

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

Acerus Pharmaceuticals Corporation, *et al.*,

Debtors in a foreign proceeding.¹

Chapter 15

Case No. 23-10111 (TMH)

(Jointly Administered)

Re: D.I. 66

**ORDER (I) RECOGNIZING AND ENFORCING
THE CCAA VESTING ORDER, (II) APPROVING THE SALE OF
SUBSTANTIALLY ALL OF THE DEBTORS' INTERESTS FREE AND CLEAR OF
LIENS, CLAIMS, AND ENCUMBRANCES, AND (III) GRANTING RELATED RELIEF**

Upon consideration of the motion (the “**Motion**”)² filed by the Foreign Representative as the “foreign representative” of the Debtors, pursuant to sections 105(a), 363, 365, 1501, 1507, 1520, 1521, 1525, and 1527 of the Bankruptcy Code, for entry of an order (this “Order”): (a) recognizing and enforcing the CCAA Vesting Order, attached hereto as **Exhibit 1**; (b) approving, under section 363 of the Bankruptcy Code, the sale of the Purchased Shares to the Purchaser pursuant to the Transaction Agreement, free and clear of all liens, claims, encumbrances, and other interests (other than the Permitted Encumbrances and Retained Liabilities); and (c) granting such other relief as the Court deems just and proper, all as more fully set forth in the Motion; and upon consideration of the Manzoor Declaration and the Pillon Declaration; and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and 11 U.S.C. §§ 109 and 1501; and venue being proper before this Court pursuant to § 1410; and the Motion being a core proceeding pursuant to 28 U.S.C. § 157(b); and that this Court

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

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

may enter a final order consistent with Article III of the United States Constitution; and adequate and sufficient notice of the filing of the Motion having been given by the Foreign Representative; and it appearing that the relief requested in the Motion is necessary and beneficial to the Debtors; and, if deemed necessary, this Court having held a hearing (the “**Hearing**”) to consider the relief requested in the Motion; and there being no objections or other responses filed that have not been overruled, withdrawn, or otherwise resolved; and after due deliberation and sufficient cause appearing therefore,

THE COURT HEREBY FINDS AND DETERMINES THAT:

A. This Court previously entered the Recognition Order [Docket No. 42] on February 27, 2023, where this Court found that the Debtors had satisfied the requirements of, among others, sections 101(23) and (24), 1502(4), 1504, 1509, 1515, 1517, 1520, 1521, and 1522 of the Bankruptcy Code. All such findings by this Court are hereby incorporated by reference herein and such Recognition Order shall continue in effect in all respects except to the extent this Order directly modifies or directly contradicts such Recognition Order.

B. On March 9, 2023, the Canadian Court granted an order (the “CCAA SISP Approval Order”) that, among other things, authorized the Debtors to implement a sale and investment solicitation process (the “SISP”) in accordance with the terms thereof; and (iii) provided other relief as set forth therein.

C. On March 23, 2023, this Court entered an order [D.I. 61] (the “SISP Recognition Order,” and together with the CCAA SISP Approval Order, the “SISP Orders”) recognizing and enforcing the CCAA SISP Approval Order.

D. On May 31, 2023, the Canadian Court entered the CCAA Vesting Order, approving, among other things, the sale of the Purchased Shares to the Purchaser pursuant to the

Transaction Agreement.

E. Based on the affidavits of service filed with, and the representations made to, this Court: (i) notice of the Motion, the Hearing, if necessary, and the CCAA Vesting Order was proper, timely, adequate, and sufficient under the circumstances of these chapter 15 cases and these proceedings and complied with the various applicable requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules; and (ii) no other or further notice of the Motion, the CCAA Vesting Order, or the entry of this Order is necessary or shall be required.

F. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a).

G. The relief granted herein is necessary and appropriate, is in the interest of the public, promotes international comity, is consistent with the public policies of the United States, is warranted pursuant to sections 105(a), 363(b), (f), (m) and (n), 365, 1501, 1507, 1520, 1521, 1525, and 1527 of the Bankruptcy Code, and will not cause any hardship to any parties in interest that is not outweighed by the benefits of the relief granted.

H. Based on the information contained in the Motion, the Manzoor Declaration, the Pillon Declaration and the record made at the Hearing, if necessary, the Debtors' advisors conducted the SISP to solicit interest in the Purchased Shares, the Debtors and their assets and business in accordance with the terms of the SISP Orders, and such process was non-collusive, duly noticed, and provided a reasonable opportunity to make any offer. The Foreign Representative and the Monitor support the sale of the Purchased Shares pursuant to the Transaction Agreement, and it is appropriate that the Purchased Shares be sold to the Purchaser on the terms and subject to the conditions set forth in the Transaction Agreement.

I. Based on information contained in the Motion, the Manzoor Declaration, the

Pillon Declaration and the record made at the Hearing, if necessary, the relief granted herein relates to assets and interests that, under the laws of the United States, should be administered in the Canadian Proceedings.

J. The Debtors' performance under the Transaction Agreement and related agreements: (i) constitute a sound and reasonable exercise of the Debtors' business judgment; (ii) provide value and are beneficial to the Debtors and are in the best interests of the Debtors; their estates, and their stakeholders; and (iii) are reasonable and appropriate under the circumstances. The consideration provided by the Purchaser for the Purchased Shares under the Transaction Agreement constitutes fair consideration and reasonably equivalent value for the Purchased Shares under the Bankruptcy Code and other laws of the United States, any state, territory, possession thereof, or the District of Columbia.

K. The Transaction does not amount to a consolidation, merger, or *de facto* merger of the Purchaser and any of the Debtors.

L. Time is of the essence in consummating the Transaction. To maximize the value of the Purchased Shares, it is essential that the Transaction occur and be recognized and enforced in the United States promptly. The Foreign Representative, on behalf of the Debtors, has demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the immediate approval and consummation of the Transaction as contemplated by the Transaction Agreement. Accordingly, there is cause to waive the stay that would otherwise be applicable under Bankruptcy Rule 6004(h), and accordingly, the transactions contemplated by the Transaction Agreement and related agreements can be closed as soon as reasonably practicable upon entry of this Order.

M. Based upon the information contained in the Motion, the Manzoor Declaration,

the Pillon Declaration, the other pleadings filed in these chapter 15 cases, and the record made at any hearing on the Motion, if necessary, the Transaction Agreement and each of the transactions contemplated therein were negotiated, proposed, and entered into by the Debtors and the Purchaser in good faith, without collusion, and from arm's-length bargaining positions. The Purchaser is a "good faith purchaser" within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to all the protections afforded thereby. Neither the Debtors, the Foreign Representative, nor the Purchaser has engaged in any conduct that would cause or permit the Transaction Agreement or the consummation of the Transaction to be avoided or costs and damages to be imposed under section 363(n) of the Bankruptcy Code.

N. The Transaction Agreement was not entered into for the purpose of hindering, delaying, or defrauding any present or future creditors of the Debtors.

O. The Foreign Representative, on behalf of itself and the Debtors, may sell the Purchased Shares free and clear of all liens, claims (as defined in section 101(5) of the Bankruptcy Code), rights, liabilities, encumbrances and other interests of any kind or nature whatsoever against the Debtors or the Purchased Shares, other than the Permitted Encumbrances and Retained Liabilities, because with respect to each creditor asserting any liens, claims, encumbrances, and other interests, one or more of the standards set forth in section 363(f)(1)–(5) of the Bankruptcy Code has been satisfied. Each creditor that did not object to the Motion is deemed to have consented to the sale of the Purchased Shares free and clear of all liens, claims, encumbrances, and other interests (other than the Permitted Encumbrances and Retained Liabilities) pursuant to section 363(f)(2) of the Bankruptcy Code.

P. The total consideration to be provided under the Transaction Agreement reflects the Purchaser's reliance on this Order to provide it, pursuant to sections 105(a) and 363(f) of the

Bankruptcy Code, with title to and possession of the Purchased Shares free and clear of all liens, claims, encumbrances, and other interests, other than the Permitted Encumbrances and Retained Liabilities.

Q. The sale of the Purchased Shares to the Purchaser will be a legal, valid, and effective sale of the Purchased Shares, and will vest the Purchaser with all rights, title, and interests in and to the Purchased Shares, free and clear of all liens, claims, encumbrances, and other interests, other than the Permitted Encumbrances and Retained Liabilities.

R. The Foreign Representative, the Debtors, and the Monitor, as appropriate: (i) have full power and authority to execute the Transaction Agreement and all other documents contemplated thereby; (ii) have all the power and authority necessary to consummate the transactions contemplated by the Transaction Agreement; and (iii) upon entry of this Order, other than any consents identified in the Transaction Agreement (including with respect to antitrust matters, if any), need no consent or approval from any other Person (as defined in the CCAA Vesting Order) or governmental unit to consummate the Transaction. The Transaction has been duly and validly authorized by all necessary corporate action of the Debtors.

S. The Transaction Agreement is a valid and binding contract between the Debtors and the Purchaser and shall be enforceable pursuant to its terms. The Transaction Agreement, the Transaction, and the consummation thereof shall be specifically enforceable against and binding upon (without posting any bond) the Debtors and the Foreign Representative in these chapter 15 cases and shall not be subject to rejection or avoidance by the foregoing parties or any other Person.

T. The Purchaser would not have entered into the Transaction Agreement and would not consummate the purchase of the Purchased Shares and the related transactions, thus adversely affecting the Debtors, their estates, and their creditors, and other parties in interest, if the sale of

the Purchased Shares to the Purchaser was not free and clear of all liens, claims, encumbrances, and other interests (other than the Permitted Encumbrances and Retained Liabilities), or if the Purchaser would, or in the future could, be liable on account of any such lien, claim, encumbrance, or any other interest, including, as applicable, certain liabilities related to the Purchased Shares that will not be assumed by the Purchaser, as described in the Transaction Agreement.

U. A sale other than free and clear of all liens, claims, encumbrances, and other interests (other than the Permitted Encumbrances) would yield substantially less value than the sale of the Debtors pursuant to the Transaction Agreement; thus, the sale free and clear of all liens, claims, encumbrances, and other interests (other than the Permitted Encumbrances and Retained Liabilities), in addition to all of the relief provided herein, is in the best interests of the Debtors, their creditors, and other parties in interest.

V. The interests of the Debtors' creditors in the United States are sufficiently protected. The relief granted herein is necessary and appropriate, in the interests of the public and international comity, consistent with the public policies of the United States, and warranted pursuant to sections 1521(b) and 1522 of the Bankruptcy Code.

W. The legal and factual bases set forth in the Motion and at the Hearing, if necessary, establish just cause for the relief granted herein.

X. Any and all findings of fact and conclusions of law announced by this Court at the Hearing are incorporated herein.

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

1. All objections, if any, to the Motion or the relief requested therein that have not been withdrawn, waived, or settled by stipulation filed with this Court, and all reservations of rights included therein, are hereby overruled on the merits.

2. The CCAA Vesting Order and all of its respective terms, including any immaterial or administrative amendments thereto, including those necessary to give effect to the substance of such order, either pursuant to the terms therein or as approved by the Canadian Court, are fully recognized and given full force and effect in the United States in their entirety.

3. The Transaction Agreement and the Transaction contemplated thereunder, including, for the avoidance of doubt, the sale of the Purchased Shares and the transfers of the Purchased Shares and any assets located within the United States on the terms set forth in the Transaction Agreement, the CCAA Vesting Order, including all transactions contemplated thereunder, this Order, including all transactions contemplated hereunder, and all of the terms and conditions of each of the foregoing are hereby approved and authorized pursuant to sections 105, 363, 365, 1501, 1520, 1521, 1525 and 1527 of the Bankruptcy Code. The failure specifically to include any particular provision of the Transaction Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Transaction Agreement and the Transaction be authorized and approved in its entirety.

4. Pursuant to sections 105, 363, 365, 1501, 1520, 1521, 1525, and 1527 of the Bankruptcy Code, the CCAA Vesting Order, and this Order, the Debtors, the Purchaser, and the Foreign Representative (as well as their respective officers, employees, and agents) are authorized to take any and all actions necessary or appropriate to: (a) consummate the Transaction, including the sale of the Purchased Shares to the Purchaser, in accordance with the Transaction Agreement, the CCAA Vesting Order, and this Order; and (b) perform, consummate, implement, and close

fully the Transaction, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Transaction Agreement and the Transaction and to take such additional steps and all further actions as may be necessary or appropriate to the performance of the obligations contemplated by the Transaction Agreement, all without further order of the Court, and are hereby authorized and empowered to cause to be executed and filed such statements, instruments, releases, and other documents on behalf of such Person with respect to the Purchased Shares that are necessary or appropriate to effectuate the Transaction, any related agreements, the CCAA Vesting Order, and this Order, including amended and restated certificates or articles of incorporation and by-laws or certificates or articles of amendment, and all such other actions, filings, or recordings as may be required under appropriate provisions of the applicable laws of all applicable governmental units or as any of the officers of the Debtors or the Purchaser may determine are necessary or appropriate, and are hereby authorized and empowered to cause to be filed, registered, or otherwise recorded a certified copy of the CCAA Vesting Order, this Order or the Transaction Agreement, which, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the release of all liens, claims, encumbrances, and other interests against the Purchased Shares. The CCAA Vesting Order and this Order are deemed to be in recordable form sufficient to be placed in the filing or recording system of each and every federal, state, or local government agency, department, or office.

5. All Persons that are currently in possession of some or all of the Purchased Shares located in the United States or that are otherwise subject to the jurisdiction of this Court are hereby directed to surrender possession of such Purchased Shares to the Purchaser on the Closing Date.

6. This Court shall retain exclusive jurisdiction to enforce any and all terms and provisions of the CCAA Vesting Order in the United States.

Releases

7. The releases, exculpation, and injunctive provisions set forth in the CCAA Vesting Order are expressly recognized by this Court and given full force and effect in the United States. For the avoidance of doubt, nothing herein shall release, exculpate or enjoin any claims arising out of fraud, bad faith or illegal acts.

8. Any legal, factual, equitable, or other defenses (including, but not limited to, waiver, release, estoppel, or res judicata) held by any current or former officer or director of the Debtors in connection with any claim held by, asserted, or asserted in the future by any Person relating in any manner to such current or former officer or director's role, position, conduct, acts, or omissions as an officer or director of any Debtor are hereby preserved and shall not be limited, waived, released, modified, or affected whatsoever by the entry of this Order. Without limiting the foregoing, the rights of any current or former officer or director of any of the Debtors to (a) raise or assert that the releases, exculpation, and/or injunctive provisions contained in the CCAA Vesting Order entered in the Canadian Proceedings are applicable to them and are fully enforceable as a defense in any action brought in any court, tribunal, or forum within the United States, and (b) seek recognition of the releases, exculpation, and injunctions contained in the CCAA Vesting Order under the comity doctrine or any other similar cross-border cooperation doctrine or treaty are fully preserved and retained in full.

9. Notwithstanding anything to the contrary in this Order, the CCAA Vesting Order, or any other document, this Court shall retain exclusive jurisdiction to hear and determine all disputes which are in any forum or court within the territorial United States involving the existence, nature, scope, or enforcement of any exculpations, discharges, injunctions, and releases granted in the CCAA Vesting Order or recognized by this Order.

Transfer of the Purchased Shares Free and Clear

10. Pursuant to sections 105(a), 363, 365, 1501, 1520, 1521, 1525, and 1527 of the Bankruptcy Code, on the Closing Date, the Purchased Shares shall be transferred and absolutely vest in the Purchaser, in accordance with CCAA Vesting Order and the Transaction Agreement, without further instrument of transfer or assignment, and such transfer shall: (a) be a legal, valid, binding, and effective transfer of the Purchased Shares to the Purchaser; (b) vest the Purchaser with all rights, title, and interests in the Purchased Shares; and (c) be free and clear of all liens, claims, encumbrances, and other interests, other than the Permitted Encumbrances and Retained Liabilities.

11. Pursuant to sections 105(a), 363(f), 365, 1501, 1520, 1521, 1525 and 1527 of the Bankruptcy Code, upon the closing of the Transaction and except with respect to solely Permitted Encumbrances and Retained Liabilities: (a) no holder of a lien, claim, encumbrance, or other interest shall interfere, and each and every holder of a lien, claim, encumbrance, or other interest is enjoined from interfering, with the Purchaser's rights and title to or use and enjoyment of the Purchased Shares or the Acerus Group Property; and (b) the sale of the Purchased Shares, the Transaction Agreement, and any instruments contemplated thereby shall be enforceable against and binding upon, and not subject to rejection or avoidance by, the Debtors or any successor thereof. All Persons holding a lien, claim, encumbrance, or other interest (other than the Permitted Encumbrances and Retained Liabilities) are forever barred and enjoined from asserting such lien, claim, encumbrance, or other interest (other than the Permitted Encumbrances and Retained Liabilities) against the Purchased Shares, the Purchaser or its affiliates and their respective officers, directors, employees, managers, partners, members, financial advisors, attorneys, agents, and

representatives, and their respective affiliates, successors, and assigns from and after closing of the Transaction.

12. Each and every federal, state, and local governmental agency or department is authorized and directed to accept (and not impose any fee, charge, or tax in connection therewith) any and all documents and instruments necessary or appropriate to consummate the sale of the Purchased Shares to the Purchaser and the Transaction generally. Effective as of the Closing Date, the CCAA Vesting Order and this Order shall constitute for any and all purposes a full and complete conveyance and transfer of the Purchased Shares to the Purchaser free and clear of all liens, claims, encumbrances, and other interests, other than the Permitted Encumbrances and Retained Liabilities.

13. This Order (a) shall be effective as a determination that, as of the Closing Date, all liens, claims, encumbrances, and other interests, other than the Permitted Encumbrances and Retained Liabilities, have been unconditionally released, discharged, and terminated as to the Purchaser and the Purchased Shares, and the Acerus Group Property, and that the conveyances and transfers described herein have been effected, (b) no creditors of Residual Co. 1 or Residual Co. 2 shall have any claim upon, cause of action against, or interest in, the Purchaser, the Purchased Shares, or the Acerus Group Property, and (c) is and shall be binding upon and govern the acts of all Persons, including all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal and local officials, and all other Persons who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease. Each of the foregoing Persons is hereby directed

to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the Transaction Agreement and effect the discharge of all liens, claims, encumbrances, and other interests, other than the Permitted Encumbrances pursuant to this Order and the CCAA Vesting Order and not impose any fee, charge, or tax in connection therewith.

14. The Purchaser is not and shall not be deemed to: (a) be a legal successor, or otherwise be deemed a successor, to any of the Debtors; (b) have, *de facto* or otherwise, merged with or into any or all Debtors; or (c) be a mere continuation or substantial continuation of any or all Debtors or the enterprise or operations of any or all Debtors.

15. The Transaction, including the purchase of the Purchased Shares, is undertaken by the Purchaser in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorizations provided herein shall neither affect the validity of the Transaction nor the transfer of the Purchased Shares to the Purchaser free and clear of all liens, claims, encumbrances, and other interests, unless such authorization is duly stayed before the closing of the Transaction pending such appeal.

16. Neither the Debtors nor the Purchaser has engaged in any conduct that would cause or permit the Transaction Agreement to be avoided or costs and damages to be imposed under section 363(n) of the Bankruptcy Code.

17. Notwithstanding anything else herein to the contrary, nothing in this order shall be construed to release, limit or impair the claims of Jones Day against APL in the Jones Day Litigation or against any of the individual defendants in the Jones Day Litigation.

18. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion, and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

19. The terms and provisions of the Transaction Agreement, the CCAA Vesting Order, and this Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtors, the Purchaser, the Foreign Representative, the Debtors' creditors, and all other parties in interest, and any successors of the Debtors, the Purchaser, the Foreign Representative, and the Debtors' creditors, including any foreign representative(s) of the Debtors, trustee(s), examiner(s), or receiver(s) appointed in any proceeding, including, without limitation, any proceeding under any chapter of the Bankruptcy Code, the CCAA, or any other law, and all such terms and provisions shall likewise be binding on such foreign representative(s), trustee(s), examiner(s), or receiver(s) and shall not be subject to rejection or avoidance by the Debtors, their creditors, or any trustee(s), examiner(s), or receiver(s).

20. Subject to the terms and conditions of the CCAA Vesting Order, the Transaction Agreement, and any related agreements, documents, or other instruments, may be modified, amended, or supplemented by the parties thereto, in a writing signed by each party, and in accordance with the terms thereof, without further order of this Court; *provided* that any such modification, amendment, or supplement does not materially change the terms of the Transaction, the Transaction Agreement, or any related agreements, documents, or other instruments and is otherwise in accordance with the terms of the CCAA Vesting Order.

21. The provisions of this Order and the Transaction Agreement are non-severable and mutually dependent. To the extent that there are any inconsistencies between the terms of this

Order and the CCAA Vesting Order, on the one hand, and the Transaction Agreement, on the other, this Order and the CCAA Vesting Order shall govern.

22. Nothing in this Order shall be deemed to waive, release, extinguish, or estop the Debtors or the Foreign Representative from asserting, or otherwise impair or diminish, any right (including, without limitation, any right of recoupment), claim, cause of action, defense, offset, or counterclaim in respect of any asset or interest that is not a Purchased Share.

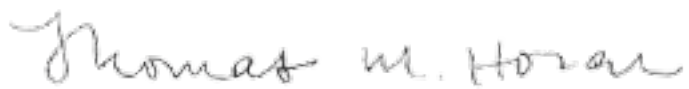
23. All Persons subject to the jurisdiction of the United States are permanently enjoined and restrained from taking any actions inconsistent with, or interfering with, the enforcement and implementation of the CCAA Vesting Order or any documents incorporated by the foregoing.

24. The Foreign Representative is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion and the CCAA Vesting Order.

25. Notwithstanding any provisions in the Bankruptcy Rules to the contrary, including but limited to Rules 6004(h) and 6006(d), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry and the Debtors and the Purchaser are authorized, each in its discretion, to close the Transaction immediately upon entry of this Order.

26. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.

Dated: June 13th, 2023
Wilmington, Delaware


THOMAS M. HORAN
UNITED STATES BANKRUPTCY JUDGE