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

FOURTH REPORT OF THE MONITOR

DATED JUNE 27, 2023

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(each an "**Applicant**" and collectively, the "**Applicants**")

FOURTH REPORT OF THE MONITOR

DATED JUNE 27, 2023

INTRODUCTION

1. On January 26, 2023, the Applicants brought an application before the Ontario Superior Court of Justice (Commercial List) (the "**Court**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") to, among other things, obtain a stay of proceedings to allow them an opportunity to restructure their business and affairs.

2. On that same date, the Court granted an Initial Order (the "**Initial Order**") in these CCAA proceedings (the "**CCAA Proceedings**"). The Initial Order, among other things:

    a) appointed Ernst & Young Inc. as monitor of the Applicants (in such capacity, the "**Monitor**");

    b) approved the engagement of FAAN Advisors Group Inc. ("**FAAN**") as Chief Restructuring Officer ("**CRO**");

    c) ordered an initial stay of proceedings in favour of the Applicants, as subsequently extended (the "**Stay Period**");

d) granted certain Court-ordered charges; and

e) approved an interim financing facility (the "**DIP Facility**") provided by First Generation Capital Inc. ("**FGC**", and in its capacity as the DIP Facility lender, the "**DIP Lender**").

3. On January 29, 2023, the Applicants commenced ancillary insolvency proceedings under Chapter 15 of the United States Bankruptcy Code (the "**Chapter 15 Cases**") in the United States Bankruptcy Court for the District of Delaware (the "**U.S. Bankruptcy Court**"). On February 27, 2023, the U.S. Bankruptcy Court granted an Order recognizing these CCAA Proceedings as the foreign main proceedings and giving full force and effect to the orders entered in the CCAA Proceedings.

4. On February 3, 2023, the Court granted an Amended and Restated Initial Order (the "**ARIO**") amending and restating the Initial Order. The ARIO, among other things:

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

b) increased the amounts which could be borrowed by the Applicants under the DIP Facility; and

c) increased certain Court-ordered charges and granted an additional Court-ordered charge in respect of the KERP.

5. On March 9, 2023, the Court granted an Order (the "**SISP Order**") that, among other things, approved a sale and investment solicitation process (the "**SISP**") to be conducted by the Monitor, in consultation with the Applicants. On March 23, 2023, the U.S. Bankruptcy Court granted an Order recognizing the SISP Order.

6. The Monitor's third report (the "**Third Report**"), dated May 25, 2023, described in detail the conduct and results of the SISP, which concluded with a Subscription Agreement dated May 15, 2023 (the "**Subscription Agreement**") between FGC, as purchaser (in such capacity, the "**Purchaser**") and Acerus Pharmaceuticals Corporation ("**APC**"), as issuer. The Subscription Agreement contemplates that, through a reverse vesting structure, FGC will acquire APC's equity interest and, indirectly, substantially all assets and business of the Applicants (excluding the Excluded Assets and Excluded Liabilities, as defined in the Subscription Agreement) (the "**Transactions**").

7. On May 30, 2023, the Court granted an Order (the "**Approval and Reverse Vesting Order**") that, among other things, approved the Subscription Agreement and the Transactions contemplated thereby and extended the Stay Period to June 30, 2023.

PURPOSE

8. The purpose of this report (the "**Fourth Report**") is to provide information to the Court on:

   a) the recognition of the Approval and Reverse Vesting Order by the U.S. Bankruptcy Court;

   b) the status of the Transactions and the anticipated closing in respect thereof;

   c) the Applicants' receipts and disbursements for the period from May 15**,** 2023 to June 11, 2023, as compared to the cash flow forecast appended as Appendix "B" to the Third Report;

   d) the Applicants' updated cash flow forecast for the period from June 12, 2023 to August 6, 2023 (the "**Cash Flow Forecast**"); and

   e) the Applicants' motion for an Order that extends the Stay Period through to July 31, 2023.

TERMS OF REFERENCE

9. In preparing this Fourth Report and making the comments herein, the Monitor has been provided with, and has relied upon, audited and unaudited financial information, books and records prepared by the Applicants, discussions with management of the Applicants ("**Management**"), and information from other third-party sources (collectively, the "**Information**"). Except as described in this Fourth Report in respect of the Cash Flow Forecast:

   a) the Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of such Information in a manner that would wholly or partially comply with Canadian Auditing Standards ("**CAS**") pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under CAS in respect of the Information; and

b) some of the information referred to in this Fourth Report consists of forecasts and projections. An examination or review of the financial forecast and projections, as outlined in the Chartered Professional Accountants Canada Handbook, has not been performed.

10. Future oriented financial information referred to in this Fourth Report was prepared based on Management's estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, even if the assumptions materialize, and the variations could be significant.

11. Unless otherwise indicated, the Monitor's understanding of factual matters expressed in this Fourth Report concerning the Applicants and their business is based on the Information, and not independent factual determinations made by the Monitor.

12. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

13. Additional information regarding these CCAA Proceedings and the Chapter 15 Cases, including copies of the Monitor's reports and key documents related to the Chapter 15 Cases, can be found on the Monitor's website at www.ey.com/ca/acerus.

BACKGROUND INFORMATION

14. This Fourth Report should be read in conjunction with the Affidavit of Naveed Z. Manzoor sworn June 26, 2023 (the "**Manzoor Affidavit**") in support of the Applicants' motion for, among other relief, the stay extension.

15. Headquartered in Mississauga, Ontario, the Applicants carry on a specialty pharmaceutical business focused on the research, development, commercialization and distribution of innovative prescription products primarily in the fields of urology and men's health.

16. APC was incorporated under the Ontario *Business Corporations Act* (the "**OBCA**"). APC was previously listed on the TSX under the ticker "ASP.TO" and the OTCQB Exchange in the United States under the ticker "ASPCF". As of March 3, 2023, APC has been delisted from the TSX.

17. FGC holds approximately 89.3% of APC's outstanding shares. FGC is affiliated with the Chairman of the Board of Directors of APC (the "**Board**").

18. The other three Applicants are APC's wholly-owned subsidiaries and are financially dependant on APC.

CHAPTER 15 PROCEEDINGS

19. On June 13, 2023, the U.S. Bankruptcy Court issued an Order (the "**Recognition Order**"), recognizing the Approval and Reverse Vesting Order. A copy of the Recognition Order is attached hereto as **Appendix "A"**.

PRE-CLOSING DISCLAIMERS

20. On June 6, 2023, the Applicants issued a formal notice of disclaimer of the product development agreement 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 (the "**PDA**") pursuant to section 32 of the CCAA (the "**Keldmann Disclaimer**"). The Keldmann 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 **Appendix "B"**.

21. In addition to the Keldmann Disclaimer, the Applicants expect to disclaim the lease in respect of their office space shortly before the Closing Date.

STATUS OF THE TRANSACTIONS

22. Following the Approval and Reverse Vesting Order, the Applicants, with the assistance of the CRO, have been working collaboratively with the Purchaser toward closing the Transactions. The Monitor has been kept apprised of the status of the Transactions.

23. As part of this process, the Applicants' have sought a partial revocation of the outstanding cease trade order from the Ontario Securities Commission that currently prohibits the issuance of new shares by APC, which is required to close the Transactions.

24. Concurrently, the Applicants have taken steps to prepare for the conclusion of these CCAA Proceedings, including, without limitation, by arranging for the necessary director and officer runoff insurance.

25. In the meantime, the Applicants, with the assistance of the CRO and Monitor, have been in discussions with various stakeholders, including suppliers, health plan administrators, employees and contractors, to provide information regarding these CCAA Proceedings and the Transactions.

26. The Applicants are seeking an extension of the Stay Period to July 31, 2023 in order to close the Transactions contemplated by the Subscription Agreement and provide the stability required during that process.

APPLICANTS' RECEIPTS AND DISBURSEMENTS

27. A summary of the Applicants' actual receipts and disbursements during the period from May 15, 2023 to June 11, 2023 (the "**Reporting Period**") as compared to the cash flow forecast appended to the Third Report (the "**Variance Analysis**") is attached hereto as **Appendix "C"**.

28. As of May 15, 2023, the Applicants had cash balance of approximately $7.789 million, which is $1.377 million higher than projected. As detailed in Appendix "C", this favourable variance is attributable to a deferral of certain expenditures.

APPLICANTS' CASHFLOW FORECAST

29. The Applicants updated Cash Flow Forecast for the period from June 12, 2023 to August 6, 2023 is attached hereto as **Appendix "D"**. The Applicants project that their current funds will be adequate to sustain operations throughout the proposed extension of the Stay Period.

EXTENSION TO THE STAY PERIOD

30. The Stay Period is currently set to expire on June 30, 2023. The Applicants are requesting an extension of the Stay Period until July 31, 2023.

31. The Monitor is of the view that the requested stay extension is necessary and appropriate for the following reasons:

    a) the Applicants require the extension to close the Transactions; and

    b) the Applicants have continued to operate in good faith and with due diligence since the date of the Initial Order.

32. The Applicants will have sufficient liquidity for the duration of the extended Stay Period.

CONCLUSIONS AND RECOMMENDATIONS

33. Based on the foregoing, the Monitor respectfully recommends that this Court make an order approving an extension of the Stay Period to July 31, 2023.

All of which is respectfully submitted this 27th day of June, 2023.

ERNST & YOUNG INC., in its capacity as Monitor of the Applicants, and not in its corporate or personal capacity

per:

Alex Morrison
Senior Vice-President

Michael Hayes
Senior Vice-President

Allen Yao
Vice-President

Appendix “A”

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

Exhibit 1

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 (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.

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
5300 Commerce Court West
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Lawyers for the Applicants

Appendix “B”

Stikeman Elliott

Stikeman Elliott LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
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Main: 416 869 5500
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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

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

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

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.

Appendix “C”

Acerus Pharmaceuticals Corporation and Subsidiaries (collectively, the "Applicants)
Cash Flow Variance Analysis for the Period from May 15, 2023 to June 11, 2023
$CDN in Thousands

Variances Forecast to Actual

	Actual	Forecast	Variance	*Note*
Receipts				
Product Sales	$ 407	$ 400	$ 6	
Total Receipts	**407**	**400**	**6**	
Disbursements				
Direct Selling Costs	$ 13	$ 674	$ 661	*1*
Payroll & Contractors	65	191	126	*1*
Contract manufacturing costs	17	245	229	*1*
Other Product Related Expenses	756	824	68	*1*
Other SG&A	24	22	(3)	
Professional Fees	433	724	291	*1*
Total Disbursements	1,308	2,679	1,371	
Net cash flow +(-)	**$ (902)**	**$ (2,279)**	**$ 1,377**	
Cash Balance				
Opening Balance +(-)	$ 8,691	$ 8,691	$ -	
Net Cash Receipts/(disbursements) +(-)	$ (902)	$ (2,279)	$ 1,377	
DIP draws/(repayment) +(-)	$ -	$ -	$ -	
Ending Cash Balance	**$ 7,789**	**$ 6,412**	**$ 1,377**	
DIP Facility				
Opening Balance (before accrued interest)	$ 9,495	$ 9,495	$ -	*2*
DIP Draws/(Repayment) +(-)	$ -	$ -	-	
Closing Balance +(-)	**$ 9,495**	**$ 9,495**	**-**	

In the Matter of the CCAA of Acerus Pharmaceuticals Corporation, Acerus Biopharma Inc., Acerus Labs Inc., and Acerus Pharmaceuticals USA, LLC (collectively, the "Applicants")

Cash flow variance analysis for the period from May 15 to June 11, 2023

Disclaimer:

This variance analysis compares the Applicants' actual receipts and disbursements compared to the cash flow forecast appended to the Third Report of the Monitor, dated May 25, 2023.

Note 1: These positive variances represent a favourable timing difference due to the deferral of certain expenditures that may reverse in the future.

Note 2: The US$7 million DIP facility was fully drawn as of the date of this Report. The balance represents the principal amount, exclusive of any accrued interest.

Appendix “D”

Acerus Pharmaceuticals Corporation and Subsidiaries (collectively, the "Applicants")
Cash Flow Forecast for the Period June 12, 2023 to August 6, 2023
$CDN in Thousands

Week #		21	22	23	24	25	26	27	28	
Ending		Jun 18	Jun 25	Jul 02	Jul 09	Jul 16	Jul 23	Jul 30	Aug 06	Total
	Notes	Estimate	Estimate	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	
Receipts										
Product Sales	1	$ 984	$ 22	$ 237	$ 427	$ 339	$ 168	$ 210	$ 278	$ 2,667
Total Receipts		**$ 984**	**$ 22**	**$ 237**	**$ 427**	**$ 339**	**$ 168**	**$ 210**	**$ 278**	**$ 2,667**
Disbursements										
Direct Selling Costs	2	-	488	5	203	15	142	299	237	1,391
Payroll & Contractor costs	3	32	14	36	84	27	14	30	150	387
Contract manufacturing costs	4	-	-	-	167	-	-	-	-	167
Other Product Related Expenses	5	18	-	460	14	475	-	257	-	1,223
Other SG&A	6	8	15	10	-	7	9	-	553	601
Professional Fees	7	-	235	141	110	213	-	75	743	1,517
Total Disbursements		57	752	652	577	737	166	661	1,683	5,285
Net cash receipts/(disbursements)		**$ 927**	**$ (730)**	**$ (415)**	**$ (150)**	**$ (398)**	**$ 2**	**$ (451)**	**$ (1,405)**	**$ (2,619)**
Cash Balance										
Opening Balance	8	$ 7,789	$ 8,716	$ 7,986	$ 7,572	$ 7,421	$ 7,024	$ 7,026	$ 6,575	$ 7,789
Net Cash Receipts/(disbursements)		927	(730)	(415)	(150)	(398)	2	(451)	(1,405)	$ (2,619)
DIP draws/(repayment)		-	-	-	-	-	-	-	-	$ -
Ending Cash Balance		**$ 8,716**	**$ 7,986**	**$ 7,572**	**$ 7,421**	**$ 7,024**	**$ 7,026**	**$ 6,575**	**$ 5,171**	**$ 5,171**
DIP Facility (before accrued interest)										
Opening Balance	9	$ 9,495	$ 9,495	$ 9,495	$ 9,495	$ 9,495	$ 9,495	$ 9,495	$ 9,495	$ 9,495
DIP Draws/(Repayment)	9	-	-	-	-	-	-	-	-	$ -
Closing Balance		**$ 9,495**	**$ 9,495**	**$ 9,495**	**$ 9,495**	**$ 9,495**	**$ 9,495**	**$ 9,495**	**$ 9,495**	**$ 9,495**

In the Matter of the CCAA of Acerus Pharmaceuticals Corporation, Acerus Biopharma Inc., Acerus Labs Inc., and Acerus Pharmaceuticals USA, LLC (collectively, the "Applicants")

Notes to the Unaudited Cash Flow Forecast of the Applicants

Disclaimer:

In preparing this cash flow forecast (the "**Cash Flow Forecast**"), the Applicants, with the assistance of FAAN Advisors Group Inc. in its capacity as the Chief Restructuring Officer, and in consultation with Ernst & Young Inc. (the "**Monitor**"), have relied upon unaudited financial information and the Applicants have not attempted to further verify the accuracy or completeness of such information. The Cash Flow Forecast includes estimates concerning the operations of the Applicants and additional assumptions discussed below with respect to the requirements and impact of a *Companies' Creditors Arrangement Act* ("**CCAA**") filing (the "**Probable and Hypothetical Assumptions**" or the "**Assumptions**"). Since the Cash Flow Forecast is based on Assumptions about future events and conditions that are not ascertainable, the actual results achieved during the Cash Flow Forecast period will vary from the Cash Flow Forecast, even if the Assumptions materialize, and such variation may be material. There is no representation, warranty or other assurance that any of the estimates, forecasts or projections will be realized.

The Monitor has reviewed the Cash Flow Forecast to the standard required of a Court appointed Monitor pursuant to section 23(1)(b) of the CCAA, which requires a Monitor to review the debtor's cash flow statements as to its reasonableness and to file a report with the Court on the Monitor's findings.

Pursuant to this standard, the Monitor's review of the Cash Flow Forecast consisted of inquiries, analytical procedures and discussions related to information supplied to it by certain key members of the Applicants and other employees of the Applicants. Since the Probable and Hypothetical Assumptions need not be supported, the Monitor's procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the Cash Flow Forecast. The Monitor also reviewed the support provided by the Applicants for the Probable and Hypothetical Assumptions and the preparation and presentation of the Cash Flow Forecast.

Based on the Monitor's review, nothing has come to the Monitor's attention that causes the Monitor to believe, in any material respect, that:

(a) The Probable and Hypothetical Assumptions are not consistent with the purpose of the Cash Flow Forecast;
(b) As at the date of this report, the Probable and Hypothetical Assumptions are not suitably supported and consistent with the plans of the Applicants or do not provide a reasonable basis for the Cash Flow Forecast, given the Probable and Hypothetical Assumptions; or
(c) The Cash Flow Forecast does not reflect the Probable and Hypothetical Assumptions.

Overview:

The Cash Flow Forecast includes the receipts and disbursements of the Applicants during the Cash Flow Forecast period. The Applicants, with the assistance of FAAN, and in consultation with the Monitor, have prepared the Cash Flow Forecast based primarily on estimated receipts and disbursements related to the ongoing operations and the CCAA proceedings.

The Cash Flow Forecast reflects the assumption that the transactions contemplated in the subscription agreement dated as of May 15, 2023 (the "**Subscription Agreement**"), as detailed in the Third Report of the Monitor, dated May 25, 2023, will be closed during the Cash Flow Forecast Period.

Assumptions:

1. **Product Sales**
   The Cash Flow Forecast reflects the continued sale of Natesto™ during the CCAA Proceedings. Cash receipts are forecast based on accounts receivable and projected sales during the forecast period, before rebates and other direct selling costs, as described in Note 2.

2. **Direct Selling Costs**
   These payments include amounts related to health plans, a co-pay program and incentives to pharmacy partners, as well as fees charged by third-party logistics service providers and distributors. A portion of these payments represents a projected deposit that will be held by the Monitor in trust. This deposit will be used to cover post-filing costs in accordance with arrangements with a service provider.

3. **Payroll and Contractor Costs**
   Payroll and contractor payments are forecast based on historical run rates and anticipated staffing levels. Salaried employees receive semi-monthly pay. This line item also includes estimated payments pursuant to the key employee retention plan approved by Court.

4. **Contract Manufacturing Costs**
   Represents estimated payments to third party contract manufacturers for the production of commercial batches of the Applicants' products.

5. **Other Product Related Expenses**
   Included in these expenses are fees charged by regulatory agencies, clinical trial costs, and costs to maintain intellectual property rights, and certain indirect selling costs.

6. **Other SG&A**
   Includes office lease, insurance premium and other administrative expenses.

7. **Restructuring Costs & Administrative Reserve**

   Restructuring costs include primarily professional fee payments and expenses to the Applicants' Canadian and U.S. legal counsel, the Monitor and its counsel and the Chief Restructuring Officer in connection with the Applicants' restructuring proceedings.

   This line item includes an estimated reserve of the professional fees that are required to complete these restructuring proceedings.

8. **Beginning Balance**

   Represents the opening cash balance as of June 12, 2023.

9. **Debt-in-Possession Facility ("DIP") Draws and Repayments**

   The entire balance of the US$7 million DIP facility was fully drawn as of June 12, 2023. The balance reflects the principal amount, exclusive of any accrued interest.