Manzoor, on behalf of FAAN Advisors.

newspaper or journal as the Monitor, in consultation with the Applicants, considers appropriate, if any;

(c) the Monitor will cause a press release to be issued with Canada Newswire or comparable newswire entity setting out the information contained in the Notice and such other relevant information that the Monitor, in consultation with the Applicants, considers appropriate; and

(d) the Monitor, in consultation with the Applicants, will prepare: (i) a process summary (the "**Teaser Letter**") describing the Opportunity, outlining the process under the SISP and inviting recipients of the Teaser Letter to express their interest pursuant to the SISP; and (ii) a non-disclosure agreement in form and substance satisfactory to the Monitor and Applicants and their respective counsel which shall inure to the benefit of any purchaser of the Business or Property or any part thereof (an "**NDA**").

10. The Monitor will cause the Teaser Letter and NDA to be sent to each Known Potential Bidder by no later than five (5) days from the SISP Order and to any other party who requests a copy of the Teaser Letter and NDA or who is identified to the Monitor as a potential bidder as soon as reasonably practicable after such request or identification, as applicable.

Potential Bidders and Due Diligence Materials

11. Any party who wishes to participate in the SISP (a "**Potential Bidder**") must provide to the Monitor (i) an NDA executed by it, (ii) a letter setting forth the identity of the Potential Bidder, the contact information for such Potential Bidder and full disclosure of the direct and indirect principals of the Potential Bidder, and (iii) any other information that the Monitor may reasonably request. The Monitor, in its discretion, may accept an NDA executed by a Potential Bidder during the previous, out-of-court strategic review process in satisfaction of the requirement set out in (i).

12. The Monitor, in consultation with the Applicants, subject to competitive and other business considerations, afford each Potential Bidder who has satisfied the conditions set out in paragraph 11 above such access to due diligence material and information relating to the Applicants, the Property and the Business as the Monitor in consultation with the Applicants deems appropriate. Due diligence may include access to an electronic data room containing information about the Applicants, the Property and the Business, and may also include management presentations, and other matters which a Potential Bidder may reasonably request and as to which the Monitor, in its judgment and in consultation with the Applicants, may agree. The Monitor will designate a representative or representatives to coordinate all reasonable requests for additional information and due diligence access from Potential Bidders and the manner in which such requests must be communicated. Neither the Monitor nor the Applicants will be obligated to furnish any information relating to the Applicants, the Property or Business to any person other than as is expressly provided for in the SISP. Furthermore and for the avoidance of doubt, selected due diligence materials may be withheld from certain Potential Bidders if the Monitor and the Applicants, determine such information to represent proprietary or sensitive competitive information / disclosure could impair the Applicants or their Business or the integrity of the SISP. None of the Monitor, the Applicants, or any of their respective agents, advisors or estates shall be held responsible for, and none of them will bear any liability with respect

to, any information obtained by any person in connection with a sale of the Property or Business or investment in the Applicants.

13. Without limiting the generality of any term or condition of any NDA between the Applicants, on the one hand, and any Potential Bidder or Bidder (as defined below), on the other, unless otherwise agreed by the Monitor and Applicants or ordered by the Court, no Potential Bidder or Bidder shall be permitted to have any discussions with (a) any counterparty to any contract with the Applicants (or any of them), any secured creditor of the Applicants, any current or former director, manager, shareholder, officer (other than the CRO), member or employee of the Applicants (or any of them), other than in the normal course of business and wholly unrelated to the Applicants, the potential transaction, the confidential information, the SISP or the CCAA Proceedings, and (b) any other Potential Bidder or Bidder regarding the SISP or any bids submitted or contemplated to be submitted pursuant thereto. Notwithstanding the foregoing, where any such communications are agreed to with the Monitor's consent, such discussions shall be made in the presence of the Monitor. For greater certainty at no time shall such secured creditors (including in the capacity as a director of the Applicants) be entitled to communicate or discuss with one another or with any other Potential Bidder or Bidder regarding the SISP or any bids submitted or contemplated to be submitted pursuant thereto.

14. Potential Bidders and Bidders must rely solely on their own independent review, investigation and/or inspection of all information and of the Property and Business in connection with their participation in the SISP and any transaction they enter into with the Applicants (or any of them).

Formal Binding Offers

15. Potential Bidders that wish to make a formal offer to purchase, or make an investment in, the Applicants or their Property or Business, or any part thereof (a "**Bidder**") shall submit a binding offer (a "**Bid**") that complies with all of the following requirements to the Monitor at the address specified in Schedule "1" hereto (including by e-mail), which Bid shall be delivered by such Bidder by no later than 5:00 p.m. (Toronto Time) on fifty (50) days following issuance of the SISP Order or such later date as may be communicated by the Monitor to Potential Bidders via a Bid Deadline Letter (as defined below) (the "**Bid Deadline**"):

(a) the Bid must be a binding offer to:

(i) acquire all, substantially all or a portion of the Property or the shares of the Applicants pursuant to a reverse vesting order (a "**Sale Proposal**"); and/or

(ii) make an investment in, restructure, reorganize or refinance the Business or the Applicants (an "**Investment Proposal**");

(b) the Bid must include a duly authorized and executed definitive transaction document;

(c) the definitive transaction document in respect of a Sale Proposal or Investment Proposal shall include, among other things:

(i) that the Bid is not conditioned upon (A) the outcome of unperformed due diligence by the Bidder, or (B) obtaining financing, but may be conditioned upon the Applicants receiving the required approvals or amendments relating to the licences required to operate the business, and/or transfer of the Products, if necessary;

(ii) any and all conditions and approvals required to complete the closing of the transaction; and

(iii) all terms in respect of such Sale Proposal or Investment Proposal, as applicable;

(d) the Bid (either individually or in combination with other bids that make up one Bid) shall be an offer to purchase or make an investment in some or all of the Applicants or their Property or Business and shall be consistent with the necessary terms and conditions established by the Monitor and the Applicants and communicated to Bidders;

(e) the Bid must include a letter stating that the Bidder's offer is irrevocable until approval of the Successful Bid(s) by the Court, provided that if such Bidder is selected as the Successful Bidder, its offer shall remain irrevocable until the closing of the transaction contemplated by such Bid;

(f) the Bid must include written evidence of a firm, irrevocable commitment for financing or other evidence of the Bidder's ability to consummate the proposed transaction that will allow the Monitor and Applicants to make a determination as to the Bidder's financial and other capabilities to consummate the proposed transaction;

(g) the Bid must include written evidence, in form and substance satisfactory to the Monitor and Applicants, of authorization and approval from the Bidder's board of directors (or comparable governing body) with respect to the submission, execution and delivery of such Bid, and identification of any anticipated shareholder, regulatory or other approvals outstanding, and the anticipated process and time frame and any anticipated impediments for obtaining such approvals;

(h) the Bid must not include any request for or entitlement to any break or termination fee, expense reimbursement or similar type of payment;

(i) the Bid must fully disclose the identity of each entity that will be entering into the transaction or the financing thereof, or that is otherwise participating in or benefiting from such Bid;

(j) without limiting the foregoing, a Sale Proposal Bid must include:

(i) the purchase price in Canadian dollars and a description of any non-cash consideration, including any future royalty payments or other deferred payment, details of any liabilities to be assumed by the Bidder and key assumptions supporting the valuation;

(A) if the purchase price involves a royalty, earn-out or other deferred payment, the Sale Proposal shall include a specific indication of the Bidder's proposal and/or commitments for and relating to obtaining necessary regulatory approvals and the Bidder's commercialization strategy, manufacturing capabilities, proposed sale milestones and minimum sale amounts, budget and/or commitment for capital expenditures, direct marketing and sales initiatives and support and proposed product positioning within the Potential Bidder's current product portfolio;

(ii) a description of the Property that is expected to be subject to the transaction and any of the Property expected to be excluded;

(iii) a specific indication of the financial capability of the Bidder and the expected structure and financing of the transaction;

(iv) a description of those liabilities and obligations (including operating liabilities) which the Bidder intends to assume and which such liabilities and obligations it does not intend to assume; and

(v) a commitment by the Bidder to provide a non-refundable deposit in the amount of not less than 10% of the purchase price offered upon the Bidder being selected as the Successful Bidder;

(k) without limiting the foregoing, an Investment Proposal Bid must include:

(i) a description of how the Bidder proposes to structure the proposed investment, restructuring, recapitalization, refinancing or reorganization, and a description of any non-cash consideration;

(ii) the aggregate amount of the equity and/or debt investment to be made in the Business or the Applicants in Canadian dollars;

(iii) the underlying assumptions regarding the pro forma capital structure;

(iv) a specific indication of the sources of capital for the Bidder and the structure and financing of the transaction;

(v) a description of those liabilities and obligations (including operating liabilities) which the Bidder intends to assume and which liabilities and obligations it does not intend to assume; and

(vi) a commitment by the Bidder to provide a non-refundable deposit in the amount of not less than 10% of the total new investment contemplated in the Bid upon the Bidder being selected as the Successful Bidder;

(l) the Bid must include acknowledgements and representations of the Bidder that the Bidder:

(i) has, to its satisfaction, had an opportunity to conduct any and all due diligence regarding the Property, the Business and the Applicants prior to making its Bid;

(ii) it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its Bid; and

(iii) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Business, the Property, or the Applicants, or the completeness of any information provided in connection therewith, except as may be expressly stated in the definitive transaction agreement(s) signed by the Applicants;

(m) the Bid must contain such other information as may be reasonably requested by the Monitor in consultation with the Applicants;

(n) the Bid must be received by the Bid Deadline;

(o) the Bid must contemplate closing the transaction set out therein on or before May 31, 2023.

16. Following the Bid Deadline, the Monitor, and the Applicants will assess the Bids received. The Applicants, in consultation with the Monitor, may designate the most competitive Bids that comply with the requirements set out herein to be "**Qualified Bids**". The Applicants and the Monitor shall be under no obligation to designate the highest or otherwise best Bid, or any Bid, as a Qualified Bid. Only Bidders whose Bids have been designated as Qualified Bids shall be eligible to participate in the Auction and/or become the Successful Bidder(s).

17. The Monitor, in consultation with the Applicants, may waive strict compliance with any one or more of the requirements set out herein and deem such non-compliant Bids to be a Qualified Bid.

18. The Monitor may, in consultation with the Applicants, may aggregate separate Bids from unaffiliated Bidders to create one Qualified Bid.

19. The Monitor and the Applicants shall be entitled to discuss and negotiate the Bid and form of any Sale Proposal or Investment Proposal prior to the Bid Deadline for purposes of amending or clarifying the terms and form thereof.

20. The Monitor shall cause each Bidder to be notified in writing as to whether its Bid constituted a Qualified Bid within five (5) business days of the Bid Deadline, or at such later time as the Monitor deems appropriate.

21. The Monitor, in consultation with the Applicants, may extend the Bid Deadline. Any such extension of the Bid Deadline shall be communicated to Potential Bidders by bid deadline extension letter (a "**Bid Deadline Letter**") from the Monitor delivered by email and posted on the Monitor's case website.

Evaluation of Competing Bids

22. Bids shall be evaluated based upon several factors including, without limitation: (i) the purchase price and the net value of the consideration provided by such Bid (with the value of any non-cash consideration being determined by the Applicants in their business judgment, in consultation with the Monitor), (ii) the identity, circumstances and ability of the Bidder to successfully complete such transactions, (iii) the proposed transaction documents, (iv) factors affecting the speed, certainty and value of the transaction, (v) the assets and liabilities included or excluded from the Bid, (vi) any related restructuring costs, (vii) the manufacturing capabilities of the Bidder and (viii) the likelihood and timing of consummating such transaction, each as determined by the Applicants in their business judgment, in consultation with the Monitor.

23. At any stage of the SISP, the Monitor, in consultation with the Applicants, may ascribe monetary values to non-monetary terms in any Bid, Qualified Bid, Initial Bid, or Overbids for the purposes of assessing and/or valuing such bids, including without limitation, the value to be ascribed to any liabilities or contracts to be assumed or not assumed.

24. If the Monitor receives one or more Bids that are designated as Qualified Bids (the "**Qualified Bidders**"), the Applicants, in consultation with the Monitor, may:

    (a) select one or more of such Qualified Bids as the successful bid (the "**Successful Bid(s)**", and the Qualified Bidder(s) making such bid, the "**Successful Bidder(s)**"), with or without negotiation of Qualified Bids with Qualified Bidders; and/or

    (b) direct such Qualified Bidders to participate in an Auction to be conducted and administered by the Monitor, with the assistance of its advisors and the Applicants, in accordance with the terms of this SISP (the "**Auction**").

Auction

25. Following the evaluation of the Qualified Bid(s), the Applicants, in consultation with the Monitor must determine whether the Auction will be held not less than two (2) business days prior to the commencement of the Auction. The Monitor shall notify and provide instructions to participate in the Auction to each Qualified Bidder not less than two (2) business days prior to the commencement of the Auction.

26. Only Qualified Bidders shall be eligible to participate in the Auction. No later than 5:00 p.m. (Toronto time) on the business day prior to the Auction, each Qualified Bidder must inform the Monitor whether it intends to participate in the Auction. The Monitor will promptly thereafter inform in writing, or cause to be informed in writing, each Qualified Bidder who has expressed its intent to participate in the Auction (the "**Auction Participants**") of the identity of all other Qualified Bidders that have indicated their intent to participate in the Auction.

Auction Procedure

27. The Auction shall be governed by the following procedures:

(a) **Participation at the Auction.** Only the Applicants, the Auction Participants, the Monitor and each of their respective advisors will be entitled to attend the Auction, and only the Auction Participants will be entitled to make any subsequent Overbids (as defined below) at the Auction. The Monitor shall provide all Auction Participants with the details of the Initial Bid (as defined below) by 5:00 p.m. (Toronto Time) two (2) business day before the Auction Date;

(b) **No Collusion.** Each Auction Participant shall be required to confirm on the record at the Auction that: (i) it has not engaged in any collusion with respect to the Auction and the SISP; and (ii) its bid and each subsequent Overbid is a good-faith *bona fide* offer, which, if accepted by the Applicants on the record of the Auction forms a binding agreement between the parties, and that the Auction Participant intends to consummate the proposed transaction if selected as the Successful Bidder;

(c) **Minimum Overbid.** The Auction shall begin with the Qualified Bid that represents the highest or otherwise best Qualified Bid as determined by the Applicants, in consultation with, and with the approval of, the Monitor (the "**Initial Bid**"), and any bid made at the Auction by a Auction Participant subsequent to the Monitor's announcement of the Initial Bid (each, an "**Overbid**"), must proceed in minimum additional increments of $100,000.00, or as otherwise declared by the Monitor during the Auction with the approval of the Applicants;

(d) **Bidding Disclosure.** The Auction shall be conducted such that all Overbids will be made and received in one group video-conference, on an open basis, and all Auction Participants will be entitled to be present for all bidding with the understanding that the true identity of each Auction Participant will be fully disclosed to all other Auction Participants and that all material terms of each subsequent bid will be fully disclosed to all other Auction Participants throughout the entire Auction; provided, however, that the Monitor, in its discretion, may establish separate video conference rooms to permit interim, technical, or clarifying discussions between the Monitor and individual Auction Participants with the understanding that all formal Overbids will be delivered in one group video conference, on an open basis;

(e) **Bidding Conclusion.** The Auction shall continue in one or more rounds and will conclude after each Auction Participant has had and refused the opportunity to submit an Overbid with full knowledge of the then-existing highest Qualified Bid(s) or Overbid(s)s, at which time the Monitor will declare the Auction to be concluded;

(f) **No Post-Auction Bids.** No Overbids will be considered for any purpose after the Monitor has declared the Auction to be concluded; and

(g) **Auction Procedures.** The Monitor, in consultation with the Applicants, shall be at liberty to modify or to set additional procedural rules for the Auction as it sees fit.

28. During the Auction, the Applicants, in consultation with, and with the approval of, the Monitor, will:

(a) review Qualified Bids and Overbids, as the case may be, considering the factors set out in paragraph 22, among others; and

(b) identify the highest or otherwise best Qualified Bid or Overbid received at any given time during the Auction, with the highest or otherwise best such bid or bids at the conclusion of the Auction being the Successful Bid(s), and the Qualified Bidder(s) making such bid the Successful Bidder(s).

Deposits

29. Any deposit made by the Successful Bidder(s) pursuant to this SISP shall be held by the Monitor in a single interest bearing account designated solely for such purpose and such deposit shall be dealt with in accordance with the definitive documents for the transactions contemplated by the Successful Bid(s).

Sale Approval Motion Hearing

30. The Successful Bidder(s) shall complete and execute all agreements, contracts, instruments or other documents evidencing and containing the terms and conditions upon which the Successful Bid(s) was made within two (2) business days of the Successful Bid(s) being selected as such, unless extended by the Monitor, in consultation with the Applicants.

31. At the hearing of the motion to approve any transaction with the Successful Bidder(s) (the "**Sale Approval Motion**"), the Applicants shall seek, among other things, approval from the Court to consummate the Successful Bid(s). All the Qualified Bids other than the Successful Bid(s), if any, shall be deemed to be rejected by the Applicants on and as of the date of approval of the Successful Bid(s) by the Court.

Consultation with the Secured Lenders

32. The Monitor, in consultation with the Applicants, may, as it deems appropriate, consult with secured creditors of the Applicants throughout the SISP upon such assurances as to confidentiality as the Monitor may require. To the extent any secured creditor is or is related to a Potential Bidder, the Monitor and Applicants shall not provide such secured lender with information that might create an unfair advantage or jeopardize the integrity of the SISP unless such secured creditor irrevocably confirms in writing to the Monitor that it shall not submit or participate directly or indirectly in the submission of a Bid. Except as set forth in this paragraph, nothing in this SISP shall prohibit a secured creditor of the Applicants (i) from participating as a Bidder in the SISP, or (ii) committing to bid its secured debt, including a credit bid of all outstanding indebtedness under any DIP loan facility (inclusive of interest and all amounts payable under any DIP loan agreement to and including the date of closing of a definitive transaction) in the SISP.

Confidentiality and Access to Information

33. Unless expressly provided for herein, participants and prospective participants in the SISP shall not be permitted to receive any information that is not made generally available to all participants relating to the number or identity of Potential Bidders, Bidders, Qualified Bidders, or Successful Bidder(s), or the details of any bids submitted or the details of any confidential discussions or correspondence between the Applicants, the Monitor and such

other Potential Bidders, Bidders, Qualified Bidders, or Successful Bidder(s) in connection with the SISP, except to the extent that the Applicants (in consultation with, and with the approval of, the Monitor and with the consent of the applicable bidders) are seeking to combine separate Bids to form a Qualified Bid.

34. All discussions regarding Bids should be directed through the Monitor. Under no circumstances should the management of the Applicants be contacted directly without the prior consent of the Monitor. Any such unauthorized contact or communication could result in exclusion of the Potential Bidder or Bidder or Qualified Bidder, as applicable, from the SISP.

Supervision of the SISP

35. The Monitor shall oversee and conduct the SISP, in all respects, and, without limitation to that supervisory role, the Monitor will participate in the SISP in the manner set out in this SISP, the SISP Order, the Initial Order and any other orders of the Court, and is entitled to receive all information in relation to the SISP. In the event that there is disagreement as to the interpretation or application of the SISP, the Court will have the jurisdiction to hear and resolve such dispute.

36. This SISP does not, and will not be interpreted to create any contractual or other legal relationship between the Applicants, or the Monitor and any Potential Bidder, Bidder, Qualified Bidder, Successful Bidder or any other party, other than as specifically set forth in a definitive agreement that may be entered into with the Applicants.

37. Without limiting the generality of preceding paragraph, the Monitor shall not have any liability whatsoever to any person or party, including, without limitation, any Potential Bidder, Bidder, Qualified Bidder, Successful Bidder, the Applicants, or any other creditor or other stakeholder of the Applicants, for any act or omission related to the process contemplated by this SISP. By submitting a Bid, each Bidder shall be deemed to have agreed that it has no claim against the Monitor for any reason whatsoever.

38. Participants in the SISP are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any Bid, due diligence activities, the Auction and any further negotiations or other actions whether or not they lead to the consummation of a transaction.

39. The Applicants, with the approval of the Monitor, shall have the right to modify the SISP (including, without limitation, pursuant to any Bid Deadline Letter) if, in their reasonable business judgment, such modification will enhance the process or better achieve the objectives of the SISP; provided that the service list in these CCAA Proceedings shall be advised of any substantive modification to the procedures set forth herein.

40. Notwithstanding anything to the contrary in this SISP, the Applicants, in consultation with, and with the approval of, the Monitor, may attempt to negotiate a stalking horse bid (a "**Stalking Horse Bid**") prior to the Bid Deadline to provide certainty for the Applicants during the SISP. If the Applicants, in consultation with, and with the approval of, the Monitor, accept a Stalking Horse Bid, such Stalking Horse Bid shall be subject to approval by the Court and the Applicants shall bring a motion before the Court on notice to the service list in these CCAA Proceedings seeking the approval of the Stalking Horse Bid,

together with approval of necessary amendments to the SISP. All Potential Bidders shall be promptly informed of any Court approval of a Stalking Horse Bid and any related amendments to the SISP.

Schedule "1"

Address of Monitor

To the Monitor:

Ernst and Young Inc.
EY Tower, 100 Adelaide Street West
PO Box 1
Toronto, ON M5H 0B3

Attention: Alex Morrison, Michael Hayes and Allen Yao

Email: alex.f.morrison@parthenon.ey.com

michael.hayes@parthenon.ey.com

allen.yao@parthenon.ey.com

Court File No. CV-23-00693595-00CL

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

AND IN THE MATTER OF PLAN OF COMPROMISE OR ARRANGEMENT OF ACERUS PHARMACEUTICALS CORPORATION, ACERUS BIOPHARMA INC., ACERUS LABS INC. AND ACERUS PHARMACEUTICALS USA, LLC.

Applicants

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

ORDER
(SISP APPROVAL AND EXTENSION TO STAY OF PROCEEDINGS)

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Elizabeth Pillon (LSO #35638M)
Tel: (416) 869-5623
Email: lpillon@stikeman.com

Lee Nicholson (LSO #66412I)
Tel : (416) 869-5604
Email: leenicholson@stikeman.com

Philip Yang (LSO #82084O)
Tel: (416) 869-5593
Email: pyang@stikeman.com

Lawyers for the Applicants

Court File No. CV-23-00693595-00CL

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

AND IN THE MATTER OF PLAN OF COMPROMISE OR ARRANGEMENT OF ACERUS PHARMACEUTICALS CORPORATION, ACERUS BIOPHARMA INC., ACERUS LABS INC. AND ACERUS PHARMACEUTICALS USA, LLC.

Applicants

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

MOTION RECORD
(SISP APPROVAL AND EXTENSION TO STAY OF PROCEEDINGS)
(RETURNABLE MARCH 9, 2023)

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Elizabeth Pillon (LSO #35638M)
Tel: (416) 869-5623
Email: lpillon@stikeman.com

Lee Nicholson (LSO #66412I)
Tel : (416) 869-5604
Email: leenicholson@stikeman.com

Philip Yang (LSO #82084O)
Tel: (416) 869-5593
Email: pyang@stikeman.com

Lawyers for the Applicants