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
(EXTENSION OF STAY PERIOD)
(RETURNABLE JUNE 28, 2023)

June 26, 2023

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TO: THE SERVICE LIST

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

ONTARIO
SUPERIOR COURT OF JUSTICE
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Applicants

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(as at June 26, 2023)

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Applicants

I N D E X

TAB 1

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

ONTARIO
SUPERIOR COURT OF JUSTICE
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Applicants

NOTICE OF MOTION
(Re: Extension of Stay Period)

Acerus Pharmaceuticals Corporation, Acerus Biopharma Inc., Acerus Labs Inc., and Acerus Pharmaceuticals USA, LLC (the "**Applicants**") will make a motion before the Honourable Justice Penny of the Ontario Superior Court of Justice (Commercial List) on **Wednesday, June 28, 2023 at 9:30 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:

https://ca01web.zoom.us/j/65400327305?pwd=WC91RjNENjNnZ1Q2NHpvbDlzaUNldz09

THE MOTION IS FOR[1]

1. An order substantially in the form attached at Tab 3 of the Motion Record of the Applicants which extends the Stay Period until and including July 31, 2023.

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

THE GROUNDS FOR THE MOTION ARE

Extension of Stay Period

3. On May 30, 2023, the Applicants sought and obtained the Approval and Reverse Vesting Order from this Court which, *inter alia*:

(a) approved the Subscription Agreement between APC and FGC and the transactions contemplated thereby (the "**Transaction**"); and

(b) extended the Stay Period until and including June 30, 2023.

4. Subsequent to the obtaining the Approval and Reverse Vesting Order, APC, as foreign representative in the Chapter 15 Proceedings, filed a motion for recognition of the Approval and Reverse Vesting Order by the US Bankruptcy Court. An objection deadline of June 12, 2023 was set and no objections were filed prior to the deadline. On June 13, 2023, the US Bankruptcy Court entered the Recognition Order, recognizing and enforcing the Approval and Reverse Vesting Order without a hearing.

5. The Applicants request an extension of the Stay Period until and including July 31, 2023.

6. The Subscription Agreement has an outside date of June 30, 2023 and the Applicants were working with the Purchaser to close the Transaction within that timeframe. The remaining condition precedent which has not been satisfied is the partial revocation of the CTO by the OSC required to issue the purchased shares to the Purchaser.

[1] Capitalized terms used herein and not otherwise defined shall have the meanings given to them in the affidavit of Naveed Z. Manzoor sworn June 26, 2023.

7. Despite efforts from the Applicants to advance satisfaction of the conditions, the Applicants do not currently expect the OSC to issue a partial revocation of the CTO in time to close the Transaction prior to or on June 30, 2023. As result, the Applicants have requested an extension of the outside date under the Subscription Agreement from the Purchaser.

8. The Applicants expect the Transaction will be implemented shortly following the partial revocation of the CTO. Upon closing, the current Applicants will emerge from the CCAA Proceedings and be replaced by two newly created companies (the "**ResidualCos**") which will be transferred the excluded liabilities and replace the Applicants in these CCAA Proceedings.

9. Following closing, additional time is required in the CCAA Proceedings to address post-closing items such as payment from the administrative reserve and a further motion to address the administration of ResidualCos and termination of the CCAA Proceedings on sufficient notice to creditors.

10. Since the granting of the Approval and Reverse Vesting Order, the Applicants have acted in good faith and with due diligence to, among other things, discuss and address concerns of various stakeholders, and continue working towards closing the Transaction. Among other things, the Applicants have:

(a) Obtained the Recognition Order in the Chapter 15 Proceedings;

(b) Worked collaboratively with the Purchaser on various transition issues and efforts to close the Transaction;

(c) Sought a partial revocation of the outstanding CTO from the OSC that currently prohibits the issuance of new shares by APC, which is required to close the Transaction;

(d) Engaged in discussions with various contract counterparties regarding the closing of the Transaction;

(e) Engaged in discussions with the landlord of the Applicants' office space, which is expected to be disclaimed shortly prior to closing of the Transaction; and

(f) Issued a formal disclaimer of the PDA between the Keldmann Parties and Trimel Biopharma SRL (a predecessor of ABI) and engaged in discussions with the

Keldmann Parties.

11. An extension of the Stay Period is necessary to provide stability for these additional steps to occur in an orderly manner. An extension of the Stay Period is also necessary as the revocation of the CTO is not expected to be issued prior to expiry of the Stay Period. Without closing of the Transaction, the Applicants require the extension of Stay Period to continue operating in the ordinary course with the stability provided by the stay or proceedings.

12. The Applicants have sufficient liquidity to fund operations up to July 31, 2023 and the Monitor supports the proposed extension of the Stay Period

Other Grounds

(a) The provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court;

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

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

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

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

(a) The Affidavit of Naveed Z. Manzoor, sworn June 26, 2023, and the Exhibits attached thereto;

(b) The Fourth Report of the Monitor; and

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

June 26, 2023

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Lawyers for the Applicants

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Applicants

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

NOTICE OF MOTION
(RETURNABLE JUNE 28, 2023)

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Lawyers for the Applicants

TAB 2

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

ONTARIO
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Applicants

AFFIDAVIT OF NAVEED Z. MANZOOR
(Sworn June 26, 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 the 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 Applicants for the issuance of an order extending the Stay Period (as defined below) until and including July 31, 2023 (the "**Stay Extension Order**").

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 "**Stay Period**");

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 First Generation Capital Inc. ("**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**"); and

f. ordered an administration charge and directors' charge against the Property.

5. For background purposes, my initial affidavit (the "**Initial Affidavit**") sworn January 25, 2023 in support of the Initial Order is attached (without exhibits) hereto as **Exhibit "A"**.

6. On January 31, 2023, in chapter 15 recognition proceedings commenced by the Applicants (the "**Chapter 15 Proceedings**"), 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 Period to and including April 5, 2023;

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

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

11. On May 30, 2023, the Applicants sought and obtained an order from the Court (the "**Approval and Reverse Vesting Order**"), which, *inter alia*:

a. approved the Subscription Agreement dated as of May 15, 2023 between APC and FGC (as may be further amended, restated or modified, the "**Subscription Agreement**") and the transactions contemplated thereby (the "**Transaction**"); and

b. extended the Stay Period until and including June 30, 2023.

12. A copy of the Approval and Reverse Vesting Order is attached hereto as **Exhibit "B"** and the related endorsement of Justice Penny dated June 2, 2023 (the "**Endorsement**") is attached hereto as **Exhibit "C"**.

13. Subsequent to the obtaining the Approval and Reverse Vesting Order, APC, as foreign representative in the Chapter 15 Proceedings, filed a motion for recognition of the Approval and Reverse Vesting Order by the US Bankruptcy Court. An objection deadline of June 12, 2023 was set and no objections were filed prior to the deadline. On June 13, 2023, the US Bankruptcy Court entered an order recognizing and enforcing the Approval and Reverse Vesting Order (the "**Recognition Order**") without a hearing. A copy of the Recognition Order is attached hereto as **Exhibit "D"**.

14. The Applicants do not expect to seek additional relief in the Chapter 15 Proceedings and will seek to terminate the Chapter 15 Proceedings in the near term.

II. EXTENSION OF STAY OF PERIOD

15. Pursuant to the Approval and Reverse Vesting Order, the Stay Period was extended to June 30, 2023.

16. Since the granting of the Approval and Reverse Vesting Order, the Applicants have acted in good faith and with due diligence to, among other things, discuss and address concerns of various stakeholders, and continue working towards closing the Transaction. Among other things, the Applicants have:

a. obtained the Recognition Order in the Chapter 15 Proceedings;

b. worked collaboratively with FGC, as purchaser (the "**Purchaser**"), on various transition issues and efforts to close the Transaction;

c. sought a partial revocation of the outstanding cease trade order ("**CTO**") from the Ontario Securities Commission ("**OSC**") that currently prohibits the issuance of new shares by APC, which is required to close the Transaction;

d. engaged in discussions with various contract counterparties regarding the closing of the Transaction;

e. engaged in discussions with the landlord of the Applicants' office space, which is expected to be disclaimed shortly prior to closing of the Transaction; and

f. issued a formal disclaimer of the product development agreement (the "**PDA**") between Keldmann Healthcare A/S, Keldmann Innovation A/S, Mr. Erik Keldmann, Dr. Troels Keldmann (collectively, the "**Keldmann Parties**") and Trimel Biopharma SRL (a predecessor of ABI) with an agreement reference date of December 30, 2009 and engaged in discussions with the Keldmann Parties (which is described in greater detail immediately below).

17. At the hearing to approve the Transaction between APC and FGC (the "**Hearing**"), Dr. Keldmann raised concerns regarding separation of an asset purchase agreement (the "**APA**") and the PDA, such that the contract counterparties under the PDA would be bound by certain non-compete clauses contained in the PDA. To remedy these concerns, the Applicants agreed at the Hearing that APC and ABI had no intention of relying on any enforcement rights under the PDA and proposed to issue a disclaimer in respect of PDA to terminate the agreement.

18. On June 6, 2023, the Applicants issued a formal notice of disclaimer of the PDA to the Keldmann Parties pursuant to section 32 of the CCAA (the "**Disclaimer**"). The Disclaimer also provided the Keldmann Parties with the ability to abridge the notice period under the CCAA such that the PDA could be disclaimed at 23:59 of the Closing Date (as defined in the Subscription Agreement). A copy of the Disclaimer is attached hereto as **Exhibit "E"**.

19. On June 7, 2023, Dr. Keldmann acknowledged receipt and took the position that the Disclaimer was not in accordance with the Endorsement. Dr. Keldmann believed that the Disclaimer was not a simple disclaimer of the non-compete clauses contained in the PDA. The Applicants engaged in further correspondence with Dr. Keldmann regarding this matter to confirm their position that the Disclaimer satisfied their agreement at the Hearing and following the effectiveness of the Disclaimer, the Applicants cannot rely on or enforce any non-compete clauses

under the PDA. Dr. Keldmann has continue to raise issues with respect to the Disclaimer and the releases granted in the Approval and Reverse Vesting Order, including by asserting that the Court does not have jurisdiction to address the APA and PDA. The correspondence between the Applicants and Dr. Keldmann is attached hereto as **Exhibit "F"**.

20. The Subscription Agreement currently has an outside date of June 30, 2023 and the Applicants were working with the Purchaser to close the Transaction within that timeframe. The remaining condition precedent which has not been satisfied is the partial revocation of the CTO by the OSC required to issue the purchased shares to the Purchaser. Despite efforts from the Applicants to advance satisfaction of the conditions, the Applicants do not currently expect the OSC to issue a partial revocation of the CTO in time to close the Transaction prior to or on June 30, 2023. As result, the Applicants have requested an extension of the outside date under the Subscription Agreement from the Purchaser.

21. The Applicants expect the Transaction will be implemented shortly following the partial revocation of the CTO. Upon closing, the current Applicants will emerge from the CCAA Proceedings and be replaced by two newly created companies (the "**ResidualCos**") which will be transferred the excluded liabilities and replace the Applicants in these CCAA Proceedings.

22. Following closing, additional time is required in the CCAA Proceedings to address post-closing items such as payment from the administrative reserve and a further motion to address the administration of ResidualCos and termination of the CCAA Proceedings on sufficient notice to creditors. An extension of the Stay Period is necessary to provide stability for these additional steps to occur in an orderly manner. An extension of the Stay Period is also necessary as the revocation of the CTO is not expected to be issued prior to expiry of the Stay Period. Without closing of the Transaction, the Applicants require the extension of Stay Period to continue operating in the ordinary course with the stability provided by the stay or proceedings.

23. I believe that the Applicants have sufficient liquidity to fund operations up to July 31, 2023. A cash flow forecast up to July 31, 2023 will be appended to the Monitor's Fourth Report.

24. I understand that the Monitor supports the proposed extension of the Stay Period until and including July 31, 2023.

25. In light of the foregoing, I believe that the proposed extension of the Stay Period is reasonable and appropriate in the circumstances.

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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 day of June 26, 2023, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.	)))))))))))	
DocuSigned by: Philip Y 36124C4218DD47C		DocuSigned by: Naveed Z. Manzoor 090F0FC3EAE4473
A Commissioner for Taking Affidavits, etc. PHILIP YANG		**NAVEED Z. MANZOOR**

EXHIBIT "A"

referred to in the Affidavit of

NAVEED Z. MANZOOR

Sworn June 26, 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.

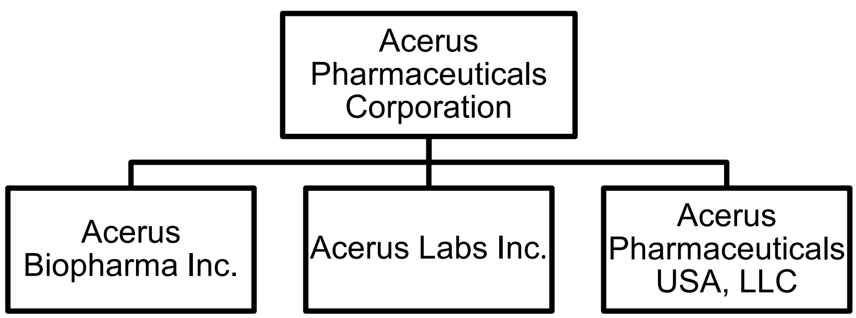
13. ABI is a wholly owned subsidiary of APC. ABI was continued under the OBCA on November 8, 2017 (formerly incorporated under the laws of Barbados), with a registered head office at 2486 Dunwin Drive,[1] Mississauga, Ontario. ABI holds the intellectual property rights relating to Natesto, and two further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

Sworn June 26, 2023

DocuSigned by:

36124C4218DD47C...

Commissioner for Taking Affidavits
Philip Yang

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	TUESDAY, THE 30TH 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
(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**"), the Responding Motion Record of Jones Day, the affidavit of Rebekah Blake, sworn May 25, 2023, the affidavit of Philip Yang, sworn May 29, 2023, and on hearing the submissions of counsel for the Acerus Group, counsel for the Monitor, counsel for the Purchaser, counsel for those other parties appearing as indicated by the counsel slip, Troels Keldmann for Keldmann Healthcare A/S, and Brian Gilderman for Precision Clinical Research, Inc., no one appearing for any other party, although duly served as appears from the affidavits of service of Philip Yang, 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 11 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 6 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 6 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** that notwithstanding any provision in the SA, the Transactions, or this Order, nothing shall provide for the transfer of any contract or agreement with the United States and its agencies, including the Department of Health and Human Services (and Secretary thereof), without compliance by a member of the Acerus Group with the terms of such contract or agreement and the United States law applicable to such contract or agreement.

16. **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 a 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.

17. **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.

18. **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.

19. **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.

20. **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

21. **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.

22. **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.

23. **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.

24. **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.

25. **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.

26. **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 6(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.

27. **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.

28. **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.

29. **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.

30. **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

31. **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 order 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

32. **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.

33. **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.

34. **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

35. **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.

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

37. **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.

38. **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.

39. **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 6 hereof shall be deemed to have occurred sequentially, on after the other, in the order set out in paragraph 6 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.	77186631
	Debtor	Acerus Pharmaceuticals Corporation
	Secured Party	First Generation Capital Inc.
	Collateral Classification	Inventory, Equipment, Accounts, Other, Motor Vehicle Included
	General Collateral Description	N/A
2.	Reference File No.	789285879
	Debtor	Acerus Biopharma Inc.
	Secured Party	First Generation Capital Inc.
	Collateral Classification	Inventory, Equipment, Accounts, Other, Motor Vehicle Included
	General Collateral Description	N/A
3.	Reference File No.	789285897
	Debtor	Acerus Labs Inc.
	Secured Party	First Generation Capital Inc.
	Collateral Classification	Inventory, Equipment, Accounts, Other, Motor Vehicle Included
	General Collateral Description	N/A

Ontario Land Titles Registrations to be Deleted and Expunged

	Encumbrance	Registration Number	Party	Amount	Registration Date
	NIL	NIL	NIL	NIL	NIL

UCC-1 Financing Statement to be Deleted and Expunged

1.	UCC Filing Number	20220613784
	Debtor	Acerus Pharmaceuticals USA, LLC
	Secured Party	First Generation Capital Inc.
	State	Delaware
	Collateral Description	All assets

Schedule "C" - Permitted Encumbrances

Permitted Encumbrances in Respect of the Acerus Group Property

- 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

- 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.

Electronically issued / Délivré par voie électronique : 31-May-2023
Toronto Superior Court of Justice / Cour supérieure de justice

Court File **Court File No./N° du dossier du greffe :** 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)

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Lawyers for the Applicants

EXHIBIT "C"

referred to in the Affidavit of

NAVEED Z. MANZOOR

Sworn June 26, 2023

DocuSigned by:

Philip Y

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Commissioner for Taking Affidavits

Philip Yang

CITATION: Acerus Pharmaceuticals Corporation (Re), 2023 ONSC 3314
COURT FILE NO.: CV-23-00693595-00CL
DATE: 2023-06-02

SUPERIOR COURT OF JUSTICE – ONTARIO (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

BEFORE: Penny J.

COUNSEL: *Elizabeth Pillon, Lee Nicholson* and *Philip Yang* for the Applicants

Stuart Brotman and *Mitch Stephenson* for the Monitor

Mervyn D. Abramowitz for the United States of America

Alex MacFarlane and *Xiaodi Jin* for First Generation Capital Inc.

D.J. Miller and *Alexander Soutter* for Jones Day

Kristina Bezprozvannykh for The Canada Life Assurance Company

Troels Keldmann as principal of Keldmann Healthcare and Keldmann Innovation

Brian Gilderman as principal of Precision Clinical Research, Inc.

HEARD: May 30, 2023

ENDORSEMENT

Overview

[1] On May 30, 2023 I granted a sale approval and reverse vesting order, extended the stay and granted other ancillary relief, with reasons to follow. These are my reasons. The capitalized terms used in these reasons reflect the meanings attributed to those terms in the relevant documents submitted to the court on this motion.

Background

[2] APC is an Ontario public company listed on the TSX and the OTCQB Exchange. APC operates out of its registered head office in Mississauga, Ontario. ABI and ALI are also OBCA corporations. APL was formed under the laws of the State of Delaware. There is a cross border component to these proceedings.

[3] Each of the subsidiaries (ABI, ALI, and APL) are wholly owned by APC. The applicants comprise one corporate group which is operated and controlled by the management of APC at its head office in Mississauga, Ontario.

[4] The applicants are in a specialized pharmaceutical business, focused on the commercialization and development of prescription men's health products. Their primary products are (a) Natesto, which is currently the sole source of revenue; and (b) Noctiva, which is currently not in distribution. There are also a number of secondary products.

[5] The procedural history is uncontroversial. It is well laid out in the supporting material, the Monitor's Third Report and the applicants' factum. I will not repeat any of that here, other than to note that the proposed transactions are the result of both a prefiling strategic process and SISP, initialed by the applicants and overseen by E&Y, and a subsequent court approved SISP, also overseen by E&Y, which had been appointed Monitor by the initial order in these proceedings.

[6] The proposed transactions which are before the Court are structured in the form of a Subscription Agreement, with the consideration or purchase price in the form of a credit bid of all secured debt obligations owing to First Generation Capital (FGC). FGC is the majority shareholder of APC. It is also the first in priority secured creditor of the applicants and the court approved DIP Lender. It is owed over $60 million in secured debt.

[7] The proposed transaction structure provides for available funding to remain with the applicants and court officers, as necessary, to implement the transactions, address ancillary post-closing steps, and emerge from the CCAA proceedings. The transactions contemplated in the Subscription Agreement have been structured as a "reverse vesting" (or RVO) transaction. The transactions provide for a share transaction under which:

(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.

Issues

[8] The issues to be determined on this motion are whether this Court should:

(a) approve the Subscription Agreement and proposed transactions in the form of an Approval and Reverse Vesting Order;

(b) grant the requested releases in favour of the applicants' directors, officers, employees and advisors, FAAN as CRO, the Monitor and its advisors and FGC and its directors, officers and advisors;

(c) grant ancillary relief in respect of the shares being cancelled and the articles of reorganization;

(d) grant the sealing order over the bid comparison chart in the Monitor's Third Report; and

(e) extend the stay period.

Analysis

Jurisdiction and Factors

[9] Section 11 of the CCAA confers jurisdiction on the court in the broadest of terms: "the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances".

[10] Section 36(3) of the CCAA provides a non-exhaustive list of factors to be considered on a motion to approve a sale. While this motion is not for approval of a traditional asset sale, the s. 36(3) factors have been applied in an ARVO context. The factors include:

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

[11] The s. 36(3) criteria largely correspond to the principles articulated in *Royal Bank v. Soundair Corp*, 1991 CanLII 2727 (ONCA) for the approval of the sale of assets in an insolvency scenario:

(a) whether sufficient effort has been made to obtain the best price and that the debtor has not acted improvidently;

(b) the interests of all parties;

(c) the efficacy and integrity of the process by which offers have been obtained; and

(d) whether there has been unfairness in the working out of the process: see *Target Canada Co. (Re)*, 2015 ONSC 1487, at paras. 14-17.

[12] Use of the ARVO structure is an unusual or extraordinary measure; not an approach appropriate in any case merely because it may be more convenient or beneficial for the purchaser. Approval of the use of an ARVO structure must be preceded by close scrutiny. The Monitor and the court must be diligent in ensuring that the restructuring is fair and reasonable to all parties having regard to the objectives and statutory constraints of the CCAA. This is particularly the case where there is no party with a significant stake in the outcome opposing the use of the ARVO structure. The debtor, the purchaser and especially the Monitor, as the court appointed officer overseeing the process and answerable to the court (and in addition to all the usual enquiries and reporting obligations), must address questions such as:

(a) Why is the ARVO necessary in this case?

(b) Does the ARVO structure produce an economic result at least as favourable as any other viable alternative?

(c) Is any stakeholder worse off under the ARVO structure than they would have been under any other viable alternative? and

(d) Does the consideration being paid for the debtor's business reflect the importance and value of the licences and permits (or other intangible assets) being preserved under the ARVO structure?

The ARVO Structure is Necessary

[13] The applicants operate in the pharmaceutical industry which is heavily regulated. In order for the applicants to carry on business, therefore, they are required to maintain various licenses. These licences are essential to the viability of the business. The insolvent circumstances of the applicants rules out a simple share purchase. In a traditional asset transaction, the purchaser would have to apply to transfer existing licences or apply for new ones. The purchaser in this case is not prepared to take the risk or invest the time and money to go through that process which is, by its very nature uncertain at best. There is no other comparable or viable transaction on offer.

[14] The Subscription Agreement was structured as an ARVO transaction which is necessary to provide the following benefits:

(a) the applicants will maintain the multiple licenses that are required to maintain operations;

(b) the applicants have several in-progress trials and testing programs that are proceeding under and in the name of the applicants;

(c) the applicants hold various contracts with government entities; and

(d) the applicants have net operating losses in the approximate amount of $215 million.

[15] The evidence is that it was not possible to structure the transaction in a different manner. The Monitor canvassed the possibility of structuring the transaction with FGC by way of a plan of arrangement. However, FGC was not willing to consider that approach.

More Favourable Economic Result

[16] The benefits of the transactions include:

(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 (which, including advances under the DIP Facility, totals over $65 million), which would not otherwise be satisfied by any other potential alternative;

(b) various unsecured and contingent liabilities will be assumed, in comparison to the other potential alternatives which do not; and

(c) sufficient liquidity to provide for post-filing obligations incurred to date and those necessary to exit the CCAA proceedings, in comparison to the other potential alternatives which do not provide comparable funding.

[17] The only other bid options available to the applicants were what is referred to in the material as Unsuccessful Bid 1 and Unsuccessful Bid 2. Neither of the unsuccessful bids was a better or even viable option because:

Unsuccessful Bid 1 offered nominal consideration for a minor asset owned by the applicants, where the consideration being offered was insufficient to cover even the expected professional fees related to closing that bid; and,

in respect of Unsuccessful Bid 2:

(i) the cash payment provided by Unsuccessful Bidder 2 was insufficient to repay the DIP Facility and amounts secured by charges in order to permit the applicants to exit the 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; and

(iv) the Bid does not assume any liabilities of the applicants nor provide for the potential employment of any existing employees.

The Transactions Do Not Disadvantage Any Stakeholder Relative to Any Other Viable Transaction

[18] Under the proposed transactions, the applicants, some of the unsecured creditors and all of the existing shareholders will have no recovery. However, the evidence makes it clear that these stakeholders would not realize any recovery in any other available restructuring alternative either (i.e., under either of the unsuccessful bids or in a bankruptcy/liquidation).

[19] The proposed transactions, by contrast, assure a going concern result. This will result in:

(a) an opportunity for each of the pharmaceutical products previously held by the applicants to be pursued and determine if they can be successfully brought to market at a future date;

(b) potential for several of the applicants' employees preserving their employment; and

(c) suppliers of goods and services having the opportunity to maintain their business relationship with the applicants on an ongoing basis in the future.

Is the Consideration Fair and Reasonable?

[20] The consideration payable for the purchased shares under the Subscription Agreement is fair, reasonable, and reflects the importance of the assets being preserved under the RVO structure. The purchase price for the purchased shares will be satisfied through FGC's credit bid and the financing of post-filing obligations, which, as noted, together total in excess of $65 million. The fairness and reasonableness of the consideration is confirmed by the results of the pre-filing strategic process, the pre-filing SISP, and the court approved SISP (discussed in more detail below). The consideration allows for the satisfaction of all the applicants' secured liabilities and assumption of some unsecured liabilities. Further, the consideration provides the applicants with the ability to implement the transactions and exit the CCAA proceedings as a going-concern.

[21] As noted earlier, the applicants' licenses and contracts with government entities may be difficult to transfer. Further, the applicants' tax attributes are also an important asset being preserved under the ARVO structure. The evidence is that the tax attributes were an important consideration for FGC in making its credit bid for all of the applicants' secured debt.

[22] The market (and the evidence) has shown that there is no other bidder out there who is willing to pay more for these assets.

Section 36 CCAA Factors

The Process Leading Up to the Subscription Agreement and the Transactions

[23] The execution of the Subscription Agreement represents the culmination of extensive solicitation efforts for investments beginning from March 2022 and a robust sales process

conducted by the applicants and E&Y beginning from September 2022. These efforts include:

(a) the applicants seeking refinancing or investment options;

(b) the pre-filing SISP which commenced in September 2022 and concluded in November 2022, with E&Y having canvassed its global network for prospective bidders;

(c) during the course of the CCAA the Monitor broadly canvassed the market under the SISP by approaching known potential bidders from prior processes and contacting 20 additional parties;

(d) the careful consideration of all the bids by the Special Committee, the applicants, the Monitor, the CRO, and their respective advisors and counsel of all available options; and

(e) negotiations between the Monitor, APC, and FGC in respect of the Subscription Agreement and the proposed transactions.

[24] The SISP appears to have been well structured and, when combined with the pre-filing strategic processes, resulted in a broad canvassing of the market for potential purchasers of the applicants' business.

The Monitor Approved the Process Leading up to the Subscription Agreement and the Transactions

[25] E&Y assisted with the pre-filing strategic initiative and the pre-filing SISP. The court approved SISP was developed in consultation with and supported by E&Y as Monitor. Further, the Monitor administered the SISP in accordance with its terms and the SISP order of this court. The Subscription Agreement is the product of the applicants' and the Monitor's continued efforts to solicit interest in the applicants' business and/or assets and is supported by the Monitor. It is the best alternative available.

More Beneficial to Creditors Than a Sale or Disposition Under a Bankruptcy

[26] The Monitor has conducted an analysis of whether the completion of the proposed transactions contemplated by the Subscription Agreement would be more beneficial to the applicants' creditors and other stakeholders as compared to a sale or disposition of the business and assets of the applicants under a bankruptcy. The Monitor determined that:

(a) a potential bankruptcy could cause significant disruption in operations and delay the market launch of Noctiva, thus adversely impacting the value of the business. The uncertainty surrounding the timeline for transferring the patents and license to a purchaser during bankruptcy proceedings adds to the uncertainty and complexity. This, coupled with the bankruptcy procedure itself, could result in a substantial delay in closing any transaction;

(b) the RVO structure is a condition of closing the Subscription Agreement. The reverse vesting structure is unlikely to be available in a potential bankruptcy given the vesting of the assets in the trustee. Furthermore, even if FGC was willing to proceed based on an asset sale structure, instead of the RVO, the Monitor believes it is unlikely that the recovery could be enhanced by pursuing a sale transaction in a bankruptcy;

(c) accordingly, it is the Monitor's view that a sale or disposition of the business and assets of the applicants in a bankruptcy would most likely result in a lower recovery. In the Monitor's view, the market has been sufficiently canvassed and the FGC bid is the only viable bid in the circumstances. It is unlikely that there is any material value to the assets of the applicants in any transaction other than the FGC bid.

<u>Stakeholders Were Consulted During the Sale Process</u>

[27] The applicants consulted with their largest secured creditor, FGC, throughout the pre-filing strategic process. FGC, and FGC in its capacity as the DIP Lender, was given the opportunity to submit a bid in respect of the applicants' business and assets, which FGC did. This was through a court approved process on notice to all stakeholders. In addition, notice of this motion was given to a broad spectrum of the applicants' stakeholders as well.

[28] In this context, I will address three specific situations which arose before and/or during the hearing of the motion.

Jones Day has an existing action against APL in the U.S. for outstanding professional fees owed by an APL predecessor. One of the issues raised by Jones Day in this CCAA proceeding involved a potential challenge to FGC's security beyond the amount advanced in December 2022 and pursuant to the DIP, in respect of the Applicants other than APC. The applicants, FGC and Jones Day were able to negotiate a specific carve-out of the Jones Day claim from the proposed releases and agreed that the following language would be approved by the court in this endorsement:

> For greater certainty, in providing the releases as outlined in paragraph 31 of the proposed Approval and Reverse Vesting Order, such relief shall not be used or raised by APL or any individual defendants in the course of the Jones Day Litigation, to limit or adversely affect the Jones Day Litigation as against APL or any individuals that have been named as defendants.

This language is so approved.

[29] Dr. Troels Keldmann attended the hearing. He is a principal of Keldmann Healthcare and Keldmann Innovation which sold certain product rights to a predecessor of APL in 2009. Part of the payment to Keldmann Innovation A/S was to be in the form of royalties under the Amended Product Development Agreement between Trimel Biopharma SRL,

Keldmann Healthcare A/S and Keldmann Innovation A/S dated December 30, 2009. This agreement, however, is one of the Excluded Contracts being transferred to a ResidualCo under the terms of the Subscription Agreement. Dr. Keldmann was concerned that, although the Keldmann counterparties would lose the right to any future payments, should the product sold to APL be successfully developed at some future point, they would remain subject to a non-compete provision embedded in that agreement. The applicants immediately made it clear that they had no intention of relying on enforcement rights under this excluded contract and proposed that they would issue a formal disclaimer of rights under that contract. This appeared to satisfactorily address Dr. Keldmann's concern.

[30] Mr. Brian Gilderman also attended the hearing. Mr. Gilderman is a principal of Precision Clinical Research, Inc., which is conducting clinical trials on an APL product. Mr. Gilderman expressed concern about a potential mis-match between his obligation to continue to perform contractual services under the court's CCAA order while being at risk of not being paid for those services. This situation was complicated by the existence of "hold back" provisions in the service agreement. There was insufficient evidence before the court to address this issue properly. The applicants and the Monitor undertook to pursue the matter with Mr. Gilderman. If a satisfactory understanding cannot be reached, the parties may return to court for further direction.

The Subscription Agreement and the Proposed Transactions Allow Various Stakeholders to Maintain their Rights

[31] As noted earlier, the analysis of the applicants and the Monitor is that none of the applicants' creditors will be materially disadvantaged by the Subscription Agreement and the proposed transactions relative to any other viable alternative. In addition, the Subscription Agreement maintains many of the rights that creditors would otherwise have in an asset sale transaction. In the case of parties with existing contracts with the applicants, though no assignment of contracts (consensual or through an assignment order) is contemplated as part of the proposed transactions, the Subscription Agreement provides for all contracts, other than the Excluded Contracts, to remain with the applicants. The contracting parties, therefore, have the opportunity to continue supplying goods and services to the applicants post-CCAA proceedings if they choose to do so. While the Subscription Agreement does not require FGC to cure pre-filing arrears under the Retained Contracts, all contract counterparties have also been served with the applicants' motion record to provide them with notice that their contracts are either being retained or excluded as part of the proposed transactions.

[32] While the Excluded Contracts, Assets and Liabilities will be vested out into Residual Cos in this structure, this outcome is no different from the result that would obtain if the proposed transactions had been carried out using a typical asset purchase structure. Nor will there be any inter-company transfer of assets and liabilities among the existing applicants prior to closing. Therefore, the proposed transactions will not result in any material prejudice or impairment of any creditors' rights which might have been avoided in an asset purchase transaction.

Sufficient Effort has been Made to Obtain the Best Price and the Applicants have not Acted Improvidently

[33] The execution of the Subscription Agreement represents the culmination of extensive solicitation efforts for investment or sale opportunities beginning in March 2022 and a robust sales process conducted by the applicants and E&Y from September 2022, both privately and under a court approved SISP post-filing. There is no evidence, or suggestion, that the process was less than fair and robust. Nor is there any prospect that a "better deal" was somehow available but not pursued.

The Share Transactions

[34] Consistent with ARVOs previously granted by this court, the proposed order in this case will terminate and cancel all options, securities and other rights held by any person that are convertible or exchangeable for any securities of APC. APC, previously publicly traded on the TSX, will be taken private as a result of the proposed transaction. The purchaser, FGC, currently holds approximately 89% of the issued and outstanding shares of APC. The other shareholders have been notified of the CCAA proceedings and the proposed transactions by way of various press releases and notices issued by the applicants and/or the Monitor.

[35] The jurisdictional and legal basis for these orders has been canvassed extensively in prior decisions of this court so I will not repeat that analysis here: *Harte Gold (Re)*, 2022 ONSC 653; *Just Energy Group Inc. v. Morgan Stanley Capital Group Inc.*, 2022 ONSC 6354. In essence, equity claims must be subordinate to the claims of creditors. In no possible scenario, on the record before me, would there be any recovery for the shareholders of APC. The OBCA provides the relevant authority to order the restructuring of the shares and the articles as contemplated in the proposed Approval and Reverse Vesting Order.

The Releases

[36] 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 assets, business or affairs or administration of the applicants, except any claim that is not permitted to be released under s. 5.1(2) of the CCAA. For avoidance of doubt, as noted above, the Releases will not release APL or the individuals named as defendants in the Jones Day litigation from liability in respect of that action.

[37] A non-exhaustive list of relevant factors to consider in determining court approval of proposed releases was laid out by Chief Justice Morawetz in *Lydian International Limited (Re),* 2020 ONSC 4006 at para. 54.

[38] Considering those factors, I conclude the Release is reasonable and appropriate in the circumstances and that they should be granted for the following reasons:

(a) The claims released are rationally connected to the applicants' restructuring. The Release will have the effect of diminishing claims against the Released Parties, which in turn will diminish indemnification claims by the Released Parties against the Administration Charge and the Directors' Charge. Given that a purpose of a

CCAA proceeding is to maximize creditor recovery, a release that helps achieve this goal is rationally connected to the purpose of the applicants' restructuring.

(b) The Released Parties made significant contributions to the applicants' restructuring, both prior to and throughout the CCAA proceedings. Among other things, the extensive efforts of the directors and management of the applicants were instrumental to the conduct of the pre-filing strategic process, the pre-filing SISP, the court-approved SISP and the continued operations of the applicants during the CCAA proceedings. The proposed transactions will maintain the applicants as a going concern; in this sense at least, the CCAA proceedings have had a successful outcome for the benefit of at least some of the applicants' stakeholders. This is an outcome which is, as discussed above, better than any other reasonably available alternative. The Released Parties have contributed time, energy and resources to achieve this outcome; they are deserving of the Release.

(c) The Release is fair and reasonable. The applicants, for example, are 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. Further, the Release is sufficiently narrow in circumstances as the Release carves out and preserve claims that are not permitted to be released pursuant to s. 5.1(2) of the CCAA, claims arising from fraud or wilful misconduct. The scope of the Release is sufficiently balanced to allow the applicants and the Released Parties to move forward with the Subscription Agreement and the transactions and work to conclude the CCAA proceedings.

(d) The Release will bring certainty and finality for the Released Parties. Additionally, the applicants, the Monitor, and FGC all believe that the Release is an essential component to the transactions.

(e) The Release benefits the applicants' creditors and other stakeholders by reducing the potential for the Released Parties to seek indemnification from the applicants, thus minimizing further claims against the applicants.

(f) Creditors had knowledge of the nature and effect of the Release. All creditors on the Service List were served with materials relating to this motion. The applicants also made additional efforts to serve all parties with excluded claims under the transactions. To date, no creditor has objected to the Release. At this point, and in these circumstances, requiring a specific claims process for claims against the Released Parties would only result in additional costs and delay without any apparent corresponding benefit.

Sealing Order

[39] The applicants seek a limited sealing order regarding the results of the bids under the SISP. Preservation of the confidentiality of bid information is recognized as meeting the

requirements of the test for sealing court documents in *Sherman Estate*. It is in the public interest that the ability of the applicants and the Monitor to maximize value be preserved until the transactions contemplated by the Subscription Agreement have closed. The request for a sealing order of the bid information is granted.

Extension of the Stay

[40] The applicants need further time to close the proposed transactions and implement the remaining steps to bring these proceedings to their conclusion. As detailed in Updated Cash Flow Forecast at Appendix B to the Third Report of the Monitor, the applicants are expected to maintain liquidity to fund operations up to July 2, 2023. The stay is extended to June 30, 2023.

Monitor Support

[41] I will say, in summary fashion to the extent not specifically mentioned in connection with the issues addressed above, that the Monitor has deep familiarity and experience with the applicants and their circumstances, dating back to March 2022. The Monitor has worked closely with the stakeholders, the CRO and other players. The Monitor, appointed by the court and answerable to the court, fully supports all the relief being sought by the applicants and has explained the basis for its support in detail in its Third Report.

Conclusion

[42] For the forgoing reasons, the motion is granted. The Subscription Agreement and proposed transactions, including the ARVO, are approved. The sealing order regarding the bid summary is granted. The stay of proceedings is extended to June 30, 2023.

Penny J.

Penny J.

Date: June 2, 2023

EXHIBIT "D"

referred to in the Affidavit of

NAVEED Z. MANZOOR

Sworn June 26, 2023

DocuSigned by:

36124C4218DD47C...

Commissioner for Taking Affidavits
Philip Yang

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

Thomas M. Horan

Dated: June 13th, 2023
Wilmington, Delaware

THOMAS M. HORAN
UNITED STATES BANKRUPTCY JUDGE

<u>Exhibit 1</u>

CCAA Vesting Approval Order

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	TUESDAY, THE 30TH 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
(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**"), the Responding Motion Record of Jones Day, the affidavit of Rebekah Blake, sworn May 25, 2023, the affidavit of Philip Yang, sworn May 29, 2023, and on hearing the submissions of counsel for the Acerus Group, counsel for the Monitor, counsel for the Purchaser, counsel for those other parties appearing as indicated by the counsel slip, Troels Keldmann for Keldmann Healthcare A/S, and Brian Gilderman for Precision Clinical Research, Inc., no one appearing for any other party, although duly served as appears from the affidavits of service of Philip Yang, 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 11 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 6 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 6 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 (5th 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** that notwithstanding any provision in the SA, the Transactions, or this Order, nothing shall provide for the transfer of any contract or agreement with the United States and its agencies, including the Department of Health and Human Services (and Secretary thereof), without compliance by a member of the Acerus Group with the terms of such contract or agreement and the United States law applicable to such contract or agreement.

16. **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 a 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.

17. **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.

18. **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.

19. **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.

20. **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

21. **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.

22. **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.

23. **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.

24. **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.

25. **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.

26. **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 6(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.

27. **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.

28. **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.

29. **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.

30. **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

31. **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 order 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

32. **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.

33. **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.

34. **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

35. **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.

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

37. **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.

38. **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.

39. **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 6 hereof shall be deemed to have occurred sequentially, on after the other, in the order set out in paragraph 6 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.	77186631
	Debtor	Acerus Pharmaceuticals Corporation
	Secured Party	First Generation Capital Inc.
	Collateral Classification	Inventory, Equipment, Accounts, Other, Motor Vehicle Included
	General Collateral Description	N/A
2.	Reference File No.	789285879
	Debtor	Acerus Biopharma Inc.
	Secured Party	First Generation Capital Inc.
	Collateral Classification	Inventory, Equipment, Accounts, Other, Motor Vehicle Included
	General Collateral Description	N/A
3.	Reference File No.	789285897
	Debtor	Acerus Labs Inc.
	Secured Party	First Generation Capital Inc.
	Collateral Classification	Inventory, Equipment, Accounts, Other, Motor Vehicle Included
	General Collateral Description	N/A

Ontario Land Titles Registrations to be Deleted and Expunged

	Encumbrance	Registration Number	Party	Amount	Registration Date
	NIL	NIL	NIL	NIL	NIL

UCC-1 Financing Statement to be Deleted and Expunged

1.	UCC Filing Number	20220613784
	Debtor	Acerus Pharmaceuticals USA, LLC
	Secured Party	First Generation Capital Inc.
	State	Delaware
	Collateral Description	All assets

Schedule "C" - Permitted Encumbrances

Permitted Encumbrances in Respect of the Acerus Group Property

- 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

- 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.

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)

STIKEMAN ELLIOTT LLP
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Lee Nicholson
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Philip Yang
Tel: (416) 869-5593
pyang@stikeman.com

Lawyers for the Applicants

EXHIBIT "E"

referred to in the Affidavit of

NAVEED Z. MANZOOR

Sworn June 26, 2023

DocuSigned by:

36124C4218DD47C...

Commissioner for Taking Affidavits
Philip Yang

Stikeman Elliott

Stikeman Elliott LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, ON Canada M5L 1B9

Main: 416 869 5500
Fax: 416 947 0866
www.stikeman.com

Philip Yang
Direct: +1 416 869 5593
PYang@stikeman.com

June 6, 2023

Private and Confidential

Delivered Via Email and Facsimile

Keldmann Healthcare A/S
Alokken 44, Bellinge,
5250 Odense SV,
Denmark

Attention: Dr. Troels Keldmann
Facsimile: +45 65 96 32 03

Mr. Erik Keldmann
Facsimile: +45 65 96 32 03

Keldmann Innovation A/S
Alokken 44, Bellinge,
5250 Odense SV,
Denmark

Attention: Mr. Erik Keldmann
Facsimile: +45 65 96 32 03

Dr. Troels Keldmann
Facsimile: +45 65 96 32 03

Dear Sirs/Mesdames:

Re: In the matter of a plan of compromise or arrangement of Acerus Pharmaceuticals Corporation et al., Court File No. CV-23-00693595-00CL

Please find enclosed a notice of disclaimer, disclaiming or resiliating the product development agreement between Keldmann Healthcare A/S, Keldmann Innovation A/S, Mr. Erik Keldmann, Dr. Troels Keldmann, and Trimel Biopharma SRL (a predecessor of Acerus Biopharma Inc.) with an agreement reference date of December 30, 2009 (as same may have been amended and restated from time to time), pursuant to section 32 of the *Companies' Creditors Arrangement Act* (Canada).

Yours truly,

Philip Yang

PY/MP

Encl.

FORM 4

NOTICE BY THE DEBTOR COMPANY TO DISCLAIM OR RESILIATE AN AGREEMENT

To: Keldmann Healthcare A/S, Keldmann Innovation A/S, Mr. Erik Keldmann, and Dr. Troels Keldmann

To: Ernst & Young Inc. ("**E&Y**"), in its capacity as the Court-appointed Monitor of the Acerus Entities (in such capacity, the "**Monitor**")

Take notice that:

1. Proceedings under the *Companies' Creditors Arrangement Act* (the "**CCAA**") in respect of Acerus Pharmaceuticals Corporation, Acerus Biopharma Inc., Acerus Labs Inc. and Acerus Pharmaceuticals USA, LLC (collectively, the "**Acerus Entities**") were commenced on January 26, 2023.

2. In accordance with subsection 32(1) of the CCAA, notice is hereby given to you of Acerus Biopharma Inc.'s intention to disclaim the amended product development agreement between Keldmann Healthcare A/S, Keldmann Innovation A/S, Mr. Erik Keldmann, Dr. Troels Keldmann and Trimel Biopharma SRL (a predecessor of Acerus Biopharma Inc.), made as of December 30, 2009 (as same may have been amended and restated from time to time, the "**Agreement**").

3. In accordance with subsection 32(2) of the CCAA, any party to the Agreement may, within 15 days after the day on which this notice is given and with notice to the other parties to the Agreement and to the Monitor, apply to Court for an order that the Agreement is not to be disclaimed or resiliated.

4. In accordance with paragraph 32(5)(a) of the CCAA, if no application for an order is made in accordance with subsection 32(2) of the CCAA, the Agreement is disclaimed or resiliated 30 days after the day on which this notice is given. By executing this disclaimer notice, Keldmann Healthcare A/S, Keldmann Innovation A/S, Mr. Erik Keldmann, and Dr. Troels Keldmann each hereby agrees to abridge the notice period under the CCAA such that the Agreement shall be disclaimed or resiliated at 23:59 of the Closing Date (as defined in the Subscription Agreement dated May 15, 2023 as between Acerus Pharmaceutical Corporation and First Generation Capital Inc.). For the avoidance of any doubt, if any of Keldmann Healthcare A/S, Keldmann Innovation A/S, Mr. Erik Keldmann, or Dr. Troels Keldmann fails to execute this disclaimer notice, the Agreement shall be disclaimed or resiliated 30 days after the day on which this notice is given.

SIGNATURE PAGES FOLLOWS

Dated at Toronto, Ontario on June 6, 2023

DocuSigned by:
38979B3222B24C8...

Acerus Biopharma Inc.
Name: Naveed Manzoor
Title: Chief Restructuring Officer

Keldmann Healthcare A/S
Name:
Title:

Keldmann Innovation A/S
Name:
Title:

Mr. Erik Keldmann

Witness

Dr. Troels Keldmann

Witness

E&Y, in its capacity as the court-appointed Monitor of the Acerus Entities, approves the proposed disclaimer or resiliation.

Dated at Toronto, Ontario on June 6, 2023

DocuSigned by:

Allen Yao

0FC788E66D2E4D9...

Name: Allen Yao

Title: Vice President

Ernst & Young Inc., in its capacity as the court-appointed Monitor of the Acerus Entities and not in its personal capacity.

EXHIBIT "E"

referred to in the Affidavit of

NAVEED Z. MANZOOR

Sworn June 26, 2023

DocuSigned by:
Philip Y
36124C4218DD47C...

Commissioner for Taking Affidavits
Philip Yang

From: Philip Yang
To: Troels Keldmann; Lee Nicholson; Michael Hayes; Elizabeth Pillon; Allen Yao; Alex Morrison
Cc: Erik Keldmann
Subject: RE: In the Mattter of a Plan of Compromise or Arrangement of Acerus Pharmaceuticals Corporation et al., Court File No. CV-23-00693595-00CL
Date: Monday, June 26, 2023 8:08:51 AM
Attachments: 2023-06-06 - LTR Encl. Disclaimer of Product Development Agreement.pdf

---

Dear Mr. Keldmann.

Thank you for your note.

We do not share your view with respect to jurisdiction. Acerus Pharmaceuticals Corporation ("**APC**") and Acerus Biopharma Inc. ("**ABI**") are Canadian companies subject to the *Companies' Creditors Arrangement Act* (Canada). Accordingly, the Canadian Court has jurisdiction to hear matters relating to APC and ABI.

At the hearing to approve the transaction between Acerus and FGC before the Ontario Superior Court of Justice (Commercial List) (the "**Canadian Court**") on May 31, 2023 (the "**Hearing**"), which you attended, concerns were raised regarding the separation of the APA and the PDA and the non-competes contained in the PDA. As addressed on the record before the Court, we attempted to remedy your concern by advising that APC and ABI had no intention of relying on enforcement rights under the PDA and proposed to issue a formal disclaimer of rights under the PDA.

In accordance with Justice Penny's ruling, APC and ABI has issued a formal disclaimer of the PDA as agreed at the hearing. You received a copy of this disclaimer and it is attached again for reference. We confirm that with the PDA disclaimed, the Applicants cannot rely on or enforce any non-compete clauses under the PDA. We believe this satisfies our agreement from the hearing.

As referenced above, APC and ABI are Canadian companies. Given the Canadian Court's decision to approve the sale transaction between the Applicants and FGC, our view is that this is a valid, final, and binding decision with respect to all matters considered before the Canadian Court, including the releases, APA, and PDA referenced in your note below.

We or the Monitor are available to provide clarity on all of the foregoing should you have any questions.

Regards,

Philip Yang

Direct: +1 416 869 5593
Mobile: +1 416 476 6195
Email: PYang@stikeman.com

From: Troels Keldmann <troels@keldmann.dk>
Sent: Monday, June 19, 2023 9:42 AM
To: Philip Yang <PYang@stikeman.com>; Lee Nicholson <leenicholson@stikeman.com>; Michael Hayes <Michael.Hayes@parthenon.ey.com>; Elizabeth Pillon <LPillon@stikeman.com>; Allen Yao <Allen.Yao@parthenon.ey.com>; Alex Morrison <Alex.F.Morrison@parthenon.ey.com>
Cc: Erik Keldmann <erik@keldmann.dk>
Subject: SV: In the Mattter of a Plan of Compromise or Arrangement of Acerus Pharmaceuticals Corporation et al., Court File No. CV-23-00693595-00CL

Good morning,

Re Judge Penny's ruling
As correctly referred from the hearing, then the concern raised from Keldmann Healthcare related to the separate assignment of the PDA, and thereby the immediate payment elimination consequences for Keldmann Healthcare in a commercialization of the TriVair assets by IPMed (Propel BioPharma). An assigned, but unterminated PDA would maintain the non-competitive clause on Keldmann. A terminated PDA would lead to continued non-compete for Keldmann an additional year (APA).

Justice Penny approved Applicants assignment and separation of the two agreements provided that Applicant with immediate effect issue a simple non-compete disclaimer to Keldmann parties. Such a notice has not been received by Keldmann.

Re Release of Acerus, its management and Board of Directors
Please note clause 22 in PDA:
22. GOVERNING LAW
22.1 This Agreement shall be governed by and construed in accordance with the substantive laws of the Kingdom of Denmark.
22.2 Any dispute, controversy or claim arising out of or in relation to this contract, including the validity, invalidity, breach or termination thereof, shall be instituted in the Danish Maritime and Commercial Court (Sø- og Handelsretten i København).

Please note clauses 22 & 23 in APA:
22. GOVERNING LAW
22.1 This Agreement shall be governed by and construed in accordance with the laws of the Kingdom of Denmark.
23. VENUE
23.1 Any dispute between the Parties arising out of or relating to this Agreement shall be instituted in the Danish Maritime and Commercial Court (Sø- og Handelsretten i København).

Both APA and PDA agreements are governed by Danish Law and under jurisdiction of Soe & Handelsretten in Copenhagen. Only rulings from this Danish court are valid regarding APA and PDA. For this reason, we do not acknowledge any release of Acerus, its management and Board of Directors for past contractual matters outlined in earlier correspondence (outline attached).

Re Potential plan of compromise or arrangement
As earlier stated, we are open to consider a compromise including full release for Acerus and parties. Our proposal for compromise is:

- Acerus assigns the current IPMed (Propel-Air Biopharma) license agreement to Keldmann Healthcare (KH)
  Clause 14.1 (copy of initial agreement between Acerus and IPMed) allows Acerus to assign *"all or part of the rights and obligations"* to third party.
- Acerus transfers ownership of any and all remaining TriVair assets (clinical documentation, equipment, tooling and IPR) to KH
- KH and Acerus enters a Termination & Release Agreement (PDA/APA/Consent). Prior agreement

draft has been prepared by Acerus (attached).

In connection with this compromise, we note that:

- Acerus Financial Statement March 31, 2022 wrote: "*the recoverable amount of the intangible asset (ed. TriVair) was reduced to $nil at December 31, 2021*".

Yours sincerely,
Troels Keldmann

Keldmann Healthcare A/S
Slotsbakken 140
2970 Hørsholm
Denmark
TEL +45 2129 6966
troels@keldmann.dk
www.linkedin.com/in/troelskeldmann
www.keldmannhealthcare.dk
www.keldmanninnovation.dk
www.learnfrominnovators.com

Fra: Philip Yang <PYang@stikeman.com>
Sendt: 7. juni 2023 21:12
Til: Troels Keldmann <troels@keldmann.dk>; Lee Nicholson <leenicholson@stikeman.com>; Michael Hayes <Michael.Hayes@parthenon.ey.com>; Elizabeth Pillon <LPillon@stikeman.com>; Allen Yao <Allen.Yao@parthenon.ey.com>; Alex Morrison <Alex.F.Morrison@parthenon.ey.com>
Cc: Erik Keldmann <erik@keldmann.dk>
Emne: RE: In the Mattter of a Plan of Compromise or Arrangement of Acerus Pharmaceuticals Corporation et al., Court File No. CV-23-00693595-00CL

Dr. Keldmann,

The attachment is fully in accordance with the ruling of Justice Penny. Paragraph 29 of Penny J's Endorsement is set out below:

Para 29: "Dr. Troels Keldmann attended the hearing. He is a principal of Keldmann Healthcare and Keldmann Innovation which sold certain product rights to a predecessor of APL in 2009. Part of the payment to Keldmann Innovation A/S was to be in the form of royalties under the Amended Product Development Agreement between Trimel Biopharma SRL, Keldmann Healthcare A/S and Keldmann Innovation A/S dated December 30, 2009. This agreement, however, is one of the Excluded Contracts being transferred to a ResidualCo under the terms of the Subscription Agreement. Dr. Keldmann was concerned that, although the Keldmann counterparties would lose the right to any future payments, should the product sold to APL be successfully developed at some future point, they would remain subject to a non-compete provision embedded in that agreement. The applicants immediately made it clear that they had no intention of relying on enforcement rights under this excluded contract and proposed that they would issue a formal disclaimer of rights under that contract. This appeared to satisfactorily address Dr. Keldmann's concern."

Accordingly, the Applicants has issued a formal disclaimer of the PDA as agreed at the hearing. We confirm that with the PDA disclaimed, the Applicants cannot rely on or enforce any non-compete clauses under the PDA. We believe this satisfies our agreement from the hearing.

If you wish to have the PDA disclaimed by the Closing Date, please kindly execute the disclaimer at your earliest convenience. Otherwise, the PDA will be disclaimed within 30 days of June 6, 2023.

Regards,

Philip Yang

Direct: +1 416 869 5593
Mobile: +1 416 476 6195
Email: PYang@stikeman.com

From: Troels Keldmann <troels@keldmann.dk>
Sent: Wednesday, June 7, 2023 11:19 AM
To: Philip Yang <PYang@stikeman.com>; Lee Nicholson <leenicholson@stikeman.com>; Michael Hayes <Michael.Hayes@parthenon.ey.com>; Elizabeth Pillon <LPillon@stikeman.com>; Allen Yao <Allen.Yao@parthenon.ey.com>; Alex Morrison <Alex.F.Morrison@parthenon.ey.com>
Cc: Erik Keldmann <erik@keldmann.dk>
Subject: SV: In the Mattter of a Plan of Compromise or Arrangement of Acerus Pharmaceuticals Corporation et al., Court File No. CV-23-00693595-00CL

Good morning,

We acknowledge reception of your mail with attachment.

The attachment is not in accordance with the ruling of Ontario Court, Justice Penny.

In plain terms, Justice Penny has granted Applicant parties the right to complete the intended transactions, and further obtain legal immunity in Canadian Courts. Justice Penny elaborately explained the mechanism of relief for the Applicant parties: If Applicants parties are sued, then the cases will be dismissed due to the issued relief.

Justice Penny approved Applicants transaction of immediately separating the APA and PDA, and further transferring PDA to Residual Co – provided that Applicant with immediate effect issues a simple disclaimer to Keldmann parties regarding the non-compete clauses.

The received attachment is not such simple disclaimer of the non-compete clauses. We shall await reception of the simple disclaimer from Applicant – and shall confirm reception.

If Applicant parties seek a specific and expeditious release agreement (including Danish Law and venue) with the Keldmann parties, then we are open for discussion of terms.

Yours sincerely,
Troels Keldmann

Keldmann Healthcare A/S
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Denmark

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www.keldmannhealthcare.dk
www.keldmanninnovation.dk
www.learnfrominnovators.com

Fra: Philip Yang <PYang@stikeman.com>
Sendt: 7. juni 2023 02:37
Til: Troels Keldmann <troels@keldmann.dk>
Cc: Allen Yao <Allen.Yao@parthenon.ey.com>
Emne: In the Mattter of a Plan of Compromise or Arrangement of Acerus Pharmaceuticals Corporation et al., Court File No. CV-23-00693595-00CL

Good evening.

Please see attached letter and enclosure of today's date.

Regards,

Philip Yang

Direct: +1 416 869 5593
Mobile: +1 416 476 6195
Email: PYang@stikeman.com

Follow us: LinkedIn / Twitter / stikeman.com

Stikeman Elliott LLP Barristers & Solicitors

5300 Commerce Court West, 199 Bay Street, Toronto, ON M5L 1B9 Canada

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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

AFFIDAVIT OF NAVEED Z. MANZOOR
(SWORN JUNE 26, 2023)

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

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Email: leenicholson@stikeman.com

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

Lawyers for the Applicants

TAB 3

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	WEDNESDAY, THE 28TH DAY
	)	
JUSTICE PENNY	)	OF JUNE, 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 Period)

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 READING the affidavit of Naveed Manzoor sworn June 26, 2023 (the "**Manzoor Affidavit**"), and the Exhibits thereto, the Fourth Report of Ernst & Young Inc. ("**EY**"), in its capacity as Court-appointed monitor of the Applicants (in such capacity, the "**Monitor**") dated June 27, 2023 (the "**Fourth Repor**t"), and on hearing the submissions of counsel for the Applicants, counsel for the Monitor, counsel for First Generation Capital Inc. ("**FGC**") and 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,

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 July 31, 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.

____

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 Period)

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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
(EXTENSION OF STAY PERIOD)
(RETURNABLE JUNE 28, 2023)

STIKEMAN ELLIOTT LLP
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Lawyers for the Applicants