

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



ORDER

(Re: Distribution Protocol)

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, among other things, an order approving a distribution protocol (the "**Distribution Protocol**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Adrian Adams sworn December 12, 2018, and the report dated December 12, 2018 by Richter Advisory Group Inc., in its capacity as Court-appointed Monitor (the "**Monitor**"), and on hearing the submissions of counsel for the Applicants, the Monitor and those other parties present, no one appearing for any other person on the service list, although duly served as appears from the affidavit of service of Shimshon E. Dukesz sworn December 13, 2018 and 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 is properly returnable today and hereby dispenses with further service 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 Amended and Restated Initial Order dated August 10, 2018 (the “**Initial Order**”).

DISTRIBUTION PROTOCOL

3. **THIS COURT ORDERS** that any distributions authorized and approved by this Order shall at all times be subject to: (a) the closing of the share purchase agreement among API, Aralez Canada and Nuvo Pharmaceuticals Inc. (“**Nuvo**”) dated September 18, 2018, for the purchase of all of the shares of Aralez Canada (as amended, the “**Nuvo SPA**”) and the receipt of the net sale proceeds thereunder by API or the Monitor (the “**Sale Proceeds**”); and (b) API retaining from the Sale Proceeds or other cash on hand a reserve of funds (the “**Reserve**”) in an amount satisfactory to the Monitor, in consultation with API, Deerfield and, in the case of (iv), below, Nuvo, sufficient to: (i) secure the obligations under the Charges (including, without limitation, the Bid Protections Charge as defined in the Order (Re Bidding Procedures) dated October 10, 2018 and the Key Employee Charge as defined in the Order (Re KEIP Approval & Related Charge) dated November 28, 2018) that rank ahead of the applicable debt owing to Deerfield; (ii) pay the Professional Expenses and Post-Filing Expenses (each as defined below); (iii) pay any other obligations of API that rank ahead of the applicable debt owing to Deerfield and any other contingent amounts appropriate under the circumstances (collectively, the “**Priority Claims**”); and (iv) account for any amounts reasonably estimated by the Monitor to be potentially owing to Nuvo as a result of the reconciliation of the Adjustment Amount under the Nuvo SPA (as such term is defined therein).

APPROVAL OF INTERIM AND FUTURE DISTRIBUTIONS

4. **THIS COURT ORDERS** that, subject to the Reserve and as soon as practicable following the filing of the Monitor's Certificate under the Nuvo SPA, the Monitor in consultation with API or API with the prior written consent of the Monitor, is hereby authorized and directed, without further Order of the Court to make any distributions in cash or otherwise to the DIP Lender up to the maximum amount of the obligations owing under the Canadian DIP Credit Agreement (as defined in the affidavit of Andrew I. Koven, sworn August 9, 2018).

5. **THIS COURT ORDERS** that, subject to the Reserve and as soon as practicable following the filing of the Monitor's Certificate under the Nuvo SPA, the Monitor in consultation with API or API with the prior written consent of the Monitor, is hereby authorized and directed, without further Order of the Court to make any distributions in cash or otherwise to Deerfield up to the maximum amount of the obligations owing under the Facility Agreement (as defined in the affidavit of Andrew I. Koven, sworn August 9, 2018).

6. **THIS COURT ORDERS** that the Monitor in consultation with API or API with the prior written consent of the Monitor, is hereby authorized and empowered to disburse from time to time from the Reserve or from other available cash on hand any amounts owing by API in respect of the fees and expenses of the Monitor, the Monitor's legal counsel, legal counsel to API, and any other professionals retained pursuant to the Initial Order (collectively, the "**Professional Expenses**"). Any disbursements to the Monitor or to the Monitor's legal counsel are subject to their obligations to pass their accounts under the terms of the Initial Order.

7. **THIS COURT ORDERS** that the Monitor in consultation with API or API with the prior written consent of the Monitor, is hereby authorized and empowered to disburse from time to time from the Reserve or from other available cash on hand any amounts owing by API in respect of obligations incurred by API since the commencement of these CCAA proceedings (collectively, the "**Post-Filing Expenses**").

8. **THIS COURT ORDERS** that the Monitor in consultation with API or API with the prior written consent of the Monitor, is hereby authorized and empowered to disburse from time to

time from the Reserve or from other available cash on hand any amounts owing by API in respect of Priority Claims, if any.

9. **THIS COURT ORDERS** that the Monitor in consultation with API or API with the prior written consent of the Monitor, is hereby authorized and empowered to disburse from the Reserve or from other available cash on hand any amounts owing to Nuvo as a result of the reconciliation of the Adjustment Amount under the Nuvo SPA (as such term is defined therein), if any.

10. **THIS COURT ORDERS** that any portion of the Reserve subsequently determined by the Monitor, in consultation with API and Deerfield, to no longer be necessary or appropriate to retain, shall be distributed to Deerfield as soon as practicable following such determination, up to the maximum amount of the obligations owing under the Facility Agreement (as defined in the affidavit of Andrew I. Koven, sworn August 9, 2018).

11. **THIS COURT ORDERS** that notwithstanding:

- (a) the pendency of these proceedings;
- (b) any assignment in bankruptcy or any petition for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (the “BIA”) and any order issued pursuant to any such petition;
- (c) any application for a receivership order; or
- (d) any provisions of any federal or provincial legislation;

the Reserve, payments, distributions and disbursements contemplated in this Order shall be made free and clear of any encumbrances, shall be binding on any trustee in bankruptcy or receiver that may be appointed, and shall not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, as against API, the Monitor, the DIP Lender, Deerfield or any other party receiving distributions pursuant to this Order, and shall not constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

MONITOR PROTECTIONS

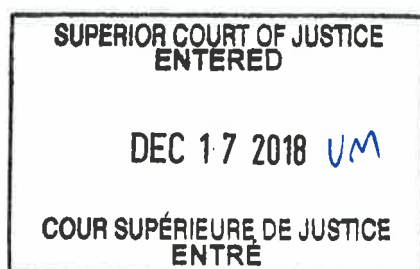
12. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Monitor under the Initial Order, the Monitor shall not be liable for any act or omission on the part of the Monitor pertaining to the discharge of its duties under this Order, save and except for any claim or liability arising out of any gross negligence or wilful misconduct on the part of the Monitor. Nothing in this Order shall derogate from the protections afforded to the Monitor by the CCAA, any other federal or provincial applicable law or the Initial Order.

13. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order and without in any way limiting the protections for the Monitor set forth in this Order, the Initial Order and the CCAA, the Monitor shall have no obligation to make any payment unless the Monitor is in receipt of funds adequate to effect any such payment, subject at all times to paragraph 3 of this Order.

GENERAL

14. **THIS COURT ORDERS** that the Monitor may apply to the Court as necessary to seek further orders and directions to give effect to the payments, distributions and disbursements proposed herein.

15. **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.



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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF ARALEZ
PHARMACEUTICALS INC. AND ARALEZ PHARMACEUTICALS CANADA INC.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at Toronto

ORDER
(RE: DISTRIBUTION PROTOCOL)

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