

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.

)

MONDAY, THE 17TH

JUSTICE DUNPHY

)

DAY OF DECEMBER, 2018

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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 ARALEZ PHARMACEUTICALS INC. AND
ARALEZ PHARMACEUTICALS CANADA INC.

(Applicants)

BEZAFIBRATE APPROVAL AND VESTING ORDER

THIS MOTION, made by Aralez Pharmaceuticals Inc. ("API") and Aralez Pharmaceuticals Canada Inc. ("Aralez Canada", and together with API, the "Applicants"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), for an Order, (a) approving the sale transaction (the "Transaction") contemplated by the Asset Purchase Agreement (the "Bezafibrate APA") between Aralez Canada (the "Seller") and Intercept Pharmaceuticals, Inc. (the "Buyer") made as of December 6, 2018, by which the Seller, (b) vests in the Buyer, the Seller's right, title and interest in and to the Purchased Assets (as defined in the Bezafibrate APA), and (c) grants to the Buyer, the Seller's right, title and interest in the Product IP License (as defined in the Bezafibrate APA), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Adrian Adams, sworn December 12, 2018, and the Sixth Report of Richter Advisory Group Inc., in its capacity as the Court-appointed Monitor (the "Monitor") and on hearing the submissions of counsel for the Applicants, the Monitor, the Buyer, and counsel for those other parties appearing as indicated by the counsel sheet, no one else appearing although duly served, as appears from the affidavits of Shimshon E. Dukesz, sworn December 6, 2018 and December 7, 2018 and filed:

SERVICE

1. **THIS COURT ORDERS** that the time and method of service and notice of this Motion is hereby abridged and validated and that this Motion is properly returnable today without further service or notice thereof.

DEFINITIONS

2. **THIS COURT ORDERS** that all capitalized terms not otherwise defined in this Order shall have the meaning ascribed to them in the Bezafibrate APA.

SALE TRANSACTION

3. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Bezafibrate APA by the Seller, through its existing agents, representatives or officers, is hereby authorized, ratified and approved, with such minor amendments as the Seller and the Buyer may agree to with the consent of the Monitor. The Seller, through its existing agents, representatives or officers, is hereby authorized and directed, and the Monitor is authorized and empowered, to take such additional steps and execute such additional documents as may be reasonably necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets and the granting of the Product IP License to the Buyer.

4. **THIS COURT ORDERS** that the Seller is authorized and directed to perform its obligations under the Bezafibrate APA and any ancillary documents related thereto.

5. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Monitor's certificate to the Buyer substantially in the form attached as Schedule "A" hereto (the "**Monitor's Certificate**"), all of the Seller's right, title and interest in and to the Purchased Assets and Product IP License shall vest absolutely in the Buyer, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts, pledges or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies or charges (whether contractual, statutory, or otherwise), license, sublicense, preference, encroachment, restrictive covenant, charge, title defect, claim of ownership, prior assignment, right of use or possession, Claim, Liability, right or restriction of any kind or nature or other

encumbrance, 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: (a) any encumbrances or charges created by the Initial Order of the Honourable Justice Dunphy dated August 10, 2018, as amended and restated, the Orders of the Honourable Justice Dunphy dated October 10, 2018 and October 25, 2018 and any subsequent charges created by the Court; and (b) all charges, security interests or claims evidenced by registrations pursuant to the Personal Property Security Act (Ontario) or any other personal property registry system in any provinces or territories in Canada, ~~the United States or~~ the Civil Code of Québec (all of which are collectively referred to as the "Encumbrances"). For greater certainty, this Court orders that, other than Permitted Encumbrances, all of the Encumbrances affecting or relating to the Purchased Assets or the Product IP License are hereby expunged and discharged as against the Purchased Assets and the Product IP License.

6. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets and from the grant of the Product IP License shall stand in the place and stead of the Purchased Assets and Product IP License, and that from and after the delivery of the Monitor's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets and Product IP License with the same priority as they had with respect to the Purchased Assets and Product IP License immediately prior to the sale, as if the Purchased Assets and Product IP License had not been sold or granted and remained in the possession or control of the person having that possession or control immediately prior to the sale.

7. **THIS COURT ORDERS** that the Monitor may rely on written notice from the Seller and the Buyer regarding the fulfillment of conditions required under the Monitor's Certificate.

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

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

(a) the pendency of these proceedings;

- (b) any assignment in bankruptcy or any application for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "BIA") in respect of the Applicants and any order issued pursuant to any such applications; and
- (c) any application for a receivership order,

the vesting of the Purchased Assets in the Buyer and the granting of the Product IP License to the Buyer pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Seller and shall not be void or voidable by creditors of the Seller, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

10. **THIS COURT ORDERS** that, except as set forth in paragraph 3 of Section 6.4 of the Disclosure Letter to the share purchase agreement among API, Aralez Canada and Nuvo Pharmaceuticals Inc. dated September 18, 2018, for the purchase of all of the shares of Aralez Canada, as amended, the Bezafibrate APA or as may otherwise be agreed to in writing among the Seller, the Buyer and Nuvo Pharmaceuticals Inc., (a) any transactions that may be approved or implemented in connection with the Seller pursuant to the CCAA Case shall be expressly subject to the rights and benefits conferred to the Buyer under the Bezafibrate APA in and to the Purchased Assets and the Product IP License, and (b) the benefits conferred to the Buyer under the Bezafibrate APA shall not be negatively impacted in any manner whatsoever by any transactions that may be approved or implemented in connection with the Seller pursuant to the CCAA process or any other bankruptcy or reorganization process that may follow in either jurisdiction or any other jurisdiction in respect of the Seller or any Affiliate of the Seller in Canada.

11. **THIS COURT ORDERS** that in the event of any transaction in which all or substantially all of the assets of the Seller and its Affiliates are sold, the purchaser of such assets shall be bound by all obligations of the Seller under the Bezafibrate APA, including any obligations in respect of the Product IP License. For the avoidance of doubt, this provision shall not bind Nuvo Pharmaceuticals Inc. as the proposed purchaser of the shares of Aralez Canada.

SEALING

12. **THIS COURT ORDERS** that the Confidential Supplement to the Sixth Report of the Monitor is hereby sealed and shall not form part of the public record unless otherwise ordered by this Court.

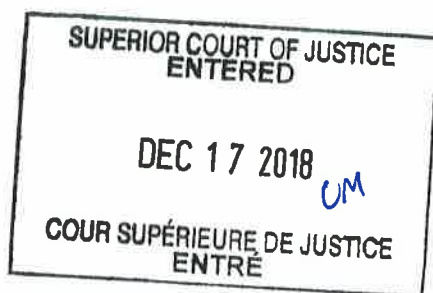
for a period of sixty days

APD

GENERAL

13. **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 and 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 the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

S. F. DUNPHY J.



Schedule A – Form of Monitor’s Certificate

Court File No. CV-18-603054-00CL

**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
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ARALEZ PHARMACEUTICALS CANADA INC.

The Applicants

MONITOR’S CERTIFICATE

RECITALS

- A. The Applicants obtained protection under the *Companies’ Creditors Arrangement Act* (the “CCAA”) pursuant to an Initial Order of the Ontario Superior Court of Justice (Commercial List) (the “Court”) dated August 10, 2018, as amended and restated (the “Initial Order”).
- B. Richter Advisory Group Inc. (in such capacity, the “Monitor”) was appointed as the Monitor of the Applicants in the CCAA proceedings pursuant to the Initial Order.
- C. Pursuant to the Approval and Vesting Order of the Court dated December 17, 2018 (the “Approval and Vesting Order”), the Court approved the asset purchase agreement dated December 6, 2018 (the “Bezafibrate APA”) between Aralez Pharmaceuticals Canada Inc. (the “Seller”) and Intercept Pharmaceuticals, Inc. (the “Buyer”), vesting in the Buyer, the Seller’s right, title and interest in and to the Purchased Assets and the Product IP License (the “Transaction”), which is to be effective upon the delivery by the Monitor to the Buyer of this Monitor’s Certificate.
- D. Unless otherwise indicated herein, capitalized terms have the meanings set out in the Approval and Vesting Order.
- E. Pursuant to the Approval and Vesting Order, the Monitor may rely on written notice from the Seller and the Buyer regarding fulfillment of conditions to closing under the

Bezafibrate APA.

THE MONITOR CONFIRMS the following:

1. The Monitor has received written confirmation, in form and substance satisfactory to the Monitor, from the Seller and Buyer that:

- (a) All applicable conditions under the Bezafibrate APA have been satisfied and/or waived, as applicable;
- (b) The Buyer has paid and the Seller has received the Closing Payment; and
- (c) The Transaction has been completed to the satisfaction of the Monitor.

2. This Certificate was delivered by the Monitor at _____ [TIME] on _____ [DATE].

**RICHTER ADVISORY GROUP INC., in its
capacity as Monitor of the Applicants, and not
in its personal capacity**

Per: _____

Name:

Title:

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INC.**

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Proceeding commenced at Toronto

APPROVAL AND VESTING ORDER

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