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
(APPROVAL AND REVERVE VESTING ORDER AND EXTENSION OF STAY OF PROCEEDINGS)
(RETURNABLE MAY 30, 2023)

May 18, 2023

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TO: THE SERVICE LIST

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

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Applicants

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Applicants

I N D E X

TAB 1

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ONTARIO
SUPERIOR COURT OF JUSTICE
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Applicants

NOTICE OF MOTION
(Re: Approval and Reverse Vesting Order and Extension of Stay of Proceedings)

Acerus Pharmaceuticals Corporation, Acerus Biopharma Inc., Acerus Labs Inc., and Acerus Pharmaceuticals USA, LLC (the "**Applicants**") will make a motion before a Judge presiding over the Ontario Superior Court of Justice (Commercial List) on **Tuesday, May 30, 2023 at 10:00 a.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[1] 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;

[1] All capitalized terms used herein and not otherwise defined herein have the meanings ascribed to them in the affidavit of Naveed Z. Manzoor sworn May 18, 2023, contained at Tab 2 of the Motion Record of the Applicants.

2. An Order substantially in the form attached at Tab 3 of the Motion Record of the Applicants (the "**Approval and Reverse Vesting Order**") which, among other things:

(a) approves the subscription agreement dated as of May 15, 2023, between First Generation Capital Inc. ("**FGC**") as purchaser, and APC, as issuer (the "**Subscription Agreement**") the transactions contemplated therein (the "**Transactions**") and authorizing and directing APC to take such additional steps and execute such additional documents as necessary or desirable for the completion of the Transactions. Upon entry of the Approval and Vesting Order, APC shall seek recognition of same by the US Bankruptcy Court, which is a condition to consummate the Transactions to be authorized and approved, which include but are not limited to:

(i) transferring and vesting all of the Applicants' liabilities to companies to be incorporated (referred to as Residual Cos.); and

(ii) issuing new shares of APC to FGC and terminating and cancelling all existing equity interests of APC outstanding prior to the issuance of the new shares of APC, such that FGC will become the sole shareholder of APC;

(b) granting a release in favour of the Companies' directors, officers and advisors, FAAN as CRO, the Monitor (as defined below) and its advisors and FGC and its directors, officers and advisors;

(c) extending the Stay Period until and including June 30, 2023; and

(d) approving the First Report of the Monitor dated February 2, 2023, the Second Report of the Monitor dated March 7, 2023, and the Third Report of the Monitor, to be filed.

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

4. **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, which was then amended and restated pursuant to the ARIO issued on February 3, 2023;

(b) On February 27, 2023, the US Bankruptcy Court entered the Final Recognition 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;

(c) On March 9, 2023, the Applicants sought and obtained the SISP Order which, *inter alia*, approved the SISP and authorized the Applicants and the Monitor to immediately commence the SISP;

Pre-Filing Solicitation Efforts

(d) Prior to initiating these CCAA Proceedings, the Applicants invested significant time and efforts, with the assistance of advisors, to explore strategic transaction opportunities. The Applicants undertook extensive efforts to explore capital market options throughout 2022;

(e) 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 "**Pre-Filing Strategic Process**");

(f) As part of the Pre-Filing Strategic Process, EY and FAAN administered 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**");

(g) 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. The Pre-Filing SISP commenced on September 21, 2022 and concluded in November 2022;

Post-Filing Solicitation Efforts and Conduct of the SISP

(h) Following the commencement of the CCAA Proceedings and the approval by this Court of the SISP, the Monitor administered the SISP, in consultation with the Applicants;

(i) In accordance with the SISP: (i) the Monitor published notice of the SISP in the Globe and Mail (National Edition) on March 14, 2023 and caused a press release to be issued with Canada Newswire on March 14, 2023; (ii) the Monitor provided the Teaser Letter and NDA to 59 Known Potential Bidders; and (iii) the SISP Order was posted on the Monitor's website on March 10, 2023;

(j) The Monitor returned to several parties who had been involved in the Pre-Filing SISP. In addition to reconnecting with the 59 Known Potential Bidders by way of the Teaser Letter referred to above, the Monitor also contacted 20 additional parties;

(k) The SISP was designed to be broad and flexible. The SISP contemplated 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. Accordingly, the SISP provided the Applicants with the latitude to pursue both asset and share transactions, including through a reverse vesting structure;

(l) The Monitor received six executed NDAs and provided each of these parties with access to the Data Room. Three parties submitted binding offers by the Bid Deadline;

(m) Following careful consideration of the available options, the Special Committee, in consultation with and based on the recommendation of the Monitor, the CRO and counsel for the Applicants, determined that it was in the Applicants' and its stakeholders' best interest to pursue the Subscription Agreement and complete negotiations as the Successful Bid under the SISP;

(n) After extensive discussion and careful consideration of the alternative options, the Board approved the FGC Bid and the Subscription Agreement as the Successful Bid, as the Board agreed with the Applicants' advisors, the Monitor and its counsel that the only viable path forward for the Applicants was to pursue the Bid submitted by FGC;

(o) On May 15, 2023, the Subscription Agreement was executed by APC and FGC, subject to Court approval. The execution of the Subscription Agreement represents the culmination of extensive solicitation efforts on the part of the Applicants and EY, which occurred both prior to and after the commencement of the CCAA Proceedings and was a broad canvass of the market of parties interested in the Applicants' business and assets;

Reverse Vesting Structure

(p) The Transactions contemplated in the Subscription Agreement have been structured to form a "reverse vesting" transaction whereby:

  (i) FGC will subscribe for and purchase new shares of APC, who will, in turn, cancel and terminate all of its existing shares so that FGC may become the sole shareholder of APC and ultimately, each of the subsidiaries of APC (including APL); and

  (ii) all excluded contracts, excluded assets, and excluded liabilities with respect to the Companies (including APL) will be transferred and "vested out" to corporations (Residual Cos.) to be incorporated by APC in advance of the closing date, so as to allow FGC to indirectly acquire APC's business and assets on a "free and clear" basis;

(q) The reverse vesting structure will allow the Applicants to maintain all of its licenses and intellectual property without requiring any additional steps or regulatory approvals to transfer them to FGC. As the Applicants are facing significant liquidity constraints, the delays, costs and uncertainty associated with getting its licenses transferred is not a viable option;

(r) Additionally, the reverse vesting structure permits the maintenance of the Companies' tax attributes;

(s) A reverse vesting structure will not result in any material prejudice or impairment of any of the Applicants' creditors' rights that they would otherwise have under an asset sale transaction;

The Releases

(t) The Applicants are also seeking a court-ordered release (the "**Release**") in favour of:

(i) the present and former directors, officers, employees, legal counsel and advisors of the Applicants;

(ii) the CRO;

(iii) the Monitor and its legal counsel;

(iv) FGC, in its capacities as secured lender to the Applicants and majority shareholder of APC, and its current and former directors, officers, employees, legal counsel and advisors; and

(v) FGC and its current and former directors, officers, employees, legal counsel, and advisors, (collectively, the "**Released Parties**").

(u) The Release covers any and all present and future claims against the Released Parties based upon any fact or matter of occurrence in respect of the Transactions or the Applicants, its asset, business or affairs or administration of the Applicants, except any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA, in connection with the Subscription Agreement or the closing documents, or any individuals named as defendants in the litigation with Jones Day;

(v) The Release is being sought, with the support of FGC, in order to achieve certainty and finality for the Released Parties in the most efficient and appropriate manner given the circumstances;

(w) The Applicants are also unaware of any statutory liabilities in respect of the Released Parties (particularly, the directors and officers of the Applicants) and to date, no stakeholder of the Applicants have made the Applicants or the Monitor aware that they intend to assert a claim against any of the Released Parties in respect of any claims covered by the Release;

(x) The Applicants, the Monitor, and FGC all believe that the Release is an essential component to the Transactions;

Extension of the Stay Period

(y) Pursuant to the Stay Extension Order, the Stay Period was extended to May 30, 2023. Since the granting of the SISP Order and the Stay Extension Order, the Applicants have acted in good faith and with due diligence to, among other things, stabilize its business, conduct the SISP, and negotiate with key stakeholders, all with the oversight of the Monitor;

(z) The Subscription Agreement contemplates an Outside Date for Closing of June 30, 2023;

(aa) Additional time is required to complete the Transactions contemplated under the Subscription Agreement and an extension of the Stay Period is necessary to provide the stability required during that time;

(bb) 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 June 30, 2023;

Other Grounds

(a) The provisions of the CCAA, including but not limited to s. 11, s. 11.02 and s. 36 thereof, and the inherent and equitable jurisdiction of this Honourable Court;

(b) 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

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

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

(a) The Affidavit of Naveed Z. Manzoor, sworn May 18, 2023, and the Exhibits attached thereto;

(b) The Third 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.

May 18, 2023

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Applicants

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

NOTICE OF MOTION
(Re: Approval and Reverse Vesting Order and Extension of Stay of Proceedings)

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TAB 2

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

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Applicants

AFFIDAVIT OF NAVEED Z. MANZOOR
(Sworn May 18, 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 Group Inc. ("**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 Companies 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 the issuance of an order (the "**Approval and Reverse Vesting Order**"), among other things:

   a. approving the subscription agreement dated as of May 15, 2023, between First Generation Capital Inc. ("**FGC**") as purchaser, and APC, as issuer (the "**Subscription Agreement**") the transactions contemplated therein (the "**Transactions**") and authorizing and directing APC to take such additional steps and execute such additional documents as necessary or desirable for the completion of the Transactions. The Transactions to be authorized and approved include but are not limited to:

i. transferring and vesting all of the Applicants' liabilities to companies to be incorporated (referred to as Residual Cos.); and

ii. issuing new shares of APC to FGC and terminating and cancelling all existing equity interests of APC outstanding prior to the issuance of the new shares of APC, such that FGC will become the sole shareholder of APC;

b. granting a release in favour of the Companies' directors, officers and advisors, FAAN as CRO, the Monitor (as defined below) and its advisors and FGC and its directors, officers and advisors as described in greater detail below; and

c. extending the Stay Period (as defined below) until and including June 30, 2023.

3. All references to monetary amounts in this affidavit are in Canadian dollars unless otherwise indicated.

I. BACKGROUND

4. On January 26, 2023, the Ontario Superior Court of Justice (Commercial List) (the "**Court**") granted in favour of the Applicants an Initial Order (the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), which, among other things:

a. appointed Ernst & Young Inc. ("**EY**" or the "**Monitor**") as monitor of the Applicants in these proceedings (the "**CCAA Proceedings**");

b. granted an initial 10-day stay of proceedings in favour of the Applicants, the Monitor, and the Companies' directors and officers (the "**Initial Stay of Proceedings**");

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

d. authorized APC to act as foreign representative of the Companies;

e. approved the execution by the Applicants of a debtor-in-possession facility loan agreement (the "**DIP Facility Agreement**") entered into on January 25, 2023 with FGC, pursuant to which FGC (in such capacity, the "**DIP Lender**") agreed to advance an initial amount of US$500,000 to the Applicants during the initial 10-day stay period (the "**DIP Facility**") in order to finance the Companies' capital requirements and other general corporate purposes, post-filing expenses and costs, and ordered the establishment of a priority charge in favour of the DIP Lender against the assets, property and undertakings of the Applicants (the "**Property**") in order to secure the Applicants' obligations under the DIP Facility Agreement (the "**DIP Lender's Charge**");

f. ordered the establishment of an "**Administration Charge**" against the Property in an initial amount of $150,000 as security for the payment of professional fees and disbursements incurred and to be incurred by the CRO, the Monitor, counsel to the Monitor, and counsel to the Applicants; and

g. ordered the establishment of a "**Directors' Charge**" against the Property in a maximum amount of $200,000 in favour of the directors and officers of the Applicants, as security for the Applicants' obligation to indemnify such directors and officers for obligations and liabilities they may incur in such capacities after the commencement of the CCAA Proceedings.

5. My initial affidavit (the "**Initial Affidavit**") sworn in support of the Initial Order is attached (without exhibits) hereto as **Exhibit "A"**. To avoid duplication, I will when relevant refer back to the Initial Affidavit. The complete Initial Affidavit with exhibits will be filed with this motion, such that the evidence is before the Court as may be required.

6. 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

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

a. extended the Stay of Proceedings to and including April 5, 2023;

b. increased the Administration Charge to $300,000;

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. approved a key employee retention plan (the "**KERP**"), sealed the unredacted KERP, and granted a priority charge over the Property in favour of the key employees referenced in the KERP up to the maximum amount of $455,250.

8. 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**").

9. On March 9, 2023, the Applicants sought and obtained an order from the Court (the "**SISP Order**"), which, *inter alia*:

a. extended the Stay of Proceedings to and including May 19, 2023; and

b. approved the sale and investment solicitation process (the "**SISP**") and authorized the Applicants and the Monitor to immediately commence the SISP.

10. At the time of seeking the SISP Order, the Applicants noted that there was a possibility that a "reverse vesting" transaction structure was an alternative that may be required to implement a transaction, which is also contemplated in the SISP. It was also noted that the SISP Order did not pre-approve such a structure and it would be necessary for the Companies to come back and support such a request, should it ultimately be necessary to implement a transaction through this structure.

11. On May 16, 2023, the Stay of Proceedings was extended until and including May 30, 2023 (the "**Stay Extension Order**").

12. Copies of the ARIO, the Final Recognition Order, the SISP Order (which now includes the SISP as a Schedule), and the Stay Extension Order are attached hereto as **Exhibit "B"**, **Exhibit "C"**, **Exhibit "D"**, and **Exhibit "E"**, respectively.

13. As a result of the conclusion of the SISP, the Applicants now seek the issuance of the Approval and Reverse Vesting Order and the transactions contemplated thereunder.

II. DESCRIPTION OF THE APPLICANTS' SOLICITATION EFFORTS

A. The Pre-Filing Strategic Process

14. Prior to initiating these CCAA Proceedings, the Applicants invested significant time and efforts, with the assistance of advisors, to explore strategic transaction opportunities. The Applicants undertook extensive efforts to explore capital market options throughout 2022. Following the acquisition of Serenity Pharmaceuticals LLC in March 2022, the Applicants encountered additional funding needs in connection with the launch of Noctiva. Consequently, the Applicants expanded their solicitation efforts by contacting known parties in the speciality pharmaceutical industry, as well as financial parties known to be interested in making investments in speciality pharmaceutical companies.

15. Despite several parties expressing interest, these informal marketing efforts did not lead to any offers. Accordingly, 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 "**Pre-Filing Strategic Process**"). A copy of the press release announcing the Pre-Filing Strategic Process and soliciting non-binding letters of intent is attached hereto as **Exhibit "F"**.

16. As part of this initiative, APC established a committee of independent directors (the "**Special Committee**") to supervise the Pre-Filing Strategic Process. EY and Ernst & Young Orenda Corporate Finance Inc. ("**EYO**") were also engaged to act as financial advisor to APC in respect of the Pre-Filing Strategic Process. FAAN was also engaged and I was appointed as the Chief Strategic Officer to assist in the strategic review.

17. As part of the Pre-Filing Strategic Process, EY and FAAN administered 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 and in my Initial Affidavit.

B. The Pre-Filing SISP

18. 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.

19. 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.

20. 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. The Pre-Filing SISP commenced on September 21, 2022 and concluded in November 2022.

C. The Conduct of the SISP

21. Following the commencement of the CCAA Proceedings and the approval by this Court of the SISP, the Monitor administered the SISP, in consultation with the Applicants. The SISP contemplated the following milestones, each of which could be modified by the Monitor as permitted in the SISP:[1]

Milestone	Deadline
Publish notice of SISP and deliver Teaser Letter and NDA to Known Potential Bidders	Five (5) days 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

[1] All capitalized terms used in this subsection and not otherwise defined herein have the meanings given to them in the SISP.

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 No later than May 19, 2023

22. The SISP was designed to be broad and flexible. The SISP contemplated 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. Accordingly, the SISP provided the Applicants with the latitude to pursue both asset and share transactions (including through a reverse vesting structure).

23. In accordance with the SISP:

a. the Monitor published notice of the SISP in the Globe and Mail (National Edition) on March 14, 2023 and caused a press release to be issued with Canada Newswire on March 14, 2023;

b. the Monitor provided the Teaser Letter and NDA to 59 Known Potential Bidders; and

c. the SISP Order was posted on the Monitor's website on March 10, 2023.

24. The Monitor returned to several parties who had been involved in the Pre-Filing SISP. In addition to reconnecting with the 59 Known Potential Bidders by way of the Teaser Letter referred to above, the Monitor also contacted 20 additional parties.

25. The Monitor received six executed NDAs and provided each of these parties with access to the Data Room. Three parties submitted binding offers by the Bid Deadline.

26. The three Bids received by the Bid Deadline include:

a. Bid for a single product at nominal value (the "**Unsuccessful Bid 1**", and the Bidder being "**Bidder 1**");

b. Bid for a separate Product wherein the primary form of consideration consisted of royalty and milestone payments (the "**Unsuccessful Bid 2**", and the Bidder being "**Bidder 2**"); and

c. Bid by FGC (i.e., the Subscription Agreement) for the shares of APC and all of the assets of the Companies (including the shares of APC's subsidiaries) wherein the consideration is a credit bid of all the secured liabilities of the Companies (including the outstanding amounts under the DIP Facility), to be implemented as a reverse vesting transaction. As referenced in the Initial Affidavit, FGC is the secured lender and majority shareholder of APC. The President and Chief Executive Officer of FGC is Ian Ihnatowycz, who also serves as Chairperson of APC's board of directors (the "**Board**").

27. Following the Bid Deadline, the Monitor and Applicants and their respective counsel began reviewing and discussing the Bids which had been received.

28. On May 1, 2023, following the Bid Deadline, the Monitor and the Company were contacted by two additional parties who indicated that they may be interested in the Opportunity. As the Bid Deadline had already expired, based on the information provided by these two parties, the Monitor and the Applicants determined that it was not appropriate to extend the Bid Deadline in the circumstances.

29. The milestone contemplated in the SISP for the Applicants and the Monitor to assess the Bids received and notify each Bidder as to whether its Bid constituted a Qualified Bid was extended from May 5, 2023 to May 9, 2023, as permitted in the SISP. This milestone was extended to provide the Applicants and the Monitor with additional time to review the Bids. Each of the Bidders were advised of the extension.

30. On May 8, 2023, the Special Committee held a meeting with the CRO, the Applicants' counsel, the Monitor and its counsel to discuss the Bids. Following careful consideration of the available options, the Special Committee, in consultation with and based on the recommendation of the Monitor, the CRO and counsel for the Applicants, determined that it was in the Applicants' and its stakeholders' best interest to pursue the Subscription Agreement and complete negotiations as the Successful Bid under the SISP.

31. In making this decision, the Applicants considered the following when exercising their business judgment, among other things:

a. in respect of the Unsuccessful Bid 1, it offered nominal consideration for a minor asset owned by the Applicants, with such consideration being insufficient to cover expected professional fees related to closing the Unsuccessful Bid 1;

b. in respect of the Unsuccessful Bid 2:

    i. the cash payment provided by Unsuccessful Bidder 2 was insufficient to repay the DIP Facility and amounts secured by the Administration Charge, Directors Charge and KERP in order to permit the Applicants to exit these CCAA Proceedings and the Applicants are unable to generate liquidity from the excluded assets;

    ii. the vast majority of the offer value was driven by future sales, which are subject to a high degree of uncertainty and risk;

    iii. the Bid was only for a single Product of the Applicants and did not provide for a going-concern solution related to the remaining business of the Applicants;

    iv. the Bid does not assume any liabilities of the Applicants; and

    v. the Bid does not provide for the potential employment of any existing employees;

c. the Subscription Agreement:

    i. represents a credit bid of the DIP Facility and existing debt position in an amount superior to the other bids;

    ii. provides sufficient liquidity to provide for post filing obligations incurred in the CCAA and to exit the CCAA Proceedings;

    iii. preserves the going concern value of the Applicants' business for the benefit of stakeholders, including the potential of future employment for existing employees;

    iv. provides for the retainer of various assets and contracts, including in respect of Noctiva, Natesto, Avanafil, Lidbree, Tefina, and TriVair;

v. by virtue of the reverse vesting structure, the tax losses currently incurred by the Companies remain and may be available going forward and to maintain licenses and regulatory approvals;

vi. assumes certain liabilities; and

vii. represented the highest and best bid in the circumstances.

32. Following the review and recommendation of the Special Committee, the Monitor and the Applicants and their respective counsel continued to discuss and finalize the form of the Subscription Agreement and the Approval and Reverse Vesting Order.

33. On May 9, 2023, in accordance with the SISP, the Monitor contacted Unsuccessful Bidder 1 and Unsuccessful Bidder 2 to notify them that their Bids were not selected as the Successful Bid, and an Auction would not be conducted.

34. On May 12, 2023, the Board, without Mr. Mr. Ihnatowycz, met to consider the Special Committee's recommendation to approve the Bid submitted by FGC as the Successful Bid. After extensive discussion and careful consideration of the alternative options, the Board also approved the FGC Bid as the Successful Bid. In reaching this conclusion, the Board considered, among other things, financial information and analysis provided by the Monitor and the recommendation of the Monitor, CRO and counsel for the Applicants.

35. The Board agreed with the Applicants' advisors, the Monitor and its counsel that the only viable path forward for the Applicants was to pursue the Bid submitted by FGC. For the reasons set out above, the Unsuccessful Bid 1 and Unsuccessful Bid 2 were not viable alternatives.

36. The Subscription Agreement was entered into between APC and FGC on May 15, 2023. A copy of the Subscription Agreement is attached hereto as **Exhibit "G"**.

37. The Monitor will provide further details of the SISP through its Third Report.

III. RELIEF SOUGHT

A. Approval of the Subscription Agreement[2]

38. As at the date of this affidavit, the highest and best offer in respect of the Applicants' business and/or assets is the offer made by FGC under the Subscription Agreement, which is summarized below. To help illustrate the proposed transaction, a pre and post corporate structure of the Applicants is attached hereto as **Exhibit "H"**.

Key Terms	Subscription Agreement
Purchaser	First Generation Capital Inc.
Purchased Assets	The Purchased Shares, which represent all the equity interest in APC, and for the avoidance of doubt, every direct and indirect subsidiary of APC. All contracts, other than the Excluded Contracts and Excluded Leases referenced in Schedule 2.2(c), will remain with the Companies.
Purchase Price	Credit Bid Consideration: The purchase price payable by Purchaser for the Purchased Shares shall be the release of the applicable members of the Acerus Group from all amounts outstanding and obligations owing to Purchaser pursuant to the Loan Agreements and the DIP Facility Loan Agreement as of the Closing Date, including the principal amount of such claims and interest accrued as of the Closing Date, which amount as of April 28, 2023 is **USD$62,187,732.63**, plus all accrued and unpaid interest thereon through to and including the Closing Date, plus any fees and expenses associated therewith.
Transaction Structure	Reverse vesting structure.
Regulatory Approvals	No regulatory or competition act approval is required. A partial revocation order in respect of each of the FFCTOs and other cease trade orders in effect in respect of APC which impairs the ability of APC to issue the Purchased Shares and to redeem and cancel the Equity Interests subject to redemption and cancellation thereunder.
Outside Date for Closing	June 30, 2023.
Employees	FGC will interview employees of the Companies and in its discretion make offers of employment ten days, but no later than five days prior to the anticipated Closing Date. In the event that no offer is made to an employee, such employee will be terminated prior to Closing.

[2] All capitalized terms used in this section and not otherwise defined herein have the meanings given to them in the Subscription Agreement.

Retained Liabilities	• All Post-Filing Claims • All liabilities of the Companies arising from and after Closing • Tax liabilities • Intercompany Claims • Indemnification obligations to current and former directors and officers of the Companies, subject to certain conditions • Jones Day Litigation in respect of APL
Administrative Expenses Reserve	On the Closing Date, the Companies shall pay the Monitor the Administrative Expense Amount (cash in an amount equal to the Administrative Expense Amount and CCAA Charges). From time to time after the Closing Date, the Monitor may pay from the Administrative Expense Amount the Administrative Expense Costs and amounts secured by the CCAA Charges, with unused amounts (if any) being transferred by the Monitor to APC.
Key Conditions to Closing	Key conditions include: • The Court granting the Vesting Order, in a form satisfactory to FGC, including in respect of proposed releases • The U.S. Bankruptcy Court granting the Vesting Recognition Order • All required Transaction Regulatory Approvals in full force and effect except for those that need not be in full force and effect prior to Closing
Other	Upon closing, FGC shall release the Company, the Monitor, the CRO, and their respective directors and officers and legal counsel from all actual or potential Released Claims relating to the Business, the Purchased Shares or the Retained Liabilities, save and except for Released Claims arising out of fraud, bad faith or illegal acts. Upon closing, APC and its Affiliates shall release FGC, the Monitor and their respective directors and officers and legal counsel from actual or potential Released Claims relating to (i) the Purchased Shares; (ii) all other Equity Interests of the Company which remain after the application of the Vesting Order, (ii) the Retained Liabilities, (iii) the Excluded Assets or (iv) the Excluded Liabilities, save and except for Released Claims arising out of fraud, bad faith or illegal acts.

39. The execution of the Subscription Agreement represents the culmination of extensive solicitation efforts on the part of the Applicants and EY, which occurred both prior to and after the commencement of the CCAA Proceedings. I believe that the Pre-Filing Strategic Process leading

up to the commencement of the CCAA Proceedings broadly canvassed the market of parties interested in the Applicants' business and assets.

40. The Transactions contemplated in the Subscription Agreement represent the best and only viable outcome for the Applicants, its creditors, and other stakeholders in the circumstances. The benefits of the Transactions include the following:

a. based on the price payable under the Subscription Agreement, all of the Applicants' secured liabilities will be satisfied by way of the credit bid;

b. the Subscription Agreement provides for various unsecured and contingent liabilities being assumed, in comparison to the other potential alternatives which provided for vesting of all liabilities; and

c. the completion of the Transactions will allow for the Applicants to continue operations as a going concern, resulting in (i) the potential for employees to preserve their employment; (ii) suppliers of goods and services being able to maintain their business relationships with the Applicants; (iii) opportunity for each of the pharmaceutical products previously held by the Companies, to be pursued and determine if they can be successfully brought to market at a future date; and (iv) many of the contractual distribution and pharmaceutical product testing arrangements will also remain intact without need for the Companies to take further steps.

41. The Transactions contemplated in the Subscription Agreement have been structured to form a "reverse vesting" transaction. In essence, instead of providing for a traditional asset sale transaction where all purchased assets are purchased and transferred to the purchaser on a "free and clear" basis and all excluded assets, excluded contracts and excluded liabilities remain with the debtor company, the Transactions provide for a share transaction whereby, essentially:

a. FGC will subscribe for and purchase new shares of APC, who will, in turn, cancel and terminate all of its existing shares so that FGC may become the sole shareholder of APC and ultimately, each of the subsidiaries of APC (including APL); and

b. all excluded contracts, excluded assets, and excluded liabilities with respect to the Companies (including APL) will be transferred and "vested out" to corporations (Residual Cos.) to be incorporated by APC in advance of the closing date, so as to allow FGC to indirectly acquire APC's business and assets on a "free and clear" basis.

42. More specifically, if approved by this Court, the Subscription Agreement provides for the following sequence to occur upon closing (the "**Closing Sequence**"):

a. first, (i) with respect to APC, ABI, and ALI (collectively, the "**Canadian Entities**"), all of their right, title and interest in and to their respective Excluded Assets shall vest absolutely and exclusively in Residual Co. 1, and (ii) with respect to APL all of APL's right, title and interest in and to the Excluded Assets shall vest absolutely and exclusively in Residual Co. 2, and in each case, all applicable Claims and Encumbrances shall continue to attach to the Excluded Assets and to the Purchase Price;

b. second, all Excluded Contracts, Excluded Leases and Excluded Liabilities, other than set off claims asserted as defences to any claims made by the any member of the Acerus Group, which for certainty includes all Claims and Encumbrances of APC (other than the Retained Liabilities) shall be channeled to, assumed by and vest absolutely and exclusively in Residual Co. 1, as to those which relate to the Canadian Entities, and Residual Co. 2, as to those that relate to APL, such that the applicable Excluded Contracts, Excluded Leases and Excluded Liabilities shall become obligations of Residual Co. 1 and Residual Co. 2, respectively, and shall no longer be obligations of the Canadian Entities or APL and all of the Canadian Entities and APL's respective assets, licenses, undertakings and properties of every nature and kind whatsoever and wherever situate, including property held in trust for the Canadian Entities and APL (the **"Acerus Group Property**"), shall be forever released and discharged from such Excluded Contracts, Excluded Leases and Excluded Liabilities and all related Claims and all Encumbrances affecting or relating to the Acerus Group's Property are to be expunged and discharged as against the Acerus Group's Property;

c. third, the Articles of Reorganization shall be filed or deemed to have been filed;

d. fourth, in consideration for the Purchase Price, APC shall issue the Purchased Shares to FGC and all of the right, title and interest in and to the Purchased Shares shall vest absolutely in FGC, free and clear of and from any and all Claims and Encumbrances of any kind and in favour of any party and, for greater certainty, all of the Claims and Encumbrances of any kind affecting or relating to the Purchased Shares would be expunged and discharged as against the Purchased Shares;

e. fifth, pursuant to the Articles of Reorganization any fractional Purchased Shares and all Equity Interests of APC outstanding prior to the issuance of the Purchased Shares other than the Purchased Shares, including all options, conversion privileges, equity-based awards, warrants, securities, debentures, loans, notes or other rights, agreements or commitments of any character whatsoever that are held by any Person and are convertible or exchangeable for any securities of APC or which require the issuance, sale or transfer by APC, of any shares or other securities of APC and/or the share capital of APC, or otherwise relating thereto, shall be deemed terminated and cancelled and the only Equity Interests of APC that shall remain shall be the Purchased Shares; and

f. sixth, the Acerus Group shall be deemed to cease being Applicants in these CCAA Proceedings, and the Acerus Group shall be deemed to be released from the purview of the Initial Order and all other Orders of this Court granted in respect of these CCAA Proceedings, save and except for the Approval and Reverse Vesting Order, the provisions of which (as they relate to the Acerus Group) shall continue to apply in all respects.

43. The pharmaceutical industry is heavily regulated. In order for the Companies to carry on its business, they are required to maintain various licenses. A variety of licenses and contracts were initially established by the Companies. I understand some were burdensome to initially establish, and/or would require a variety of steps should it be necessary to transfer to a third party outside the Companies. The identity of a potential purchaser / transferee and whether that party had its own establishment licenses and regulatory approvals, would also factor into the transferability of the various licenses and contracts. The licenses and contracts currently held by the Companies which would require transfer or re-establishment and/or new arrangements to be entered into if an asset transfer was implement include but are not limited to:

a. drug establishment license and import license in Canada;

b. state business licenses in the US;

c. contracts with the US government and payors;

d. contracts with distributors in Canada, the US, and globally;

e. intellectual property which would require re-recording and registration of the names and assignment on all patents worldwide; and

f. marketing materials in the name of the Companies, originally approved by the US Food and Drug Administration and Pharmaceutical Advertising Advisory Board in Canada and other organizations, which may require resubmission and approval, and thereafter the cost of rebranding of materials.

44. Accordingly, the Subscription Agreement was structured as a reverse vesting transaction because the Companies maintain various licenses that are required to maintain its operations, as well as in-progress trials and testing programs that are proceeding under and in the name of the Companies. Under a traditional asset sale transaction structure, some of these licenses may be difficult to transfer to a purchaser and, to the extent that such transfer is possible, the steps required to proceed with such transfer will likely result in additional delays, costs and uncertainty.

45. Additionally, as referenced above, the Companies hold various contracts with government entities, particularly in the United States, some of which may be difficult to transfer to a purchaser and, to the extent such transfer is possible, the steps required to proceed with such transfer will likely result in additional delays, costs and uncertainty. The reverse vesting structure will also allow the Applicants to maintain all of its licenses and intellectual property without requiring any additional steps or regulatory approvals to transfer them to FGC. As the Applicants are facing significant liquidity constraints, the delays, costs and uncertainty associated with getting its licenses transferred is not a viable option.

46. Additionally, the reverse vesting structure permits the maintenance of the Companies' tax attributes, which include net operating losses in the approximate amount of $215 million. FGC has advised the Monitor that the Companies' tax attributes is an important consideration in their decision to credit bid the entire amount of the Companies' secured debt.

47. Importantly, the Monitor had enquired with FGC and its counsel with respect to whether FGC would be willing to consider a plan of arrangement. FGC was not willing to consider this structure to implement a transaction.

48. I do not believe that completing the Transactions under a reverse vesting structure will result in any material prejudice or impairment of any of the Applicants' creditors' rights that they would otherwise have under an asset sale transaction under any other alternative available to the Applicants. The Subscription Agreement maintains the rights that creditors would otherwise have in an asset sale transaction. In the case of parties with existing Contracts with the Companies, though no assignment of contracts (consensual or through an assignment order) is contemplated

as part of the Transactions, the Subscription Agreement provides for all contracts, other than the Excluded Contracts, to remain with the Companies. The contracting parties therefore have the opportunity to continue supplying goods and services to the Companies post-emergence from the CCAA Proceedings. All contract counterparties have also been served with the Companies' motion record to provide them with notice that their contracts are either being retained or excluded as part of the Transactions.

49. In this case, the market has been thoroughly canvassed and there was simply no other viable alternative transaction available to the Companies. The only going-concern option, which would result in an ongoing customer or supplier for contract counterparties, among other benefits, are the Transactions with FGC under the Subscription Agreement, which is to be implemented through a reverse vesting structure.

50. While a variety of liabilities will be vested out into Residual Cos. in this structure, the same result would have occurred had the transaction been implemented in an asset purchase structure. The concept of Retained Liabilities in the Subscription Agreement provides a benefit for a variety of stakeholders that would not have otherwise had this benefit in a traditional vesting transaction structure. As referenced above, the Retained Liabilities include: (a) the Jones Day Litigation in respect of APL; (b) All Post-Filing Claims; (c) All liabilities of the Companies arising from and after Closing; (d) Tax liabilities; (e) Intercompany Claims; and (f) Indemnification obligations to current and former directors and officers of the Companies, subject to certain conditions.

51. Finally, I believe, based on my involvement with the Pre-Filing Strategic Process and the SISP, that:

a. the process leading to the proposed Transactions, which began in September 2022, was reasonable in the circumstances;

b. the Monitor was actively involved in the Pre-Filing Strategic Process and the SISP and was consulted by the Applicants throughout;

c. the Transactions, if approved by this Court, will result in the best outcome for the Applicants and their creditors and other stakeholders in the circumstances;

d. the consideration to be received for the Purchased Shares is reasonable and fair, taking into account their market value and the broad canvassing of the potentially interested parties during the Pre-Filing Strategic Process and the SISP;

e. the Company has now tested the market on two separate occasions with the benefit of experienced advisors. This is the best outcome in the circumstances, and results in a going concern solution for the Companies;

f. the credit bid by FGC of the entirety of its secured indebtedness will allow the Companies to emerge with a clean balance sheet and will provide the Companies with the opportunity for a fresh start to continue developing its products with the hopes of bringing them to market; and

g. the Monitor and the Company's secured creditor FGC are both supportive of the relief sought on this motion.

B. The Releases

52. As set forth in the draft Approval and Reverse Vesting Order, the Applicants also seek the issuance of a court-ordered release (the "**Release**") in favour of:

a. the present and former directors, officers, employees, legal counsel and advisors of the Applicants;

b. the CRO;

c. the Monitor and its legal counsel;

d. FGC, in its capacities as secured lender to the Applicants and majority shareholder of APC, and its current and former directors, officers, employees, legal counsel and advisors; and

e. FGC and its current and former directors, officers, employees, legal counsel, and advisors,

(collectively, the "**Released Parties**").

53. The Release covers any and all present and future claims against the Released Parties based upon any fact or matter of occurrence in respect of the Transactions or the Applicants, its asset, business or affairs or administration of the Applicants, except any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA, in connection with the Subscription

Agreement or the closing documents, or any individuals named as defendants in the litigation with Jones Day.

54. The Release is being sought, with the support of FGC, in order to achieve certainty and finality for the Released Parties in the most efficient and appropriate manner given the circumstances.

55. The Applicants believe that the Release sought is appropriate, given the significant and material contributions of the Released Parties in connection with the Transactions which, as previously discussed, will allow for the satisfaction of all the Applicants' secured liabilities, assumption of certain unsecured liabilities, and will allow the Applicants to continue its operations as a going concern, resulting in: (i) the potential of several of the Applicants' employees preserving their employment and (ii) suppliers of goods and services having the opportunity to maintain their business relationships with the Applicants.

56. The Applicants are also unaware of any statutory liabilities in respect of the Released Parties (particularly, the directors and officers of the Applicants) and to date, no stakeholder of the Applicants have made the Applicants or the Monitor aware that they intend to assert a claim against any of the Released Parties in respect of any claims covered by the Release.

57. The Applicants, the Monitor, and FGC all believe that the Release is an essential component to the Transactions.

C. Jones Day

58. As the SISP was being conducted, the Companies and Monitor became aware of a potential challenge being contemplated by a contingent creditor of the Applicants, Jones Day. I understand that Jones Day had provided legal services to Serenity Pharmaceuticals LLC ("**Serenity**") and had commenced litigation against APL to recover on the outstanding accounts. The litigation had been amended in July 2020 to include various individuals and in September 2022 to include APC.

59. Canadian counsel retained by Jones Day had indicated to the Companies' counsel and Monitor of the potential of a motion, seeking to ensure the ability to continue the litigation through lifting of the stay of proceedings or otherwise; and also, an opportunity to respond to the form of transaction being pursued, once the SISP had been completed including a review of existing security if the Successful Bid was a credit bid.

60. The structure of the reverse vesting transaction in the Subscription Agreement addresses the Jones Day issues as follows:

a. The Monitor and Companies analyzed the available bids, taking into consideration the potential challenge related to certain of the pre-filing security

b. The assumption of the Jones Day obligation as a Retained Liability by APL, and if successful are able to continue to pursue recovery of the liability post-Closing as against APL;

c. director and officer releases have carve-outs as required by the relevant provisions in the CCAA, and a specific carve-out related to the Jones Day litigation;

d. the credit bid provided for in Subscription Agreement will ensure that the existing secured debt will be satisfied as part of the implementation of the transaction; and

e. the Subscription Agreement does not contemplate any transfer of assets or liabilities among the Applicants.

61. Should Jones Day proceed with its challenges to the Subscription Agreement, the Applicants reserve their rights to file supplemental materials to respond.

D. Notice

62. Should the Court approve the Subscription Agreement and the Transactions contemplated therein, the Companies will seek recognition of the Approval and Reverse Vesting Order before the US Bankruptcy Court.

63. Parties on the service list, including those based in the United States, have been provided with notice of this motion and will have an opportunity to appear before the Canadian Court at first instance with respect to any matters they wish to raise.

E. Extension of Stay Period

64. Pursuant to the Stay Extension Order, the Stay Period was extended to May 30, 2023. Since the granting of the SISP Order and the Stay Extension Order, the Applicants have acted in good faith and with due diligence to, among other things, stabilize its business, conduct the SISP, and negotiate with key stakeholders, all with the oversight of the Monitor.

65. The Subscription Agreement contemplates an Outside Date for Closing of June 30, 2023. Additional time is required to complete the Transactions contemplated under the Subscription Agreement and an extension of the Stay Period is necessary to provide the stability required during that time.

66. The Applicants have prepared an updated cash flow forecast which will be attached to the Third Report of the Monitor (the "**Updated Cash Flow Forecast**"). The Updated Cash Flow Forecast reflects that the Applicants are expected to maintain liquidity to fund operations up to June 30, 2023.

67. I understand that the Monitor will be providing further details with respect to the appropriateness of the requested extension to the Stay Period in its Third Report.

IV. CONCLUSION

68. In light of the foregoing, I believe that the relief sought by the Applicants in connection with this Motion is reasonable and appropriate in the circumstances. I understand that the Monitor is also supportive of the relief sought by the Applicants in connection with this Motion.

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 18 day of May, 2023, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.	)))))))	
DocuSigned by: Philip Y 36124C4218DD476...	)))	DocuSigned by: Naveed Z. Manzoor 090E0EC3FAE4473...
A Commissioner for Taking Affidavits, etc. PHILIP YANG	)	**NAVEED Z. MANZOOR**

EXHIBIT "A"

referred to in the Affidavit of

NAVEED N. MANZOOR

Sworn May 18, 2023

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.

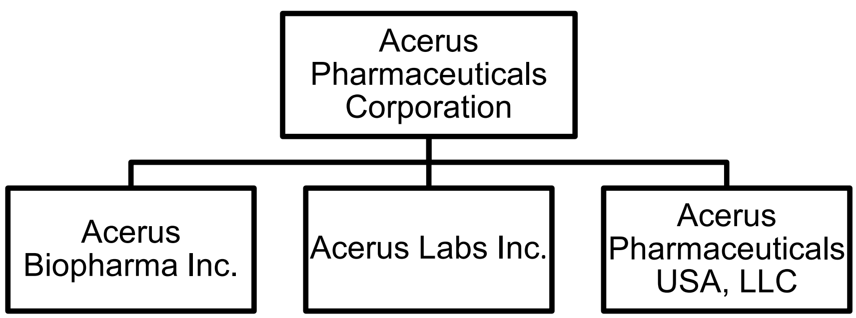
13. ABI is a wholly owned subsidiary of APC. ABI was continued under the OBCA on November 8, 2017 (formerly incorporated under the laws of Barbados), with a registered head office at 2486 Dunwin Drive,[1] Mississauga, Ontario. ABI holds the intellectual property rights relating to Natesto, and two further 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**

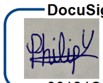
EXHIBIT "B"

referred to in the Affidavit of

NAVEED N. MANZOOR

Sworn May 18, 2023

DocuSigned by:



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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 Report**"), 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.

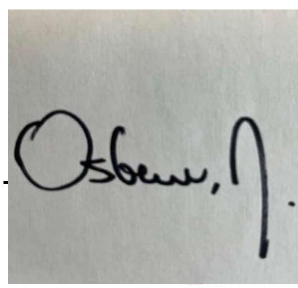
69. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this 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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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
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Tel: (416) 869-5593
Email: pyang@stikeman.com

Lawyers for the Applicants

EXHIBIT "C"

referred to in the Affidavit of

NAVEED N. MANZOOR

Sworn May 18, 2023

DocuSigned by:

Philip Y

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Commissioner for Taking Affidavits
Philip Yang

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

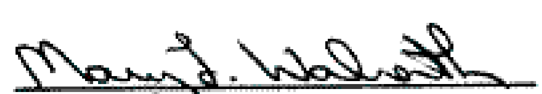
14. Notwithstanding any provision in the Bankruptcy Rules to the contrary, including, but not limited to, Bankruptcy Rules 7062 and 1018, (i) this Order shall be effective immediately and enforceable upon its entry; (ii) the Foreign Representative and the DIP Lender are not subject to any stay in the 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

EXHIBIT "D"

referred to in the Affidavit of

NAVEED N. MANZOOR

Sworn May 18, 2023

DocuSigned by:

Philip Y

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Commissioner for Taking Affidavits
Philip Yang

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 9TH DAY
	)	
JUSTICE CONWAY	)	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 7, 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.

Conway J.

Schedule "A"

SALE AND INVESTMENT SOLICITATION PROCESS

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

Electronically issued / Délivré par voie électronique : 09-Mar-2023
Toronto Superior Court of Justice / Cour supérieure de justice

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

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

Lawyers for the Applicants

EXHIBIT "E"

referred to in the Affidavit of

NAVEED N. MANZOOR

Sworn May 18, 2023

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	)	MONDAY, THE 15TH DAY
	)	
JUSTICE PENNY	)	OF MAY, 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

(Re: Extension of 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 extending the stay of proceedings was heard this day by judicial videoconference via Zoom.

ON HEARING the submissions of counsel for the Applicants and counsel for Ernst & Young Inc., in its capacity as the Monitor of the Applicants,

DEFINITIONS

1. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them in the Order of Justice Osborne dated February 3, 2023 (the "**ARIO**").

EXTENSION OF STAY PERIOD

2. **THIS COURT ORDERS** that the Stay Period as referred to in the ARIO is extended, until and including May 30, 2023 in respect of the Applicants.

GENERAL

3. **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.

4. **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.

Electronically issued / Délivré par voie électronique : 16-May-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

ORDER
(Re: Extension of Stay of Proceedings)

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

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Lawyers for the Applicants

EXHIBIT "F"

referred to in the Affidavit of

NAVEED N. MANZOOR

Sworn May 18, 2023

DocuSigned by:

Philip Y

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Commissioner for Taking Affidavits
Philip Yang

ACERUS ANNOUNCES INITIATION OF STRATEGIC REVIEW

09/21/2022

- *Ernst & Young Orenda Corporate Finance Inc. ("EY") engaged as independent financial advisors*

TORONTO, Sept. 21, 2022 (GLOBE NEWSWIRE) -- Acerus Pharmaceuticals Corporation (the "**Company**" or "**Acerus**") (TSX: ASP; OTCQB: ASPCF) today announced that the Board of Directors has determined to undertake a strategic review of capital and business alternatives, including a possible debt or equity financing, asset sale, M&A, or licensing transaction.

The Board has struck a committee of independent directors to supervise this strategic review process. Ernst & Young Orenda Corporate Finance Inc. ("EY") has been engaged as independent financial advisors to the Company. Parties interested in pursuing a transaction with Acerus should contact EY via one of the persons listed below to get further details and should plan to deliver a non-binding letter of interest no later than October 26, 2022.

Michael Hayes
Senior Vice-President

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416 943 2063

Allen Yao
Vice-President
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416 943 3470

About Acerus

Acerus Pharmaceuticals Corporation is a specialty pharmaceutical company focused on the commercialization and development of innovative prescription products that improve patient experience, with a primary focus in the field of men's health. The Company commercializes its products via its own salesforce in the United States and Canada, and through a global network of licensed distributors in other territories.

Acerus' shares trade on TSX under the symbol ASP and on OTCQB under the symbol ASPCF. For more information, visit www.aceruspharma.com and follow us on Twitter and LinkedIn.

Notice regarding forward-looking statements

Information in this press release that is not current or historical factual information may constitute forward-looking information within the meaning of securities laws. Implicit in this information are assumptions regarding our future operational results. These assumptions, although considered reasonable by the company at the time of preparation, may prove to be incorrect. Readers are cautioned that actual performance of the company is subject to a number of risks and uncertainties, and could differ materially from what is currently expected as set out above. For more exhaustive information on these risks and uncertainties you should refer to our annual information form dated March 14, 2022 that is available on www.sedar.com. Forward-looking information contained in this press release is based on our current estimates, expectations and projections, which we believe are reasonable as of the current date. You should not place undue importance on forward-looking information and should not rely upon this information as of any other date. While we may elect to, we are under no obligation and do not undertake to update this information at any particular time, whether as a result of new information, future events or otherwise, except as required by applicable securities laws.

Company Contact
ir@aceruspharma.com

Investor Relations Contact
Chris Witty
Acerus Investor Relations
(646) 438-9385
cwitty@darrowir.com

Source: Acerus Pharmaceuticals Corporation

Contact Us

Acerus Pharmaceuticals Corporation
7025 Langer Drive Suite 205, Mississauga, ON, L5N 0E8 CANADA
416.679.0771

EXHIBIT "G"

referred to in the Affidavit of

NAVEED N. MANZOOR

Sworn May 18, 2023

DocuSigned by:

Philip Y

36124C4218DD47C...

Commissioner for Taking Affidavits
Philip Yang

SUBSCRIPTION AGREEMENT

ACERUS PHARMACEUTICALS CORPORATION

as Company

-and-

FIRST GENERATION CAPITAL INC.

as Purchaser

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SUBSCRIPTION AGREEMENT

THIS SUBSCRIPTION AGREEMENT is made as of May 15, 2023

BETWEEN:

Acerus Pharmaceuticals Corporation ("**APC**" or "**Company**")

-and-

First Generation Capital Inc. ("**Purchaser**")

RECITALS:

A. APC is a public pharmaceutical company based in Mississauga, Ontario that directly and indirectly through its subsidiaries 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 (collectively, the "**Business**").

B. On January 26, 2023, the Acerus Group commenced proceedings under the CCAA before the Ontario Superior Court of Justice (Commercial List) (the "**CCAA Court**") to, among other things, seek creditor protection for, and certain relief in respect of, certain of the members of the Acerus Group.

C. On January 29, 2023, APC, as duly appointed foreign representative, on behalf of the Acerus Group, commenced ancillary recognition proceedings pursuant to Chapter 15 of the US Bankruptcy Code, in the U.S. Bankruptcy Court and a provisional recognition order was entered on January 31, 2023, with a further recognition order entered on February 27, 2023 (the "**U.S. Proceedings**").

D. On March 9, 2023, the Acerus Group obtained an order under the CCAA Court approving, among other things, the SISP (the "**SISP Order**"), which was further recognized under the U.S. Proceedings by an order entered March 23, 2023 (the "**SISP Recognition Order**").

E. Pursuant to the SISP, Purchaser has been selected as a Successful Bidder and the transaction hereunder selected as a Successful Bid, and as such Purchaser has agreed to buy and Company has agreed to sell the Purchased Shares on and pursuant to the terms set forth herein.

NOW THEREFORE, the Parties agree as follows:

ARTICLE 1
INTERPRETATION

1.1 Definitions

In this Agreement,

"**ABI**" means Acerus Biopharma Inc.

"**Acerus Group**" means Company, ABI, ALI and APL.

"**Administration Charge**" has the meaning given to it in the Initial Order.

"**Administrative Expense Amount**" means cash in an amount of the Administrative Expense Costs and CCAA Charge Amount and shall be paid by the members of the Acerus Group to the Monitor on the Closing Date out of the cash and cash equivalents of the members of the Acerus Group as at the Closing Date and held in trust by the Monitor for the benefit of Persons entitled to be paid the Administrative Expense Costs and CCAA Charge Amount, subject to the terms hereof;

"**Administrative Expense Costs**" means the reasonable and documented fees and costs of the Monitor and its professional advisors and professional advisors of the members of the Acerus Group and Residual Cos. in each case for services performed prior to and, other than in respect of the members of the Acerus Group, after the Closing Date, in each case, relating directly or indirectly to the CCAA Proceedings, the U.S. Proceedings, and this Agreement and including without limitation: (i) costs required to wind down and/or dissolve and/or bankrupt Residual Cos.; and (ii) costs and expenses required to administer the Excluded Assets, Excluded Liabilities and Residual Cos.; (iii) the success fee owing to the CRO pursuant to its engagement letter; (iv) costs related to a premium for a run-off policy of the Acerus Group's existing director and officer liability insurance policy.

"**Affiliate**" means, with respect to any specified Person, any other Person which, directly or indirectly, through one or more intermediaries controls, or is controlled by, or is under common control with, such specified Person (for the purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise). For greater certainty, an Affiliate of a Person shall include such Person's investment funds and managed accounts and any funds managed or directed by the same investment advisor. Notwithstanding the above, Purchaser and its Affiliates on one hand, and the Acerus Group and Residual Cos. on the other hand, shall not be considered Affiliates of each other for the purposes of this Agreement.

"**Agreement**" means this subscription agreement and all attachments and Exhibits, in each case as the same may be supplemented, amended, restated or replaced from time to time, and the expressions "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions refer to this transaction agreement and all attached Exhibits, and unless otherwise indicated, references to Articles, Sections, and Exhibits are to Articles, Sections, and Exhibits in this transaction agreement.

"**ALI**" means Acerus Labs Inc.

"**APL**" means Acerus Pharmaceuticals USA, LLC.

"**Applicable Law**" means any transnational, domestic or foreign, federal, provincial, territorial, state, local or municipal (or any subdivision of any of them) law (including common law and civil law), statute, ordinance, rule, regulation, restriction, limit, by-law (zoning or otherwise), judgment, order, direction or any consent, exemption, Transaction Regulatory Approval, or any other legal requirements of, or agreements with, any Governmental Authority, that applies in whole or in part to the transactions contemplated by this Agreement, the members of the Acerus Group, Purchaser, the Business, or any of the Purchased Shares or the Retained Liabilities.

"**Applicants**" means the Acerus Group and the Residual Cos. (at the time the Residual Cos. become Applicants).

"**Articles of Reorganization**" means articles of reorganization in respect of Company's authorized and issued capital to: (i) create a new class of shares of the company, being the Class "A" Common shares; and (ii) provide for the redemption or cancellation of the common shares and other equity interests thereof other than the Purchased Shares by Company for no consideration on Closing; such articles of reorganization to be in form and substance satisfactory to Purchaser, acting reasonably.

"**Business**" has the meaning given to such term in Recital A.

"**Business Day**" means any day, other than a Saturday or Sunday, on which the principal commercial banks in Toronto, Ontario are open for commercial banking business during normal banking hours.

"**Causes of Action**" means any action, claim, cross claim, third party claim, damage, judgment, cause of action, controversy, demand, right, action, suit, obligation, liability, debt, account, defense, offset, power, privilege, license, lien, indemnity, interest, guaranty, or franchise of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, matured or unmatured, suspected or unsuspected, in contract or in tort, at law or in equity, or pursuant to any other theory of law or otherwise, of the members of the Acerus Group against any Person, in each case based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the Closing Time (which Causes of Action for the avoidance of doubt shall be retained by the applicable member of the Acerus Group on Closing).

"**CCAA**" means the *Companies' Creditors Arrangement Act* (Canada).

"**CCAA Charge Amount**" means cash in an amount sufficient to satisfy the amounts owing in respect of obligations secured by the CCAA Charges (without duplication to amounts satisfied as Administrative Expense Costs, Employee Priority Claims or Priority Payments).

"**CCAA Charges**" means the Administration Charge, Directors' Charge and KERP Charge.

"**CCAA Court**" has the meaning given to such term in Recital B.

"**CCAA Order**" means the order of the CCAA Court pursuant to the CCAA commencing the CCAA Proceedings, as amended, restated, supplemented and/or modified from time to time.

"**CCAA Proceedings**" means the proceedings commenced under the CCAA by the Applicants pursuant to the Initial Order.

"**Claims**" means any and all demands, claims, liabilities, actions, causes of action, counterclaims, expenses, costs, damages, losses, suits, debts, sums of money, refunds, accounts, indebtedness, rights of recovery, rights of set-off, rights of recoupment and liens of whatever nature (whether direct or indirect, absolute or contingent, asserted or unasserted, secured or unsecured, matured or not yet matured due or to become due, accrued or unaccrued or liquidated or unliquidated) and including all costs, fees and expenses relating thereto.

"**Closing**" means the completion of the purchase of the Purchased Shares and the transactions in accordance with the provisions of this Agreement.

"**Closing Date**" means a date no later than five (5) Business Days after the conditions set forth in Article 7 have been satisfied or waived, other than the conditions set forth in Article 7 that by their terms are to be satisfied or waived at the Closing (or such other date agreed to by the Parties in writing); provided that, if there is to be a Closing hereunder, then the Closing Date shall be no later than the Outside Date.

"**Closing Documents**" means all contracts, agreements, certificates and instruments required by this Agreement to be delivered at or before the Closing.

"**Closing Time**" means 10:00 a.m. (Toronto time) on the Closing Date or such other time on the Closing Date as the Parties agree in writing that the Closing Time shall take place.

"**Code**" means the United States Internal Revenue Code of 1986, as amended.

"**Company**" has the meaning given to such term in the preamble to this Agreement.

"**Confidential Information**" means non-public, confidential, personal or proprietary information which is furnished to Purchaser or any of its Affiliates by Company or any of the members of the Acerus Group' representatives, including information about identifiable individuals, any information relating to the members of the Acerus Group, or any customer or supplier of the members of the Acerus Group, but does not include information that is or becomes generally available to the public other than as a result of disclosure by Purchaser or its representatives in breach of this Agreement or that is received by Purchaser from an independent third party that, to the knowledge of Purchaser, obtained it lawfully and was under no duty of confidentiality (except to the extent that applicable privacy laws do not exclude such information from the definition of personal information) or that is independently developed by Purchaser or its representatives without reference to any Confidential Information.

"**Credit Bid Consideration**" has the meaning given to such term in Section 3.1.

"**CRO**" means FAAN Advisors Group Inc., in its capacity as Chief Restructuring Officer of the Applicants.

"**DIP Facility Loan Agreement**" means the DIP Facility Loan Agreement dated as of January 26, 2023 between APC and APL (as borrowers), the Purchaser (as lender), and each of the guarantors thereto (being each of ABI and ALI as of the date hereof) as such loan agreement may be amended, restated, supplemented and/or otherwise modified from time to time in accordance with the terms thereof.

"**Directors Charge**" has the meaning given to it in the Initial Order.

"**Employee Priority Claims**" means any Claim for: (i) accrued and unpaid wages and vacation pay owing to an employee of any of the members of the Acerus Group whose employment was terminated between the Filing Date and the Closing Date, including the Terminated Employees; and (ii) unpaid amounts provided for in Section 6(5)(a) of the CCAA.

"**Employment Agreements**" means, collectively, the employment agreements, the management compensation plans, and indemnification agreements of, or for the benefit of, the directors, officers and employees of any of the members of the Acerus Group that, on or prior to the Closing, have not resigned, in each case, in existence on the date hereof; provided, however, that Employment Agreements shall not include employment agreements, the management compensation plans, and indemnification agreements of, or for the benefit of, the directors, officers and employees of any of the members of the Acerus Group that have been terminated or disclaimed without the consent of Purchaser.

"**Encumbrance**" means any security interest (whether contractual, statutory or otherwise), lien, prior claim, charge, hypothec, reservation of ownership, pledge, encumbrance, mortgage, trust (including any statutory, deemed or constructive trust), option or adverse claim or encumbrance of any nature or kind.

"**Equity Interests**" means any capital share, capital stock, partnership, membership, joint venture or other ownership or equity interest, participation or securities (whether voting or nonvoting, whether preferred, common or otherwise, and including share appreciation, contingent interest or similar rights) of a Person.

"**ETA**" means the *Excise Tax Act* (Canada).

"**Excluded Assets**" has the meaning given to such term in Section 2.2.

"**Excluded Contracts**" means contracts of the members of the Acerus Group as specified on Schedule 2.2(c).

"**Excluded Leases**" means those leases of the members of the Acerus Group as specified in Schedule 2.2(c).

"**Excluded Liabilities**" has the meaning given to such term in Section 2.4.

"**Filing Date**" means January 26, 2023.

"**Final Order**" means with respect to any order or judgment of the CCAA Court or the U.S. Bankruptcy Court, or any other court of competent jurisdiction, with respect to the subject matter addressed in the CCAA Proceedings or the Chapter 15 Cases or the docket of any court of competent jurisdiction, that such order or judgement has not been vacated, set aside, reversed, stayed, modified or amended, and as to which the applicable periods to appeal, or seek certiorari or move for a new trial, reargument, or rehearing has expired and no appeal, leave to appeal, or petition for certiorari or other proceedings for a new trial, reargument, or rehearing has been timely taken or filed, or as to which any appeal has been taken or any petition for certiorari or leave to appeal that has been timely filed has been withdrawn or resolved in a manner acceptable to Company and Purchaser, each acting reasonably, by the highest court to which the order or judgment was appealed or from which leave to appeal or certiorari was sought or the new trial, reargument, or rehearing shall have been denied, resulted in no modification of such order or has otherwise been dismissed with prejudice; provided, however, that the possibility that a motion under Rule 60 of the United States Federal Rules of Civil Procedure, or any analogous rule under the U.S. Bankruptcy Rules, may be filed relating to such order shall not cause such order to not be a Final Order.

"**Fundamental Representations and Warranties of Company**" means the representations and warranties of Company included in Sections 4.1 [Due Authorization and Enforceability of Obligations], 4.2 [Existence and Good Standing] and 4.4 [Absence of Conflicts].

"**GAAP**" means generally accepted accounting principles as set out in the *CPA Canada Handbook – Accounting* for an entity that prepares its financial statements in accordance with International Financial Reporting Standards, at the relevant time, applied on a consistent basis.

"**Governmental Authority**" means any government, regulatory authority, governmental department, agency, commission, bureau, official, minister, Crown corporation, court, board, tribunal or dispute settlement panel or other law, rule or regulation-making organization or entity (i) having or purporting to have jurisdiction on behalf of any nation, province, territory or state or any other geographic or political subdivision of any of them, or (ii) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power.

"**GST/HST**" means all goods and services tax and harmonized sales tax imposed under Part IX of the ETA or any other statute in any jurisdiction of Canada.

"**Implementation Steps**" has the meaning given to such term in Section 2.7(b).

"**Initial Order**" means the Amended and Restated Initial Order dated February 3, 2023 granted by the CCAA Court pursuant to the CCAA as may be further amended and restated from time to time.

"**Intercompany Claim**" means any claim that may be asserted against any of the members of the Acerus Group by or on behalf of any of the members of the Acerus Group or any of their affiliated companies, partnerships, or other corporate entities.

"**KERP Charge**" has the meaning given to it in the Initial Order.

"**Loan Agreements**" means, collectively: (i) the Third Amended & Restated Secured Grid Promissory Note dated March 30, 2022 between APC (as borrower), and Purchaser (as lender), as amended by Amendment #1 to Third Amended and Restated Secured Grid Promissory Note dated June 23 2022, Amendment #2 to Third Amended and Restated Secured Grid Promissory Note dated August 4, 2022 and Amended #3 to Third Amended and Restated Secured Grid Promissory Note dated December 21, 2022; and (ii) the Loan Agreement between APC and APL (as borrowers), and each of ABI and ALI (as guarantors), and Purchaser (as lender), dated December 21, 2022, each as may be amended, restated, supplemented and/or otherwise modified from time to time in accordance with the terms thereof.

"**Material Adverse Effect**" means any change, effect, event, occurrence, state of facts or development that has had a material adverse effect on: (i) the business, assets, liabilities, financial conditions or results of operations of the members of the Acerus Group, taken as a whole; or (ii) prevents the ability of any of the members of the Acerus Group to perform its obligations under, or to consummate the transactions contemplated by, this Agreement, but excluding any such change, effect, event, occurrence, state of facts or development attributable to or arising from: (A) general economic or business conditions; (B) Canada, the U.S. or foreign economies, or financial, banking or securities markets in general, or other general business, banking, financial or economic conditions (including: (I) any disruption in any of the foregoing markets; (II) any change in the currency exchange rates; or (III) any decline or rise in the price of any security, commodity, contract or index); (C) acts of God or other calamities, pandemics (including COVID-19 and any Governmental Authorities response thereto), national or international political or social conditions, including the engagement and/or escalation by the U.S. or Canada in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon the U.S. or Canada or any of their territories, possessions or diplomatic or consular offices or upon any military installation, equipment or personnel of the U.S. or Canada; (D) the identity of Purchaser or its Affiliates; (E) conditions affecting generally the industry in which the members of the Acerus Group participates; (F) the public announcement of, entry into or pendency of, actions required or contemplated by or performance of obligations under, this Agreement or the transactions contemplated by this Agreement, or the identity of the Parties; (G) changes in Applicable Laws or the interpretation thereof; (H) any change in GAAP or other accounting requirements or principles; (I) national or international political, labor or social conditions; (J) the failure of the members of the Acerus Group to meet or achieve the results set forth in any internal projections (but not the underlying facts giving rise to such failure unless such facts are otherwise excluded pursuant to the clauses contained in this definition); or (K) any change resulting from compliance with the terms of, or any actions taken (or not taken) by any Party pursuant to or in accordance with, this Agreement; provided that the exceptions set forth in clauses (A), (B), (C), (E), (G), (H) or (I) shall not apply to the extent that such event is disproportionately adverse to the members of the Acerus Group, taken as a whole, as compared to other companies in the industries in which the members of the Acerus Group operate.

"**Monitor**" means Ernst & Young Inc., as Court-appointed monitor of the members of the Acerus Group in the CCAA Proceeding and not in its personal or corporate capacity.

"**Monitor's Certificate**" means the certificate delivered to Purchaser and filed with the CCAA Court by the Monitor certifying that the Monitor has received written confirmation in form and substance satisfactory to the Monitor from Company and Purchaser that all conditions to Closing have been satisfied or waived by the applicable Parties and the transactions contemplated by this Agreement have been completed.

"**Order**" means any order of the Court made in the CCAA Proceedings, any order of the U.S. Bankruptcy Court made in the U.S. Proceedings, or any order, directive, judgment, decree, injunction, decision, ruling, award or writ of any Governmental Authority.

"**Outside Date**" has the meaning given to such term in Section 10.1(b).

"**Parties**" means Company and Purchaser collectively, and "**Party**" means either Company or Purchaser, as the context requires.

"**Permitted Encumbrances**" means the Encumbrances listed in Schedule 1.1(b)(1).

"**Person**" includes an individual, partnership, firm, joint venture, venture capital fund, limited liability company, unlimited liability company, association, trust, entity, corporation, unincorporated association, or organization, syndicate, committee, court appointed representative, the government of a country or any political subdivision thereof, or any agency, board, tribunal, commission, bureau, instrumentality, or department of such government or political subdivision, or any other entity, howsoever designated or constituted, including any Taxing Authority, and the trustees, executors, administrators, or other legal representatives of an individual, and for greater certainty includes any Governmental Authority.

"**Post-Closing Straddle Tax Period**" has the meaning given to such term in Section 8.4(c).

"**Post-Filing Claim**" or "**Post-Filing Claims**" means any or all indebtedness, liability, or obligation of the members of the Acerus Group of any kind that arises during and in respect of the period commencing on the Filing Date and ending on the day immediately preceding the Closing Date in respect of services rendered or supplies provided to the members of the Acerus Group during such period; provided that, for certainty, such amounts are not a Restructuring Period Claim or a Restructuring Period D&O Claim.

"**Priority Payments**" means those priority payments prescribed under subsections 6(3), 6(5) and 6(6) of the CCAA, and the amounts owing under the Employee Priority Claims, and including those amounts identified in the Implementation Steps.

"**Purchase Price**" has the meaning given to such term in Section 3.1.

"**Purchased Shares**" has the meaning given to such term in Section 2.1(a).

"**Purchaser**" has the meaning given to such term in the preamble to this Agreement.

"**Released Claims**" means all claims, demands, complaints, grievances, actions, applications, suits, causes of action, Orders, charges, indictments, prosecutions, informations or other similar processes, assessments or reassessments, judgments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, professional fees, including "claims" as defined in the CCAA or the U.S. Bankruptcy Code and including fees and disbursements of legal counsel on a full indemnity basis, and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing.

"**Residual Cos.**" means each of "**Residual Co. 1**" and "**Residual Co. 2**", to be formed by Company, each such entities in form satisfactory to Purchaser, acting reasonably, prior to the Closing; provided, that no such entity shall be a flow through entity for Canadian or U.S. tax purposes unless approved by Purchaser, and each a "**Residual Co.**".

"**Restructuring Period Claim**" means any Claim owed by any member of the Acerus Group arising out of the restructuring, disclaimer, resiliation, termination or breach by such member of the Acerus Group on or after the Filing Date of any contract, lease or other agreement, whether written or oral.

"**Restructuring Period D&O Claim**" means any Claim against one or more of the directors and/or officers of a member of the Acerus Group arising after the Filing Date, whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including any assessments and any right or ability of any Person to advance a claim for contribution, indemnity or otherwise against any of such directors and/or officers with respect to any matter, action, cause or chose in action, whether existing at present or arising or commenced in the future, for which any such director or officer is alleged to be, by statute or otherwise by law or equity, liable to pay in his or her capacity as a director or officer.

"**Retained Liabilities**" has the meaning given to such term in Section 2.3.

"**SISP**" means the Sale and Investment Solicitation Process approved by the SISP Order, as may be amended by the CCAA Court from time to time.

"**SISP Order**" has the meaning ascribed to it in the preamble.

"**SISP Recognition Order**" has the meaning ascribed to it in the preamble.

"**Successful Bid(s)**" has the meaning given to such term in the SISP.

"**Successful Bidder(s)**" has the meaning given to such term in the SISP.

"**Tax**" and "**Taxes**" means taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever (including withholding on amounts paid to or by any Person) imposed by any Taxing Authority, including all interest, penalties, fines, additions to tax or other additional amounts imposed by any Taxing Authority in respect thereof, and including those levied on, or measured by, or referred to as, income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, use, value-added, excise, stamp, withholding, business, franchising, escheat, property, development, occupancy, employer health, payroll, employment, health, disability, severance, unemployment, social services, education and social security taxes, all surtaxes, all customs duties and import and export taxes, countervail and anti-dumping, all license, franchise and registration fees and all employment insurance, health insurance and Canada, Ontario and other government pension plan premiums or contributions.

"**Tax Act**" means the *Income Tax Act* (Canada) and shall also include a reference to any applicable and corresponding provisions under the income tax laws of a province or territory of Canada, as applicable.

"**Tax Return**" means any return, declaration, report, statement, information statement, form, election, amendment, claim for refund, schedule or attachment thereto or other document filed or required to be filed with a Taxing Authority with respect to Taxes.

"**Taxing Authority**" means His Majesty the King in right of Canada, His Majesty the King in right of any province or territory of Canada, the Canada Revenue Agency, any similar revenue or taxing authority of Canada and each and every province or territory of Canada and any political subdivision thereof, the United States Internal Revenue Service, any similar revenue or taxing authority of the U.S. and each and every state and locality of the U.S., and any Canadian, U.S. or other Governmental Authority exercising taxing authority or power, and "Taxing Authority" means any one of the Taxing Authorities.

"**Terminated Employees**" means those individuals employed by a member of the Acerus Group whose employment has or shall be terminated by the applicable member of the Acerus Group, including those deemed to be terminated pursuant to Section 8.5(c).

"**Transaction Regulatory Approvals**" means any material licenses, permits or approvals required from any Governmental Authority or under any Applicable Laws relating to the business and operations of the members of the Acerus Group that would be required to be obtained in order to permit the members of the Acerus Group and Purchaser to complete the transactions contemplated by this Agreement.

"**U.S.**" means the United States of America.

"**U.S. Bankruptcy Code**" means title 11 of the United States Code, 11 U.S.C. §§ 101 et seq, as amended.

"**U.S. Bankruptcy Court**" means the United States Bankruptcy Court for the District of Delaware, overseeing the U.S. Proceedings.

"**U.S. Proceedings**" has the meaning given to such term in Recital C.

"**Vesting Order**" means an order of the CCAA Court substantially in the form of Schedule 1.1(b)(2) (or as otherwise acceptable to Purchaser and Company, each acting reasonably).

"**Vesting Recognition Motion**" has the meaning given to such term in subsection 9.1(f).

"**Vesting Recognition Order**" means an order of the U.S. Bankruptcy Court entered in the U.S. Proceedings in form and substance acceptable to Purchaser, acting reasonably, which shall, among other things, recognize and give effect to the Vesting Order and otherwise recognize this Agreement and the transactions contemplated hereby.

1.2 Statutes

Except as otherwise provided in this Agreement, any reference in this Agreement to a statute refers to such statute and all rules and regulations made under it, as it or they may have been or may from time to time be amended, re-enacted or replaced.

1.3 Headings, Table of Contents, etc.

The provision of a table of contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenient reference only and do not affect the interpretation of this Agreement. The recitals to this Agreement are an integral part of this Agreement.

1.4 Gender and Number

In this Agreement, unless the context otherwise requires, words importing the singular include the plural and vice versa, and words importing gender include all genders.

1.5 Currency

Except where otherwise expressly provided, all amounts in this Agreement are stated and shall be paid in Canadian dollars. References to "$" are to Canadian dollars. References to USD$ are to United States Dollars.

1.6 Certain Phrases

In this Agreement (i) the words "including", "includes" and "include" and any derivatives of such words mean "including (or includes or include) without limitation" and (ii) the words "the aggregate of", "the total of", "the sum of", or a phrase of similar meaning means "the aggregate (or total or sum), without duplication, of". The expression "Article", "Section" and other subdivision followed by a number, mean and refer to the specified Article, Section or other subdivision of this Agreement.

1.7 Invalidity of Provisions

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon (i) such a determination of invalidity or unenforceability or (ii) any change in Applicable Law or other action by any Governmental Authority which materially detracts from the legal or economic rights or benefits, or materially increases the obligations, of any Party or any of its Affiliates under this Agreement, the Parties shall negotiate to modify this Agreement in good faith so as to effect the original intent of the Parties as closely as possible in an acceptable manner so that the transactions contemplated by this Agreement be consummated as originally contemplated to the fullest extent possible.

1.8 Knowledge

Any reference to the knowledge of (i) Company or the members of the Acerus Group, means the actual knowledge, after reasonable inquiry of Edward Gudaitis, and (ii) Purchaser, means the actual knowledge, after reasonable inquiry, of Ian Ihnatowycz.

1.9 Entire Agreement

This Agreement and the agreements and other documents required to be delivered pursuant to this Agreement, constitute the entire agreement among the Parties, and set out all the covenants, promises, warranties, representations, conditions and agreements among the Parties in connection with the subject matter of this Agreement, and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, precontractual or otherwise. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, whether oral or written, pre-contractual or otherwise, express, implied or collateral among the Parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement and any document required to be delivered pursuant to this Agreement.

1.10 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement shall be binding unless executed in writing by all Parties hereto. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

1.11 Governing Law; Jurisdiction and Venue

This Agreement, the rights and obligations of the Parties under this Agreement, and any Claim or controversy directly or indirectly based upon or arising out of this Agreement or the transactions contemplated by this Agreement (whether based on contract, tort or any other theory), including all matters of construction, validity and performance, shall in all respects be governed by, and interpreted, construed and determined in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to the conflicts of law principles thereof. The Parties consent to the jurisdiction and venue of the CCAA Court for the resolution of any such disputes arising under this Agreement. Each Party agrees that service of process on such Party as provided in Section 12.7 shall be deemed effective service of process on such Party.

1.12 Incorporation of Schedules and Exhibits

Any schedule or exhibit attached thereto, and any schedule or exhibit attached to this Agreement, is an integral part of this Agreement.

1.13 Accounting Terms

All accounting terms used in this Agreement are to be interpreted in accordance with GAAP unless otherwise specified.

1.14 Non-Business Days

Whenever payments are to be made or an action is to be taken on a day which is not a Business Day, such payment will be made or such action will be taken on or not later than the next succeeding Business Day.

1.15 Computation of Time Periods

If any action may be taken within, or any right or obligation is to expire at the end of, a period of days under this Agreement, then the first day of the period is not counted, but the day of its expiry is counted.

ARTICLE 2
PURCHASE AND SALE

2.1 Agreement to Purchase and Sell Purchased Shares

(a) Upon and subject to the terms and conditions of this Agreement, at the Closing and effective as of the Closing Time, and subject to the completion of the Implementation Steps required to be completed prior to the Closing Time, Company shall issue to Purchaser, and Purchaser shall purchase from Company, free and clear of all Encumbrances (other than Permitted Encumbrances), 1,000,000,000,000,000 Class "A" Common shares of Company from treasury (the "**Purchased Shares**").

(b) Pursuant to the Vesting Order, in accordance with the Implementation Steps, all Equity Interests of Company outstanding prior to the issuance of the Purchased Shares other than the Purchased Shares shall be cancelled, without consideration, and the Purchased Shares shall represent 100% of the outstanding Equity Interests in Company after such cancellation and issuance.

(c) For the avoidance of doubt, upon the Closing and after the completion of the Implementation Steps, Company and each and every direct and indirect subsidiary of Company shall be wholly owned, directly or indirectly, by Purchaser.

2.2 Excluded Assets

Notwithstanding any provision of this Agreement to the contrary, as of the Closing, the assets of the members of the Acerus Group shall not include any of the following assets, together with any other assets as set forth on Schedule 2.2 (collectively, the "**Excluded Assets**"):

(a) the Tax records and returns, and books and records pertaining thereto and other documents, in each case, that primarily or solely relate to any of the Excluded Liabilities, provided that the applicable member of the Acerus Group may take copies of all Tax records and books and records pertaining to such records (as redacted, if applicable) to the extent necessary or useful for the carrying on of the Business after Closing, including the filing of any Tax Return, provided, however that Residual Cos. shall retain the original copies of any of the records required to be provided to the applicable member of the Acerus Group hereunder (and provide the applicable member of the Acerus Group with a copy thereof) to the extent Residual Cos. are required to do so under Applicable Law;

(b) the Administrative Expense Amount;

(c) the Excluded Contracts;

(d) the Excluded Leases;

(e) all communications, information or records, written or oral, that are in any way related to (i) the transactions contemplated by this Agreement, (ii) the sale of the Purchased Shares, (iii) any Excluded Asset or (iv) any Excluded Liability;

(f) any rights which accrue to Residual Cos. under the transaction documents; and

(g) any other asset, including contracts and leases, identified by Purchaser to Company in writing as an Excluded Asset no later than two (2) Business Days before the Closing Date.

2.3 Retained Liabilities

Pursuant to this Agreement and the Vesting Order, as of the Closing Time the only obligations and liabilities of the Acerus Group shall consist of only the items specifically set forth below, as applicable (collectively, the "**Retained Liabilities**"); provided, for the avoidance of doubt the Retained Liabilities of any member of the Acerus Group pursuant to this Section 2.3 shall continue to be liabilities of the applicable member of the Acerus Group (and, except as applied to Section 2.3(c)) no other Person) as of the Closing; provided, further, however, that each of the members of the Acerus Group shall take such steps as are necessary to ensure that any claim that could give rise to responsible person liability is satisfied if the applicable member of the Acerus Group is, for any reason, unable to satisfy such claim:

(a) all Post-Filing Claims;

(b) all liabilities of the members of the Acerus Group arising from and after Closing;

(c) (A) Tax liabilities of the members of the Acerus Group for any tax period or the portion thereof beginning on or after the Filing Date, and (B) any other Taxes, including sales or use taxes, payable to a Taxing Authority for any period whereby the nonpayment of which by any member of the Acerus Group could result in a responsible person (including for greater certainty, employees, officers or directors) associated with a member of the Acerus Group being held personally liable for such nonpayment, excluding from (A), for the avoidance of doubt (x) all income tax or similar liabilities of any member of the Acerus Group for any tax period ending prior to the Filing Date, other than Taxes with respect to which any current or former employee, officer, director or other individual may be held liable under any applicable statute imposing responsible person liability for unpaid taxes, and (y) any Tax or similar liability directly and solely related to the Excluded Assets, other than Taxes with respect to which any current or former employee, officer, director or other individual may be held liable under any applicable statute imposing responsible person liability for unpaid taxes (excluding, for the avoidance of doubt, any such person serving in such capacity at a Residual Co.);

(d) Intercompany Claims between members of the Acerus Group;

(e) any and all indemnification obligations of the members of the Acerus Group to current and former directors, officers and or other person employed or previously employed by the members of the Acerus Group (excluding, for the avoidance of doubt, Residual Cos.), provided that such indemnification both: (i) arises under the corporate by-laws of the applicable member of the Acerus Group; and (ii) is covered under the director and officer insurance policies of such member of the Acerus Group, and only to the extent covered by such director and officer insurance policy; and

(f) those specific Retained Liabilities set forth in Schedule 2.3.

2.4 Excluded Liabilities

Except as expressly retained pursuant to or specifically contemplated by Section 2.3, all Claims and all debts, obligations, and liabilities of the members of the Acerus Group or any predecessors of the members of the Acerus Group, of any kind or nature, shall be assigned and become the sole obligation of the Residual Cos. pursuant to the terms of the Vesting Order and this Agreement, and, as of the Closing, the members of the Acerus Group shall not have any obligation, duty, or liability of any kind whatsoever, except as expressly retained pursuant to Section 2.3, whether accrued, contingent, known or unknown, express or implied, primary or secondary, direct or indirect, liquidated, unliquidated, absolute, accrued, contingent or otherwise, and whether due or to become due, and such liabilities or obligations shall be the sole responsibility of the applicable Residual Co., including inter alia, the non-exhaustive list of those certain Liabilities set forth in Schedule 2.4, and any and all liability relating to any change of control provision that may arise in connection with the change of control contemplated by the transactions hereunder and to which the members of the Acerus Group may be bound as at Closing, all liabilities relating to or under the Excluded Contracts, the Excluded Leases and Excluded Assets, liabilities for employees whose employment with Company or its Affiliates is terminated on or before Closing, including the Terminated Employees, the Restructuring Period Claims, and the Restructuring Period D&O Claims (collectively, the "**Excluded Liabilities**"). For avoidance of doubt, Excluded Liabilities shall not include any debts, obligations, liabilities or Encumbrances that are or are deemed to be an interest in land and, to the extent that any of the Excluded Liabilities listed in Schedule 2.4 hereof is determined by the Court to be an interest in land, and any interest in land shall be deemed to be Retained Liabilities hereunder. Purchaser may, with the consent of Company, which consent shall not be unreasonably withheld, amend the clarifying items listed in Schedule 2.4 as specifically enumerated Excluded Liabilities no later than two (2) Business Days before the Closing Date.

2.5 Transfer of Excluded Liabilities to Residual Co. 1 and Residual Co. 2

On the Closing Date, pursuant to the terms of the Vesting Order, the members of the Acerus Group shall assign and transfer the Excluded Liabilities: (i) relating to each of APC, ABI and ALI to Residual Co. 1; and (ii) relating to APL to Residual Co. 2, and each such Residual Co. shall assume the applicable Excluded Liabilities. All of the Excluded Liabilities shall be discharged from the members of the Acerus Group as of the Closing, pursuant to the Vesting Order.

2.6 Transfer of Excluded Assets to Residual Co. 1 and Residual Co. 2

On the Closing Date, pursuant to the terms of the Vesting Order and, where applicable, in consideration for Residual Cos. assuming the Excluded Liabilities pursuant to Section 2.5 from a member of the Acerus Group, the members of the Acerus Group shall assign and transfer the Excluded Assets (i) relating to each of APC, ABI and ALI to Residual Co. 1; and (ii) relating to APL to Residual Co. 2, and the Excluded Assets shall be vested in the applicable Residual Co. pursuant to the Vesting Order.

2.7 Pre-Closing and Closing Reorganization

(a) The specific mechanism for implementing the Closing, payment of the Credit Bid Consideration, and the structure of the transactions contemplated by this Agreement shall be structured in a tax efficient manner mutually agreed upon by the parties, each acting reasonably.

(b) On or prior to the Closing Date, the members of the Acerus Group shall effect the transaction steps and pre-closing reorganization (collectively, the "**Implementation Steps**") of the members of the Acerus Group as set forth on a schedule to be agreed upon by Company and Purchaser, each acting reasonably, at least seven (7) days prior to the hearing of the members of the Acerus Group's motion to the CCAA Court seeking the Vesting Order; provided that in no event will the Implementation Steps described in Schedule 2.7(c) be materially prejudicial to the interests of Purchaser under the other sections of this Agreement. The Implementation Steps may include, without limitation, the formation of new entities required to implement the transactions contemplated by this Agreement in a tax efficient manner, consistent with Section 2.7(a).

(c) The Implementation Steps shall occur, and be deemed to have occurred in the order and manner to be set out in Schedule 2.7(c).

(d) The steps to be taken and the compromises and releases to be effective on the Closing Date are deemed to occur and be effected in the steps and sequential order set forth in Schedule 2.7(c), beginning on or before the Closing Date at such time as is specified therein.

ARTICLE 3
PURCHASE PRICE AND RELATED MATTERS

3.1 Purchase Price

The purchase price payable by Purchaser for the Purchased Shares (the "**Purchase Price**") shall be the release of the applicable members of the Acerus Group from all amounts outstanding and obligations owing to Purchaser pursuant to the Loan Agreements and the DIP Facility Loan Agreement as of the Closing Date, including the principal amount of such claims and interest accrued as of the Closing Date, which amount as of April 28, 2023 is **USD$62,187,732.63**, plus all accrued and unpaid interest thereon through to and including the Closing Date, plus any fees and expenses associated therewith (such aggregate amount, the "**Credit Bid Consideration**").

3.2 Payment of Certain Liabilities

On the Closing Date, the members of the Acerus Group shall satisfy, in accordance with the Implementation Steps, the Priority Payments as required to be paid on Closing in the Vesting Order such that all the Priority Payments shall be satisfied in full in connection with the Closing.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF COMPANY

Company represents and warrants, on behalf of itself and all other members of the Acerus Group, to Purchaser as follows, and acknowledges that Purchaser is relying upon the following representations and warranties in connection with its purchase of the Purchased Shares:

4.1 Due Authorization and Enforceability of Obligations

Subject to the granting of the Vesting Order and Vesting Recognition Order, this Agreement has been duly authorized, executed and delivered by it, and constitutes a legal, valid and binding obligation of it, enforceable against it in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium, or other similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

4.2 Existence and Good Standing

Each of the members of the Acerus Group is validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization and (i) has all requisite power and authority to execute and deliver this Agreement and (ii) has taken all requisite corporate or other action necessary for it to execute and deliver this Agreement and to perform its obligations hereunder and consummate the transaction contemplated hereunder.

4.3 Sophisticated Parties

Each of the members of the Acerus Group (i) is a sophisticated party with sufficient knowledge and experience to evaluate properly the terms and conditions of this Agreement, (ii) has conducted its own analysis and made its own decision to enter into this Agreement and has obtained such independent advice in this regard as it deemed appropriate, and (iii) has not relied on such analysis or decision of any Person other than its own independent advisors.

4.4 Absence of Conflicts

The execution and delivery of this Agreement by Company and the completion by Company of its obligations hereunder and the consummation of the transactions contemplated herein do not and will not violate or conflict with any Applicable Law, (subject to the receipt of any Transaction Regulatory Approvals and the granting of the Vesting Order and Vesting Recognition Order) and will not result (with due notice or the passage of time or both) in a violation, conflict or breach of, or constitute a default under, or require any consent to be obtained under the certificate of incorporation, articles, by-laws or other constituent documents of any member of the Acerus Group. Subject to the granting of the Vesting Order and Vesting Recognition Order, the execution, delivery and performance by Company does not and will not violate any Order.

4.5 Approvals and Consents

The execution and delivery of this Agreement by Company, the completion by Company of its obligations hereunder and the consummation by Company of the transactions contemplated herein, do not and will not require any consent or approval or other action, with or by, any Governmental Authority, other than as contemplated by the Transaction Regulatory Approvals and the entry of the Vesting Order by the CCAA Court and Vesting Recognition Order by the U.S. Bankruptcy Court.

4.6 No Actions

Except for as previously disclosed in writing to the Purchaser, there is not, as of the date hereof, pending or, to Company's knowledge, threatened against any member of the Acerus Group or any of its properties, nor has any member of the Acerus Group received any written notice in respect of, any claim, potential claim, litigation, action, suit, arbitration, investigation or other proceeding before any Governmental Authority or legislative body, other than the CCAA Court, that, would prevent Company from executing and delivering this Agreement, performing its obligations hereunder and consummating the transactions and agreements contemplated by this Agreement.

4.7 Subsidiaries

Schedule 4.7 sets forth a complete and correct list of the name and jurisdiction of organization of each member of the Acerus Group.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser represents and warrants to Company as follows, and acknowledges that Company is relying upon the following representations and warranties in connection with the sale of the Purchased Shares:

5.1 Due Authorization and Enforceability of Obligations

This Agreement has been duly authorized, executed and delivered by Purchaser, and, assuming the due authorization, execution and delivery by it, this Agreement constitutes a legal, valid and binding obligation of it, enforceable against it in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium, or other similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

5.2 Existence and Good Standing

Purchaser is validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization and has all requisite power and authority to execute and deliver this Agreement and to perform its obligations hereunder and consummate the transactions contemplated by this Agreement.

5.3 Sophisticated Party

Purchaser (i) is a sophisticated party with sufficient knowledge and experience to evaluate properly the terms and conditions of this Agreement, (ii) has conducted its own analysis and made its own decision to enter into this Agreement and has obtained such independent advice in this regard as it deemed appropriate, and (iii) has not relied on such analysis or decision of any Person other than its own independent advisors.

5.4 Absence of Conflicts

The execution and delivery of this Agreement by Purchaser and the completion by Purchaser of its obligations hereunder and the consummation of the transactions contemplated herein do not and will not violate or conflict with any Applicable Law, or any of its properties or assets, (subject to the receipt of any Transaction Regulatory Approvals) and will not result (with due notice or the passage of time or both) in a violation, conflict or breach of, or constitute a default under, or require any consent to be obtained under its certificate of incorporation, articles, by-laws or other constituent documents.

5.5 Approvals and Consents

The execution and delivery of this Agreement by Purchaser, the completion by Purchaser of its obligations hereunder and the consummation by Purchaser of the transactions contemplated herein, do not and will not require any consent or approval or other action, with or by, any Governmental Authority, other than as contemplated by the Transaction Regulatory Approvals and the granting of the Vesting Order by the CCAA Court and Vesting Recognition Order by the U.S. Bankruptcy Court.

5.6 No Actions

There is not, as of the date hereof, pending or, to Purchaser's knowledge, threatened against it or any of its properties, nor has Purchaser received notice in respect of, any claim, potential claim, litigation, action, suit, arbitration, investigation or other proceeding before any Governmental

Authority or legislative body, other than the CCAA Court, that, would prevent it from executing and delivering this Agreement, performing its obligations hereunder and consummating the transactions and agreements contemplated by this Agreement.

5.7 Accredited Investor

Purchaser is an "accredited investor", as such term is defined in NI 45-106 and in Rule 501 of Regulation D under the United States Securities Act of 1933 (the "**Securities Act**") and it was not created or used solely to purchase or hold securities as an accredited investor as described in paragraph (m) of the definition of "accredited investor" in NI 45-106 and acknowledges that the Purchased Shares may be subject to resale restrictions under applicable securities laws. The Purchased Shares are being acquired by Purchaser for its own account, and not with a view to, or for the offer or sale in connection with, any public distribution or sale of the Purchased Shares or any interest in them.

5.8 Credit Bid; Availability of Funds

Purchaser has executed, on or prior to the date hereof, the requisite instruction letters to fully authorize Purchaser, and Purchaser is duly authorized, to, among other things, deliver the Credit Bid Consideration in connection with the consummation of the Closing hereunder.

ARTICLE 6
AS IS, WHERE IS

Purchaser acknowledges and agrees that it has conducted to its satisfaction an independent investigation and verification of the Business, the Purchased Shares, the Retained Liabilities and all related operations of the members of the Acerus Group, and, based solely thereon and the advice of its financial, legal and other advisors, has determined to proceed with the transactions contemplated by this Agreement. The Purchaser has relied solely on the results of its own independent investigation and verification and, except for the representations and warranties of the Company expressly set forth in Article 4, the Purchaser understands, acknowledges and agrees that all other representations, warranties, conditions and statements of any kind or nature, expressed or implied (including any relating to the future or historical financial condition, results of operations, prospects, assets or liabilities of the members of the Acerus Group or the Business, or the quality, quantity or condition of the Purchased Shares) are specifically disclaimed by the Company, the other members of Acerus Group, their respective financial and legal advisors and the Monitor and its legal counsel. THE PURCHASER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF THE COMPANY EXPRESSLY AND SPECIFICALLY SET FORTH IN Article 4: (A) THE PURCHASER IS ACQUIRING THE PURCHASED SHARES ON AN "AS IS, WHERE IS" BASIS; AND (B) NONE OF THE COMPANY, THE OTHER MEMBERS OF THE ACERUS GROUP, THE MONITOR OR ANY OTHER PERSON (INCLUDING ANY REPRESENTATIVE OF THE COMPANY, THE OTHER MEMBERS OF THE ACERUS GROUP OR THE MONITOR WHETHER IN ANY INDIVIDUAL, CORPORATE OR ANY OTHER CAPACITY) IS MAKING, AND THE PURCHASER IS NOT RELYING ON, ANY REPRESENTATIONS, WARRANTIES, CONDITIONS OR OTHER STATEMENTS OF ANY KIND WHATSOEVER, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED,

STATUTORY OR OTHERWISE, AS TO ANY MATTER CONCERNING THE MEMBERS OF THE ACERUS GROUP, THE BUSINESS, THE PURCHASED SHARES, THE RETAINED LIABILITIES, THE EXCLUDED ASSETS, THE EXCLUDED LIABILITIES, THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THE AGREEMENT, OR THE ACCURACY OR COMPLETENESS OF ANY INFORMATION PROVIDED TO (OR OTHERWISE ACQUIRED BY) THE PURCHASER OR ANY OF ITS RESPECTIVE REPRESENTATIVES, INCLUDING WITH RESPECT TO MERCHANTABILITY, PHYSICAL OR FINANCIAL CONDITION, DESCRIPTION, FITNESS FOR A PARTICULAR PURPOSE, OR IN RESPECT OF ANY OTHER MATTER OR THING WHATSOEVER, INCLUDING ANY AND ALL CONDITIONS, WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, PURSUANT TO ANY APPLICABLE LAWS IN ANY JURISDICTION, WHICH THE PURCHASER CONFIRMS DO NOT APPLY TO THIS AGREEMENT, AND ARE HEREBY WAIVED IN THEIR ENTIRETY BY THE PURCHASER.

ARTICLE 7
CONDITIONS

7.1 Conditions for the Benefit of Purchaser and Company

The respective obligations of Purchaser and Company to consummate the transactions contemplated by this Agreement are subject to the satisfaction of, or compliance with, at or prior to the Closing Time, each of the following conditions:

(a) *No Law* – no provision of any Applicable Law and no judgment, injunction or Order preventing or otherwise frustrating the consummation of the purchase of the Purchased Shares or any of the other transactions pursuant to this Agreement, including, for the avoidance of doubt, a cease trade or similar order issued by a Governmental Authority in respect of any member of the Acerus Group, shall be in effect;

(b) *Final Orders* – each of the SISP Order and the Vesting Order shall have been issued and entered and shall be Final Orders;

(c) *Final U.S. Orders* – the SISP Recognition Order and Vesting Recognition Order shall have been issued and entered by the U.S. Bankruptcy Court and shall be Final Orders; and

(d) *Transaction Regulatory Approvals* – the members of the Acerus Group shall have received all required Transaction Regulatory Approvals, and all required Transaction Regulatory Approvals shall be in full force and effect, except for Transaction Regulatory Approvals that need not be in full force and effect prior to Closing.

The Parties acknowledge that the foregoing conditions are for the mutual benefit of Company and Purchaser. Any condition in this Section 7.1 may be waived by Company and by Purchaser, in whole or in part, without prejudice to any of their respective rights of termination in the event of non-fulfillment of any other condition in whole or in part. Any such waiver will be binding on Company or Purchaser, as applicable, only if made in writing.

7.2 Conditions for the Benefit of Purchaser

The obligation of Purchaser to consummate the transactions contemplated by this Agreement is subject to the satisfaction of, or compliance with, or waiver by Purchaser of, at or prior to the Closing Time, each of the following conditions (each of which is acknowledged to be for the exclusive benefit of Purchaser):

(a) *Performance of Covenants* – the covenants contained in this Agreement to be performed or complied with by Company at or prior to the Closing Time shall have been performed or complied with in all material respects as at the Closing Time;

(b) *Truth of Representations and Warranties* – (i) the Fundamental Representations and Warranties of Company shall be true and correct in all respects as of the Closing Date, as if made at and as of such date (except for *de minimus* inaccuracies) and (ii) all other representations and warranties of Company contained in Article 4 shall be true and correct in all respects as of the Closing Date, as if made at and as of such date (except for representations and warranties made as of specified date, the accuracy of which shall be determined as of such specified date) except where the failure to be so true and correct would not, in the aggregate, have a Material Adverse Effect (and, for this purpose, any reference to "**material**", "**Material Adverse Effect**" or other concepts of materiality in such representation and warranties shall be ignored);

(c) *Officer's Certificates* – Purchaser shall have received a certificate confirming the satisfaction of the conditions contained in Sections 7.2(a) (*Performance of Covenants*) and 7.2(b) (*Truth of Representations and Warranties*), signed for and on behalf of Company without personal liability by an executive officer of Company or other Persons acceptable to Purchaser, in each case in form and substance reasonably satisfactory to Purchaser;

(d) *No Material Adverse Effect* – since the date hereof, no change effect, event, occurrence, state of facts or development shall have occurred that resulted in, or would reasonably be expected to result in, a Material Adverse Effect;

(e) *Company's Deliverables* – Company shall have delivered to Purchaser all of the deliverables contained in Section 11.2 in form and substance reasonably satisfactory to Purchaser;

(f) *Implementation Steps* – the members of the Acerus Group shall have completed the Implementation Steps that are required to be completed prior to Closing, in form and substance reasonably acceptable to Purchaser, acting reasonably;

(g) *Terminated Employees* - the applicable member of the Acerus Group shall have terminated the employment of the Terminated Employees, and all liabilities owing to any such Terminated Employees in respect of such terminations, including all amounts owing on account of or damages in lieu of, statutory notice, termination payments, severance, benefits, bonuses or other compensation or entitlements, shall be Excluded Liabilities which, pursuant the Vesting Order, shall be assigned and transferred as against the applicable member of the Acerus Group to and assumed by Residual Co.

(h) *Sufficient Funds* – As of immediately prior to the Closing, the aggregate amount of cash held by the members of the Acerus Group shall be sufficient to pay all amounts to be paid by the members of the Acerus Group pursuant to this Agreement and the Vesting Order.

7.3 Conditions for the Benefit of Company

The obligation of Company to consummate the transactions contemplated by this Agreement is subject to the satisfaction of, or compliance with, or waiver where applicable by Company of, at or prior to the Closing Time, each of the following conditions (each of which is acknowledged to be for the exclusive benefit of Company):

(a) *Truth of Representations and Warranties* – the representations and warranties of Purchaser contained in Article 5 will be true and correct in all respects on and as of the date of this Agreement and on and as of the Closing Date as if made on and as of such date (except for representations and warranties made as of specified date, the accuracy of which shall be determined as of such specified date) except where the failure to be so true and correct would not reasonably be expected to have a material and adverse effect on Purchaser's ability to consummate the transactions contemplated by this Agreement;

(b) *Performance of Covenants* – the covenants contained in this Agreement to be performed by Purchaser at or prior to the Closing Time shall have been performed in all material respects as at the Closing Time;

(c) *Officer's Certificate* – Company shall have received a certificate confirming the satisfaction of the conditions contained in Sections 7.3(a) and 7.3(b) signed for and on behalf of Purchaser without personal liability by an executive officer of Purchaser or other Persons acceptable to Company, acting in a commercially reasonable manner, in each case, in form and substance satisfactory to Company, acting in a commercially reasonable manner; and

(d) *Purchaser Deliverables* – Purchaser shall have delivered to Company all of the deliverables contained in Section 11.3 in form and substance satisfactory to Company, acting in a commercially reasonable manner.

(e) *Sufficient Funds* – as of immediately prior to the Closing, the aggregate amount of cash held by the members of the Acerus Group shall be sufficient to pay all amounts to be paid by the members of the Acerus Group pursuant to this Agreement and the Vesting Order, including the Administrative Expense Amount.

ARTICLE 8
ADDITIONAL AGREEMENTS OF THE PARTIES

8.1 Access to Information

(a) Until the Closing Time, Company shall give to Purchaser's personnel engaged in the transactions contemplated by this Agreement and their accountants, legal advisers, consultants, financial advisors and representatives during normal business hours reasonable access to its premises and to all of the books and records relating to the Business, the members of the Acerus Group, the Retained Liabilities and the employees, and shall furnish them with all such information relating to the Business, the members of the Acerus Group, the Retained Liabilities and the employees as Purchaser may reasonably request in connection with the transactions contemplated by this Agreement; provided that such access shall be conducted at Purchaser's expense, in accordance with Applicable Law and under supervision of Company's personnel and in such a manner as to maintain confidentiality, and Company will not be required to provide access to or copies of any such books and records if: (i) the provision thereof would cause Company to be in contravention of any Applicable Law; or (ii) making such information available would: (1) result in the loss of any lawyer-client or other legal privilege; or (2) cause Company to be found in contravention of any Applicable Law, or contravene any fiduciary duty or agreement (including any confidentiality agreement to which Company or any of its Affiliates are a party). Notwithstanding anything in this Section 8.1 to the contrary, any such investigation shall be conducted upon reasonable advance notice and in such manner as does not materially disrupt the conduct of the Business or the possible sale thereof to any other Person.

(b) Following the Closing, the members of the Acerus Group shall make all books and records of the members of the Acerus Group reasonably available to the Monitor and any trustee in bankruptcy of any of the members of the Acerus Group upon at least five (5) Business Days prior notice, for a period of seven (7) years after Closing, and shall, at such party's expense, permit any of the foregoing Persons to take copies thereof as they may determine to be necessary or useful to accomplish their respective roles; provided that Purchaser shall not be obligated to make such books and records available to the extent that doing so would: (i) violate Applicable Law; (ii) jeopardize the protection of a solicitor-client privilege; or (iii) unreasonably interfere with the ongoing business and operations of the members of the Acerus Group and their Affiliates, as determined by the members of the Acerus Group, acting reasonably.

8.2 Approvals and Consents

(a) The Parties shall use commercially reasonable efforts to apply for and obtain any Transaction Regulatory Approvals as soon as reasonably practicable and no later than the time limits imposed by Applicable Laws, in accordance with Section 8.2(b), in each case at the sole cost and expense of Company.

(b) The Parties shall use commercially reasonable efforts to apply for and obtain the Transaction Regulatory Approvals and shall co-operate with one another in connection with obtaining such approvals. Without limiting the generality of the foregoing, the Parties shall: (i) give each other reasonable advance notice of all meetings or other oral communications with any Governmental Authority relating to the Transaction Regulatory Approvals, as applicable, and provide as soon as practicable but in any case, if any, within the required time, any additional submissions, information and/or documents requested by any Governmental Authority necessary, proper or advisable to obtain the Transaction Regulatory Approvals; (ii) not participate independently in any such meeting or other oral communication without first giving the other Party (or their outside counsel) an opportunity to attend and participate in such meeting or other oral communication, unless otherwise required or requested by such Governmental Authority; (iii) if any Governmental Authority initiates an oral communication regarding the Transaction Regulatory Approvals, promptly notify the other Party of the substance of such communication; (iv) subject to Applicable Laws relating to the exchange of information, provide each other with a reasonable advance opportunity to review and comment upon and consider in good faith the views of the other in connection with all written communications (including any filings, notifications, submissions, analyses, presentations, memoranda, briefs, arguments, opinions and proposals) made or submitted by or on behalf of a Party with a Governmental Authority regarding the Transaction Regulatory Approvals as applicable; and (v) promptly provide each other with copies of all written communications to or from any Governmental Authority relating to the Transaction Regulatory Approvals as applicable.

(c) Each of the Parties may, as advisable and necessary, reasonably designate any competitively or commercially sensitive material provided to the other under this Section 8.2 as "Outside Counsel Only Material", provided that the disclosing Party also provides a redacted version to the receiving Party. Such materials and the information contained therein shall be given only to the outside legal counsel of the recipient and, subject to any additional agreements between the Parties, will not be disclosed by such outside legal counsel to employees, officers or directors of the recipient unless express written permission is obtained in advance from the source of the materials or its legal counsel.

(d) The obligations of either Party to use its commercially reasonable efforts to obtain the Transaction Regulatory Approvals does not require either Party (or any Affiliate thereof) to undertake any divestiture of any business or business segment of such Party, to agree to any material operating restrictions related thereto or to incur any material expenditure(s) related therewith, unless agreed to by the Parties. In connection with obtaining the Transaction Regulatory Approvals, no member of the Acerus Group shall agree to any of the foregoing items without the prior written consent of Purchaser.

8.3 Covenants Relating to this Agreement

(a) Each of the Parties shall perform all obligations required to be performed by the applicable Party under this Agreement, co-operate with the other Parties in connection therewith and do all such other acts and things as may be necessary or desirable in order to consummate and make effective, as soon as reasonably practicable, the transactions contemplated by this Agreement and, without limiting the generality of the foregoing, from the date hereof until the Closing Date, each Party shall and, where appropriate, shall cause each of its Affiliates to:

(i) negotiate in good faith and use its commercially reasonable efforts to take or cause to be taken all actions and to do, or cause to be done, all things necessary, proper or advisable to satisfy the conditions precedent to the obligations of such Party hereunder (including, where applicable, negotiating in good faith with the applicable Governmental Authorities and/or third Persons in connection therewith), and to cause the fulfillment at the earliest practicable date of all of the conditions precedent to the other Party's obligations to consummate the transactions contemplated hereby; and

(ii) not take any action, or refrain from taking any action, or permit any action to be taken or not taken, which would reasonably be expected to prevent, materially delay or otherwise impede the consummation of the transactions contemplated by this Agreement.

(b) From the date hereof until the Closing Date, Purchaser hereby agrees, and hereby agrees to cause its representatives to, keep Company informed on a reasonably current basis, and no less frequently than on a weekly basis through teleconference or other meeting, and as reasonably requested by Company or the Monitor, as to Purchaser's progress in terms of the satisfaction of the conditions precedent contained herein.

(c) From the date hereof until the Closing Date, Company hereby agrees, and hereby agrees to cause its representatives to, keep Purchaser informed on a reasonably current basis, and no less frequently than on a weekly basis through teleconference or other meeting, and as reasonably requested by Purchaser or the Monitor, as to Company's progress in terms of the satisfaction of the conditions precedent contained herein.

(d) Company and Purchaser agree to execute and deliver such other documents, certificates, agreements and other writings, reasonably necessary for the consummation of the transactions contemplated by this Agreement, and to take such other actions to consummate or implement as soon as reasonably practicable, the transactions contemplated by this Agreement.

(e) From the date hereof until the Closing Date, Company hereby agrees, and hereby agrees to cause its representatives to, promptly notify Purchaser of (i) any event, condition, or development that has resulted in the inaccuracy in a material respect or material breach of any representation or warranty, covenant or agreement contained in this Agreement, or (ii) any Material Adverse Effect occurring from and after the date hereof prior to the Closing Date.

(f) Company and Purchaser agree to use commercial reasonable efforts to timely prepare and file all documentation and pursue all steps reasonably necessary to obtain any material third-party consents and approvals as may be required in connection with the transaction contemplated by this Agreement.

(g) The Company and the Purchaser shall cooperate and use commercially reasonable efforts to have the Company to cease to be a reporting issuer (or equivalent thereof) in the applicable jurisdictions of Canada as soon as reasonably practicable after the Closing Date.

8.4 Tax Matters

(a) Purchaser and Company agree to furnish or cause to be furnished to each other, as promptly as practicable, such information and assistance relating to the Purchased Shares and the Retained Liabilities as is reasonably necessary for the preparation and filing of any Tax Return, claim for refund or other required filings relating to Tax matters, for the preparation for and proof of facts during any Tax audit, for the preparation for any Tax protest, for the prosecution of any suit or other proceedings relating to Tax matters and for the answer to any governmental or regulatory inquiry relating to Tax matters. Purchaser and Company also agree to furnish or cause to be furnished to each other, as promptly as practicable, such information and assistance relating to the members of the Acerus Group, the Purchased Shares and the Retained Liabilities as is reasonably necessary for Purchaser to acquire them in a tax efficient manner for both Company and the members of the Acerus Group.

(b) Purchaser and Company shall each be responsible for the preparation of their own statements required to be filed under the Tax Act, the ETA and the Code and other similar forms and returns in accordance with Applicable Law.

(c) For all purposes under this Agreement for which it is necessary to apportion taxes in a taxable period which includes (but does not end on) the Closing Date or Filing Date, as applicable (a "**Straddle Period**"), all real property Taxes, personal property Taxes and similar ad valorem obligations shall be apportioned between the taxable period up to and including the Closing Date or Filing Date, as applicable (such portion of such Straddle Period, the "**Pre-Closing Straddle Tax Period**") and the taxable period after the Closing Date or Filing Date, as applicable (such portion of such Straddle Period, the "**Post-Closing Straddle Tax Period**"), on a per diem basis. Except as otherwise provided herein, with respect to the Purchased Shares, Company shall be liable for the proportionate amount of such real property Taxes, personal property Taxes and similar ad valorem obligations that are attributable to the Pre-Closing Straddle Tax Period, and Purchaser shall be liable for the proportionate amount of such real property Taxes, personal property Taxes and similar ad valorem obligations that are attributable to the Post-Closing Straddle Tax Period. For all purposes under this Agreement, in the case of any Tax based upon or related to income, receipts, sales, use, payroll, or withholding, in respect of any Straddle Period, the portion of such Tax allocable to the Pre-Closing Straddle Tax Period shall be deemed to be the amount that would be payable if the relevant Straddle Period ended on and included the Closing Date or Filing Date, as applicable. To the extent such closing of the books method is not incorporated under the law of a jurisdiction for particular types of entities, allocations of income among the periods shall be made to replicate the closing of the books method to the maximum extent possible.

8.5 Employee Matters

(a) Purchaser may in as many separate instances as it may require, notify Company that Purchaser wishes to interview any employees or contractors or consultants of the Acerus Group, and upon receipt of a request thereof Company will use all commercially reasonable efforts to facilitate such interviews as soon as reasonably practicable. Purchaser may, but is not obligated to, in the name of the applicable member of the Acerus Group, make conditional (upon Closing) continued or new (as applicable) offers of employment on such terms as it may determine in its absolute and sole discretion.

(b) Purchaser shall make commercially reasonable efforts to make such offers in writing on or prior to the date that is ten (10) days prior to the anticipated Closing Date, provided that such offers shall be made no later than five (5) days prior to the anticipated Closing Date, and leave such offers open for acceptance up to and including one (1) day prior to the Closing Date. Notwithstanding any other provision of this Agreement, Purchaser has no obligation to offer employment to any employee.

(c) In the event:

(i) no conditional offer of employment is made to such employee of the Acerus Group; or

(ii) an employee who receives an offer of employment rejects such offer in writing or fails to accept such offer of employment up to and including one (1) day prior to the Closing Date,

such employee shall be deemed to be a Terminated Employee.

8.6 Administrative Expense Amount

(a) On the Closing Date, the members of the Acerus Group shall pay to the Monitor the Administrative Expense Amount, which the Monitor shall hold in trust for the benefit of Persons entitled to be paid the Administrative Expense Costs and amounts secured by the CCAA Charges.

(b) From time to time after the Closing Date, the Monitor may pay from the Administrative Expense Amount the Administrative Expense Costs and amounts secured by the CCAA Charges at its sole discretion and without further authorization from Company or Purchaser. Any unused portion of the Administrative Expense Amount after payment or reservation for all Administrative Expense Costs, as determined by the Monitor, shall be transferred by the Monitor to Company.

(c) Notwithstanding the foregoing or anything else contained herein or elsewhere, each of Company and Purchaser acknowledges and agrees that: (i) the Monitor's obligations hereunder are and shall remain limited to those specifically set out in this Section 8.5(a); and (ii) Monitor is acting solely in its capacity as the CCAA Court-appointed Monitor of the Applicants pursuant to the CCAA Order and not in its personal or corporate capacity, and the Monitor has no liability in connection with this Agreement whatsoever, in its personal or corporate capacity or otherwise, save and except for and only to the extent of the Monitor's gross negligence or intentional fault.

(d) The Parties acknowledge that the Monitor may rely upon the provisions of this Section 8.5(a) notwithstanding that the Monitor is not a party to this Agreement. The provisions of this Section 8.5(a) shall survive the termination or non-completion of the transactions contemplated by this Agreement.

8.7 Release by Purchaser

Except in connection with any obligations of Company or the Monitor contained in this Agreement and any Closing Documents, effective as of the Closing, Purchaser and its Affiliates hereby releases and forever discharges the Company, the Monitor, the CRO, and their respective Affiliates, and each of their respective successors and assigns, and all present and former officers, directors, partners, members, shareholders, limited partners, employees, agents, financial and legal advisors of each of them, from any and all actual or potential Released Claims which such Person had, has or may have in the future to the extent relating to the Business, the Purchased Shares or the Retained Liabilities, save and except for Released Claims arising out of fraud, bad faith or illegal acts (unless such Person believed in good faith that its conduct was legal).

8.8 Release by Company

Except in connection with any obligations of Purchaser and the Monitor contained in this Agreement and any Closing Documents, effective as of the Closing, Company and its Affiliates hereby release and forever discharges Purchaser, the Monitor and their respective Affiliates, and each of their respective successors and assigns, and all former and present officers, directors, partners, members, shareholders, limited partners, employees, agents, financial and legal advisors of each of them, from any and all actual or potential Released Claims which such Person had, has or may have in the future to the extent relating to (i) the Purchased Shares; (ii) all other Equity Interests of the Company which remain after the application of the Vesting Order, (ii) the Retained Liabilities, (iii) the Excluded Assets or (iv) the Excluded Liabilities, save and except for Released

Claims arising out of fraud, bad faith or illegal acts (unless such Person believed in good faith that its conduct was legal).

ARTICLE 9
INSOLVENCY PROVISIONS

9.1 Court Orders and Related Matters

(a) From and after the date of this Agreement and until the Closing Date, Company shall deliver to Purchaser drafts of any and all pleadings, motions, notices, statements, applications, schedules, and other papers to be filed or submitted by any member of the Acerus Group in connection with or related to this Agreement, including with respect to the Vesting Order and the Vesting Recognition Order, for Purchaser's prior review at least three (3) days in advance of service and filing of such materials (or where circumstances make it impracticable to allow for three (3) days' review, with as much opportunity for review and comment as is practically possible in the circumstances). Company acknowledges and agrees (i) that any such pleadings, motions, notices, statements, applications, schedules, or other papers shall be in form and substance satisfactory to Purchaser, acting reasonably, and (ii) to consult and cooperate with Purchaser regarding any discovery, examinations and hearing in respect of any of the foregoing, including the submission of any evidence, including witnesses testimony, in connection with such hearing.

(b) Notice of the motions seeking the issuance of the Vesting Order and the Vesting Recognition Order shall be served or be caused to be served by Company on all Persons required to receive notice under Applicable Law and the requirements of the CCAA, the CCAA Court, the U.S. Bankruptcy Code, the U.S. Bankruptcy Court and any other Person determined necessary by Company or Purchaser, acting reasonably.

(c) Notwithstanding any other provision herein, it is expressly acknowledged and agreed that in the event that: (i) the Vesting Order has not been issued and entered by the CCAA Court by May 31, 2023 or such later date agreed to in writing by Purchaser in its sole discretion; or (ii) the Vesting Recognition Order has not been issued and entered by the U.S. Bankruptcy Court within twenty-eight (28) days of the Vesting Order being entered by the CCAA Court or such later date agreed to in writing by Purchaser in its sole discretion, Purchaser may terminate this Agreement.

(d) If the Vesting Order, the Vesting Recognition Order as applicable, relating to this Agreement is appealed or a motion for leave to appeal, rehearing, reargument or reconsideration is filed with respect thereto, Company agrees (subject to the available liquidity of the Company) to take all action as may be commercially reasonable and appropriate to defend against such appeal, petition or motion.

(e) Company acknowledges and agrees, that the Vesting Order, and the Vesting Recognition Order shall provide that, on the Closing Date and concurrently with the Closing, the Purchased Shares shall be transferred to Purchaser free and clear of all Encumbrances, other than Permitted Encumbrances.

(f) Upon the entry of the Vesting Order the Company shall cause APC, as duly appointed and recognized foreign representative in the Chapter 15 Cases, to seek recognition of the Vesting Order and this Agreement by the U.S. Bankruptcy Court (the "**Vesting Recognition Motion**"). Concurrently with the filing of the Vesting Recognition Motion, APC shall seek entry of an order from the U.S. Bankruptcy Court shortening the notice period of the Vesting Recognition Motion to a period not greater than fourteen (14) days. For the avoidance of doubt, the U.S. Bankruptcy Court's granting or denial of APC's request to shorten the notice period of the Vesting Recognition Motion shall not constitute grounds for termination under Article 10 of this Agreement.

ARTICLE 10
TERMINATION

10.1 Termination

This Agreement may be terminated at any time prior to Closing as follows:

(a) by mutual written consent of Company and Purchaser;

(b) by Purchaser or Company, if Closing has not occurred on or before June 30, 2023 or such later date agreed to by both Company and Purchaser in writing in consultation with the Monitor (the "**Outside Date**"), provided that the terminating Party is not in breach of any representation, warranty, covenant or other agreement in this Agreement which would prevent the satisfaction of the conditions in Article 7 by the Outside Date;

(c) by Purchaser or Company, if at any time after the date hereof any of the conditions in Article 7 is not capable of being satisfied by the applicable dates required in Article 7 of this Agreement or if not otherwise required, by the Outside Date;

(d) by Purchaser, pursuant to Section 9.1(c);

(e) by Purchaser, upon the appointment of a receiver, trustee in bankruptcy or similar official in respect of any member of the Acerus Group or any of the property of any member of the Acerus Group, other than with the prior written consent of Purchaser;

(f) by Purchaser or Company, upon the termination, dismissal or conversion of the CCAA Proceedings or the U.S. Proceedings;

(g) by Purchaser or Company, upon dismissal of the motion for the Vesting Order or the Vesting Recognition Order (or if any such order is stayed, vacated or varied without the consent of Purchaser);

(h) by Purchaser or Company, if a court of competent jurisdiction, including the CCAA Court or the U.S. Bankruptcy Court, or other Governmental Authority has issued an Order or taken any other action to restrain, enjoin or otherwise prohibit the consummation of Closing and such Order or action has become a Final Order;

(i) by Company, if there has been a material violation or breach by Purchaser of any covenant, representation or warranty which would prevent the satisfaction of the conditions set forth in Section 7.1 or Section 7.3, as applicable, by the Outside Date and such violation or breach has not been waived by Company or cured within ten (10) Business Days after written notice thereof from Company, unless Company is in material breach of their obligations under this Agreement which would prevent the satisfaction of the conditions set forth in Section 7.1 or Section 7.2, as applicable, by the Outside Date; and

(j) by Purchaser, if there has been a material violation or breach by Company of any covenant, representation or warranty which would prevent the satisfaction of the conditions set forth in Section 7.1 or Section 7.2, as applicable, by the Outside Date and such violation or breach has not been waived by Company or cured within ten (10) Business Days after written notice thereof from Purchaser, unless Purchaser is in material breach of its obligations under this Agreement which would prevent the satisfaction of the conditions set forth in Section 7.1 or Section 7.3, as applicable, by the Outside Date.

The Party desiring to terminate this Agreement pursuant to this Section 10.1 (other than pursuant to Section 10.1(a)) shall give written notice of such termination to the other Party or Parties, as applicable, specifying in reasonable detail the basis for such Party's exercise of its termination rights.

10.2 Effect of Termination

In the event of termination of this Agreement pursuant to Section 10.1, this Agreement shall become void and of no further force or effect without liability of any Party to any other Party to this Agreement except that: (i), this Section 10.2, Section 12.1, Section 12.3, Section 12.5, Section 12.6, Section 12.77 and Section 11.8 shall survive; and (ii) no termination of this Agreement shall relieve any Party of any liability for any wilful breach by it of this Agreement, or impair the right of any Party to compel specific performance by any other Party of its obligations under this Agreement in accordance with Section 12.3.

ARTICLE 11
CLOSING

11.1 Location and Time of the Closing

The Closing shall take place at the Closing Time on the Closing Date at the offices of Stikeman Elliott LLP in Toronto, or at such other location as may be agreed upon by the Parties.

11.2 Company's Deliveries at Closing

At Closing, Company shall deliver to Purchaser the following:

(a) a true copy of each of the Vesting Order, the SISP Order, the Vesting Recognition Order, the SISP Recognition Order, each of which shall be final;

(b) executed copy of the Monitor's Certificate;

(c) a certificate of a senior officer or director of Company (in such capacity and without personal liability) in form and substance reasonably satisfactory to Purchaser : (i) certifying that the board of directors of Company, has adopted resolutions (in a form attached to such certificate) authorizing the execution, delivery and performance of this Agreement and the transactions contemplated herein, as applicable, which resolutions are in full force and effect and have not been superseded, amended or modified as of the Closing Date; and (ii) certifying as to the incumbency and signatures of the officers and directors of Company;

(d) the certificates contemplated by Section 7.2(c);

(e) confirmation of the due incorporation and organization of Residual Co. on the terms set forth herein;

(f) evidence of the filing of the Articles of Reorganization; and

(g) all other documents as reasonably requested by Purchaser in good faith.

11.3 Purchaser's Deliveries at Closing

At Closing, Purchaser shall deliver to Company:

(a) the payment in the form of a release contemplated by Section 3.1;

(b) a certificate of a senior officer or director of Purchaser (in such capacity and without personal liability), in form and substance reasonably satisfactory to Company: (i) certifying that the board of directors has adopted resolutions (in a form attached to such certificate) authorizing the execution, delivery and performance of this Agreement and the transactions contemplated herein, as applicable, which resolutions are in full force and effect and have not been superseded, amended or modified as of the Closing Date; and (ii) certifying as to the incumbency and signature of the authorized signatory of Purchaser executing this Agreement and the other transaction documents contemplated herein, as applicable;

(c) the certificate contemplated by Section 7.3(c); and

(d) all other documents as reasonably requested by Company in good faith.

11.4 Monitor

When all conditions to Closing set out in Article 7 other than delivery by the Company to the Purchaser of an executed copy of the Monitor's Certificate have been satisfied and/or waived by Company or Purchaser, as applicable, Company and Purchaser, or their respective counsel, shall each deliver to the Monitor written confirmation that all conditions to Closing other than delivery by the Company to the Purchaser of an executed copy of the Monitor's Certificate have been satisfied or waived. Upon receipt of such written confirmation, the Monitor shall: (i) issue forthwith its Monitor's Certificate in accordance with the Vesting Order; and (ii) file as soon as practicable a copy of the Monitor's Certificate with the CCAA Court (and shall provide a true copy of such filed certificate to Company and Purchaser). The Parties hereby acknowledge and agree that the Monitor will be entitled to file the Monitor's Certificate with the CCAA Court without independent investigation upon receiving written confirmation from Company and Purchaser that all conditions to Closing have been satisfied or waived, and the Monitor will have no liability to Company or Purchaser or any other Person as a result of filing the Monitor's Certificate.

11.5 Simultaneous Transactions

All actions taken and transactions consummated at the Closing shall be deemed to have occurred in the manner and sequence set forth in the Implementation Steps and the Vesting Order (subject to the terms of any escrow agreement or arrangement among the Parties relating to the Closing), and no such transaction shall be considered consummated unless all are consummated.

11.6 Further Assurances

As reasonably required by a Party in order to effectuate the transactions contemplated by this Agreement, Purchaser and Company shall execute and deliver at (and after) the Closing such other documents, and shall take such other actions, as are necessary or appropriate, to implement and make effective the transactions contemplated by this Agreement.

ARTICLE 12
GENERAL MATTERS

12.1 Confidentiality

After the Closing Time, Company shall maintain the confidentiality of all confidential information relating to the Business and the members of the Acerus Group (but does not include information that is or becomes generally available to the public other than as a result of disclosure by Purchaser or its representatives in breach of this Agreement or that is received by Purchaser from an independent third party that, to the knowledge of Purchaser, obtained it lawfully and was under no duty of confidentiality (except to the extent that applicable privacy laws do not exclude such information from the definition of personal information) or that is independently developed by Purchaser or its representatives without reference to any Confidential Information), including the Confidential Information, except any disclosure of such information and records as may be required by Applicable Law. If Company or any member of the Acerus Group, or any of its or their respective representatives, becomes legally compelled by deposition, interrogatory, request for documents, subpoena, civil investigative demand, or similar judicial or administrative process, to disclose any such information, such party shall, or shall cause Company or its representative to, provide Purchaser with reasonably prompt prior oral or written notice of such requirement (including any report, statement, testimony or other submission to such Governmental Authority) to the extent legally permissible and reasonably practicable, and cooperate with Purchaser, at Purchaser's expense, to obtain a protective order or similar remedy to cause such information not to be disclosed; provided that in the event that such protective order or other similar remedy is not obtained, Company shall, or shall cause the applicable member of the Acerus Group or representative to, furnish only that portion of such information that has been legally compelled, and shall, or shall cause such Affiliate or representative to, exercise its commercially reasonable efforts to obtain assurance that confidential treatment will be accorded such disclosed information. Company shall instruct each member of the Acerus Group and representatives having access to such information of such obligation of confidentiality and shall be responsible for any breach of the terms of this Section 12.1 by any of the members of the Acerus Group or representatives.

12.2 Public Notices

No press release or other announcement concerning the transactions contemplated by this Agreement shall be made by Company or Purchaser without the prior consent of the other Party (such consent not to be unreasonably withheld, conditioned or delayed); provided, however, that subject to the last sentence of this Section 12.2, any Party may, without such consent, make such disclosure if the same is required by Applicable Law (including the CCAA Proceedings and the U.S. Proceedings) or by any stock exchange on which any of the securities of such Party or any of its Affiliates are listed, or by any insolvency or other court or securities commission, or other similar Governmental Authority having jurisdiction over such Party or any of its Affiliates, and, if such disclosure is required, the Party making such disclosure shall use commercially reasonable efforts to give prior oral or written notice to the other Party to the extent legally permissible and reasonably practicable, and if such prior notice is not legally permissible or reasonably practicable, to give such notice reasonably promptly following the making of such disclosure. Notwithstanding the foregoing: (i) this Agreement may be filed by Company: (A) with the CCAA Court and the U.S. Bankruptcy Court; and (B) on its profile on www.sedar.com; and (ii) the transactions contemplated in this Agreement may be disclosed by Company to the CCAA Court and the U.S. Bankruptcy Court. The Parties further agree that:

(a) the Monitor may prepare and file reports and other documents with the CCAA Court and the U.S. Bankruptcy Court containing references to the transactions contemplated by this Agreement and the terms of such transactions; and

(b) Company, Purchaser and their respective professional advisors may prepare and file such motions, affidavits, materials, reports and other documents with the CCAA Court and the U.S. Bankruptcy Court containing references to the transactions contemplated by this Agreement and the terms of such transactions as may reasonably be necessary to complete the transactions contemplated by this Agreement or to comply with their obligations in connection therewith.

Purchaser shall be afforded an opportunity to review and comment on such materials prior to their filing; provided in the case of reports or other documents prepared or to be filed by the Monitor with the CCAA Court or the U.S. Bankruptcy Court the Purchaser shall be entitled to review only factual information contained therein relating to the terms of the transactions contemplated in this Agreement. The Parties may issue a joint press release announcing the execution and delivery of this Agreement, in form and substance mutually agreed to them.

12.3 Injunctive Relief

(a) The Parties agree that irreparable harm would occur for which money damages would not be an adequate remedy at law in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Parties shall be entitled to seek specific performance, injunctive and other equitable relief to prevent breaches or threatened breaches of this Agreement, and to enforce compliance with the terms of this Agreement, without any requirement for the securing or posting of any bond in connection with the obtaining of any such specific performance, injunctive or other equitable relief, this being in addition to any other remedy to which the Parties may be entitled at law or in equity.

(b) Each Party hereby agrees not to raise any objections to the availability of the equitable remedies provided for herein and the Parties further agree that by seeking the remedies provided for in this Section 12.3, a Party shall not in any respect waive its right to seek any other form of relief that may be available to a Party under this Agreement.

(c) Notwithstanding anything herein to the contrary herein, under no circumstances shall a Party be permitted or entitled to receive both monetary damages and specific performance and election to pursue one shall be deemed to be an irrevocable waiver of the other.

12.4 Survival

None of the representations, warranties, covenants (except the covenants in Article 2, Article 3, Article 12 and Sections 8.1(b), 8.4, 8.7 and 8.8, to the extent they are to be performed after the Closing) of any of the Parties set forth in this Agreement, in any Closing Document to be executed and delivered by any of the Parties (except any covenants included in such Closing Documents, which, by their terms, survive Closing) or in any other agreement, document or certificate delivered pursuant to or in connection with this Agreement or the transactions contemplated hereby shall survive the Closing.

12.5 Non-Recourse

No past, present or future director, officer, employee, incorporator, member, partner, securityholder, Affiliate, agent, lawyer or representative of the respective Parties, in such capacity, shall have any liability for any obligations or liabilities of Purchaser or Company, as applicable, under this Agreement, or for any Causes of Action based on, in respect of or by reason of the transactions contemplated hereby.

12.6 Assignment; Binding Effect

No Party may assign its right or benefits under this Agreement without the consent of each of the other Parties, except that without such consent Purchaser may, upon prior notice to Company, assign this Agreement, or any or all of its rights and obligations hereunder, to one or more of its Affiliates; provided that no such assignment or direction shall relieve Purchaser of its obligations hereunder. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and permitted assigns. Although no Parties to this Agreement, the Monitor and the CRO and their respective Affiliates and advisors shall have the benefits expressed to be conferred upon them in this Agreement including in Article 6 and sections 8.7, 8.8 and 11.4 (in respect of the Monitor) hereof. Subject to the preceding sentence, nothing in this Agreement shall create or be deemed to create any third Person beneficiary rights in any Person not a Party to this Agreement.

12.7 Notices

Any notice, request, demand or other communication required or permitted to be given to a Party pursuant to the provisions of this Agreement will be in writing and will be effective and deemed given under this Agreement on the earliest of: (i) the date of personal delivery; (ii) the date of transmission by email, with confirmed transmission and receipt (if sent during normal business hours of the recipient, if not, then on the next Business Day); (iii) two (2) days after deposit with a nationally-recognized courier or overnight service such as Federal Express; or (iv) five (5) days after mailing via certified mail, return receipt requested. All notices not delivered personally or by email will be sent with postage and other charges prepaid and properly addressed to the Party to be notified at the address set forth for such Party:

(a) If to Purchaser at:

First Generation Capital Inc.
Scotia Plaza
Suite 3515, 40 King Street West
Toronto, ON, M5H 3Y

Attention: Ian Ihnatowycz

Email: ian@generationcapitalmgmt.com

and to:

Borden Ladner Gervais LLP
Bay Adelaide Centre, East Tower
3400, 22 Adelaide Street W.
Toronto, ON M5H 4E3

Attention	Alex MacFarlane Lynn McGrade Xiaodi Jin
Email:	amacfarlane@blg.com lmcgrade@blg.com xjin@blg.com

(b) If to Company at:

Acerus Pharmaceuticals Corporation
Suite 205, 7025 Langer Drive
Mississauga, Ontario L5N 0E8

Attention:	Naveed Manzoor
Email:	naveed@faanadvisors.com

and to:

Stikeman Elliott LLP
Commerce Court West
5300, 199 Bay St.
Toronto, ON M5L 1B9

Attention:	Elizabeth Pillon Lee Nicholson Philip Yang
Email:	lpillon@stikeman.com leenicholson@stikeman.com pyang@stikeman.com

and to:

Ernst and Young Inc.
EY Tower, 100 Adelaide Street West
PO Box 1,
Toronto, ON M5H 0B3

Attention: Alex Morrison
Michael Hayes
Allen Yao

Email: alex.f.morrison@parthenon.ey.com
michael.hayes@parthenon.ey.com
allen.yao@parthenon.ey.com

Any Party may change its address for service from time to time by notice given in accordance with the foregoing and any subsequent notice shall be sent to such Party at its changed address.

12.8 Counterparts; Electronic Signatures

This Agreement may be signed in counterparts and each of such counterparts shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument. Execution of this Agreement may be made by electronic signature which, for all purposes, shall be deemed to be an original signature.

12.9 Language

The Parties have expressly required that this Agreement and all documents and notices relating hereto be drafted in English.

[Signature pages to follow]

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first written above.

ACERUS PHARMACEUTICALS CORPORATION

DocuSigned by:

By: Naveed Manzoor ________________

090F0FC3FAE4473...

Name: Naveed Manzoor

Title: Chief Restructuring Officer

By: ________________________________

Name:

Title:

We have the authority to bind the corporation.

FIRST GENERATION CAPITAL INC.

By: ______________________________

Name: Ian Ihnatowycz
Title: President & CEO

Schedule 1.1(b)(1)
Permitted Encumbrances

- Encumbrances securing Retained Liabilities to the extent that such Retained Liabilities are secured by Encumbrances as of the Closing Time;

- Encumbrances given to a public utility or any Governmental Authority when required by such utility or authority in connection with the operations of that person in the ordinary course of the business but only insofar as they relate to any amounts not due as at the Closing Date;

- the reservations, limitations, provisos and conditions (if any) expressed in any original grant from the Crown;

- Encumbrances for taxes, assessments or governmental charges incurred in the ordinary course that are not yet due and payable or the validity of which is being actively and diligently contested in good faith by the Acerus Group and in respect of which the Acerus Group has established on its books reserves considered by it and its auditors to be adequate therefor;

- normal and customary rights of setoff or compensation upon deposits in favour of depository institutions, and liens of a collecting bank on cheques and other payment items in the course of collection;

- servitudes, easements, rights of way or similar rights in land granted to or reserved by other persons including minor title defects effecting real property such as reservations and limitations expressed in any original grant from the Crown or as a result of statutory reservations and exceptions to title;

- Encumbrances imposed by Applicable Law which rank in priority to the Encumbrances in respect of the DIP Facility Loan Agreement amounts including, but not limited to, Encumbrances of mechanics, labourers, workmen, builders, contractors, suppliers of material or architects or other similar Encumbrances incidental to construction, maintenance or repair operations, provided such Encumbrances secure amounts which are not yet due or delinquent and have not been registered on title to any real property or written notice thereof has not been received by Company or Purchaser;

- Encumbrances associated with, and financing statements evidencing, the rights of equipment lessors under any of the personal property leases;

- undetermined or inchoate liens and charges incidental to construction or repairs or operations which have not at such time been filed pursuant to law against Company or which relate to obligations not due or delinquent; and

- the right reserved to or vested in any municipality or government, or to any statutory or public authority, by the terms of any lease, license, franchise, grant or permit acquired by Company or any statutory provision to terminate any such lease, license, franchise, grant or permit, or to require annual or other periodic payments as a condition to the continuance thereof.

Schedule 1.1(b)(2)
Form of Vesting Order

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

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

ORDER
(Approval and Vesting Order)

THIS MOTION, made by Acerus Pharmaceuticals Corporation ("**APC**" or the "**Company**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), for an order, among other things: (i) approving the Subscription Agreement (the "**SA**") between APC and First Generation Capital Inc. ("**FGC**" or the "**Purchaser**"), dated April 2X, 2023, and the transactions contemplated thereby (the "**Transactions**"), (ii) adding XXX Ontario Inc. ("**Residual Co. 1**") and XXX Ontario Inc. ("**Residual Co. 2**") as a Applicants in these CCAA proceedings; (iii) transferring and vesting all of APC's, Acerus Biopharma Inc.'s ("**ABI**"), Acerus Labs Inc.'s ("**ALI**") and Acerus Pharmaceuticals USA, LLC.'s ("**APL**" collectively with APC, ABI and ALI the "**Acerus Group**") right, title and interest in and to the Excluded Assets, Excluded Leases, Excluded Contracts, and Excluded Liabilities (all as defined in the SA) to and in Residual Co.1 and Residual Co. 2, as applicable; (iv) authorizing and directing the Company to file the Articles of Reorganization; (v) vesting all of the right, title and interest in and to the Purchased Shares (as defined in the SA) in the Purchaser; and (vi) terminating and cancelling the all Equity Interests of APC outstanding prior to the issuance of the Purchased Shares other than those Equity Interests held by and registered in the name of the Purchaser, was heard on May XX, 2023, by video conference due to the COVID-19 pandemic.

ON READING the Notice of Motion, the affidavit of XX, dated May XX, 2023, (the "**XX Affidavit**") the XX Report of Ernst & Young as the court appointed monitor in these CCAA proceedings (the "**Monitor**"), filed (the "**XX Report**"), and on hearing the submissions of counsel for the Acerus Group, counsel for the Monitor, counsel for the Purchaser and counsel for those other parties appearing as indicated by the counsel slip, no one appearing for any other party, although duly served as appears from the affidavits of service of XX sworn May XX, 2023, filed.

SERVICE

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 was properly returnable on May ● 2023, and hereby dispenses with further service thereof.

DEFINED TERMS

2. **THIS COURT ORDERS** that capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the SA.

APPROVAL AND VESTING

3. **THIS COURT ORDERS AND DECLARES** that the SA and the Transactions be and are hereby approved and that the execution of the SA by the Company is hereby authorized and approved, with such minor amendments as the parties thereto may deem necessary with the approval of the Monitor. Company is hereby authorized and directed to perform its obligations under the SA and to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transactions and for the issuance, [sale and conveyance of the Purchased Shares to the Purchaser], including the filing of the Articles of Reorganization [and the cancellation or redemption of the applicable equity interests].

4. **THIS COURT ORDERS AND DECLARES** that this Order shall constitute the only authorization required by the Company to proceed with the Transactions, and that no shareholder or other approval shall be required in connection therewith.

5. **THIS COURT ORDERS AND DECLARES** that upon the delivery of the Monitor's certificate (the "**Monitor's Closing Certificate**") to the Purchaser (the "**Closing Time**"), substantially in the form attached as Schedule "A" hereto, the following shall occur and shall be deemed to have occurred at the Closing Time in the following sequence:

(a) first, (i) with respect to APC, ABI and ALI (collectively the "**Canadian Entities**") all of their right, title and interest in and to their respective Excluded Assets shall vest absolutely and exclusively in Residual Co. 1, and all Claims and (ii) with respect to APL all of APL's right, title and interest in and to the Excluded Assets shall vest absolutely and exclusively in Residual Co. 2, and in each case, all applicable Claims and Encumbrances (each as defined below) shall continue to attach to the Excluded Assets and to the Purchase Price in accordance with paragraph 10 of this Order, in either case with the same nature and priority as they had immediately prior to the transfer;

(b) second, all Excluded Contracts, Excluded Leases and Excluded Liabilities, other than set off claims asserted as defences to any claims made by the any member of the Acerus Group, (which for certainty includes all debts, liabilities, obligations, indebtedness, contracts, leases, agreements, and undertakings of any kind or nature whatsoever, whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise, including any and all encumbrances, security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**"), including without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Initial Order or any other Order of the Court in this CCAA Proceeding; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry systems; (iii) any charges, security interests or claims evidenced by registrations pursuant to the *Land Titles Act* (Ontario), the *Registry Act* (Ontario), the *Land Registration Reform Act* (Ontario)) or any other real property or real property related registry or recording system; (iv) any ownership or third party right, title, or interest that might arise or exists as a result of the contravention of Section 44(1) of the *Land Titles Act* (Ontario)) or any predecessor of any such statutes; and (v) those Claims listed on **Schedule "B"** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances listed on **Schedules "C"** hereto)) of Company (other than the Retained Liabilities) shall be channelled to, assumed by and vest absolutely and exclusively in Residual Co. 1, as to those which relate to the Canadian Entities, and Residual Co. 2, as to those that relate to APL, such that the applicable Excluded Contracts, Excluded Leases and Excluded Liabilities shall become obligations of Residual Co. 1 and Residual Co. 2, respectively, and shall no longer be obligations of the Canadian Entities or APL and all of the Canadian Entities and APL's respective assets, licenses, undertakings and properties of every nature and kind whatsoever and wherever situate, including property held in trust for the Canadian Entities and APL (the **"Acerus Group Property**"), shall be and are hereby forever released and discharged from such Excluded Contracts, Excluded Leases and Excluded Liabilities and all related Claims and all Encumbrances affecting or relating to the Acerus Group's Property are hereby expunged and discharged as against the Acerus Group's Property;

(c) third, the Articles of Reorganization shall be filed or deemed to have been filed;

(d) fourth, in consideration for the Purchase Price, the Company shall issue the Purchased Shares to the Purchaser and all of the right, title and interest in and to the Purchased Shares shall vest absolutely in the Purchaser, free and clear of and from any and all Claims and Encumbrances of any kind and in favour of any party and, for greater certainty, this Court orders that all of the Claims and

Encumbrances of any kind affecting or relating to the Purchased Shares are hereby expunged and discharged as against the Purchased Shares;

(e) fifth, pursuant to the Articles of Reorganization any fractional Purchased Shares and all Equity Interests of the Company outstanding prior to the issuance of the Purchased Shares other than the Purchased Shares, including all options, conversion privileges, equity-based awards, warrants, securities, debentures, loans, notes or other rights, agreements or commitments of any character whatsoever that are held by any Person (defined below) and are convertible or exchangeable for any securities of the Company or which require the issuance, sale or transfer by the Company, of any shares or other securities of the Company and/or the share capital of the Company, or otherwise relating thereto, shall be deemed terminated and cancelled without consideration and the only Equity Interests of the Company that shall remain shall be the Purchased Shares; and

(f) sixth, the Acerus Group shall be deemed to cease being Applicants in these CCAA proceedings, and the Acerus Group shall be deemed to be released from the purview of the Initial Order and all other Orders of this Court granted in respect of these CCAA proceedings, save and except for this Order, the provisions of which (as they relate to the Acerus Group) shall continue to apply in all respects.

6. **THIS COURT ORDERS AND DIRECTS** the Monitor to file with the Court a copy of the Monitor's Closing Certificate, forthwith after delivery thereof in connection with the Transactions.

7. **THIS COURT ORDERS** that the Monitor may rely on written notice from the Company and the Purchaser regarding the satisfaction or waiver of conditions to closing under the SA and shall have no liability with respect to delivery of the Monitor's certificate.

8. **THIS COURT ORDERS** that upon delivery of the Monitor's Closing Certificate, and upon filing of a copy of this Order, together with any applicable registration fees, all

governmental authorities and any other applicable registrar or government ministries or authorities exercising jurisdiction with respect to the Acerus Group, the Acerus Group Property, or the Excluded Assets (collectively, the "**Governmental Authorities**") are hereby authorized, requested and directed to accept delivery of such Monitor's Closing Certificate and a copy of this Order as though they were originals and to register such transfers and interest authorizations as may be required to give effect to the terms of this Order and the SA. Presentment of this Order and the Monitor's Closing Certificate shall be the sole and sufficient authority for the Governmental Authorities to make and register transfers of interest against any of the Acerus Group Property and the Monitor and the Purchaser. [are hereby specifically authorized to discharge the registrations on the Acerus Group Property and the Excluded Assets, as applicable.]

9. **THIS COURT ORDERS** that no authorization, approval or other action by and no notice to or filing with any Governmental Authority or regulatory body exercising jurisdiction over the Acerus Group Property is required for the due execution, delivery and performance by the Company of the SA.

10. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, from and after the Closing Time, subject to the funding of the Priority Payments and the Administrative Expense Amount, all Claims and Encumbrances transferred, assumed, released, expunged and discharged pursuant to paragraph 5 hereof, including against the Acerus Group, the Acerus Group Property and the Purchased Shares and Equity Interests of the Company held by the Purchaser shall attach to the Excluded Assets with the same priority as they had with respect to the Acerus Group's Property immediately prior to the Transactions, as if the Transactions had not occurred.

11. **THIS COURT ORDERS** that, pursuant to clause 7(3) (c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, as amended, the Acerus Group or the Monitor, as the case may be, is authorized, permitted and directed to, at the Closing Time, disclose to the Purchaser all human resources and payroll information in the Acerus Group's records pertaining to past and current employees of the Acerus Group. The Purchaser shall maintain and protect the privacy of such information in accordance with

applicable law and shall be entitled to use the personal information provided to it in a manner that is in all material respects identical to the prior use of such information by the Acerus Group.

12. **THIS COURT ORDERS AND DECLARES** that, at the Closing Time and without limiting the provisions of paragraph 5 hereof, the Purchaser, Acerus Group and the Monitor shall be deemed released from any and all claims, liabilities, (direct, indirect, absolute or contingent) or obligations with respect to any Taxes (including penalties and interest thereon) of, or that relate to the Acerus Group (provided, as it relates to the Purchaser and the Acerus Group, such release shall not apply to (a) Taxes in respect of the business and operations conducted by the Acerus Group after the Closing Time; or (b) Taxes expressly assumed as Retained Liabilities pursuant to the SA), including without limiting the generality of the foregoing, all Taxes that could be assessed against the Purchaser or the Acerus Group (including their affiliates and any predecessor corporations) pursuant to sections 160 and 160.01 of the *Income Tax Act*, R.S.C. 1985 c. 1 (5^{th} Supp.), or any provincial or foreign tax equivalent, in connection with the Acerus Group. For greater certainty, nothing in this paragraph shall release or discharge any Claims with respect to Taxes that are transferred to Residual Co.1 or Residual Co. 2.

13. **THIS COURT ORDERS** that except to the extent expressly contemplated by the SA (and, for greater certainty, excluding the Excluded Assets and Excluded Liabilities and contracts relating thereto, all contracts to which any of the Acerus Group are a party at the time of delivery of the Monitor's Closing Certificate will be and remain in full force and effect upon and following delivery of the Monitor's Closing Certificate and no individual, firm, corporation, governmental body or agency, or any other entity (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") who is a party to any such arrangement may accelerate, terminate, rescind, refuse to perform or otherwise repudiate its obligations thereunder, or enforce or exercise any right (including any right of set off, dilution or other remedy) or make any demand under or in respect of any such arrangement and no automatic termination will have any validity or effect, by reason of:

(a) any event that occurred on or prior to the Closing Time and is not continuing that would have entitled such Person to enforce those rights or remedies (including defaults or events of default arising as a result of the insolvency of any of the Acerus Group);

(b) the insolvency of any Acerus Group entity or the fact that the Acerus Group obtained relief under the CCAA;

(c) any compromises, releases, discharges, cancellations, transactions, arrangements, reorganizations or other steps taken or effected pursuant to the SA, the Transactions or the provisions of this Order, or any other Order of this Court in these CCAA proceedings; or

(d) any transfer or assignment, or any change of control of any of the Acerus Group arising from the implementation of the SA, the Transactions or the provisions of this Order.

14. **THIS COURT ORDERS**, for greater certainty, that (a) nothing in paragraph 13 hereof shall waive, compromise or discharge any obligations of the Acerus Group, or the Purchaser in respect of any Retained Liabilities, and (b) the designation of any Claim as an Retained Liability is without prejudice to any of the Acerus Group's, or the Purchaser's right to dispute the existence, validity or quantum of any such Retained Liability, and (c) nothing in this Order or the SA shall affect or waive the Acerus Group's, or the Purchaser's rights and defences, both legal and equitable, with respect to any Retained Liability, including, but not limited to, all rights with respect to entitlements to set-offs or recoupments against such Retained Liability.

15. **THIS COURT ORDERS** that from and after the Closing Time, all Persons shall be deemed to have waived any and all defaults of any of the Acerus Group then existing or previously committed by any of the Acerus Group, or caused by any one of the Acerus Group, directly or indirectly, or non-compliance with any covenant, warranty, representation, undertaking, positive or negative pledge, term, provision, condition, or obligation, expressed or implied in any contract, or lease existing between such Person and any of the Acerus Group

(including for certainty, those contracts, or leases constituting Acerus Group Property) arising directly or indirectly from the filing by the Acerus Group under the CCAA and implementation of the Transactions, including without limitation any of the matters or events listed in paragraph 13 hereof, and any and all notices of default and demands for payment or any step or proceeding taken or commenced in connection therewith under a contract, or a lease shall be deemed to have been rescinded and of no further force or effect, provided that nothing herein shall be deemed to excuse any of the Acerus Group, or the Purchaser from performing their obligations under the SA or be a waiver of defaults by any of the Acerus Group or the Purchaser under the SA and the related documents.

16. **THIS COURT ORDERS** that, from and after the Closing Time, any and all Persons shall be and are hereby forever barred, estopped, stayed and enjoined from commencing, taking, applying for or issuing or continuing any and all steps or proceedings, whether directly, derivatively or otherwise, and including without limitation, administrative hearings and orders, declarations and assessments, commenced, taken or proceeded with or that may be commenced, taken or proceeded with against the Acerus Group or the Purchaser relating in any way to or in respect of any Excluded Assets, Excluded Liabilities, Excluded Leases, or Excluded Contracts and any other claims, obligations and other matters that are waived, released, expunged or discharged pursuant to this Order.

17. **THIS COURT ORDERS** that from and after the Closing Time:

(a) the nature of the Retained Liabilities, as retained by the Acerus Group, including, without limitation, their amount and their secured or unsecured status, shall not be affected or altered as a result of the Transactions or this Order;

(b) the nature of the Excluded Liabilities, including, without limitation, their amount and their secured or unsecured status, shall not be affected or altered as a result of their transfer to Residual Co.1 and Residual Co. 2, as applicable;

(c) any Person that prior to the Closing Time had a valid right or claim against the Acerus Group under or in respect of any Excluded Contract, Excluded Lease, or Excluded Liability (each an "**Excluded Liability Claim**") shall no longer have an Excluded Liability Claim against the Acerus Group, but will have an equivalent Excluded Liability Claim against Residual Co.1 or Residual Co. 2, as applicable, in respect of the Excluded Contract, Excluded Lease, or Excluded Liability from and after the Closing Time in its place and stead, and nothing in this Order limits, lessens or extinguishes the Excluded Liability Claim of any Person as against Residual Co.1 and/or Residual Co. 2; and

(d) any Person with an Excluded Liability Claim against Residual Co. 1and/or Residual Co. 2 following the Closing Time shall have the same rights, priority and entitlement as against Residual Co.1 and/or Residual Co. 2 as such Person, with an Excluded Liability Claim, had against the applicable Acerus Group entity prior to the Closing Time.

18. **THIS COURT ORDERS AND DECLARES** that, as of the Closing Time:

(a) Residual Co.1 and Residual Co. 2 shall be companies to which the CCAA applies; and

(b) Residual Co.1 and Residual Co. 2 shall be added as Applicants in these CCAA proceedings and all references in any Order of this Court in respect of these CCAA proceedings to (i) an "Applicant" or the "Applicants" shall refer to and include Residual Co.1 and Residual Co. 2, and (ii) "Property" shall include the current and future assets, licenses, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof, of Residual Co.1 and Residual Co. 2 (collectively the "**Residual Co. Property**"), and, for greater certainty, each of the Charges (as defined in the Amended and Restated Initial Order dated February [XX], 2023), shall constitute a charge on the Residual Co. Property.

PRIORITY PAYMENTS

19. **THIS COURT ORDERS AND DIRECTS** that the Priority Payments, as necessary and permitted by the SA, shall be distributed by the Company from the cash on hand on the Closing Date consistent with the Implementation Steps.

20. **THIS COURT ORDERS** that, notwithstanding:

(a) the pendency of these CCAA proceedings;

(b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C 195, c. B-3, as amended (the "**BIA**"), in respect of Residual Co. 1 or Residual Co. 2 and any bankruptcy order issued pursuant to any such applications;

(c) any assignment in bankruptcy made in respect of any of the Acerus Group, Residual Co.1 or Residual Co. 2; or

(d) any foreign law equivalent of (b) or (c),

the SA, the implementation of the Transactions (including without limitation the transfer and vesting of the Excluded Assets, Excluded Contracts, Excluded Leases and Excluded Liabilities in and to Residual Co.1 and Residual Co. 2, as applicable, the transfer and vesting of the Purchased Shares in and to the Purchaser, the payment of the Priority Payments by the Company and any payments by or to the Purchaser, any of the Acerus Group entities, Residual Co.1, Residual Co. 2, or the Monitor authorized herein, or pursuant to the SA) shall be binding on any trustee in bankruptcy that may be appointed in respect of any of the Acerus Group, Residual Co.1 and/or Residual Co. 2 and shall not be void or voidable by creditors of the Acerus Group, Residual Co.1 or Residual Co. 2, as applicable, nor shall they constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the CCAA, the BIA or any other applicable federal, provincial or foreign legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

21. **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 and its legal counsel

and their respective present and former directors, officers, partners, employees, and advisors shall continue to have the benefit of all of the indemnities, charges, protections and priorities as set out in the Initial Order and any other Order of this Court and all such indemnities, charges, protections and priorities shall apply and extend to the Monitor and its legal counsel and their respective present and former directors, officers, partners, employees, and advisors in the fulfillment of the Monitor's duties and the carrying out of the provisions of this Order.

22. **[THIS COURT ORDERS** that no action lies against the Monitor by reason of this Order or the performance of any act authorized by this Order, except with leave of the Court following a motion brought on not less than fifteen (15) days' notice to the Monitor and its legal counsel. The entities related or affiliated with the Monitor or belonging to the same group as the Monitor (including, without limitation, any agents, employees, legal counsel or other advisors retained or employed by the Monitor) shall benefit from the protection granted to the Monitor under the present paragraph.]

23. **THIS COURT ORDERS** that the Monitor shall not, as a result of this Order or any matter contemplated hereby: (a) be deemed to have taken part in the management or supervision of the management of the Acerus Group, Residual Co. 1 or Residual Co. 2, or to have taken or maintained possession or control of the business or property of any of the Acerus Group, Residual Co. 1 or Residual Co. 2, or any part thereof; or (b) be deemed to be in Possession (as defined in the Initial Order) of any property of the Acerus Group, Residual Co. 1 or Residual Co. 2 within the meaning of any applicable Environmental Legislation (as defined in the Initial Order) or otherwise.

24. **THIS COURT ORDERS** that nothing in this Order, including the release of the Acerus Group from the purview of these CCAA proceedings pursuant to paragraph 5(f) hereof and the addition of Residual Co. 1 and Residual Co. 2 as Applicants in these CCAA proceedings, shall affect, vary, derogate from, limit or amend any rights, approvals and protections afforded to the Monitor in these CCAA proceedings and EY shall continue to have the benefit of, any and all rights and approvals and protections in favour of the Monitor at law or pursuant to the CCAA, the Initial Order, any other Orders in these CCAA proceedings or

otherwise, including all approval, protections and stays of proceedings in favour of EY in its capacity as Monitor, all of which are expressly continued and confirmed.

25. **THIS COURT ORDERS** that notwithstanding anything contained in this Order, the Monitor, its employees and representatives shall are not and shall not be or be deemed to be, a director, officer, or employee of Residual Co. 1 or Residual Co. 2, *de facto* or otherwise, and shall incur no liability as a result of acting in accordance with this Order, other than any liability arising as a direct result of the gross negligence or wilful misconduct of the Monitor.

26. **THIS COURT ORDERS** that nothing in this Order shall constitute or be deemed to constitute the Monitor as receiver, assignee, liquidator, administrator, receiver-manager, agent of the creditors or legal representative of Residual Co. 1, or Residual Co. 2.

27. **THIS COURT ORDERS** that in the event of a conflict between the terms of this Order and those of the Initial Order or any other Order of this Court, the provisions of this Order shall govern.

28. **THIS COURT ORDERS** that the ● Report and the activities of the Monitor as set out therein be and are hereby approved provided, however, that only the Monitor, in its personal capacity and only with respect to its own liability, shall be entitled to rely upon or utilize in any way such approval.

RELEASES

29. **THIS COURT ORDERS** that effective upon the filing of the Monitor's Closing Certificate, (i) the current and former directors, officers, employees, legal counsel and advisors to the Acerus Group; (ii) the Monitor and its legal counsel and their respective present and former directors, officers, partners, employees, and advisors; (iii) FGC, in its capacities as secured lender to the Acerus Group and majority shareholder of APC, and its current and former directors, officers, employees, legal counsel and advisors; and (iv) the Purchaser and its current and former directors, officers, employees, legal counsel and advisors (collectively, the "**Released Parties**") shall be deemed to be forever irrevocably released and discharged from any and all present and future liabilities, claims (including, without limitation, claims for contribution or indemnity), indebtedness, demands, actions, causes of action, counterclaims,

suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, taxes, recoveries, and obligations of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) based in whole or in part of any act or omission, transaction, dealing or other occurrence existing or taking place prior to the filing of the Monitor's Closing Certificate, or undertaken or completed in connection with or pursuant to the terms of this Order and that relate in any manner whatsoever to the Acerus Group, or any of its operations, assets and property (current or historical), obligations, business or affairs or theses CCAA proceedings and/or the Chapter 15 Case, or arising in connection with or relating to the SA, the completion of the Transactions, the closing documents, any agreement, document, instrument, matter or transaction involving the Acerus Group arising in connection with or pursuant to any of the foregoing, and/or the consummation of the Transactions (collectively, the "**Released Claims**"), which Released Claims are hereby and shall be deemed to be fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties, provided that nothing herein shall release any claim that that is not permitted to be released pursuant to section 5.1(2) of the CCAA, or any obligations of any Released Party under, or in connection with the SA or the closing documents. **"Releasing Parties"** means any and all Persons (not including the Acerus Group and their respective current and former affiliates), and their current and former affiliates' current and former members, directors, managers, officers, investment committee members, special committee members, equity holders (regardless of whether such interests are held directly or indirectly), predecessors, successors, assigns, participants, subsidiaries, affiliates, partners, limited partners, general partners, affiliated investment funds or investment vehicles , managed accounts or funds, and each of their respective current and former members, equity holders, officers, directors, managers, principals, members, management companies, advisory board members, investment fund advisors or managers, employees, agents, trustees, investment managers, financial advisors, partners, legal counsel, accountants, investment bankers, consultants, representatives and other professionals. For certainty, nothing in this paragraph shall release, or be deemed to release APL or any individuals that have been named as defendants in the Jones Day Litigation from any potential liability in the Jones Day Litigation.

GENERAL

30. **THIS COURT ORDERS** that, having been advised of the provisions of Multilateral Instrument 61-101 "Protection of Minority Security Holders in Special Transactions" relating to the requirement for "minority" shareholder approval in certain circumstances, no meeting of shareholders or other holders of Equity Interests in the Acerus Group is required to be held in respect of the Transactions and accordingly, there is no requirement to send any disclosure document related to the Transactions to such shareholders or other holders of Equity Interests.

31. **THIS COURT ORDERS** that, following the Closing Time, the Purchaser and the Acerus Group shall be authorized to take all steps as may be necessary to affect the discharge of the Claims and Encumbrances as against the Acerus Group, the Purchased Shares, those Equity Interests of the Company held by the Purchaser and the Acerus Group Property.

32. **THIS COURT ORDERS** that, following the Closing Time, the title of these proceedings is hereby changed to

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

AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF. XX AND YY

33. **THIS COURT ORDERS** that, notwithstanding Rule 59.05, this Order is effective from the date that it is made and is enforceable without any need for entry and filing. In accordance with Rules 77.07(6) and 1.04, no formal order need be entered and filed unless an appeal or a motion for leave to appeal is brought to an appellate court. Any party may nonetheless submit a formal order for original signing, entry and filing when the Court returns to regular operations.

34. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

35. **THIS COURT DECLARES** that the Monitor or the Acerus Group shall be authorized to apply as they may consider necessary or desirable, with or without notice, to any

other court, tribunal or administrative body whether in Canada, the United States, or elsewhere, for order which aid and complement this Order. All courts, tribunals and administrative bodies of all such jurisdictions are hereby respectfully requested to make such orders and to provide such assistance to the Acerus group and the Monitor as may be deemed necessary or appropriate for that purpose.

36. **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 including the United States Bankruptcy Court for the District of Delaware overseeing the Acerus Group's proceedings under Chapter 15 of the U.S. Bankruptcy Code in Case No. [XX-XXXX], to give effect to this Order and to assist Residual Co.1, Residual Co. 2, the Acerus Group, 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 Residual Co.1, Residual Co. 2, the Monitor, as an officer of this Court, and to the Company, in its capacity as Foreign Representative of the Acerus Group, as may be necessary or desirable to give effect to this Order, or to assist Residual Co.1, Residual Co. 2, the Monitor, the Acerus Group and their respective agents in carrying out the terms of this Order.

37. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Prevailing Eastern time on the date hereof; provided that, the transaction steps set out in paragraph 5 hereof shall be deemed to have occurred sequentially, on after the other, in the order set out in paragraph 5 hereof.

Schedule A – Form of Monitor's Closing Certificate

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 PLAN OF COMPROMISE OR ARRANGEMENT OF ACERUS PHARMACEUTICALS CORPORATION,
ACERUS BIOPHARMA INC., ACERUS LABS INC. AND ACERUS PHARMACEUTICALS USA, LLC. (each an "**Applicant**" and collectively the "**Applicants**")

RECITALS

A. Pursuant to the Initial Order of Justice Osborne of the Ontario Superior Court of Justice (Commercial List), (the "**Court**") dated January 26, 2023, as amended and restated, the Applicants were granted protection from their creditors pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, and Ernst & Young Inc., was appointed as the monitor ("**Monitor**") of the Applicants. (the "**Monitor"**).

B. Pursuant to the Approval and Vesting Order of the Court, dated May XX, 2023, (the "**AVO**"), the Court approved the transactions (the "**Transactions**") contemplated by the Subscription Agreement dated April XX, 2023, (the "**SA**"), between the Company and First Generation Capital Inc. (the "**Purchaser**"), and ordered, *inter alia*, that: (i) all of the Acerus Group's right, title and interest in and to the Excluded Assets shall vest absolutely and exclusively in Residual Co.1 and/or Residual Co. 2, as applicable; (ii) all of the Excluded Contracts, Excluded Leases and Excluded Liabilities shall be transferred to, assumed by and vest in Residual Co.1 and Residual Co. 2, as applicable; and (iii) all of the right, title and interest in and to the Purchased Shares shall vest absolutely and exclusively in the Purchaser, free and clear of and from any and all Claims and Encumbrances, which vesting is, in each case, to be effective upon the delivery by the Monitor to the Purchaser of a certificate confirming that the Monitor has received written confirmation in the form and substance satisfactory to the Monitor from the Company and the Purchaser that all conditions to closing have been satisfied or waived by the parties to the SA.

D. Capitalized terms not defined herein shall have the meaning given to them in the Order.

THE MONITOR CERTIFIES the following:

1. The Monitor has received written confirmation from the Company, in form and substance satisfactory to the Monitor, that the Priority Payments have been paid by the Company**.**

2. The Monitor has received written confirmation from the Company and the Purchaser, in form and substance satisfactory to the Monitor, that all conditions to closing have been satisfied or waived by the parties to the SA.

3. This Monitor's closing certificate was delivered by the Monitor at Toronto on _________, 2023.

Ernst & Young Inc., in its capacity as Monitor of the Acerus Group and not in its personal or corporate capacity.

Per:________________________________
Name:
Title:

Schedule "B" - Encumbrances to be Deleted and Expunged from the Acerus Group

Personal Property Security Act (Ontario) Registrations to be Deleted and Expunged

1.	Reference File No.	
	Debtor	
	Secured Party	
	Collateral Classification	
	General Collateral Description	
2.	Reference File No.	
	Debtor	
	Secured Party	
	Collateral Classification	
	General Collateral Description	
3.	Reference File No.	
	Debtor	
	Secured Party	
	Collateral Classification	
	General Collateral Description	
4.	Reference File No.	
	Debtor	
	Secured Party	
	Collateral Classification	
	General Collateral Description	
5.	Reference File No.	
	Debtor	
	Secured Party	
	Collateral Classification	
	General Collateral Description	

Ontario Land Titles Registrations to be Deleted and Expunged

	Encumbrance	Registration Number	Party	Amount	Registration Date

Schedule "C" - Permitted Encumbrances

Permitted Encumbrances in Respect of the Acerus Group Property

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
(APPROVAL AND VESTING ORDER)

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pyang@stikeman.com

Lawyers for the Applicants

136956903:v1

Schedule 2.2
Excluded Assets

Nil

Schedule 2.2(c)
Excluded Contracts and Excluded Leases

- Consulting Agreement between APL and CNF Pharma, LLC dated effective April 1, 2022

- Consulting Agreement between APL and Samuel Herschkowitz dated effective April 1, 2022

- Board Matters Letter Agreement between APC and Samuel Herschkowitz and Seymour Fein dated on or about February 25, 2022

- Board Observer Rights Letter Agreement between APC and Seymour Fein dated on or about February 25, 2022

- Payment Administration Agreement between David B. Foltz, Dr. Samuel Herschkowitz, and APC dated March 7, 2022

- Agreement and Plan of Merger by and among APC, Lazarus Merger Sub, Inc. Serenity Pharmaceuticals LLC, the Key Securityholders (as defined in such agreement), and Dr. Samuel Herschkowitz as Securityholder Representative dated February 25, 2022

- Amended and Restated Promissory note from APC to the Serenity Securityholders dated September 30, 2022, originally in the principal amount of USD$4,907,876.02

- Engagement letter of Torreya Capital, LLC as Strategic Advisor with APC dated March 10, 2021

- Any and all agreements with Syneos Health, including but not limited to the Master Commercial Services Agreement between APC and inVentiv Commercial Services, LLC dated May 6, 2019

- License, Development and Supply Agreement between Acerus Pharmaceuticals SRL and Apsen Farmaceutica S.A. dated October 18, 2017

- Amended Product Development Agreement between Trimel Biopharma SRL, Keldmann Healthcare A/S and Keldmann Innovation A/S dated December 30, 2009

- Development and License Agreement between Bentley Pharmaceuticals, Inc. and APL dated February 4, 2008 and subsequent Agreement and First Amendment to Development and License Agreement dated on or about March 31, 2010, and the related Assignment and Assumption Agreement dated May 28, 2017 between Allergan Sales, LLC and Allergan, Inc. and APL

- Manufacturing Agreement dated July 15, 2014 and subsequent Quality Agreement on Contract Manufacturing dated January 16, 2015, in each case between APL and DPT Lakewood, LLC

- Agreement and First Amendment to Development and License Agreement between CPEX Pharmaceuticals, Inc. and Serenity Pharmaceuticals LLC dated March 31, 2010

- Letter Agreement re Desmopressin Acetate Active Pharmaceutical Ingredient between Plantex USA, Inc. and APL dated June 23, 2010, including any and all amendments thereto, including verbal amendments

- License, Transfer, and Development Agreement between APL and Allergan Sales, LLC, and Allergan USA, Inc. dated March 31, 2010 and Assignment and Assumption Agreement among Serenity Pharmaceuticals LLC and Allergan Sales, LLC and Allergan, Inc. dated May 28, 2017

- Client Agreement between Symphony Health Solutions Corporation and APC dated February 6, 2020

- License and Supply Agreement between Acerus Pharmaceuticals SRL and Aytu Bioscience, Inc. dated April 22, 2016, as amended by the Amended and Restated License and Supply Agreement between APC and Aytu Bioscience, Inc. dated July 29, 2019 and terminated by the Termination and Transition Agreement between APC and Aytu Bioscience Inc. dated March 31, 2021

- User-Customer Agreement for AMA Physician Professional Data between Source Healthcare Analytics, LLC and APC dated February 25, 2020

- Asset Purchase Agreement between Alyvant Therapeutics, Inc. and Alyvant GmbH and APL dated July 14, 2021

- Office Lease between The Canada Life Assurance Company and APC dated April 22, 2021

- those agreements, engagement letters, work orders, statements of work, or other contracts between an Acerus Group entity and each of: ZS Associates Canada Consulting ULC, Cadent Medical Communications, Piramal Pharma Solutions, Synapse Medcom, Six Degrees Worldwide Inc., The adpharm Inc., Professional Targeted Marketing, Aceelero GmbH, LifeSci Advisors, Impres Inc., GWL Realty Advisors Inc., Darrow Associates, Bionical, Q4 Inc., Ardena Bioanalytical Laboratory, Deerfield Agency, Deeth Williams Wall LLP, FXAP, and Buttermore and Foltz

and in each case including all amendments, restatements, addendums, modifications, work orders, revisions, statements of work and other documentation or supplements issued thereunder.

Schedule 2.3
Additional Retained Liabilities

1. Liabilities (contingent) of APL related to the Jones Day Litigation.

The "**Jones Day Litigation**" means the case filed by Jones Day against Serenity Pharmaceuticals, LLC, Samuel Herschkowitz and Alain Kodsi, No. 657373/2019 (NY Sup. Ct. NY Cnty), and all actions, claims, counterclaims made in connection therewith.

Schedule 2.4
Non-Exhaustive List of Certain Enumerated Excluded Liabilities

1. Liabilities (contingent) of any member of the Acerus Group other than APL related to the Jones Day Litigation,

For greater certainty, the Purchaser and the Acerus Group shall not assume any liabilities (contingent) of any individual that is a named defendant to the Jones Day Litigation.

Schedule 2.7(c)
Implementation Steps

1. At least three (3) Business Days prior to the Closing Date, the Company shall form each of the Residual Cos. in accordance with the terms contained herein, in form satisfactory to Purchaser, acting reasonably, and the directors thereof shall not include the directors or related parties of the Purchaser, and no such entity shall be a flow through entity for Canadian or U.S. tax purposes unless approved by Purchaser.

2. At least two (2) Business Days prior to the Closing Date, all employees deemed to be Terminated Employees pursuant to Section 8.5 will be terminated by the Company, and all Employee Priority Claims shall be calculated to include such Terminated Employees and if not paid at the time of such termination by the Company, shall be included in the calculation of the Priority Payments required to be paid by the Company at Closing.

3. At Closing, the following amounts shall be paid and satisfied from the funds on hand of the Acerus Group:

    a. the Priority Payments in accordance with the Vesting Order and Section 3.2 hereof; and

    b. the Administrative Expense Amount to the Monitor in accordance with the Vesting Order and Section 8.5(a) hereof.

Schedule 4.7
Subsidiaries

	Name	**Jurisdiction of Incorporation**
1.	Acerus Biopharma Inc.	Ontario
2.	Acerus Labs Inc.	Ontario
3.	Acerus Pharmaceuticals USA, LLC.	Delaware

Schedule 6.1(e)
Transaction Regulatory Approvals to be Obtained Prior to the Closing Time

1. A partial revocation order in respect of each of the FFCTOs and other cease trade orders in effect in respect of ACP which impair the ability of ACP to issue the Purchased Shares and to redeem and cancel the Equity Interests subject to redemption and cancellation hereunder.

EXHIBIT "H"

referred to in the Affidavit of

NAVEED N. MANZOOR

Sworn May 18, 2023

DocuSigned by:

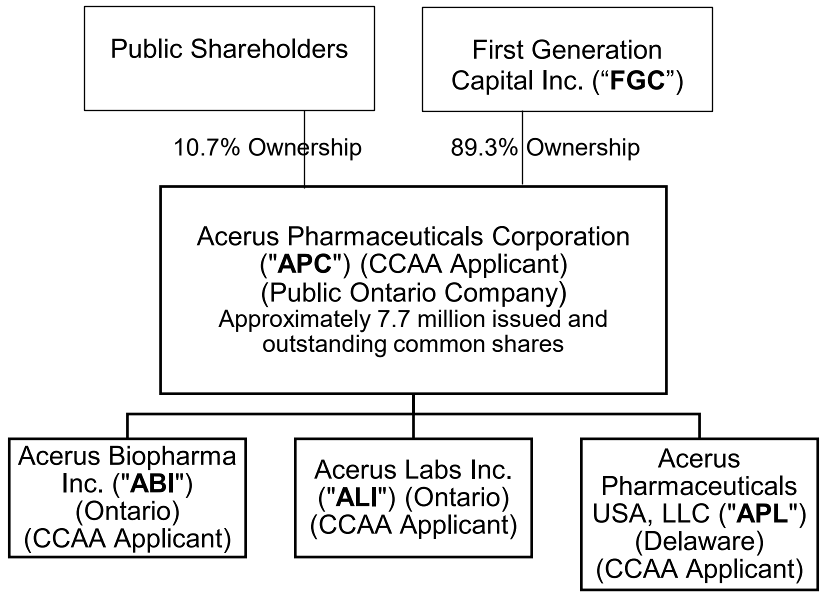
Philip Y

36124C4218DD47C...

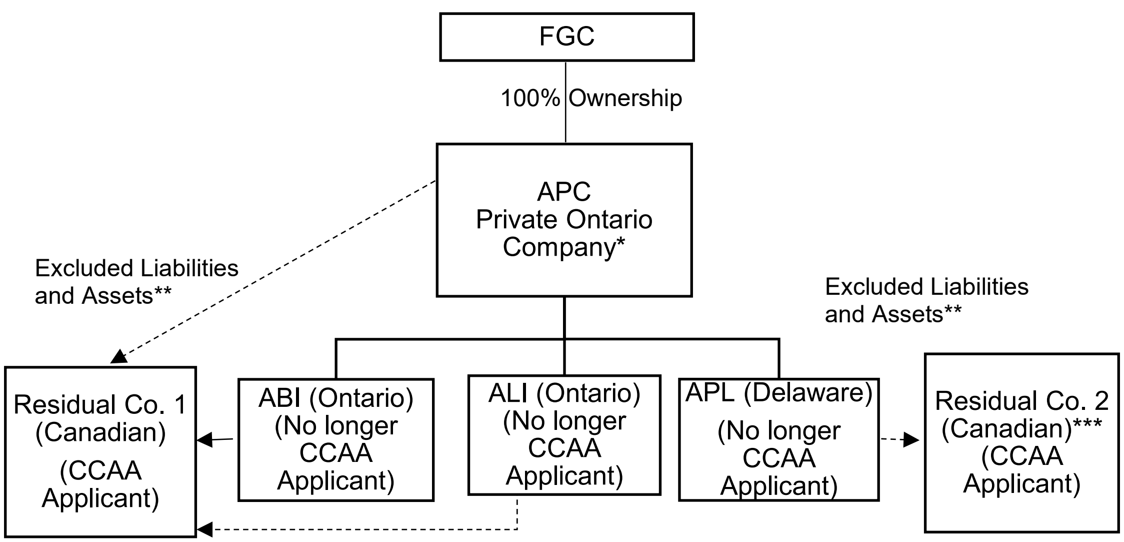
Commissioner for Taking Affidavits

Philip Yang

PRE-RVO STRUCTURE



POST-RVO STRUCTURE



NOTES

*All equity interests of APC outstanding shall be cancelled, with APC issuing 1,000,000,000,000,000 common shares to FGC, resulting in APC becoming a private company that is wholly owned by FGC.

Retained Liabilities include: (a) all Post-Filing Claims; (b) all liabilities arising from and after Closing; (c) tax liabilities; (d) Intercompany Claims; (e) indemnification obligations to D&Os; and (f) Jones Day litigation with respect to APL.

Retained Assets include all assets which are not Excluded Assets

**Excluded Assets include: (a) tax records relating to Excluded Liabilities; (b) Administrative Expense Amount; (c) Excluded Contracts; (d) Excluded Leases; (e) communications related to the transaction; and (f) rights which accrue to Residual Cos.

Excluded Liabilities include all debts, obligations, and liabilities which are not expressly retained or specifically contemplated as a Retained Liability.

***The excluded US assets and liabilities will be vested out to Residual Co. 2, which is a Canadian corporation

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 MAY 18, 2023)

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
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Lawyers for the Applicants

TAB 3

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

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

ORDER
(Approval and Reverse Vesting Order and Extension of Stay of Proceedings)

THIS MOTION, made by Acerus Pharmaceuticals Corporation ("**APC**" or the "**Company**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), for an order, among other things: (i) approving the Subscription Agreement (the "**SA**") between APC and First Generation Capital Inc. ("**FGC**" or the "**Purchaser**"), dated May 15, 2023, and the transactions contemplated thereby (the "**Transactions**"), (ii) adding XXX Ontario Inc. ("**Residual Co. 1**") and XXX Ontario Inc. ("**Residual Co. 2**") as a Applicants in these CCAA proceedings; (iii) transferring and vesting all of APC's, Acerus Biopharma Inc.'s ("**ABI**"), Acerus Labs Inc.'s ("**ALI**") and Acerus Pharmaceuticals USA, LLC.'s ("**APL**" collectively with APC, ABI and ALI the "**Acerus Group**") right, title and interest in and to the Excluded Assets, Excluded Leases, Excluded Contracts, and Excluded Liabilities (all as defined in the SA) to and in Residual Co.1 and Residual Co. 2, as applicable; (iv) authorizing and directing the Company to file the Articles of Reorganization; (v) vesting all of the right, title and interest in and to the Purchased Shares (as defined in the SA) in the Purchaser; and (vi) terminating and cancelling the all Equity Interests of APC outstanding prior to the issuance of the Purchased Shares other than those Equity Interests held by and registered in the name of the Purchaser, was heard on May 30, 2023, by video conference due to the COVID-19 pandemic.

ON READING the Notice of Motion, the affidavit of Naveed Z. Manzoor, dated May 18, 2023, (the "**Manzoor Affidavit**") the Third Report of Ernst & Young Inc. as the court appointed monitor in these CCAA proceedings (the "**Monitor**"), filed (the "**Third Report**"), and on hearing the submissions of counsel for the Acerus Group, counsel for the Monitor, counsel for the Purchaser and counsel for those other parties appearing as indicated by the counsel slip, no one appearing for any other party, although duly served as appears from the affidavit of service of Philip Yang sworn May 18, 2023, filed,

SERVICE

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 was properly returnable on May 30 2023, and hereby dispenses with further service thereof.

DEFINED TERMS

2. **THIS COURT ORDERS** that capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the SA.

EXTENSION OF STAY PERIOD

3. **THIS COURT ORDERS** that the Stay Period as referred to in the Order of Justice Osborne dated February 3, 2023 is extended, until and including June 30, 2023 in respect of the Applicants.

APPROVAL AND VESTING

4. **THIS COURT ORDERS AND DECLARES** that the SA and the Transactions be and are hereby approved and that the execution of the SA by the Company is hereby authorized and approved, with such minor amendments as the parties thereto may deem necessary with the approval of the Monitor. Company is hereby authorized and directed to perform its obligations under the SA and to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transactions and for the issuance, sale and conveyance of the Purchased Shares to the Purchaser, including the filing of the Articles of Reorganization and the cancellation or redemption of the applicable equity interests.

5. **THIS COURT ORDERS AND DECLARES** that this Order shall constitute the only authorization required by the Company to proceed with the Transactions, and that no shareholder or other approval shall be required in connection therewith.

6. **THIS COURT ORDERS AND DECLARES** that upon the delivery of the Monitor's certificate (the "**Monitor's Closing Certificate**") to the Purchaser (the "**Closing Time**"), substantially in the form attached as Schedule "A" hereto, the following shall occur and shall be deemed to have occurred at the Closing Time in the following sequence:

(a) first, (i) with respect to APC, ABI and ALI (collectively the "**Canadian Entities**") all of their right, title and interest in and to their respective Excluded Assets shall vest absolutely and exclusively in Residual Co. 1, and all Claims and (ii) with respect to APL all of APL's right, title and interest in and to the Excluded Assets shall vest absolutely and exclusively in Residual Co. 2, and in each case, all applicable Claims and Encumbrances (each as defined below) shall continue to attach to the Excluded Assets and to the Purchase Price in accordance with paragraph 10 of this Order, in either case with the same nature and priority as they had immediately prior to the transfer;

(b) second, all Excluded Contracts, Excluded Leases and Excluded Liabilities, other than set off claims asserted as defences to any claims made by the any member of the Acerus Group, (which for certainty includes all debts, liabilities, obligations, indebtedness, contracts, leases, agreements, and undertakings of any kind or nature whatsoever, whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise, including any and all encumbrances, security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**"), including without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Initial Order or any other Order of the Court in this CCAA Proceeding; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry systems; (iii) any charges, security interests or claims evidenced by registrations pursuant to the *Land Titles Act* (Ontario), the *Registry Act* (Ontario), the *Land Registration Reform Act* (Ontario)) or any other real property or real property related registry or recording system; (iv) any ownership or third party right, title, or interest that might arise or exists as a result of the contravention of Section 44(1) of the *Land Titles Act* (Ontario)) or any predecessor of any such statutes; and (v) those Claims listed on **Schedule "B"** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances listed on **Schedules "C"** hereto)) of Company (other than the Retained Liabilities) shall be channelled to, assumed by and vest absolutely and exclusively in Residual Co. 1, as to those which relate to the Canadian Entities, and Residual Co. 2, as to those that relate to APL, such that the applicable Excluded Contracts, Excluded Leases and Excluded Liabilities shall become obligations of Residual Co. 1 and Residual Co. 2, respectively, and shall no longer be obligations of the Canadian Entities or APL and all of the Canadian Entities and APL's respective assets, licenses, undertakings and properties of every nature and kind whatsoever and wherever situate, including property held in trust for the Canadian Entities and APL (the **"Acerus Group Property**"), shall be and are hereby forever released and discharged from such Excluded Contracts, Excluded Leases and Excluded Liabilities and all related Claims and all Encumbrances affecting or relating to the Acerus Group's Property are hereby expunged and discharged as against the Acerus Group's Property;

(c) third, the Articles of Reorganization shall be filed or deemed to have been filed;

(d) fourth, in consideration for the Purchase Price, the Company shall issue the Purchased Shares to the Purchaser and all of the right, title and interest in and to the Purchased Shares shall vest absolutely in the Purchaser, free and clear of and from any and all Claims and Encumbrances of any kind and in favour of any party and, for greater certainty, this Court orders that all of the Claims and Encumbrances of any kind affecting or relating to the Purchased Shares are hereby expunged and discharged as against the Purchased Shares;

(e) fifth, pursuant to the Articles of Reorganization any fractional Purchased Shares and all Equity Interests of the Company outstanding prior to the issuance of the Purchased Shares other than the Purchased Shares, including all options, conversion privileges, equity-based awards, warrants, securities, debentures, loans, notes or other rights, agreements or commitments of any character whatsoever that are held by any Person (defined below) and are convertible or exchangeable for any securities of the Company or which require the issuance, sale or transfer by the Company, of any shares or other securities of the Company and/or the share capital of the Company, or otherwise relating thereto, shall be deemed terminated and cancelled without consideration and the only Equity Interests of the Company that shall remain shall be the Purchased Shares; and

(f) sixth, the Acerus Group shall be deemed to cease being Applicants in these CCAA proceedings, and the Acerus Group shall be deemed to be released from the purview of the Initial Order and all other Orders of this Court granted in respect of these CCAA proceedings, save and except for this Order, the provisions of which (as they relate to the Acerus Group) shall continue to apply in all respects.

7. **THIS COURT ORDERS AND DIRECTS** the Monitor to file with the Court a copy of the Monitor's Closing Certificate, forthwith after delivery thereof in connection with the Transactions.

8. **THIS COURT ORDERS** that the Monitor may rely on written notice from the Company and the Purchaser regarding the satisfaction or waiver of conditions to closing under the SA and shall have no liability with respect to delivery of the Monitor's certificate.

9. **THIS COURT ORDERS** that upon delivery of the Monitor's Closing Certificate, and upon filing of a copy of this Order, together with any applicable registration fees, all governmental authorities and any other applicable registrar or government ministries or authorities exercising jurisdiction with respect to the Acerus Group, the Acerus Group Property, or the Excluded Assets (collectively, the "**Governmental Authorities**") are hereby authorized,

requested and directed to accept delivery of such Monitor's Closing Certificate and a copy of this Order as though they were originals and to register such transfers and interest authorizations as may be required to give effect to the terms of this Order and the SA. Presentment of this Order and the Monitor's Closing Certificate shall be the sole and sufficient authority for the Governmental Authorities to make and register transfers of interest against any of the Acerus Group Property and the Monitor and the Purchaser are hereby specifically authorized to discharge the registrations on the Acerus Group Property and the Excluded Assets, as applicable.

10. **THIS COURT ORDERS** that no authorization, approval or other action by and no notice to or filing with any Governmental Authority or regulatory body exercising jurisdiction over the Acerus Group Property is required for the due execution, delivery and performance by the Company of the SA.

11. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, from and after the Closing Time, subject to the funding of the Priority Payments and the Administrative Expense Amount, all Claims and Encumbrances transferred, assumed, released, expunged and discharged pursuant to paragraph 5 hereof, including against the Acerus Group, the Acerus Group Property and the Purchased Shares and Equity Interests of the Company held by the Purchaser shall attach to the Excluded Assets with the same priority as they had with respect to the Acerus Group's Property immediately prior to the Transactions, as if the Transactions had not occurred.

12. **THIS COURT ORDERS** that, pursuant to clause 7(3) (c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, as amended, the Acerus Group or the Monitor, as the case may be, is authorized, permitted and directed to, at the Closing Time, disclose to the Purchaser all human resources and payroll information in the Acerus Group's records pertaining to past and current employees of the Acerus Group. The Purchaser shall maintain and protect the privacy of such information in accordance with applicable law and shall be entitled to use the personal information provided to it in a manner that is in all material respects identical to the prior use of such information by the Acerus Group.

13. **THIS COURT ORDERS AND DECLARES** that, at the Closing Time and without limiting the provisions of paragraph 5 hereof, the Purchaser, Acerus Group and the Monitor

shall be deemed released from any and all claims, liabilities, (direct, indirect, absolute or contingent) or obligations with respect to any Taxes (including penalties and interest thereon) of, or that relate to the Acerus Group (provided, as it relates to the Purchaser and the Acerus Group, such release shall not apply to (a) Taxes in respect of the business and operations conducted by the Acerus Group after the Closing Time; or (b) Taxes expressly assumed as Retained Liabilities pursuant to the SA), including without limiting the generality of the foregoing, all Taxes that could be assessed against the Purchaser or the Acerus Group (including their affiliates and any predecessor corporations) pursuant to sections 160 and 160.01 of the *Income Tax Act*, R.S.C. 1985 c. 1 (5^{th} Supp.), or any provincial or foreign tax equivalent, in connection with the Acerus Group. For greater certainty, nothing in this paragraph shall release or discharge any Claims with respect to Taxes that are transferred to Residual Co.1 or Residual Co. 2.

14. **THIS COURT ORDERS** that except to the extent expressly contemplated by the SA (and, for greater certainty, excluding the Excluded Assets and Excluded Liabilities and contracts relating thereto, all contracts to which any of the Acerus Group are a party at the time of delivery of the Monitor's Closing Certificate will be and remain in full force and effect upon and following delivery of the Monitor's Closing Certificate and no individual, firm, corporation, governmental body or agency, or any other entity (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") who is a party to any such arrangement may accelerate, terminate, rescind, refuse to perform or otherwise repudiate its obligations thereunder, or enforce or exercise any right (including any right of set off, dilution or other remedy) or make any demand under or in respect of any such arrangement and no automatic termination will have any validity or effect, by reason of:

(a) any event that occurred on or prior to the Closing Time and is not continuing that would have entitled such Person to enforce those rights or remedies (including defaults or events of default arising as a result of the insolvency of any of the Acerus Group);

(b) the insolvency of any Acerus Group entity or the fact that the Acerus Group obtained relief under the CCAA;

(c) any compromises, releases, discharges, cancellations, transactions, arrangements, reorganizations or other steps taken or effected pursuant to the

SA, the Transactions or the provisions of this Order, or any other Order of this Court in these CCAA proceedings; or

(d) any transfer or assignment, or any change of control of any of the Acerus Group arising from the implementation of the SA, the Transactions or the provisions of this Order.

15. **THIS COURT ORDERS**, for greater certainty, that (a) nothing in paragraph 14 hereof shall waive, compromise or discharge any obligations of the Acerus Group, or the Purchaser in respect of any Retained Liabilities, and (b) the designation of any Claim as an Retained Liability is without prejudice to any of the Acerus Group's, or the Purchaser's right to dispute the existence, validity or quantum of any such Retained Liability, and (c) nothing in this Order or the SA shall affect or waive the Acerus Group's, or the Purchaser's rights and defences, both legal and equitable, with respect to any Retained Liability, including, but not limited to, all rights with respect to entitlements to set-offs or recoupments against such Retained Liability.

16. **THIS COURT ORDERS** that from and after the Closing Time, all Persons shall be deemed to have waived any and all defaults of any of the Acerus Group then existing or previously committed by any of the Acerus Group, or caused by any one of the Acerus Group, directly or indirectly, or non-compliance with any covenant, warranty, representation, undertaking, positive or negative pledge, term, provision, condition, or obligation, expressed or implied in any contract, or lease existing between such Person and any of the Acerus Group (including for certainty, those contracts, or leases constituting Acerus Group Property) arising directly or indirectly from the filing by the Acerus Group under the CCAA and implementation of the Transactions, including without limitation any of the matters or events listed in paragraph 14 hereof, and any and all notices of default and demands for payment or any step or proceeding taken or commenced in connection therewith under a contract, or a lease shall be deemed to have been rescinded and of no further force or effect, provided that nothing herein shall be deemed to excuse any of the Acerus Group, or the Purchaser from performing their obligations under the SA or be a waiver of defaults by any of the Acerus Group or the Purchaser under the SA and the related documents.

17. **THIS COURT ORDERS** that, from and after the Closing Time, any and all Persons shall be and are hereby forever barred, estopped, stayed and enjoined from commencing,

taking, applying for or issuing or continuing any and all steps or proceedings, whether directly, derivatively or otherwise, and including without limitation, administrative hearings and orders, declarations and assessments, commenced, taken or proceeded with or that may be commenced, taken or proceeded with against the Acerus Group or the Purchaser relating in any way to or in respect of any Excluded Assets, Excluded Liabilities, Excluded Leases, or Excluded Contracts and any other claims, obligations and other matters that are waived, released, expunged or discharged pursuant to this Order.

18. **THIS COURT ORDERS** that from and after the Closing Time:

(a) the nature of the Retained Liabilities, as retained by the Acerus Group, including, without limitation, their amount and their secured or unsecured status, shall not be affected or altered as a result of the Transactions or this Order;

(b) the nature of the Excluded Liabilities, including, without limitation, their amount and their secured or unsecured status, shall not be affected or altered as a result of their transfer to Residual Co.1 and Residual Co. 2, as applicable;

(c) any Person that prior to the Closing Time had a valid right or claim against the Acerus Group under or in respect of any Excluded Contract, Excluded Lease, or Excluded Liability (each an "**Excluded Liability Claim**") shall no longer have an Excluded Liability Claim against the Acerus Group, but will have an equivalent Excluded Liability Claim against Residual Co.1 or Residual Co. 2, as applicable, in respect of the Excluded Contract, Excluded Lease, or Excluded Liability from and after the Closing Time in its place and stead, and nothing in this Order limits, lessens or extinguishes the Excluded Liability Claim of any Person as against Residual Co.1 and/or Residual Co. 2; and

(d) any Person with an Excluded Liability Claim against Residual Co. 1and/or Residual Co. 2 following the Closing Time shall have the same rights, priority and entitlement as against Residual Co.1 and/or Residual Co. 2 as such Person, with an Excluded Liability Claim, had against the applicable Acerus Group entity prior to the Closing Time.

19. **THIS COURT ORDERS AND DECLARES** that, as of the Closing Time:

(a) Residual Co.1 and Residual Co. 2 shall be companies to which the CCAA applies; and

(b) Residual Co.1 and Residual Co. 2 shall be added as Applicants in these CCAA proceedings and all references in any Order of this Court in respect of these CCAA proceedings to (i) an "Applicant" or the "Applicants" shall refer to and include Residual Co.1 and Residual Co. 2, and (ii) "Property" shall include the current and future assets, licenses, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof, of Residual Co.1 and Residual Co. 2 (collectively the "**Residual Co. Property**"), and, for greater certainty, each of the Charges (as defined in the Amended and Restated Initial Order dated February 3, 2023), shall constitute a charge on the Residual Co. Property.

PRIORITY PAYMENTS

20. **THIS COURT ORDERS AND DIRECTS** that the Priority Payments, as necessary and permitted by the SA, shall be distributed by the Company from the cash on hand on the Closing Date consistent with the Implementation Steps.

21. **THIS COURT ORDERS** that, notwithstanding:

(a) the pendency of these CCAA proceedings;

(b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C 195, c. B-3, as amended (the "**BIA**"), in respect of Residual Co. 1 or Residual Co. 2 and any bankruptcy order issued pursuant to any such applications;

(c) any assignment in bankruptcy made in respect of any of the Acerus Group, Residual Co.1 or Residual Co. 2; or

(d) any foreign law equivalent of (b) or (c),

the SA, the implementation of the Transactions (including without limitation the transfer and vesting of the Excluded Assets, Excluded Contracts, Excluded Leases and Excluded Liabilities in and to Residual Co.1 and Residual Co. 2, as applicable, the transfer and vesting of the Purchased Shares in and to the Purchaser, the payment of the Priority Payments by the Company and any payments by or to the Purchaser, any of the Acerus Group entities, Residual Co.1, Residual Co. 2, or the Monitor authorized herein, or pursuant to the SA) shall be binding on any trustee in bankruptcy that may be appointed in respect of any of the Acerus Group, Residual Co.1 and/or Residual Co. 2 and shall not be void or voidable by creditors of the Acerus Group, Residual Co.1 or Residual Co. 2, as applicable, nor shall they constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the CCAA, the BIA or any other applicable federal, provincial or foreign legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

22. **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 and its legal counsel and their respective present and former directors, officers, partners, employees, and advisors shall continue to have the benefit of all of the indemnities, charges, protections and priorities as set out in the Initial Order and any other Order of this Court and all such indemnities, charges, protections and priorities shall apply and extend to the Monitor and its legal counsel and their respective present and former directors, officers, partners, employees, and advisors in the fulfillment of the Monitor's duties and the carrying out of the provisions of this Order.

23. **THIS COURT ORDERS** that no action lies against the Monitor by reason of this Order or the performance of any act authorized by this Order, except with leave of the Court following a motion brought on not less than fifteen (15) days' notice to the Monitor and its legal counsel. The entities related or affiliated with the Monitor or belonging to the same group as the Monitor (including, without limitation, any agents, employees, legal counsel or other advisors retained or employed by the Monitor) shall benefit from the protection granted to the Monitor under the present paragraph.

24. **THIS COURT ORDERS** that the Monitor shall not, as a result of this Order or any matter contemplated hereby: (a) be deemed to have taken part in the management or supervision of the management of the Acerus Group, Residual Co. 1 or Residual Co. 2, or to have taken or maintained possession or control of the business or property of any of the Acerus Group, Residual Co. 1 or Residual Co. 2, or any part thereof; or (b) be deemed to be in Possession (as defined in the Initial Order) of any property of the Acerus Group, Residual

Co. 1 or Residual Co. 2 within the meaning of any applicable Environmental Legislation (as defined in the Initial Order) or otherwise.

25. **THIS COURT ORDERS** that nothing in this Order, including the release of the Acerus Group from the purview of these CCAA proceedings pursuant to paragraph 5(f) hereof and the addition of Residual Co. 1 and Residual Co. 2 as Applicants in these CCAA proceedings, shall affect, vary, derogate from, limit or amend any rights, approvals and protections afforded to the Monitor in these CCAA proceedings and EY shall continue to have the benefit of, any and all rights and approvals and protections in favour of the Monitor at law or pursuant to the CCAA, the Initial Order, any other Orders in these CCAA proceedings or otherwise, including all approval, protections and stays of proceedings in favour of EY in its capacity as Monitor, all of which are expressly continued and confirmed.

26. **THIS COURT ORDERS** that notwithstanding anything contained in this Order, the Monitor, its employees and representatives shall are not and shall not be or be deemed to be, a director, officer, or employee of Residual Co. 1 or Residual Co. 2, *de facto* or otherwise, and shall incur no liability as a result of acting in accordance with this Order, other than any liability arising as a direct result of the gross negligence or wilful misconduct of the Monitor.

27. **THIS COURT ORDERS** that nothing in this Order shall constitute or be deemed to constitute the Monitor as receiver, assignee, liquidator, administrator, receiver-manager, agent of the creditors or legal representative of Residual Co. 1, or Residual Co. 2.

28. **THIS COURT ORDERS** that in the event of a conflict between the terms of this Order and those of the Initial Order or any other Order of this Court, the provisions of this Order shall govern.

29. **THIS COURT ORDERS** that the First Report of the Monitor dated February 2, 2023, the Second Report of the Monitor dated March 7, 2023, the Third Report, and the activities of the Monitor as set out therein be and are hereby approved provided, however, that only the Monitor, in its personal capacity and only with respect to its own liability, shall be entitled to rely upon or utilize in any way such approval.

RELEASES

30. **THIS COURT ORDERS** that effective upon the filing of the Monitor's Closing Certificate, (i) the current and former directors, officers, employees, legal counsel and

advisors to the Acerus Group; (ii) the CRO (iii) the Monitor and its legal counsel and their respective present and former directors, officers, partners, employees, and advisors; (iv) FGC, in its capacities as secured lender to the Acerus Group and majority shareholder of APC, and its current and former directors, officers, employees, legal counsel and advisors; and (v) the Purchaser and its current and former directors, officers, employees, legal counsel and advisors (collectively, the "**Released Parties**") shall be deemed to be forever irrevocably released and discharged from any and all present and future liabilities, claims (including, without limitation, claims for contribution or indemnity), indebtedness, demands, actions, causes of action, counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, taxes, recoveries, and obligations of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) based in whole or in part of any act or omission, transaction, dealing or other occurrence existing or taking place prior to the filing of the Monitor's Closing Certificate, or undertaken or completed in connection with or pursuant to the terms of this Order and that relate in any manner whatsoever to the Acerus Group, or any of its operations, assets and property (current or historical), obligations, business or affairs or theses CCAA proceedings and/or the Chapter 15 Case, or arising in connection with or relating to the SA, the completion of the Transactions, the closing documents, any agreement, document, instrument, matter or transaction involving the Acerus Group arising in connection with or pursuant to any of the foregoing, and/or the consummation of the Transactions (collectively, the "**Released Claims**"), which Released Claims are hereby and shall be deemed to be fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties, provided that nothing herein shall release any claim that that is not permitted to be released pursuant to section 5.1(2) of the CCAA, or any obligations of any Released Party under, or in connection with the SA or the closing documents. **"Releasing Parties"** means any and all Persons (not including the Acerus Group and their respective current and former affiliates), and their current and former affiliates' current and former members, directors, managers, officers, investment committee members, special committee members, equity holders (regardless of whether such interests are held directly or indirectly), predecessors, successors, assigns, participants, subsidiaries, affiliates, partners, limited partners, general partners, affiliated investment funds or investment vehicles , managed accounts or funds, and each of their respective current and former members, equity holders, officers, directors, managers, principals, members, management companies, advisory board members, investment fund advisors or managers, employees, agents, trustees, investment managers, financial advisors, partners, legal counsel, accountants, investment bankers, consultants, representatives and other professionals. For certainty, nothing in this paragraph shall release, or be deemed to release APL or any individuals that have been named as defendants in the Jones Day Litigation from any potential liability in the Jones Day Litigation.

GENERAL

31. **THIS COURT ORDERS** that, having been advised of the provisions of Multilateral Instrument 61-101 “Protection of Minority Security Holders in Special Transactions” relating to the requirement for “minority” shareholder approval in certain circumstances, no meeting of shareholders or other holders of Equity Interests in the Acerus Group is required to be held in respect of the Transactions and accordingly, there is no requirement to send any disclosure document related to the Transactions to such shareholders or other holders of Equity Interests.

32. **THIS COURT ORDERS** that, following the Closing Time, the Purchaser and the Acerus Group shall be authorized to take all steps as may be necessary to affect the discharge of the Claims and Encumbrances as against the Acerus Group, the Purchased Shares, those Equity Interests of the Company held by the Purchaser and the Acerus Group Property.

33. **THIS COURT ORDERS** that, following the Closing Time, the title of these proceedings is hereby changed to

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

AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF. XX AND YY

34. **THIS COURT ORDERS** that, notwithstanding Rule 59.05, this Order is effective from the date that it is made and is enforceable without any need for entry and filing. In accordance with Rules 77.07(6) and 1.04, no formal order need be entered and filed unless an appeal or a motion for leave to appeal is brought to an appellate court. Any party may nonetheless submit a formal order for original signing, entry and filing when the Court returns to regular operations.

35. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

36. **THIS COURT DECLARES** that the Monitor or the Acerus Group shall be authorized to apply as they may consider necessary or desirable, with or without notice, to any other court, tribunal or administrative body whether in Canada, the United States, or elsewhere, for order which aid and complement this Order. All courts, tribunals and administrative bodies of all such jurisdictions are hereby respectfully requested to make such orders and to provide such assistance to the Acerus group and the Monitor as may be deemed necessary or appropriate for that purpose.

37. **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 including the United States Bankruptcy Court for the District of Delaware overseeing the Acerus Group's proceedings under Chapter 15 of the U.S. Bankruptcy Code in Case No. 23-10111-MFW, to give effect to this Order and to assist Residual Co.1, Residual Co. 2, the Acerus Group, 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 Residual Co.1, Residual Co. 2, the Monitor, as an officer of this Court, and to the Company, in its capacity as Foreign Representative of the Acerus Group, as may be necessary or desirable to give effect to this Order, or to assist Residual Co.1, Residual Co. 2, the Monitor, the Acerus Group and their respective agents in carrying out the terms of this Order.

38. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Prevailing Eastern time on the date hereof; provided that, the transaction steps set out in paragraph 5 hereof shall be deemed to have occurred sequentially, on after the other, in the order set out in paragraph 5 hereof.

Schedule A – Form of Monitor's Closing Certificate

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 PLAN OF COMPROMISE OR ARRANGEMENT OF ACERUS PHARMACEUTICALS CORPORATION,
ACERUS BIOPHARMA INC., ACERUS LABS INC. AND ACERUS PHARMACEUTICALS USA, LLC. (each an "**Applicant**" and collectively the "**Applicants**")

RECITALS

A. Pursuant to the Initial Order of Justice Osborne of the Ontario Superior Court of Justice (Commercial List), (the "**Court**") dated January 26, 2023, as amended and restated, the Applicants were granted protection from their creditors pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, and Ernst & Young Inc., was appointed as the monitor ("**Monitor**") of the Applicants. (the "**Monitor"**).

B. Pursuant to the Approval and Vesting Order of the Court, dated May XX, 2023, (the "**AVO**"), the Court approved the transactions (the "**Transactions**") contemplated by the Subscription Agreement dated April XX, 2023, (the "**SA**"), between the Company and First Generation Capital Inc. (the "**Purchaser**"), and ordered, *inter alia*, that: (i) all of the Acerus Group's right, title and interest in and to the Excluded Assets shall vest absolutely and exclusively in Residual Co.1 and/or Residual Co. 2, as applicable; (ii) all of the Excluded Contracts, Excluded Leases and Excluded Liabilities shall be transferred to, assumed by and vest in Residual Co.1 and Residual Co. 2, as applicable; and (iii) all of the right, title and interest in and to the Purchased Shares shall vest absolutely and exclusively in the Purchaser, free and clear of and from any and all Claims and Encumbrances, which vesting is, in each case, to be effective upon the delivery by the Monitor to the Purchaser of a certificate confirming that the Monitor has received written confirmation in the form and substance satisfactory to the Monitor from the Company and the Purchaser that all conditions to closing have been satisfied or waived by the parties to the SA.

D. Capitalized terms not defined herein shall have the meaning given to them in the Order.

THE MONITOR CERTIFIES the following:

1. The Monitor has received written confirmation from the Company, in form and substance satisfactory to the Monitor, that the Priority Payments have been paid by the Company**.**

2. The Monitor has received written confirmation from the Company and the Purchaser, in form and substance satisfactory to the Monitor, that all conditions to closing have been satisfied or waived by the parties to the SA.

3. This Monitor's closing certificate was delivered by the Monitor at Toronto on _________, 2023.

Ernst & Young Inc., in its capacity as Monitor of the Acerus Group and not in its personal or corporate capacity.

Per:________________________________
Name:
Title:

Schedule "B" - Encumbrances to be Deleted and Expunged from the Acerus Group

Personal Property Security Act (Ontario) Registrations to be Deleted and Expunged

1.	Reference File No.	
	Debtor	
	Secured Party	
	Collateral Classification	
	General Collateral Description	
2.	Reference File No.	
	Debtor	
	Secured Party	
	Collateral Classification	
	General Collateral Description	
3.	Reference File No.	
	Debtor	
	Secured Party	
	Collateral Classification	
	General Collateral Description	
4.	Reference File No.	
	Debtor	
	Secured Party	
	Collateral Classification	
	General Collateral Description	
5.	Reference File No.	
	Debtor	
	Secured Party	
	Collateral Classification	
	General Collateral Description	

Ontario Land Titles Registrations to be Deleted and Expunged

	Encumbrance	Registration Number	Party	Amount	Registration Date

Schedule "C" - Permitted Encumbrances

Permitted Encumbrances in Respect of the Acerus Group Property

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
(APPROVAL AND REVERSE VESTING ORDER AND EXTENSION OF STAY OF PROCEEDINGS)
(RETURNABLE MAY 30, 2023)

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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
(APPROVAL AND REVERSE VESTING ORDER AND EXTENSION OF STAY OF PROCEEDINGS)
(RETURNABLE MAY 30, 2023)

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