

**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 OLD API WIND-DOWN LTD.**

Applicant

**MOTION RECORD OF THE APPLICANT
(Re CCAA Termination Order)
(Returnable May 17, 2019)**

May 8, 2019

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TO: The Service List

**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
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OF OLD API WIND-DOWN LTD.**

I N D E X

TAB	DOCUMENT
1.	Notice of Motion, returnable May 17, 2019
A.	Draft CCAA Termination Order
2.	Affidavit of Christopher Freeland, sworn May 8, 2019

TAB 1

**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 OLD API WIND-DOWN LTD.

Applicant

**NOTICE OF MOTION
(Re CCAA Termination Order)
(Returnable May 17, 2019)**

Old API Wind-down Ltd. ("**API**"), will make a motion to the Justice presiding over the Commercial List on May 17, 2019 at 10:00AM at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING:

The motion is to be heard orally.

THE MOTION IS FOR:

1. An order substantially in the form of the draft order attached as Schedule "A" to this Notice of Motion:
 - (a) Terminating these CCAA proceedings and the Stay Period (defined below);
 - (b) Terminating the Administration Charge, DIP Lender's Charge, D&O Charge, Key Employee Charge, Transactional Fee Charge and Bid Protections Charge (each defined below);
 - (c) Approving the fees and disbursements of the Monitor (defined below) and its counsel;

- (d) Approving the activities of the Monitor, discharging the Monitor and releasing the Monitor from any potential claims against it;
- (e) Authorizing API to file an assignment into bankruptcy; and
- (f) Such further and other relief as the Court deems just.

THE GROUNDS FOR THE MOTION ARE:

A. BACKGROUND

2. API and Aralez Pharmaceuticals Canada Inc., (“**Aralez Canada**”, with API the “**CCAA Entities**”), together with Aralez Pharmaceuticals Management Inc., Aralez Pharmaceuticals R&D Inc., Aralez Pharmaceuticals U.S. Inc., POZEN Inc., Halton Laboratories LLC, Aralez Pharmaceuticals Holdings Limited, and Aralez Pharmaceuticals Trading DAC (collectively, the “**Chapter 11 Entities**”, and with the CCAA Entities, the “**Aralez Entities**”) were in the business of acquiring, developing, marketing and selling specialty pharmaceutical products in Canada and the U.S.;

3. The Aralez Entities experienced financial difficulties, resulting in the Aralez Entities seeking protection from their creditors;

4. On August 10, 2018, the CCAA Entities sought and were granted creditor protection and related relief under the CCAA pursuant to the Initial Order of the Honourable Mr. Justice Dunphy of the Ontario Superior Court of Justice (Commercial List), as amended and restated (the “**Initial Order**”);

5. The Initial Order granted a stay of proceedings (the “**Stay Period**”) which has since been extended five times, most recently to July 31, 2019;

6. On August 10, 2018, the Chapter 11 Entities filed voluntary petitions under chapter 11 of title 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York;

7. The Aralez Entities retained Alvarez & Marsal Healthcare Industry Group, LLC and Alvarez & Marsal Canada Inc. (together, the “**Financial Advisor**”), to assist the Aralez Entities

in their restructuring efforts. The Aralez Entities also engaged the services of Moelis & Company LLC (the “**Investment Banker**”) to assist with their sale and marketing efforts during the CCAA proceedings;

B. SALES PROCESS

8. Pursuant to a Court approved sales process, API entered into a stalking horse agreement contemplating the sale of all of the shares of Aralez Canada to Nuvo Pharmaceuticals Inc. (the “**Purchaser**”) for a purchase price of US\$62.5 million, subject to certain adjustments (the “**SPA Transaction**”);

9. On December 7, 2018, the Court approved the SPA Transaction, which closed on December 31, 2018;

10. The SPA Transaction contemplates that API and the Purchaser will engage in a post-closing price adjustment process, through which the parties have reached an agreement in principle;

11. Prior to the closing of the SPA Transaction, Aralez Canada entered into an asset purchase agreement with Intercept Pharmaceuticals, Inc. to sell certain contractual rights to develop and market products containing bezafibrate in the United States (the “**Bezafibrate APA**”);

12. On December 17, 2018, the Court approved the Bezafibrate APA, which closed on December 18, 2018;

C. DISTRIBUTIONS

13. Pursuant to an order of this Court dated December 17, 2018, API and the Monitor, in consultation with API’s secured creditor, Deerfield Private Design Fund III, L.P. and Deerfield Partners, L.P. (“**Deerfield**”) established a reserve (the “**Reserve**”) in the amount of US\$10.5 million from the proceeds of the SPA Transaction and the Bezafibrate APA to secure and/or satisfy various obligations;

14. Pursuant to an offset of debt amounts, API distributed US\$55.1 million to Deerfield. API and the Monitor distributed a further US\$2.3M from the Reserve to Deerfield on March 6, 2019;

15. Deerfield stands to suffer a shortfall on its recovery against the assets of the Aralez Entities;

D. CLAIMS PROCEDURE

16. On October 10, 2018, the Court approved the Claims Procedure Order (the “**Claims Procedure Order**”) providing for the solicitation of Claims (as defined in the Claims Procedure Order);

17. The CCAA Entities received 34 Claims against API and 39 Claims against Aralez Canada in the total amounts of US\$136.9 million and US\$66.7 million, respectively, by the applicable deadlines contained in the Claims Procedure Order (the “**Claims**”);

18. All Claims filed against Aralez Canada have been irrevocably settled or withdrawn. Two outstanding Proofs of Claim were filed against Aralez Canada after the applicable deadline contained in the Claims Procedure Order. API and the Purchaser have agreed that Aralez Canada will address these claims;

19. API does not anticipate that there will be any recovery available in respect of the Claims made against it, and therefore API does not intend to seek a determination of those Claims;

E. CHARGES

20. The following Court-ordered super-priority charges were granted by this Court, in order of priority:

- (a) The Administration Charge (as defined and approved in the Initial Order) to secure the professional fees and disbursements of API’s counsel, the Monitor and its counsel, the Financial Advisor and the Investment Banker;
- (b) The DIP Lender’s Charge (as defined and approved in the Initial Order) to secure amounts owing under the DIP Agreement;
- (c) The Bid Protections Charge (as defined and approved in the Order Re Bidding Procedures Approval dated October 10, 2018) to secure the potential payment of certain bid protections to the Purchaser;

- (d) The Key Employee Charge (as defined and approved in the Order Re KEIP Approval & Related Charge dated November 28, 2018) to secure amounts payable to participants of the Key Employee Retention Plan and Key Employee Incentive Plan;
- (e) The D&O Charge (as defined and approved in the Initial Order) to secure the indemnity provided by the CCAA Entities to their directors and officers; and
- (f) The Transactional Fee Charge (as defined and approved in the Initial Order) to secure potential obligations owing to the Investment Banker;

(collectively, the “**Charges**”);

21. Aside from the Administration Charge and the D&O Charge, the Charges are no longer necessary to the CCAA proceedings. API seeks to immediately terminate all Charges other than the Administration Charge and the D&O Charge;

F. WIND-UP OF THE ARALEZ ENTITIES

22. The Aralez Entities are taking the necessary steps to complete the windup of the remaining corporate entities, including API, the Chapter 11 Entities and certain foreign affiliates, in the most efficient manner available;

23. API has no ongoing business activities and substantially all of its Canadian assets were sold in the SPA Transaction and in the transaction contemplated by the Bezafibrate APA;

24. There are a number of issues that still require resolution in the CCAA proceedings, including: the purchase price adjustment process, the distribution of proceeds from the SPA Transaction and Bezafibrate APA, and the winding up of certain subsidiaries of API. Once these issues are resolved, there will be no further need for the CCAA proceedings;

25. API is seeking an order permitting the CCAA proceedings to be terminated and replaced by a bankruptcy proceeding;

26. The draft order provides that upon delivery of a Monitor's certificate confirming that certain outstanding issues in the CCAA proceedings have been resolved, the following will occur (among other things):

- (a) The CCAA proceedings and the Stay Period will be terminated;
- (b) The remaining Charges will be terminated; and
- (c) The Monitor will be discharged;
- (d) The Monitor will set aside C\$100,000 from the Reserve to fund the bankruptcy, which will be transferred to the trustee in bankruptcy upon its appointment; and
- (e) The Monitor will distribute the remainder of the Reserve to Deerfield;

G. APPROVAL OF THE MONITOR'S FEES AND ACTIVITIES

27. The Monitor has undertaken various activities pursuant to its mandate in these proceedings. API seeks to have these activities approved by the Court and to obtain a release and discharge of any potential or actual claim of any person against the Monitor and its counsel in respect of their conduct in these CCAA proceedings;

28. The Monitor and API further seek approval of the fees and disbursements of the Monitor and its counsel up to April 30, 2019, inclusive, as well as their estimated fees and disbursements to complete the administration of the CCAA proceedings;

GENERAL

29. The provisions of the CCAA, including section 11 thereof, and the inherent and equitable jurisdiction of this Court;

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

31. Such further grounds as counsel may advise and this Court may see fit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the motion hearing:

32. The Affidavit of Christopher Freeland, sworn May 8, 2019;
33. The Affidavit of Pritesh Patel, sworn May 8, 2019;
34. The Affidavit of Lily Coodin, sworn May 3, 2019;
35. A report of the Monitor to be filed; and
36. Such further and other materials as counsel may advise and this Court may permit.

May 8, 2019

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Lawyers for the Applicant

TAB A

Schedule "A"

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE M●) FRIDAY, THE 17TH
JUSTICE ●) DAY OF MAY, 2019

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
OLD API WIND-DOWN LTD.

Applicant

CCAA TERMINATION ORDER

THIS MOTION, made by Old API Wind-down Ltd. (the "**Applicant**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), for an Order, among other things, terminating the CCAA proceedings upon the filing of the Monitor's Certificate (defined below) by Richter Advisory Group Inc. ("**Richter**") in its capacity as Monitor of the Applicant (the "**Monitor**") and granting the other relief set out herein, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of the Applicant filed in respect of this motion, including the affidavit of Christopher Freeland sworn May 8, 2019, the Ninth Report of the Monitor (the "**Monitor's Report**"), the affidavit of Lily Coodin, sworn May 3, 2019 (the "**Torys Affidavit**") and the affidavit of Pritesh Patel, sworn May 8, 2019 (the "**Richter Affidavit**"), and on hearing the submissions of counsel for the Applicant, the Monitor and Deerfield Private Design Fund III, L.P. and Deerfield Partners, L.P. (collectively, "**Deerfield**"), no one appearing for any other person on the service list, although properly served as appears from the affidavit of service of ●, sworn ● and filed:

SERVICE

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

DEFINED TERMS

2. **THIS COURT ORDERS** that capitalized terms used and not defined herein shall have the meanings given to them in the Initial Order dated August 10, 2018, as amended and restated (the "**Initial Order**").

TERMINATION OF CCAA PROCEEDINGS AND RELATED PROVISIONS

3. **THIS COURT ORDERS** that effective at the date and time (the "**CCAA Termination Time**") on which the Monitor files the certificate, substantially in the form attached hereto as Schedule "A" (the "**Monitor's Certificate**"), certifying that it has been advised by the Applicant that all matters to be attended to in connection with the CCAA proceedings have been completed, the within CCAA proceedings shall be automatically terminated without any further act or formality and, except as otherwise expressly set out herein, the Initial Order shall have no further force or effect.

4. **THIS COURT ORDERS** that the Stay Period shall expire on the earlier of the CCAA Termination Time and July 31, 2019.

5. **THIS COURT ORDERS** that the Monitor shall, at least seven (7) days prior to the proposed CCAA Termination Time, post on the Monitor's website and serve on the service list for these CCAA proceedings notice of the Monitor's intention to file the Monitor's Certificate.

6. **THIS COURT ORDERS** that, effective as of the date of this Order, the DIP Lender's Charge and the Transactional Fee Charge (each as defined in the Initial Order), the Bid Protections Charge (as defined in the Order Re: Bidding Procedures Approval dated October 10, 2018), and the Key Employee Charge (as defined in the Order Re KEIP Approval & Related Charge dated November 28, 2018) shall be and are hereby fully and unconditionally terminated, released and discharged.

7. **THIS COURT ORDERS** that, as at the CCAA Termination Time, the Administration Charge and the D&O Charge shall be fully, unconditionally and automatically terminated, released and discharged.

CLAIMS BARRED AND EXTINGUISHED

8. **THIS COURT ORDERS AND CONFIRMS** that, notwithstanding the termination of these CCAA proceedings, the Claims Procedure Order dated October 10, 2018, including the bar dates set forth therein, remains in full force and effect.

APPROVAL OF MONITOR'S FEES AND DISBURSEMENTS

9. **THIS COURT ORDERS** that the fees and disbursements of the Monitor up to and including April 30, 2019, all as set out in the Monitor's Report and the Richter Affidavit, are hereby approved.

10. **THIS COURT ORDERS** that the fees and disbursements of the Monitor, as estimated not to exceed \$50,000, to complete its remaining duties and the administration of these CCAA proceedings, are hereby approved without further Order of the Court.

11. **THIS COURT ORDERS** that the fees and disbursements of the Monitor's counsel up to and including April 30, 2019, all as set out in the Torys Affidavit, are hereby approved.

12. **THIS COURT ORDERS** that the fees and disbursements of the Monitor's counsel, as estimated not to exceed \$25,000, incurred in connection with the completion by the Monitor of its remaining duties and the administration of these CCAA proceedings, are hereby approved without further Order of the Court

APPROVAL OF MONITOR'S ACTIVITIES

13. **THIS COURT ORDERS** that the Sixth, Seventh, Eighth and Ninth Reports of the Monitor and the activities and conduct of the Monitor referred to therein are hereby ratified and approved; provided, however, that only the Monitor in its personal capacity and only with respect to its personal liability, shall be entitled to rely upon or utilize in any way such approvals.

14. **THIS COURT ORDERS AND DECLARES** that the Monitor has duly and properly satisfied, discharged and performed all of its obligations, liabilities, responsibilities and duties in respect of the Applicant in compliance and in accordance with the CCAA, the Initial Order and any other Orders of this Court made in the within CCAA proceedings.

DISCHARGE OF MONITOR

15. **THIS COURT ORDERS AND DECLARES** that, effective as at the CCAA Termination Time, Richter shall be discharged as Monitor of the Applicant and shall have no further duties, obligations or responsibilities as Monitor in these CCAA proceedings.

RELEASES

16. **THIS COURT ORDERS** that the Monitor and its counsel and each of their respective affiliates, officers, directors, partners, employees and agents (collectively, the “**Released Persons**”) shall be and are hereby released and discharged from any and all claims that any person may have or be entitled to assert against the Released Persons, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the date of this Order in any way relating to, arising out of or in respect of the within proceedings or with respect to their conduct in the within proceedings (collectively, the “**Released Claims**”), and any such Released Claims are hereby released, stayed, extinguished and forever barred, and the Released Persons shall have no liability in respect thereof, provided that the Released Claims shall not include any claim or liability arising out of any gross negligence or wilful misconduct on the part of the Released Persons.

17. **THIS COURT ORDERS** that, at the CCAA Termination Time, and subject to paragraph 18 hereof, the Released Persons shall be released and discharged from any and all claims that any person may have or be entitled to assert against the Released Persons, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or thereafter arising, based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place following the date of this Order in any way relating to, arising out of or in respect of the within CCAA proceedings or with respect to their respective conduct in the within CCAA proceedings (collectively, the “**Subsequent Released Claims**”), and any such

Subsequent Released Claims shall be released, stayed, extinguished and forever barred and the Released Persons shall have no liability in respect thereof, provided that the Subsequent Released Claims shall not include any claim or liability arising out of any gross negligence or wilful misconduct on the part of the Released Persons.

18. **THIS COURT ORDERS** that in the event that any person objects to the release and discharge of the Subsequent Released Claims, that person must send a written notice of objection and the grounds therefor to the Monitor such that the notice of objection is received by the Monitor prior to the proposed CCAA Termination Time. If no objection is received by the Monitor prior to the CCAA Termination Time, the release and discharge of Subsequent Released Claims pursuant to paragraph 17 hereof shall be automatically deemed effective upon the CCAA Termination Time, without further Order of the Court.

19. **THIS COURT ORDERS** that if an objection to the release of the Subsequent Released Claims is received by the Monitor pursuant to paragraph 18 hereof, the release and discharge of the Subsequent Released Claims pursuant to paragraph 17 hereof shall not become effective pending further Order of the Court. For greater certainty, no objection received in accordance with paragraph 18 hereof shall affect the release and discharge of the Released Claims pursuant to paragraph 16 hereof, which shall be effective as of the date of this Order.

20. **THIS COURT ORDERS** that from and after the CCAA Termination Time no action or other proceeding shall be commenced against any of the Released Persons in any way arising from or related to the within CCAA proceedings, except with prior leave of this Court on at least seven days' prior written notice to the applicable Released Person, and provided that any such Order granting leave includes a term granting the applicable Released Person security for its costs and the costs of its counsel in connection with any proposed action or proceeding, such security to be on terms this Court deems just and appropriate.

21. **THIS COURT ORDERS** that, notwithstanding any provision of this Order, the termination of the CCAA proceedings or the discharge of the Monitor, nothing herein shall affect, vary, derogate from, limit or amend, and the Monitor and its counsel shall continue to have the benefit of, the approvals and protections in favour of the Monitor at law or pursuant to the Initial Order or any other Order of this Court in the CCAA proceedings, all of which are

expressly continued and confirmed, including in connection with any actions taken by the Monitor pursuant to this Order following the filing of the Monitor's Certificate.

ASSIGNMENT INTO BANKRUPTCY AND DISTRIBUTION OF RESERVE

22. **THIS COURT ORDERS** that the Applicant is authorized to file an assignment in bankruptcy pursuant to the *Bankruptcy and Insolvency Act* (Canada) in the City of Toronto, Province of Ontario, and the Stay Period is lifted in order to permit such application.

23. **THIS COURT ORDERS** that the Monitor is authorized and directed to set aside \$100,000 from the funds remaining in the Reserve (as defined in the Order Re: Distribution Protocol dated December 17, 2018) to account for the funding of the bankruptcy proceedings (the "**Trustee Account**"). The Monitor is further authorized and directed to transfer the Trustee Account to the trustee in bankruptcy upon its appointment.

24. **THIS COURT ORDERS** that at or before the CCAA Termination Time, subject to the creation of the Trustee Account, the Monitor is authorized and directed without further Order of the Court, to distribute the remainder of the Reserve to Deerfield.

GENERAL

25. **THIS COURT ORDERS** that notwithstanding the discharge of the Monitor and the termination of the CCAA proceedings, this Court shall remain seized of any matter arising from these CCAA proceedings, and each of the Applicant, the Monitor and any other interested party shall have the authority from and after the date of this Order to apply to this Court to address matters ancillary or incidental to these CCAA proceedings notwithstanding the termination thereof. The Monitor is authorized to take such steps and actions as the Monitor determines are necessary to give effect to this Order following the date of this Order until the CCAA Termination Time.

26. **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 Applicant, 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 Applicant and the Monitor as may be necessary or desirable to give effect to this Order or to assist the Applicant, the Monitor and their agents in carrying out the terms of this Order.

**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 OF
OLD API WIND-DOWN LTD.**

Applicant

MONITOR'S CERTIFICATE

RECITALS

- A. Old API Wind-down Ltd. (the "**Applicant**") 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 (the "**Initial Order**").
- B. Richter Advisory Group Inc. (in such capacity, the "**Monitor**") was appointed as the Monitor of the Applicant in the CCAA proceedings pursuant to the Initial Order.
- C. Pursuant to the CCAA Termination Order granted ●, 2019, the Court approved, among other things, the termination of the CCAA proceedings effective at the date and time (the "**CCAA Termination Time**") on which the Monitor files this Monitor's certificate with the Court.

THE MONITOR CONFIRMS the following:

1. The Monitor has been informed by the Applicant that all matters to be attended to in connection with the CCAA proceedings have been completed.

2. Accordingly, the CCAA Termination Time has occurred at the date and time set forth below.

DATED at Toronto, Ontario this _____ day of _____, 2019.

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

Per: _____

Name:

Title:

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 OLD API
WIND-DOWN LTD.

Applicant

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

CCAA TERMINATION ORDER

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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 OLD API WIND-DOWN LTD.

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

NOTICE OF MOTION
(RETURNABLE MAY 17, 2019)

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Lawyers for the Applicant

TAB 2

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 OLD API WIND-DOWN LTD.

Applicant

AFFIDAVIT OF CHRISTOPHER FREELAND
(Sworn May 8, 2019)

I, Christopher Freeland, of the Town of Princeton, in the State of New Jersey, MAKE OATH AND SAY:

1. I am the General Counsel and Chief Operating Officer of the Applicant, Old API Wind-down Ltd. ("API"). As a result of my role with API, I have certain knowledge of the matters to which I hereinafter depose. I have also reviewed certain books and records of API and have spoken with and relied upon certain of the directors, officers, employees and/or advisors of API, as necessary and applicable. Where I have relied upon such information, I believe such information to be true.
2. This affidavit is sworn in support of a motion brought by API pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") seeking an order (the "Termination Order"), *inter alia*:
 - (a) Terminating these CCAA proceedings and the Stay Period (defined below);
 - (b) Terminating the Administration Charge, DIP Lender's Charge, D&O Charge, Key Employee Charge, Transactional Fee Charge and Bid Protections Charge (each defined below);
 - (c) Approving the fees and disbursements of the Monitor (defined below) and its counsel;

- (d) Approving the activities of the Monitor, discharging the Monitor and releasing the Monitor from any potential claims against it;
- (e) Authorizing API to file an assignment into bankruptcy; and
- (f) Such further and other relief as the Court deems just.

A. BACKGROUND AND STATUS OF THE PROCEEDINGS

i. The Filing

3. API and Aralez Pharmaceuticals Canada Inc. ("**Aralez Canada**", and together with API, the "**CCAA Entities**") were two entities within a larger corporate structure that included Aralez Pharmaceuticals Management Inc. ("**APMI**"), Aralez Pharmaceuticals R&D Inc., Aralez Pharmaceuticals U.S. Inc. ("**APUS**"), POZEN Inc., Halton Laboratories LLC, Aralez Pharmaceuticals Holdings Limited ("**APHL**") and Aralez Pharmaceuticals Trading DAC (collectively, the "**Chapter 11 Entities**", and with the CCAA Entities, the "**Aralez Entities**").

4. As described in greater detail in the affidavit sworn by Andrew I. Koven on August 9, 2018 (the "**Initial Affidavit**"), the Aralez Entities were in the business of acquiring, developing, marketing and selling specialty pharmaceutical products in Canada and the U.S.

5. API, a company incorporated under the laws of British Columbia, was the public holding company and ultimate parent of the other Aralez Entities. Prior to the events described below, Canadian operations of the Aralez Entities were largely conducted through Aralez Canada, which is incorporated under the laws of Ontario.

6. On August 10, 2018, the CCAA Entities sought and were granted creditor protection and related relief under the CCAA (the "**CCAA Proceedings**") pursuant to the Initial Order of the Honourable Mr. Justice Dunphy of the Ontario Superior Court of Justice (Commercial List) (the "**CCAA Court**"), as amended and restated (the "**Initial Order**"). The CCAA Court appointed Richter Advisory Group Inc. ("**Richter**") as Monitor of the CCAA Entities (the "**Monitor**"). The Initial Order granted a stay of proceedings (the "**Stay Period**") which has since been extended five times, most recently to July 31, 2019.

7. Also on August 10, 2018, the Chapter 11 Entities filed voluntary petitions under chapter 11 of title 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the “U.S. Court”).

8. The Aralez Entities retained Alvarez & Marsal Healthcare Industry Group, LLC and Alvarez & Marsal Canada Inc. (together, the “Financial Advisor”), to assist the Aralez Entities in their restructuring efforts, including assistance in cash management and implementing a restructuring plan. The Aralez Entities also engaged the services of Moelis & Company LLC (the “Investment Banker”) to assist the Aralez Entities with their sale and marketing efforts during the CCAA Proceedings.

9. Additional details regarding the background to these CCAA Proceedings are set out in the Initial Affidavit and, unless relevant to the present motion, are not repeated herein.

10. Copies of each of the filings in the CCAA Proceedings, including the Initial Affidavit are available on the Monitor’s website for these proceedings at: <http://insolvency.richter.ca/A/Aralez-Pharmaceuticals>.

ii. Sales process

11. An essential component of the CCAA Entities’ restructuring was a comprehensive, Court-approved marketing process followed by a series of going concern sales of substantially all of the CCAA Entities’ assets.

12. Beginning in the spring of 2017, the CCAA Entities commenced negotiations with Intercept Pharmaceuticals, Inc. to sell certain contractual rights to develop and market products containing bezafibrate in the United States. The parties reached an acceptable agreement in principle on August 9, 2018, but were unable to complete the transaction ahead of the CCAA filing. Negotiations concluded during the CCAA Proceedings with the execution of an asset purchase agreement (the “Bezafibrate APA”). The transaction was approved by the CCAA Court on December 17, 2018 and closed on December 18, 2018.

13. Pursuant to the sales process approved by the CCAA Court, API entered into a sale transaction (the “SPA Transaction”) contemplated by a share purchase agreement (the “Share Purchase Agreement”) among API, as vendor, and Nuvo Pharmaceuticals Inc., as purchaser (the “Purchaser”) dated September 18, 2018. The Share Purchase Agreement, which acted as a

stalking horse bid, contemplated the sale of all of the shares of Aralez Canada, which were held by API, to the Purchaser for the purchase price of US\$62.5 million, subject to certain adjustments (the “**Purchase Price**”). This Court approved the SPA Transaction on December 7, 2018 and the transaction closed on December 31, 2018.

14. The Share Purchase Agreement provided that immediately before the SPA Transaction closed API was to provide the Purchaser with an estimate (the “**Estimate**”) of the net working capital as of the time the SPA Transaction would close (the “**Closing**”). The Share Purchase Agreement further provided that, within 75 days of Closing, the Purchaser shall prepare and deliver a statement setting forth its calculation of, among other things, the actual net working capital (the “**Closing Date Statement**”), following which API may either agree with the quantum in the Closing Date Statement or dispute it. The Purchaser delivered the Closing Date Statement on March 15, 2019. API delivered a notice disputing the quantum contained therein on April 4, 2019.

15. To the extent the actual net working capital (as ultimately determined) differs from the Estimate, the Share Purchase Agreement contemplates a post-facto adjustment of the Purchase Price to reflect those variations (the “**Adjustment Process**”).

16. Following delivery of the dispute notice by API referred to above, the parties engaged in good faith negotiations, with input from Deerfield and the Monitor, which has resulted in the parties reaching an agreement in principle. The proposed settlement will result in an increase in the Purchase Price of approximately US\$1.8 million. The parties are currently working on documenting the agreement. One aspect of the proposed settlement involves the Late Claims (defined below), which is discussed under the heading Claims Process.

iii. Distributions

17. Pursuant to an order of this Court dated December 17, 2018 (the “**Distribution Order**”), API and the Monitor, in consultation with Deerfield Private Design Fund III, L.P. and Deerfield Partners, L.P. (“**Deerfield**”) established a reserve (the “**Reserve**”) in the amount of US\$10.5 million from the proceeds of the SPA Transaction and the Bezafibrate APA (the “**Sale Proceeds**”) to secure and/or satisfy various obligations, including certain Court-approved charges, professional expenses, post-filing expenses, priority obligations and amounts that the

Monitor reasonably estimated to be potentially owing to the Purchaser under the Adjustment Process.

18. Pursuant to the Distribution Order, API and the Monitor were authorized and directed to distribute the remainder of the Sale Proceeds to Deerfield up to the maximum amount of the obligations owed to them under the DIP Agreement (defined in the Initial Order) and the pre-filing Facility Agreement (defined in the Initial Affidavit). Pursuant to an offset of debt amounts owing under the Facility Agreement, API distributed US\$55.1 million to Deerfield. API, with the consent of the Monitor, distributed a further US\$2.3 million from the Reserve to Deerfield on March 6, 2019.

19. I am informed by Pritesh Patel of Richter that as of May 3, 2019 the amount of the Reserve was approximately US\$5.6 million.

iv. Claims Process

20. On October 10, 2018, this Court approved a claims process (the “**Claims Process**”) pursuant to which claims against the CCAA Entities and their directors and officers were solicited (the “**Claims Procedure Order**”).

21. The CCAA Entities received 34 claims against API and 39 claims against Aralez Canada in the aggregate amounts of US\$136.9 million and US\$66.7 million, respectively, by the applicable deadline of November 29, 2018 (the “**Claims**”).

22. Following discussions with the Purchaser and the Monitor, the CCAA Entities concluded that given the small number of disputed Claims, the parties did not require a claims resolution officer or formal resolution process to resolve the Claims. The CCAA Entities resolved to address the Claims directly, in consultation with the Monitor, the Purchaser and Deerfield.

23. Pursuant to an Order of this Court dated December 7, 2018, issued in conjunction with the SPA Transaction, API retained the authority to address and resolve Claims filed against Aralez Canada following the Closing of the SPA Transaction. All the Claims filed against Aralez Canada by the Claims Bar Date (as defined in the Claims Procedure Order) have been irrevocably settled or withdrawn.

24. Two Proofs of Claim (as defined in the Claims Procedure Order) were filed against Aralez Canada after the Claims Bar Date in the aggregate amount of C\$220,727 (the "Late Claims"). The Claims Procedure Order provides that any party that did not file a Proof of Claim by the Claims Bar Date is not entitled to receive any distribution in respect of such claim and is barred from making or enforcing such claim against the CCAA Entities and their directors and officers. The Aralez Canada CCAA Termination Order dated December 7, 2018, provides similar relief and also discharges, cancels and releases any such claims. The Claims Procedure Order further provides that neither the Monitor nor the CCAA Entities shall have any discretion to accept any Claim submitted after the Claims Bar Date.

25. Pursuant to the proposed settlement of the working capital calculation, API and the Purchaser have agreed that Aralez Canada (now owned by the Purchaser) will address the Late Claims. If Aralez Canada and the claimants cannot come to a mutually acceptable resolution of their claims, it will be incumbent on the claimants to seek relief from this Court.

26. There are 34 Claims outstanding against API, all of which are unsecured (the "API Claims"). Given that Deerfield is the sole secured creditor of API and will suffer a shortfall on its recovery, API does not anticipate that there will be any recovery available in respect of the API Claims, and therefore API does not intend to seek a determination of the API Claims.

v. The Charges

27. The following Court-ordered super-priority charges were granted by the CCAA Court, in order of priority:

- (a) The Administration Charge (as defined and approved in the Initial Order) to secure the professional fees and disbursements of API's counsel, the Monitor and its counsel, the Financial Advisor and the Investment Banker;
- (b) The DIP Lender's Charge (as defined and approved in the Initial Order) to secure amounts owing under the DIP Agreement;
- (c) The Bid Protections Charge (as defined and approved in the Order Re Bidding Procedures Approval dated October 10, 2018) to secure the potential payment of certain bid protections to the Purchaser;

- (d) The Key Employee Charge (as defined and approved in the Order Re KEIP Approval & Related Charge dated November 28, 2018) to secure amounts payable to participants of the Key Employee Retention Plan and Key Employee Incentive Plan;
- (e) The D&O Charge (as defined and approved in the Initial Order) to secure the indemnity provided by the CCAA Entities to their directors and officers; and
- (f) The Transactional Fee Charge (as defined and approved in the Initial Order) to secure potential obligations owing to the Investment Banker under the Moelis Engagement Letter,

(collectively, the "Charges").

28. Aside from the Administration Charge and the D&O Charge, the Charges are no longer required in the CCAA Proceedings. As such, the draft Termination Order provides that all Charges other than the Administration Charge and the D&O Charge be terminated as of the date of the Termination Order's issuance. As detailed below, the draft Termination Order further provides that the Administration Charge and D&O Charge be terminated at the CCAA Termination Time (defined below).

B. TERMINATION OF THE CCAA PROCEEDINGS

29. The Chapter 11 Entities have previously sold substantially all of their assets. On May 6, 2019, the U.S. Court approved a plan put forward by the Chapter 11 Entities (the "U.S. Plan") that will pay out certain claims, implement a settlement between the Official Committee of Unsecured Creditors and Deerfield and wind down the estates of the Chapter 11 Entities. The U.S. Plan requires that APUS merge with APMI and become the parent company of APHL. Both APMI and APHL (which have nominal equity value) are currently owned by API. Prior to the effective date of the U.S. Plan, API will consent to: (a) the merger of APMI and APUS; and (b) the transfer of its shares in APHL to APUS, all for the purpose of facilitating the U.S. Plan and the wind up of API's subsidiaries.

30. API has no ongoing business activities and substantially all of its Canadian assets were sold in the SPA Transaction and in the transaction contemplated by the Bezafibrate APA.

31. Notwithstanding API's lack of ongoing business activities, there are a number of issues that still require resolution in the CCAA Proceedings, including the completion of the Adjustment Process, distribution of the remaining Sale Proceeds to API's stakeholders and winding up of certain subsidiaries of API. Once these issues are resolved, there will be no further need for the CCAA Proceedings and, accordingly, API is seeking an order permitting the CCAA Proceedings to be terminated and replaced by a bankruptcy proceeding, with Richter acting as trustee in bankruptcy (the "Trustee").

32. Converting the CCAA Proceedings into bankruptcy proceedings will allow for an orderly wind-up of API in the most efficient manner available.

33. The draft Termination Order provides that upon delivery of a certificate from the Monitor confirming that it has been advised by API that certain outstanding issues in the CCAA Proceedings have been resolved (the "CCAA Termination Time"), the following will occur (among other things):

- (a) The CCAA Proceedings and the Stay Period will be terminated;
- (b) The Administration Charge and the D&O Charge will be terminated;
- (c) The Monitor will be discharged;
- (d) The Monitor will set aside C\$100,000 from the Reserve to fund the bankruptcy, which will be transferred to the Trustee once appointed in the bankruptcy proceedings; and
- (e) The Monitor will distribute the remainder of the Reserve to Deerfield.

C. APPROVAL OF THE MONITOR'S ACTIVITIES AND FEES

34. As described above and in the Ninth Report of the Monitor, the Monitor has undertaken various activities pursuant to its mandate in these CCAA Proceedings. API seeks to have these activities approved by the CCAA Court, *nunc pro tunc*, to the extent not specifically approved in prior orders of the CCAA Court. API is further seeking a release and discharge of any potential or actual claim of any person against the Monitor and its counsel in respect of their conduct in these CCAA Proceedings.

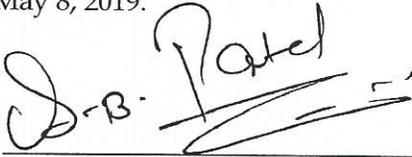
35. I know of no objections to the activities of the Monitor in these CCAA Proceedings.

36. The Monitor and API further seek approval of the fees and disbursements of the Monitor and its counsel up to April 30, 2019, inclusive, as well as the estimated fees and disbursements of the Monitor and its counsel to complete, or assist in the completion of, the administration of the CCAA Proceedings, such fees and disbursements estimated not to exceed C\$50,000 and C\$25,000, respectively.

D. CONCLUSION

37. It is my belief that granting the relief sought herein is an appropriate next step in the restructuring and will provide a pathway to complete the restructuring of the Aralez Entities in a manner that will maximize value for stakeholders.

SWORN BEFORE ME in the Town of
Princeton, in the State of New Jersey, on
May 8, 2019.



Commissioner for Taking Affidavits



CHRISTOPHER FREELAND

SWETA PATEL
NOTARY PUBLIC, STATE OF NEW JERSEY
COMMISSION # 2341983
MY COMMISSION EXPIRES
MARCH 21, 2021

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 OLD API WIND-DOWN LTD.

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

AFFIDAVIT OF CHRISTOPHER FREELAND
SWORN ON MAY 8, 2019

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**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 OLD API WIND-DOWN LTD.**

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

**MOTION RECORD OF THE APPLICANT
(Re CCAA Termination Order)
(Returnable May 17, 2019)**

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