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 15177561 CANADA INC. and 15177570 CANADA INC.

Applicants

MOTION RECORD
(TERMINATION OF CCAA PROCEEDINGS)
(RETURNABLE JULY 24, 2023)

July 19, 2023

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TO: THE SERVICE LIST

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Applicants

I N D E X

TAB 1

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ONTARIO
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Applicants

NOTICE OF MOTION
(Termination of CCAA Proceedings)

15177561 Canada Inc. and 15177570 Canada Inc. (together, the "**Applicants**") will make a motion before Justice Steele of the Ontario Superior Court of Justice (Commercial List) on **Monday, July 24, 2023 at 9:30 a.m.**, or as soon after that time as the Motion can be heard, via Zoom videoconference.

PROPOSED METHOD OF HEARING: The Motion is to be heard

[ ] In writing under subrule 37.12.1(1);
[ ] In writing as an opposed motion under subrule 37.12.1(4);
[ ] In person;
[ ] By telephone conference;
[X] By video conference.

at the following location:

https://ca01web.zoom.us/j/67927063702?pwd=c1Z2eFN3NXB1N0xOK0lYSWtCL2ZBZz09

THE MOTION IS FOR[1]

1. An order (the "**CCAA Termination Order**"), substantially in the form of the draft order attached at Tab 3 of the Applicants' Motion Record, *inter alia*:

(a) abridging the time for service of this motion and the Motion Record and dispensing with service on any other person other than those served;

(b) terminating these CCAA Proceedings upon the filing of the Monitor's Termination Certificate by the Monitor certifying that, to the knowledge of the Monitor, all matters described in the Fifth Report to be attended to in connection with the CCAA Proceedings have been completed;

(c) approving the Fourth Report, the Fifth Report, and the activities of the Monitor and its counsel referred to therein;

(d) approving fees of the Monitor and its counsel throughout these CCAA Proceedings and the anticipated further fees and disbursements of the Monitor and its counsel required to complete the administration of the CCAA Proceedings;

(e) terminating the Charges upon the filing of the Monitor's Termination Certificate;

(f) discharging and releasing FAAN as CRO of the Applicants in the CCAA Proceedings as at the CCAA Termination Time;

(g) confirming that the Release under the Approval and Reverse Vesting Order (as defined below) applies to the CRO and Naveed Z. Manzoor which may be incurred as a result of acting as a director or officer of Residual Cos.;

(h) discharging and releasing EY as Monitor of the Applicants in the CCAA Proceedings as at the CCAA Termination Time;

(i) enhancing the Monitor's powers as they relate to Residual Cos., including:

(i) taking any and all actions and steps, and execute all documents and

[1] Capitalized terms used herein and not otherwise defined shall have the meanings given to them in the affidavit of Naveed Z. Manzoor sworn July 19, 2023.

writings, on behalf of, and in the name of Residual Cos. in order to facilitate the performance of their obligations; and

(ii) exercise any powers which may be properly exercised by any board of directors of Residual Cos.;

(j) authorizing the Applicants or the Monitor on behalf of the Applicants, to file an assignment in bankruptcy and EY to act as trustee in bankruptcy of the Applicants (in such capacity, the "**Trustee**");

(k) unsealing Confidential Appendix "E" to the Third Report of the Monitor dated May 25, 2023; and

(l) extending the Stay Period until the CCAA Termination Time.

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

THE GROUNDS FOR THE MOTION ARE

Background to the CCAA Proceedings

3. APC is a pharmaceutical company who, directly and through its subsidiaries ABI, ALI, and APL, holds intellectual property rights over pharmaceutical products, and various methods of treatment and manufacturing, and carries on a business researching, trialling, and bringing said products to market for distribution. Facing a severe liquidity crisis, the Acerus Entities sought protection under the CCAA pursuant to the Initial Order which was granted on January 26, 2023 and amended and restated on February 3, 2023.

4. Among other things, the Initial Order and ARIO granted a stay of proceedings in favour of the Acerus Entities, appointed FAAN as CRO of the Acerus Entities, authorized APC to act as foreign representative, approved the DIP Facility Agreement, and granted the Charges over the Acerus Entities' property.

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

6. On March 9, 2023, the Acerus Entities sought and obtained the SISP Order which approved the SISP and authorized the Acerus Entities and the Monitor to immediately commence the SISP.

7. Following completion of the SISP, the Acerus Entities with the assistance of the Monitor identified the successful bid and transaction. On May 30, 2023, the Acerus Entities sought and obtained the Approval and Reverse Vesting Order which approved the Subscription Agreement and the Transaction.

8. On June 13, 2023, the US Bankruptcy Court entered an order recognizing and enforcing the Approval and Reverse Vesting Order.

9. The Transaction closed on July 10, 2023. Upon the issuance of the Monitor's Closing Certificate on July 10, 2023 and closing of the Transaction, among other things:

(a) (i) all of the Canadian Entities right, title and interest in and to the Excluded Assets vested absolutely and exclusively in Residual Co. 1; and (ii) with respect to APL, all of APL's right, title and interest in and to the Excluded Assets vested absolutely and exclusively in Residual Co. 2;

(b) all Excluded Contracts, Excluded Leases and Excluded Liabilities were channeled to, assumed by and vested absolutely and exclusively in Residual Co. 1, as to those which relate to the Canadian Entities, and Residual Co. 2, as to those that related to APL; and

(c) the Acerus Entities were deemed to cease being Applicants in these CCAA Proceedings and were deemed to be released from the purview of the Initial Order and all other Orders of this Court granted in respect of these CCAA Proceedings, save and except for the Approval and Reverse Vesting Order.

Terminating the CCAA Proceedings

10. Having closed the Transaction, the Applicants are now seeking approval of the CCAA Termination Order to facilitate the completion of the CCAA Proceedings.

11. Pursuant to the proposed CCAA Termination Order, the CCAA Proceedings will be terminated upon the filing of the Monitor's Certificate certifying that all matters described in the

Fifth Report to be attended to in connection with the CCAA Proceedings have been completed.

12. At the CCAA Termination Time, EY will be released and discharged as Monitor, each of the Charges will be terminated, and FAAN will be discharged as CRO.

13. The Monitor is supportive of the proposed termination of the CCAA Proceedings and FAAN's discharge as CRO.

The Releases

14. The CCAA Termination Order also provides confirmation that the previously court-ordered release granted in the Approval and Reverse Vesting Order applies to claims which may exist as result of acting as a director of Residual Cos. Specifically, the CCAA Termination Order provides that "Released Claims" as defined in the Approval and Reverse Vesting Order shall include all present and future liabilities or claims of any nature or kind against the CRO or Naveed Z. Manzoor which may be incurred as a result of acting as a director or officer of Residual Cos.

15. As the Residual Cos. were required to be incorporated for the Transaction to successfully close and there were no other individuals willing to be a director, the relief related to the Releases is appropriate.

16. The Monitor is supportive of the CRO's discharge and the Releases being granted.

Authority to Assign the Applicants into Bankruptcy and Monitor's Expanded Powers

17. Given that the Transaction did not provide sufficient proceeds to satisfy Residual Cos.' indebtedness to their creditors, the proposed CCAA Termination Order envisions a bankruptcy for the Applicants and authorizes the Applicants or the Monitor to file an assignment in bankruptcy and EY to act as the Trustee.

18. Residual Cos. do not have any directors and may not be assigned into bankruptcy for several weeks. Accordingly, the most logical and cost-effective solution is to enhance the Monitor's powers to allow it to act on behalf of Residual Cos. and take on their behalf any actions and steps which may be necessary to assign or cause the assignment of Residual Cos. into bankruptcy in order to complete this matter.

19. The Monitor believes that the proposed bankruptcy is appropriate in the circumstances and is in the best interests of the Applicants and their stakeholders. The Monitor is also supportive

of enhancing the Monitor's powers such that it may exercise any powers which may be properly exercised by any board of directors of Residual Cos., which will allow it to address any issues that may arise prior to the CCAA Termination Time and allow it to facilitate the Applicants' assignment in bankruptcy as needed.

Approval of the Monitor's Fees and Activities

20. The Monitor and its counsel have undertaken numerous activities to facilitate the CCAA Proceedings and the Acerus Entities' restructuring. The Applicants are now seeking approval of such activities pursuant to the proposed CCAA Termination Order.

21. In the Approval and Reverse Vesting Order, the Monitor's activities as outlined in the First Report of the Monitor dated February 2, 2023, the Second Report of the Monitor dated March 7, 2023, and the Third Report of the Monitor dated May 25, 2023 were approved

22. The proposed CCAA Termination Order also approves the fees and disbursements of the Monitor and its counsel. The Monitor and its counsel will prepare and file fee affidavits with the Court in advance of the hearing of this motion.

Extending the Stay Period

23. The Stay Period currently expires on July 31, 2023. Pursuant to the CCAA Termination Order, the Stay Period is proposed to be extended to the CCAA Termination Time.

24. The Applicants have and continue to act in good faith and with due diligence to complete the CCAA Proceedings. Prior to the CCAA Termination Time, the Applicants and/or the Monitor are required to take various steps.

25. While the Applicants and the Monitor are working diligently and in good faith towards completing all activities required to terminate these CCAA Proceedings, same may not be completed prior to July 31, 2023. The extension of the Stay Period to the CCAA Termination Time will permit the Applicants and the Monitor to complete the required activities in an efficient manner with the benefit of the stay of proceedings. Further, the proposed extension of the Stay Period will obviate the need for a further attendance before the Court which would only result in additional costs being incurred by Residual Cos. and occupation of further court time.

26. The Monitor is supportive of the proposed extension of the Stay Period and does not

believe that it will materially prejudice any of the Applicants' stakeholders.

Other Grounds

27. The provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court.

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

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

30. Such further and other grounds as counsel may advise and this Court may permit.

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

31. The Affidavit of Naveed Z. Manzoor, sworn July 19, 2023, and the Exhibits attached thereto;

32. The Fifth Report of the Monitor; and

33. Such further and other documentary evidence as counsel may advise and this Court may permit.

July 19, 2023

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Applicants

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

NOTICE OF MOTION
(TERMINATION OF CCAA PROCEEDINGS)

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TAB 2

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

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Applicants

AFFIDAVIT OF NAVEED Z. MANZOOR
(Sworn July 19, 2023)

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

1. I am the current Chief Restructuring Officer ("**CRO**") of 15177561 Canada Inc. ("**Residual Co. 1**") and 15177570 Canada Inc. ("**Residual Co. 2**", and together with Residual Co. 1, the "**Applicants**" or "**Residual Cos.**") through FAAN Advisors Group Inc. ("**FAAN**"). I was also the sole director of Residual Cos. prior to my resignation from the Residual Cos. on July 11, 2023.

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

3. I swear this affidavit in support of a motion by the Applicants for the issuance of an order (the "**CCAA Termination Order**"), *inter alia*:

a. terminating these proceedings (the "**CCAA Proceedings**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") upon the filing of a certificate (the "**Monitor's Termination Certificate**") by Ernst & Young Inc. ("**EY**") in its capacity as the Court-appointed monitor of the Applicants (in such capacity, the "**Monitor**") certifying that, to the knowledge of the Monitor, all matters described in the Fifth Report of the Monitor to be filed (the "**Fifth Report**") to be attended to in connection with the CCAA Proceedings have been completed;

b. approving the Fourth Report of the Monitor dated June 27, 2023 (the "**Fourth Report**"), the Fifth Report, the activities of the Monitor and its counsel referred to therein;

c. approving fees of the Monitor and its counsel throughout these CCAA Proceedings and the anticipated further fees and disbursements of the Monitor and its counsel required to complete the administration of the CCAA Proceedings;

d. terminating the Charges (as defined below) upon the filing of the Monitor's Termination Certificate (the "**CCAA Termination Time**");

e. discharging and releasing FAAN as CRO of the Applicants in the CCAA Proceedings as at the CCAA Termination Time;

f. confirming that the Release under the Approval and Reverse Vesting Order (as defined below) applies to the CRO and Naveed Z. Manzoor which may be incurred as a result of acting as a director or officer of Residual Cos.;

g. discharging and releasing EY as Monitor of the Applicants in the CCAA Proceedings as at the CCAA Termination Time;

h. enhancing the Monitor's powers as they relate to Residual Cos., including:

    i. taking any and all actions and steps, and execute all documents and writings, on behalf of, and in the name of Residual Cos. in order to facilitate the performance of their obligations; and

    ii. exercise any powers which may be properly exercised by any board of directors of Residual Cos.;

i. authorizing the Applicants or the Monitor on behalf of the Applicants, to file an assignment in bankruptcy and EY to act as trustee in bankruptcy of the Applicants (in such capacity, the "**Trustee**");

j. unsealing Confidential Appendix "E" to the Third Report of the Monitor dated May 25, 2023; and

k. extending the Stay Period (as defined below) until the CCAA Termination Time.

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

I. BACKGROUND

5. APC is a pharmaceutical company who, directly and through its subsidiaries ABI, ALI, and APL, holds intellectual property rights over pharmaceutical products, and various methods of treatment and manufacturing, and carries on a business researching, trialling, and bringing said products to market for distribution. Facing a severe liquidity crisis, the Acerus Entities sought protection under the CCAA pursuant to an order issued by the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on January 26, 2023 (the "**Initial Order**").

6. Among other things, the Initial Order:

a. appointed EY as Monitor of the Acerus Entities in the CCAA Proceedings;

b. granted an initial 10-day stay of proceedings in favour of the Acerus Entities, the Monitor, and the Acerus Entities' directors and officers (the "**Stay Period**");

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

d. authorized APC to act as foreign representative of the Acerus Entities and to seek recognition of the CCAA Proceedings in the United States under Chapter 15 of the United States Bankruptcy Code, 11 U.S. Code § 1501-1532;

e. approved the execution by the Acerus Entities of a debtor-in-possession facility loan agreement (the "**DIP Facility Agreement**") entered into on January 25, 2023 with First Generation Capital Inc. ("**FGC**"), pursuant to which FGC (in such capacity, the "**DIP**

Lender") agreed to advance an initial amount of US$500,000 to the Acerus Entities during the initial 10-day stay period (the "**DIP Facility**") in order to finance the Acerus Entities' capital requirements and other general corporate purposes, post-filing expenses and costs, and ordered the establishment of a priority charge in favour of the DIP Lender against the assets, property and undertakings of the Acerus Entities (the "**Property**") in order to secure the Acerus Entities' obligations under the DIP Facility Agreement (the "**DIP Lender's Charge**");

f. granted a charge over the Acerus Entities' property in favour of the CRO, the Monitor, counsel for the Monitor, and counsel for the Acerus Entities in the amount of $150,000 (the "**Administration Charge**"); and

g. granted a charge over the Acerus Entities' property in favour of the Acerus Entities' directors and officers in the amount of $200,000 (the "**Directors' Charge**").

7. On January 31, 2023, in Chapter 15 recognition proceedings commenced by the Acerus Entities (the "**Chapter 15 Proceedings**"), Judge Mary F. Walrath for the United States Bankruptcy Court for the District of Delaware (the "**US Bankruptcy Court**") entered the Order Granting Provisional Relief Pursuant to Section 1519 of the Bankruptcy Code (the "**Provisional Relief Order**"), granting provisional, injunctive, and related relief, including but not limited to, granting recognition and giving effect in the United States to the Initial Order and giving effect to the ARIO (as defined immediately below) that was anticipated at the time to be entered into on or about February 3, 2023.

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

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

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

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

Charge", and together with the Administration Charge, the Directors' Charge, and the DIP Lender's Charge, the "**Charges**").

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

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

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

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

11. On May 16, 2023, the Stay Period was extended until and including May 30, 2023.

12. Following the completion of the SISP, the Acerus Entities with the assistance of the Monitor identified the successful bid and transaction. On May 30, 2023, the Acerus Entities sought and obtained an order from the Court (the "**Approval and Reverse Vesting Order**"), which, *inter alia*:

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

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

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

14. The Transaction closed on July 10, 2023. A copy of the Monitor's certificate (the "**Monitor's Closing Certificate**"), confirming that all conditions to closing the Transaction under

the Subscription Agreement had been satisfied or waived by APC and FGC is attached hereto as **Exhibit "A".**

15. Accordingly, among other things, the following occurred upon delivery of the Monitor's Closing Certificate and closing of the Transaction:[1]

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 vested absolutely and exclusively in Residual Co. 1, and (ii) with respect to APL, all of APL's right, title and interest in and to the Excluded Assets vested absolutely and exclusively in Residual Co. 2, and in each case, all applicable Claims and Encumbrances continued to attach to the Excluded Assets and to the Purchase Price;

b. second, all Excluded Contracts, Excluded Leases and Excluded Liabilities were channeled to, assumed by and vested absolutely and exclusively in Residual Co. 1, as to those which relate to the Canadian Entities, and Residual Co. 2, as to those that related to APL; and

c. the Acerus Entities were deemed to cease being Applicants in these CCAA Proceedings and were deemed to be released from the purview of the Initial Order and all other Orders of this Court granted in respect of these CCAA Proceedings, save and except for the Approval and Reverse Vesting Order.

16. To help illustrate the Transaction, a pre and post corporate structure of the Acerus Entities is attached as **Exhibit "B"**.

17. Copies of each of the orders and other materials filed in the CCAA Proceedings are available on the Monitor's website at https://ey.com/ca/acerus. A copy of the Approval and Reverse Vesting Order is attached hereto as **Exhibit "C"** and the related endorsement of Justice Penny dated June 2, 2023 (the "**Endorsement**") is attached hereto as **Exhibit "D"**.

II. TERMINATING THE CCAA PROCEEDINGS AND RELATED RELIEF

18. Since the granting of the Initial Order, the Acerus Entities and thereafter the Residual Cos. (as Applicants), in consultation with the Monitor, have acted in good faith and with due diligence

[1] Capitalized terms used in this paragraph and not otherwise defined have the meanings given to them in the Subscription Agreement.

to, among other things, stabilize their business, apprise their stakeholders of the CCAA Proceedings, prepare and implement the SISP, and consummate the Transaction. As the Acerus Entities have closed the Transaction, the Residual Cos./Applicants are now seeking approval of the CCAA Termination Order to facilitate the efficient completion of the CCAA Proceedings.

19. Pursuant to the proposed CCAA Termination Order, the CCAA Proceedings will be terminated upon the filing of the Monitor's Termination Certificate certifying that all matters described in the Fifth Report to be attended to in connection with the CCAA Proceedings have been completed.

20. I understand the primary activity that the Monitor will complete prior to filing the Monitor's Termination Certificate is administration and payment of the Administrative Reserve (as defined below) which was paid to the Monitor in connection with the Transaction in order to fund and pay certain administrative expenses and priority claims, including certain amounts secured by the Charges.

21. At the CCAA Termination Time, the Charges will be terminated immediately.

22. At the CCAA Termination Time, EY will be released and discharged as Monitor. Certain of the other relief sought under the CCAA Termination Order necessary to effect an orderly termination of the CCAA Proceedings and the Applicants' assignments in bankruptcy is discussed immediately below.

A. Discharging the CRO and Releases in favour of CRO and Naveed Z. Manzoor

23. As described in my affidavit sworn January 25, 2023 in support of the Initial Order, the Acerus Entities lost a number of key employees from 2021 through 2022. Additionally, the pharmaceutical industry is heavily regulated and complex. For these reasons, among others, the Acerus Entities engaged FAAN to act as CRO.

24. In my capacity as the CRO through FAAN, I have, among other things:

a. overseen the Acerus Entities' business operations;

b. disclaimed certain of the Acerus Entities' contracts;

c. communicated with the Acerus Entities' employees, suppliers, customers and other key stakeholders regarding the CCAA Proceedings;

d. assisted with the conduct of the SISP;

e. in consultation with the Acerus Entities' counsel and the Monitor, attended to all matters arising in connection with closing the Transaction; and

f. acted as the sole director of Residual Cos. for a brief period of time following the closing of the Transaction.

25. The CCAA Termination Order also provides confirmation that the previously court-ordered release granted in the Approval and Reverse Vesting Order applies to claims which may exist as result of acting as a director of Residual Cos. Specifically, the CCAA Termination Order provides that "Released Claims" as defined in the Approval and Reverse Vesting Order shall include all present and future liabilities or claims of any nature or kind against the CRO or myself which may be incurred as a result of acting as a director or officer of Residual Cos (the "**Releases**").

26. As the Residual Cos. were required to be incorporated for the Transaction to successfully close and there were no other individuals willing to be a director, I believe the relief related to the Releases is appropriate.

27. I understand that the Monitor is supportive of the CRO's discharge and the Releases being granted.

B. Authority to Assign the Applicants into Bankruptcy and Monitor's Expanded Powers

28. Given that the Transaction did not provide sufficient proceeds to satisfy Residual Cos.' indebtedness to their creditors, the proposed CCAA Termination Order envisions a bankruptcy for the Applicants and authorizes the Applicants or the Monitor to file an assignment in bankruptcy and EY to act as the Trustee.

29. As noted above, the Transaction has closed, and I have resigned as director of Residual Cos. I understand that the Residual Cos. will not be immediately assigned into bankruptcy and that the Monitor is working to make payments to the required parties under the Administrative Reserve (as defined and discussed below). As such, Residual Cos. may have no directors and officers for several weeks before they are assigned into bankruptcy.

30. Accordingly, the most logical and cost-effective solution is to enhance the Monitor's powers to allow it to act on behalf of Residual Cos. and take on their behalf any actions and steps

which may be necessary to, among other things, assign or cause the assignment of Residual Cos. into bankruptcy in order to complete this matter.

31. I understand that the Monitor is supportive of the proposed bankruptcies in order to bring an orderly conclusion to the Residual Cos. I also understand that the Monitor is supportive of enhancing the Monitor's powers such that it may exercise any powers which may be properly exercised by any board of directors of Residual Cos., which will allow it to address any issues that may arise prior to the CCAA Termination Time and allow it to facilitate the Applicants' assignment in bankruptcy as needed.

C. Approval of the Monitor's Fees and Activities

32. As described in the Fourth Report and Fifth Report, the Monitor and its counsel have undertaken numerous activities to facilitate the CCAA Proceedings and the Acerus Entities' restructuring. The Applicants are now seeking approval of such activities pursuant to the proposed CCAA Termination Order.

33. In the Approval and Reverse Vesting Order, the Monitor's activities as outlined in the First Report of the Monitor dated February 2, 2023, the Second Report of the Monitor dated March 7, 2023, and the Third Report of the Monitor dated May 25, 2023 were approved.

34. The proposed CCAA Termination Order also seeks approval of the fees and disbursements of the Monitor and its counsel. To this end, I understand that the Monitor and its counsel will prepare and file fee affidavits with the Court in advance of the hearing of this motion.

D. Extending the Stay Period

35. The Stay Period currently expires on July 31, 2023. Pursuant to the CCAA Termination Order, the Stay Period is proposed to be extended to the CCAA Termination Time.

36. Prior to the CCAA Termination Time, the Applicants and/or the Monitor are required to take various steps such as:

a. terminating the Chapter 15 Proceedings in the near term;

b. addressing an amount regarding unpaid wages alleged by a former employee of the Acerus Entities;

c. providing necessary cooperation with FGC to address matters arising from the Transaction, including communication with vendors;

d. collaborating with FGC to address outstanding tax matters that need to be completed before terminating the CCAA Proceedings;

e. process disbursements held by the Monitor;

f. coordinating with FGC to manage record retention and issue employment records to terminated employees;

g. distributing the administrative expense amount in the amount of $1,073,000 and US$150,000 received by the Monitor from the Acerus Entities (the "**Administrative Reserve**") to pay:

    i. the reasonable and documented fees and costs of the Monitor and its professional advisors and professional advisors of the Acerus Entities and the Applicants relating to these CCAA Proceedings;

    ii. costs required to bankrupt and administer Residual Cos.;

    iii. the success fee owing to the CRO pursuant to its engagement letter;

    iv. certain of the Charges granted in these CCAA Proceedings, specifically the KERP Charge; and

h. bankrupting and administering Residual Cos.

37. These activities will be complete as soon as possible, however, may not be able to completed prior to July 31, 2023. The extension of the Stay Period to the CCAA Termination Time will permit the Applicants and the Monitor to complete the above activities in an efficient manner with the benefit of the stay of proceedings. Further, the proposed extension of the Stay Period will obviate the need for a further attendance before the Court which would only result in additional costs being incurred by Residual Cos. and occupation of further court time.

38. I understand that the Monitor is supportive of the proposed extension of the Stay Period and does not believe that it will materially prejudice any of the Applicants' stakeholders. I also

believe the Applicants have and continue to act in good faith and with due diligence to complete the CCAA Proceedings.

39. Amounts remaining in the Administrative Reserve (if any) after making the above-referenced payments, will be returned to APC.

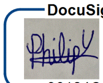
III. CONCLUSION

40. I believe that the relief sought and described herein is in the best interests of the Applicants and their stakeholders. Further, I understand that the Monitor is supportive of the relief described herein and does not believe that any creditor will be materially prejudiced by the granting of the CCAA Termination Order.

41. I swear this affidavit in support of the of the Applicant's motion for the CCAA Termination Order and for no other or improper purpose.

SWORN REMOTELY via videoconference, by Naveed Z. Manzoor stated as being located in the Town of Oakville, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on this 19th day of July, 2023, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:



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A Commissioner for Taking Affidavits, etc.
PHILIP YANG

DocuSigned by:

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NAVEED Z. MANZOOR

EXHIBIT "A"

referred to in the Affidavit of

NAVEED Z. MANZOOR

Sworn July 19, 2023

DocuSigned by:

Philip Y

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Commissioner for Taking Affidavits
Philip Yang

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 30, 2023, (the "**AVO**"), the Court approved the transactions (the "**Transactions**") contemplated by the Subscription Agreement dated May 15, 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.

C. 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 July 10, 2023.

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

Per: ______________________
Name: Alexander Morris
Title: Senior Vice President

Electronically filed / Déposé par voie électronique : 11-Jul-2023
Toronto Superior Court of Justice / Cour supérieure de justice
Court File No./N° du dossier du greffe : CV-23-00693595-00CL

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

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at
Toronto

MONITOR'S CLOSING CERTIFICATE

FASKEN MARTINEAU DuMOULIN LLP
Barristers and Solicitors
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Toronto ON   M5H 2T6

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Mitch Stephenson (LSO: 73064H)
mstephenson@fasken.com
Tel: 416 868 3502

Lawyers for the Monitor

EXHIBIT "B"

referred to in the Affidavit of

NAVEED Z. MANZOOR

Sworn July 19, 2023

DocuSigned by:

Philip Y

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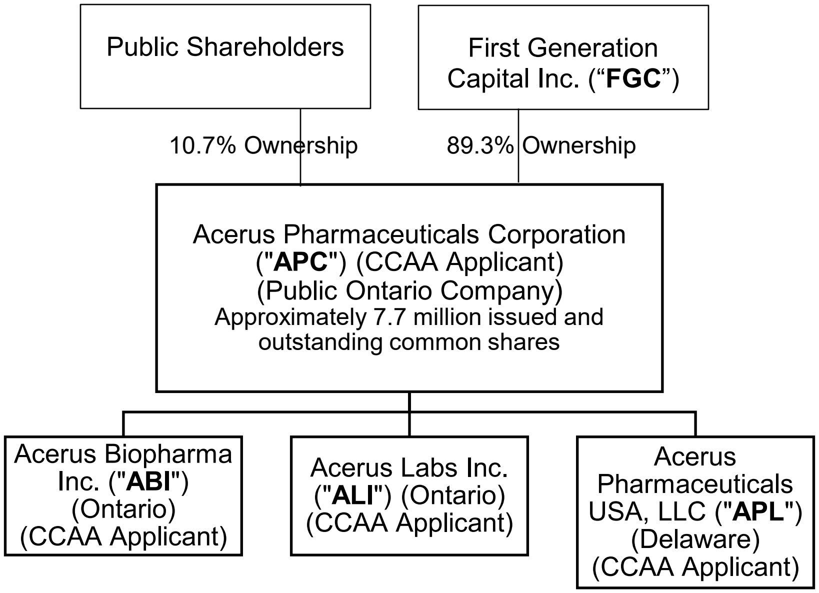
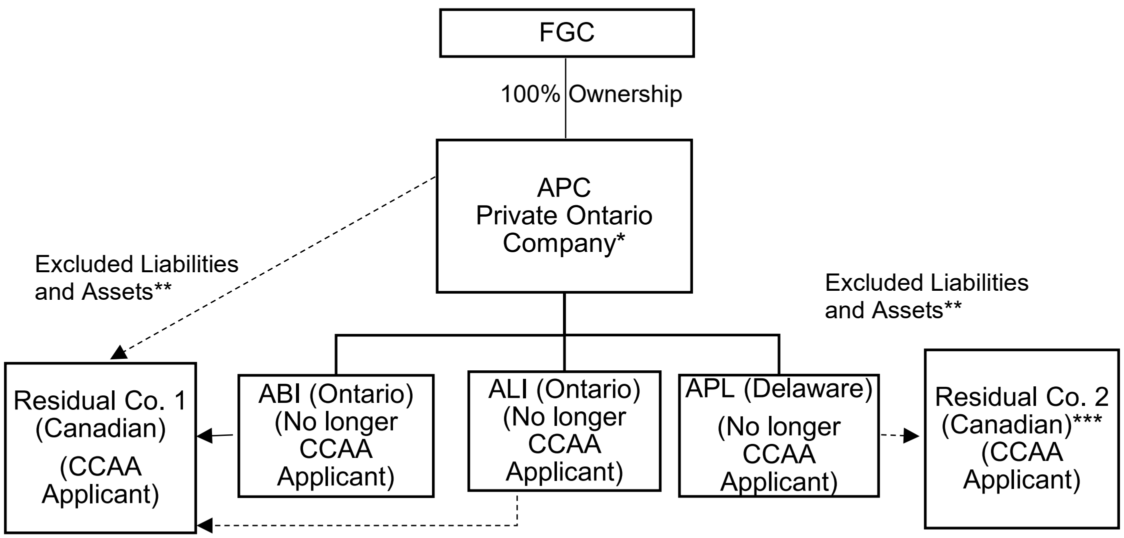
Commissioner for Taking Affidavits

Philip Yang

PRE-RVO STRUCTURE



POST-RVO STRUCTURE



NOTES

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

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

Retained Assets include all assets which are not Excluded Assets

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

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

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

EXHIBIT "C"

referred to in the Affidavit of

NAVEED Z. MANZOOR

Sworn July 19, 2023

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Commissioner for Taking Affidavits
Philip Yang

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	TUESDAY, THE 30TH DAY
	)	
JUSTICE PENNY	)	OF MAY, 2023

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

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

Applicants

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

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

ON READING the Notice of Motion, the affidavit of Naveed Z. Manzoor, dated May 18, 2023, (the "**Manzoor Affidavit**"), the Third Report of Ernst & Young Inc. as the court appointed monitor in these CCAA proceedings (the "**Monitor**"), filed (the "**Third Report**"), the Responding Motion Record of Jones Day, the affidavit of Rebekah Blake, sworn May 25, 2023, the affidavit of Philip Yang, sworn May 29, 2023, and on hearing the submissions of counsel for the Acerus Group, counsel for the Monitor, counsel for the Purchaser, counsel for those other parties appearing as indicated by the counsel slip, Troels Keldmann for Keldmann Healthcare A/S, and Brian Gilderman for Precision Clinical Research, Inc., no one appearing for any other party, although duly served as appears from the affidavits of service of Philip Yang, filed,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion was properly returnable on May 30 2023, and hereby dispenses with further service thereof.

DEFINED TERMS

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

EXTENSION OF STAY PERIOD

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

APPROVAL AND VESTING

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

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

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

(a) first, (i) with respect to APC, ABI and ALI (collectively the "**Canadian Entities**") all of their right, title and interest in and to their respective Excluded Assets shall vest absolutely and exclusively in Residual Co. 1, and all Claims and (ii) with respect to APL all of APL's right, title and interest in and to the Excluded Assets shall vest absolutely and exclusively in Residual Co. 2, and in each case, all applicable Claims and Encumbrances (each as defined below) shall continue to attach to the Excluded Assets and to the Purchase Price in accordance with paragraph 11 of this Order, in either case with the same nature and priority as they had immediately prior to the transfer;

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

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

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

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

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

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

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

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

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

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

11. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, from and after the Closing Time, subject to the funding of the Priority Payments and the Administrative Expense Amount, all Claims and Encumbrances transferred, assumed, released, expunged and discharged pursuant to paragraph 6 hereof, including against the Acerus Group, the Acerus Group Property and the Purchased Shares and Equity Interests of the Company held by the Purchaser shall attach to the Excluded Assets with the same priority as they had with respect to the Acerus Group's Property immediately prior to the Transactions, as if the Transactions had not occurred.

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

13. **THIS COURT ORDERS AND DECLARES** that, at the Closing Time and without limiting the provisions of paragraph 6 hereof, the Purchaser, Acerus Group and the Monitor

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

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

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

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

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

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

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

15. **THIS COURT ORDERS** that notwithstanding any provision in the SA, the Transactions, or this Order, nothing shall provide for the transfer of any contract or agreement with the United States and its agencies, including the Department of Health and Human Services (and Secretary thereof), without compliance by a member of the Acerus Group with the terms of such contract or agreement and the United States law applicable to such contract or agreement.

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

17. **THIS COURT ORDERS** that from and after the Closing Time, all Persons shall be deemed to have waived any and all defaults of any of the Acerus Group then existing or previously committed by any of the Acerus Group, or caused by any one of the Acerus Group, directly or indirectly, or non-compliance with any covenant, warranty, representation, undertaking, positive or negative pledge, term, provision, condition, or obligation, expressed or implied in any contract, or lease existing between such Person and any of the Acerus Group (including for certainty, those contracts, or leases constituting Acerus Group Property) arising directly or indirectly from the filing by the Acerus Group under the CCAA and implementation of the Transactions, including without limitation any of the matters or events listed in paragraph 14 hereof, and any and all notices of default and demands for payment or any step or proceeding taken or commenced in connection therewith under a contract, or a

lease shall be deemed to have been rescinded and of no further force or effect, provided that nothing herein shall be deemed to excuse any of the Acerus Group, or the Purchaser from performing their obligations under the SA or be a waiver of defaults by any of the Acerus Group or the Purchaser under the SA and the related documents.

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

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

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

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

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

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

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

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

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

PRIORITY PAYMENTS

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

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

(a) the pendency of these CCAA proceedings;

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

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

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

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

23. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor and its legal counsel and their respective present and former directors, officers, partners, employees, and advisors shall continue to have the benefit of all of the indemnities, charges, protections and priorities as set out in the Initial Order and any other Order of this Court and all such indemnities, charges, protections and priorities shall apply and extend to the Monitor and its legal counsel and their respective present and former directors, officers, partners, employees, and advisors in the fulfillment of the Monitor's duties and the carrying out of the provisions of this Order.

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

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

26. **THIS COURT ORDERS** that nothing in this Order, including the release of the Acerus Group from the purview of these CCAA proceedings pursuant to paragraph 6(f) hereof and the addition of Residual Co. 1 and Residual Co. 2 as Applicants in these CCAA proceedings, shall affect, vary, derogate from, limit or amend any rights, approvals and protections afforded to the Monitor in these CCAA proceedings and EY shall continue to have the benefit of, any and all rights and approvals and protections in favour of the Monitor at law or pursuant to the CCAA, the Initial Order, any other Orders in these CCAA proceedings or otherwise, including all approval, protections and stays of proceedings in favour of EY in its capacity as Monitor, all of which are expressly continued and confirmed.

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

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

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

30. **THIS COURT ORDERS** that the First Report of the Monitor dated February 2, 2023, the Second Report of the Monitor dated March 7, 2023, the Third Report, and the activities of the Monitor as set out therein be and are hereby approved provided, however,

that only the Monitor, in its personal capacity and only with respect to its own liability, shall be entitled to rely upon or utilize in any way such approval.

RELEASES

31. **THIS COURT ORDERS** that effective upon the filing of the Monitor's Closing Certificate, (i) the current and former directors, officers, employees, legal counsel and advisors to the Acerus Group; (ii) the CRO (iii) the Monitor and its legal counsel and their respective present and former directors, officers, partners, employees, and advisors; (iv) FGC, in its capacities as secured lender to the Acerus Group and majority shareholder of APC, and its current and former directors, officers, employees, legal counsel and advisors; and (v) the Purchaser and its current and former directors, officers, employees, legal counsel and advisors (collectively, the "**Released Parties**") shall be deemed to be forever irrevocably released and discharged from any and all present and future liabilities, claims (including, without limitation, claims for contribution or indemnity), indebtedness, demands, actions, causes of action, counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, taxes, recoveries, and obligations of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) based in whole or in part of any act or omission, transaction, dealing or other occurrence existing or taking place prior to the filing of the Monitor's Closing Certificate, or undertaken or completed in connection with or pursuant to the terms of this Order and that relate in any manner whatsoever to the Acerus Group, or any of its operations, assets and property (current or historical), obligations, business or affairs or theses CCAA proceedings and/or the Chapter 15 Case, or arising in connection with or relating to the SA, the completion of the Transactions, the closing documents, any agreement, document, instrument, matter or transaction involving the Acerus Group arising in connection with or pursuant to any of the foregoing, and/or the consummation of the Transactions (collectively, the "**Released Claims**"), which Released Claims are hereby and shall be deemed to be fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties, provided that nothing herein shall release any claim that that is not permitted to be released pursuant to section 5.1(2) of the CCAA, or any obligations of any Released Party under, or in connection with the SA or the closing documents. **"Releasing Parties"** means any and all Persons (not including the Acerus Group and their respective current and former affiliates), and their

current and former affiliates' current and former members, directors, managers, officers, investment committee members, special committee members, equity holders (regardless of whether such interests are held directly or indirectly), predecessors, successors, assigns, participants, subsidiaries, affiliates, partners, limited partners, general partners, affiliated investment funds or investment vehicles , managed accounts or funds, and each of their respective current and former members, equity holders, officers, directors, managers, principals, members, management companies, advisory board members, investment fund advisors or managers, employees, agents, trustees, investment managers, financial advisors, partners, legal counsel, accountants, investment bankers, consultants, representatives and other professionals. For certainty, nothing in this order shall release, or be deemed to release APL or any individuals that have been named as defendants in the Jones Day Litigation from any potential liability in the Jones Day Litigation.

GENERAL

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

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

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

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

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

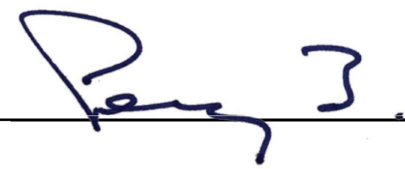
35. **THIS COURT ORDERS** that, notwithstanding Rule 59.05, this Order is effective from the date that it is made and is enforceable without any need for entry and filing. In accordance with Rules 77.07(6) and 1.04, no formal order need be entered and filed unless an appeal or a motion for leave to appeal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

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

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

38. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States including the United States Bankruptcy Court for the District of Delaware overseeing the Acerus Group's proceedings under Chapter 15 of the U.S. Bankruptcy Code in Case No. 23-10111-MFW, to give effect to this Order and to assist Residual Co.1, Residual Co. 2, the Acerus Group, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to Residual Co.1, Residual Co. 2, the Monitor, as an officer of this Court, and to the Company, in its capacity as Foreign Representative of the Acerus Group, as may be necessary or desirable to give effect to this Order, or to assist Residual Co.1, Residual Co. 2, the Monitor, the Acerus Group and their respective agents in carrying out the terms of this Order.

39. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Prevailing Eastern time on the date hereof; provided that, the transaction steps set out in paragraph 6 hereof shall be deemed to have occurred sequentially, on after the other, in the order set out in paragraph 6 hereof.



Schedule A – Form of Monitor's Closing Certificate

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

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

RECITALS

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

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

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

THE MONITOR CERTIFIES the following:

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

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

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

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

Per:________________________________
Name:
Title:

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

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

1.	Reference File No.	77186631
	Debtor	Acerus Pharmaceuticals Corporation
	Secured Party	First Generation Capital Inc.
	Collateral Classification	Inventory, Equipment, Accounts, Other, Motor Vehicle Included
	General Collateral Description	N/A
2.	Reference File No.	789285879
	Debtor	Acerus Biopharma Inc.
	Secured Party	First Generation Capital Inc.
	Collateral Classification	Inventory, Equipment, Accounts, Other, Motor Vehicle Included
	General Collateral Description	N/A
3.	Reference File No.	789285897
	Debtor	Acerus Labs Inc.
	Secured Party	First Generation Capital Inc.
	Collateral Classification	Inventory, Equipment, Accounts, Other, Motor Vehicle Included
	General Collateral Description	N/A

Ontario Land Titles Registrations to be Deleted and Expunged

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

UCC-1 Financing Statement to be Deleted and Expunged

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

Schedule "C" - Permitted Encumbrances

Permitted Encumbrances in Respect of the Acerus Group Property

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Applicants

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

ORDER
(APPROVAL AND REVERSE VESTING ORDER)

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Lawyers for the Applicants

EXHIBIT "D"

referred to in the Affidavit of

NAVEED Z. MANZOOR

Sworn July 19, 2023

DocuSigned by:

Philip Y

36124C4218DD47C...

Commissioner for Taking Affidavits

Philip Yang

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

SUPERIOR COURT OF JUSTICE – ONTARIO (COMMERCIAL LIST)

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

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

BEFORE: Penny J.

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

Stuart Brotman and *Mitch Stephenson* for the Monitor

Mervyn D. Abramowitz for the United States of America

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

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

Kristina Bezprozvannykh for The Canada Life Assurance Company

Troels Keldmann as principal of Keldmann Healthcare and Keldmann Innovation

Brian Gilderman as principal of Precision Clinical Research, Inc.

HEARD: May 30, 2023

ENDORSEMENT

Overview

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

Background

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

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

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

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

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

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

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

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

Issues

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

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

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

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

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

(e) extend the stay period.

Analysis

Jurisdiction and Factors

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

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

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

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

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

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

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

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

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

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

(b) the interests of all parties;

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

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

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

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

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

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

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

The ARVO Structure is Necessary

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

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

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

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

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

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

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

<u>More Favourable Economic Result</u>

[16] The benefits of the transactions include:

(a) based on the price payable under the Subscription Agreement, all of the applicants' secured liabilities will be satisfied by way of the credit bid (which, including advances under the DIP Facility, totals over $65 million), which would not otherwise be satisfied by any other potential alternative;

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

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

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

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

in respect of Unsuccessful Bid 2:

(i) the cash payment provided by Unsuccessful Bidder 2 was insufficient to repay the DIP Facility and amounts secured by charges in order to permit the applicants to exit the CCAA proceedings and the applicants are unable to generate liquidity from the excluded assets;

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

(iii) the Bid was only for a single product of the applicants and did not provide for a going-concern solution related to the remaining business of the applicants; and

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

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

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

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

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

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

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

Is the Consideration Fair and Reasonable?

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

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

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

Section 36 CCAA Factors

The Process Leading Up to the Subscription Agreement and the Transactions

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

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

(a) the applicants seeking refinancing or investment options;

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

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

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

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

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

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

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

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

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

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

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

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

Stakeholders Were Consulted During the Sale Process

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

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

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

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

This language is so approved.

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

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

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

<u>The Subscription Agreement and the Proposed Transactions Allow Various Stakeholders to Maintain their Rights</u>

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

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

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

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

The Share Transactions

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

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

The Releases

[36] The Release covers any and all present and future claims against the Released Parties based upon any fact or matter of occurrence in respect of the transactions or the applicants, its assets, business or affairs or administration of the applicants, except any claim that is not permitted to be released under s. 5.1(2) of the CCAA. For avoidance of doubt, as noted above, the Releases will not release APL or the individuals named as defendants in the Jones Day litigation from liability in respect of that action.

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

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

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

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

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

(c) The Release is fair and reasonable. The applicants, for example, are unaware of any statutory liabilities in respect of the Released Parties (particularly, the directors and officers of the applicants) and to date, no stakeholder of the applicants have made the applicants or the Monitor aware that they intend to assert a claim against any of the Released Parties in respect of any claims covered by the Release. Further, the Release is sufficiently narrow in circumstances as the Release carves out and preserve claims that are not permitted to be released pursuant to s. 5.1(2) of the CCAA, claims arising from fraud or wilful misconduct. The scope of the Release is sufficiently balanced to allow the applicants and the Released Parties to move forward with the Subscription Agreement and the transactions and work to conclude the CCAA proceedings.

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

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

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

Sealing Order

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

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

Extension of the Stay

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

Monitor Support

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

<u>Conclusion</u>

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

Penny J.

Penny J.

Date: June 2, 2023

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 15177561 CANADA INC. and 15177570 CANADA INC.

Applicants

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

AFFIDAVIT OF NAVEED Z. MANZOOR
(SWORN JULY 19, 2023)

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Lawyers for the Applicants

TAB 3

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	MONDAY, THE 24TH DAY
	)	
JUSTICE STEELE	)	OF JULY, 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 15177561 CANADA INC. and 15177570 CANADA INC

Applicants

CCAA TERMINATION ORDER

THIS MOTION, made by 15177561 Canada Inc. and 15177570 Canada Inc. (together, the "**Applicants**" or "**Residual Cos.**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order (the "**Order**"), among other things: (a) approving the Monitor's Reports (as defined below) of Ernst & Young Inc. ("**EY**") in its capacity as monitor of the Applicants (in such capacity, the "**Monitor**") and the fees, disbursements, and activities of the Monitor and its counsel described therein; (b) terminating the proceedings of the Applicants under the CCAA (the "**CCAA Proceedings**"), terminating the Charges (as defined below) and discharging EY in its capacity as the Monitor and FAAN Advisors in its capacity as CRO, each upon the Monitor's filing of the Termination Certificate (as defined below), was heard this day by judicial videoconference via Zoom.

ON READING the affidavit of Naveed Manzoor sworn July 19, 2023 (the "**Manzoor Affidavit**"), and the Exhibits thereto, the Fourth Report and the Fifth Report of EY in its capacity as the Monitor dated June 27, 2023 and July 20, 2023, respectively, and the appendices thereto, the affidavit of Dylan Chochla sworn July 20, 2023 and the Exhibits thereto (the "**Chochla Affidavit**"), and the affidavit of Allen Yao, and the Exhibits thereto (the "**Yao Affidavit**" and together with the Chochla Affidavit, the "**Fee Affidavits**"), and on hearing the submissions of counsel for the Applicants, counsel for the Monitor, counsel for First Generation Capital Inc. ("**FGC**") and FGC in its capacity as the DIP Lender, and such other parties as listed on the

Counsel Slip, with no one else appearing although duly served as appears from the affidavit of service of Philip Yang, as filed,

SERVICE AND DEFINITIONS

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

2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them in the Order of Justice Osborne dated February 3, 2023 (the "**ARIO**") and the Order of Justice Penny dated May 30, 2023 (the "**Approval and Reverse Vesting Order**").

APPROVAL OF THE MONITOR'S FOURTH REPORT, FIFTH REPORT, ACTIVITIES AND FEES

3. **THIS COURT ORDERS AND DECLARES** that the Fourth Report of the Monitor dated June 27, 2023 (the "**Fourth Report**"), and the Fifth Report of the Monitor dated July 20, 2023 (the "**Fifth Report**", and together with the Fourth Report, the "**Monitor's Reports**") and the activities of the Monitor and its counsel referred to 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.

4. **THIS COURT ORDERS** that the fees and disbursements of the Monitor for the period from January 3, 2023 to June 30, 2023 in the total amount of $481,214.68 (exclusive of HST), and of the Monitor's legal counsel, Fasken Martineau DuMoulin LLP ("**Fasken**"), for the period from January 17, 2023 to July 7, 2023 in the total amount of $380,400.24 (exclusive of HST), as set out in the Fifth Report and in the Fee Affidavits at Appendices "A" and "B" thereto, be and are hereby approved.

5. **THIS COURT ORDERS** that the anticipated further fees and disbursements of the Monitor and Fasken in connection with the completion by the Monitor of its remaining duties and administration of the CCAA Proceedings, estimated not to exceed $90,000 (inclusive of HST) (the "**Remaining Fees and Disbursements**"), all as set out in the Fifth Report, be and are hereby approved, and that the Monitor and Fasken shall not be required to pass their accounts in respect of any further activities in connection with the administration of the CCAA Proceedings, *provided,*

however, that if the further fees and disbursements of the Monitor and Fasken in connection with the completion by the Monitor of its remaining duties and administration of the CCAA Proceedings exceed the above estimate, the Monitor shall return to Court to seek approval to pay any such amounts in excess of the Remaining Fees and Disbursements pursuant to a further Order of the Court.

ADMINISTRATIVE EXPENSE AMOUNT

6. **THIS COURT ORDERS** that the Monitor shall be authorized to retain the Administrative Expense Amount as a reserve to provide for the Administrative Expense Costs (each as defined in the Fifth Report), and the anticipated further accrued and future disbursements required to complete the administration of the CCAA Proceedings, as described in the Fifth Report, in each case without further authorization from the Applicants or FGC. Any unused portion of the Administrative Expense Amount after payment or reservation for all Administrative Expense Costs, as determined by the Monitor, shall be transferred by the Monitor to Acerus Pharmaceuticals Corporation.

TERMINATION OF CCAA PROCEEDINGS

7. **THIS COURT ORDERS** that, upon service by the Monitor of an executed certificate in substantially the form attached hereto as Schedule "A" (the "**Termination Certificate**") on the service list in these CCAA Proceedings certifying that, to the knowledge of the Monitor, all matters to be attended to in connection with these CCAA Proceedings have been completed, these CCAA Proceedings shall be terminated without any further act or formality (the "**CCAA Termination Time**"), save and except as provided in this Order, and provided that nothing herein impacts the validity of any Orders made in these CCAA Proceedings or any action or steps taken by any Person pursuant thereto.

8. **THIS COURT ORDERS** that the Monitor is hereby directed to file a copy of the Termination Certificate with the Court as soon as is practicable following the service thereof on the service list in these CCAA Proceedings.

9. **THIS COURT ORDERS** that the Charges shall be terminated, released and discharged as of the CCAA Termination Time without any further act or formality.

MONITOR'S ENHANCED POWERS

10. **THIS COURT ORDERS** that in addition to the powers and duties of the Monitor set out in the Initial Order or any other Order of this Court in this CCAA Proceeding, and without altering in any way the limitations and obligations of Residual Cos. as a result of these proceedings, the Monitor be and is hereby authorized and empowered, but not required, to:

(a) take any and all actions and steps, and execute all documents and writings, on behalf of, and in the name of Residual Cos. in order to facilitate the performance of any ongoing obligations of Residual Cos., including with respect to any Excluded Liability Claim, and to carry out the Monitor's duties under this Order or any other Order of this Court in this CCAA Proceeding;

(b) exercise any powers which may be properly exercised by a board of directors of Residual Cos.;

(c) cause Residual Cos. to retain the services of any person as an employee, consultant, or other similar capacity all under the supervision and direction of the Monitor and on the terms as agreed with the Monitor;

(d) open one or more new accounts (the "**Residual Cos. Accounts**") into which all funds, monies, cheques, instruments and other forms of payment payable to Residual Cos. shall be deposited from and after the making of this Order from any source whatsoever and to operate and control, as applicable, on behalf of Residual Cos., the Residual Cos. Accounts in such manner as the Monitor, in its sole discretion, deems necessary or appropriate to assist with the exercise of the Monitor's powers and duties;

(e) cause Residual Cos. to perform such other functions or duties as the Monitor considers necessary or desirable in order to facilitate or assist the winding-down of Residual Cos. or the distribution of the proceeds of the Residual Cos. property or any other related activities, including in connection with bringing the CCAA Proceedings to an end;

(f) engage, deal, communicate, negotiate, agree and settle with any creditor or other stakeholder of Residual Cos. in the name of or on behalf of Residual Cos.;

(g) claim or cause Residual Cos. to claim any and all insurance refunds or tax refunds, including refunds of harmonized sales taxes, to which Residual Cos. is entitled;

(h) have access to all books and records that are the property of Residual Cos. in Residual Cos.' possession or control in addition to the Acerus Group's books and records which were retained by the Residual Cos. in accordance with the Subscription Agreement;

(i) assign Residual Cos., or cause Residual Cos. to be assigned into bankruptcy, and the Monitor shall be entitled but not obligated to act as trustee in bankruptcy thereof;

(j) consult with Canada Revenue Agency with respect to any issues arising in respect of this CCAA Proceeding; and

(k) apply to this Court for advice and directions or any orders necessary or advisable to carry out its powers and obligations under this Order or any other Order granted by this Court including for advice and directions with respect to any matter.

11. **THIS COURT ORDERS** that notwithstanding anything contained in this Order, the Monitor is not and shall not be or be deemed to be, a director, officer, or employee of Residual Cos. or the Applicants.

12. **THIS COURT ORDERS** that, without limiting the provisions of the Initial Order, Residual Cos. shall remain in possession and control of its Property and Business (each as defined in the Initial Order) and the Monitor shall not take, or be deemed to have taken, possession or control of the Property or the Business of Residual Cos., or any part thereof.

13. **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 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 the fulfillment of its duties and the carrying out of the provisions of this Order.

14. **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 the Residual Cos. within the meaning of any relevant legislation and that any distributions to creditors of Residual Cos. by the Monitor will be deemed to have been made by Residual Cos.

15. **THIS COURT ORDERS** that the power and authority granted to the Monitor by virtue of this Order shall, if exercised in any case, be paramount to the power and authority of Residual Cos. with respect to such matters and, 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.

DISCHARGE OF THE MONITOR AND CRO

16. **THIS COURT ORDERS** that effective at the CCAA Termination Time, EY and FAAN Advisors shall be and are hereby discharged from its duties as the Monitor and CRO, respectively, and shall have no further duties, obligations or responsibilities as Monitor or CRO from and after the CCAA Termination Time, provided that, notwithstanding its discharge as Monitor and CRO, EY and FAAN Advisors shall have the authority to carry out, complete or address any matters in its role as Monitor or CRO, respectively, that are ancillary or incidental to these CCAA Proceedings following the CCAA Termination Time, as may be required.

17. **THIS COURT ORDERS** that, notwithstanding any provision of this Order, the Monitor's and CRO's discharge or the termination of these CCAA Proceedings, nothing herein shall affect, vary, derogate from, limit or amend, and the Monitor and the CRO shall continue to have the benefit of, all of the rights, approvals and protections in favour of the Monitor and CRO at law or pursuant to the CCAA, the ARIO, Approval and Reverse Vesting Order, or any other Order of this Court in these CCAA Proceedings or otherwise, all of which are expressly continued and confirmed following the CCAA Termination Time, including in connection with any other actions taken by the Monitor following the CCAA Termination Time with respect to the Applicants or these CCAA Proceedings.

18. **THIS COURT ORDERS** that no action or other proceeding shall be commenced against the Monitor or CRO in any way arising from or related to their capacity or conduct as Monitor or CRO, respectively, except with prior leave of this Court on not less than fifteen (15) days prior written notice to the Monitor or CRO, as applicable.

BANKRUPTCY

19. **THIS COURT ORDERS** that upon filing of the Termination Certificate; (a) the Applicants are authorized to make an assignment in bankruptcy pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**"); and (b) EY is authorized to act as the trustee-in-bankruptcy of each of the Applicants.

20. **THIS COURT ORDERS** that, upon EY's appointment as licensed insolvency trustee for each of the Applicants (the "**Trustee**"), the Trustee may administer the bankruptcy estates of the Applicants as follows:

(a) a single court file number and title of proceeding of "In the Matter of the Bankruptcy of 15177561 Canada Inc. and 15177570 Canada Inc.";

(b) the Trustee is authorized to administer the bankrupt estates of the Applicants as if such estates were a single bankrupt estate for the purpose of carrying out its administrative duties and responsibilities as trustee under the BIA with respect to the administration of bankrupt estates generally, including without limitation as follows:

(i) the Trustee is authorized to send notice of the first meeting of creditors (the "**Notice**") in the manner prescribed by section 102 of the BIA by sending the Notice together with directions to download documents to accompany the notice set out in section 102(2) of the BIA (the "**Forms**");

(ii) meetings of creditors and inspectors in the bankrupt estates of the Applicants may be convened through one combined advertisement and conducted jointly provided that the results of any creditors' vote shall be separately tabulated for each such bankrupt estate;

(iii) the Trustee is authorized to use a consolidated form of proof of claim that directs creditors to identify the bankrupt estate in which a claim is made for voting and for distribution purposes;

(iv) the Trustee is authorized to maintain a consolidated bank account with respect to the Applicants' respective bankruptcy estates;

(v) the Trustee is authorized to issue consolidated reports in respect of the bankruptcy estates of the Applicants;

(vi) the Trustee is authorized to perform a consolidated making, filing, advertising and distribution of all filings and notices in the bankrupt estates of the Applicants required under the BIA; and

(vii) a single group of inspectors shall be the inspectors for the consolidated bankruptcy estates of the Applicants.

21. **THIS COURT ORDERS** that this procedural consolidation is not a substantive consolidation of the bankrupt estates of the Applicants and will automatically terminate if the Trustee is replaced as licensed insolvency trustee of any, but not all, of the estates of the Applicants.

22. **THIS COURT ORDERS** that, upon the appointment of the Trustee, the Monitor shall be authorized to transfer to the Trustee such amounts as the Monitor expects will be required in payment of the anticipated fees and disbursements of the Trustee and Fasken in connection with the administration of the Applicants' bankruptcy proceedings.

EXTENSION OF THE STAY PERIOD

23. **THIS COURT ORDERS** that the Stay Period be and is hereby extended to the earlier of (i) the CCAA Termination Time, and (ii) such other date as this Court may order.

RELEASE

24. **THIS COURT ORDERS** that "Released Claims" as defined pursuant to the Approval and Reverse Vesting Order shall include any and all present and future liabilities or claims 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) against the CRO or Naveed Manzoor which may be incurred as result of acting as a director or officer of Residual Cos.

UNSEALING

25. **THIS COURT ORDERS** that Confidential Appendix "E" to the Third Report of the Monitor dated May 25, 2023 is hereby unsealed and shall form part of the public record.

GENERAL

26. **THIS COURT ORDERS** that the Applicants or the Monitor may apply to the Court as necessary to seek further orders and directions to give effect to this Order.

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

28. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

29. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

____

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

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 15177561 CANADA INC. and 15177570 CANADA INC

Applicants

TERMINATION CERTIFICATE

RECITALS

1. Ernst & Young Inc. ("**EY**") was appointed as the Monitor of the Applicants in the within proceedings commenced under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") pursuant to an Initial Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated January 26, 2023 (as amended, the "**Initial Order**").

2. Pursuant to an Order of this Court dated July 24, 2023 (the "**CCAA Termination Order**"), among other things, EY shall be discharged as the Monitor and the Applicants' CCAA proceedings shall be terminated upon the service of this Termination Certificate on the service list in these CCAA proceedings, all in accordance with the terms of the CCAA Termination Order.

3. Unless otherwise indicated herein, capitalized terms used in this Termination Certificate shall have the meaning given to them in the CCAA Termination Order.

THE MONITOR CERTIFIES the following:

1. To the knowledge of the Monitor, all matters to be attended to in connection with the Applicants' CCAA proceedings (Court File No. CV-23-00693595-00CL) have been completed.

ACCORDINGLY, the CCAA Termination Time as defined in the CCAA Termination Order has occurred.

DATED at Toronto, Ontario this ____________ day of ___________, 2023.

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

Per:_________________________
Name:
Title:

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 15177561 CANADA INC. and 15177570 CANADA INC.

Applicants

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

CCAA TERMINATION ORDER

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Lawyers for the Applicants

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

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

AND IN THE MATTER OF PLAN OF COMPROMISE OR ARRANGEMENT OF 15177561 CANADA INC. and 15177570 CANADA INC.

Applicants

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

MOTION RECORD
(TERMINATION OF CCAA PROCEEDINGS)
(RETURNABLE JULY 24, 2023)

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