

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.) WEDNESDAY, THE 28th
JUSTICE DUNPHY) DAY OF NOVEMBER, 2018

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 KEIP Approval & Related Charge)

THIS MOTION, made by Aralez Pharmaceuticals Inc. and Aralez Pharmaceuticals Canada Inc. (together 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 key employee incentive plan (the "KEIP") was heard this day at 361 University Avenue, Toronto, Ontario.

ON READING the affidavit of Adrian Adams sworn November 9, 2018 (the "Adams Affidavit"), and the Exhibits attached thereto, and the Fourth Report of Richter Advisory Group Inc., in its capacity as Court-appointed Monitor (the "Monitor") including the confidential supplement attached thereto (the "Confidential Supplement") and on hearing the submissions of counsel for the Applicants, the Monitor, Deerfield Private Design Fund III, L.P. and Deerfield Partners, L.P. (the "DIP Lenders"), the Official Committee of the Unsecured Creditors, and counsel for those other parties appearing as indicated by the counsel sheet, no one else appearing although duly served, as appears from the affidavit of Sam Dukesz, sworn November 13, 2018 and filed:

DEFINITIONS

1. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined shall have the meanings ascribed to them in the Adams Affidavit.

KEIP

2. **THIS COURT ORDERS** that the KEIP described in the Adams Affidavit is hereby approved and the Applicants are authorized and directed to make payments in accordance with the terms thereof.

KERP & KEIP CHARGE

3. **THIS COURT ORDERS** that the key employee retention plan (the “KERP”) Participants and the KEIP Participants shall be entitled to the benefit of and are hereby granted a charge (the “Key Employee Charge”) on the Property (as that term is defined in the Initial Order dated August 10, 2018 (as amended and restated, the “Initial Order”)), which charge shall not exceed an aggregate amount of US\$2.8 million, to secure the amounts payable to the participants in the KEIP and KERP pursuant to paragraph 2 of this Order and paragraph 2 of the KERP Approval Order issued on November 16, 2018, respectively;

4. **THIS COURT ORDERS** that the Key Employee Charge shall have the benefit of paragraphs 50-55 of the Initial Order and shall rank in priority to all other Encumbrances and Charges (as those terms are defined in the Initial Order) other than the Administration Charge, the DIP Lenders’ Charge and the Bid Protections Charge such that the Charges shall rank as follows:

First – Administration Charge (to the maximum amount of \$1 million);

Second – DIP Lender’s Charge;

Third – Bid Protections Charge;

Fourth – Key Employee Charge (to the maximum amount of US \$2.8 million)

Fifth – D&O Charge (to the maximum amount of \$1 million); and

Sixth – Transactional Fee Charge (to the maximum amount of \$2.5 million);

5. **THIS COURT ORDERS** that the filing, registration or perfection of the Key Employee Charge shall not be required, and that the Key Employee Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Key Employee Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.

6. **THIS COURT ORDERS** that except as otherwise expressly provided for herein or in the Initial Order or the Sales Process Order, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, the Key Employee Charge unless the Applicants also obtain the prior written consent of the KERP Participants, KEIP Participants, or by further Order of this Court.

7. **THIS COURT ORDERS** that the Key Employee Charge shall not be rendered invalid or unenforceable and the rights and remedies of the KERP Participants and KEIP Participants entitled to the benefit of the Key Employee Charge thereunder shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the “BIA”), or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “Agreement”) which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

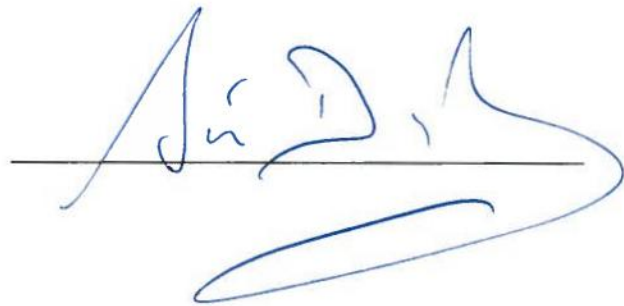
- (x) the creation of the Key Employee Charge shall not create or be deemed to constitute a breach by the Applicants of any Agreement to which it is a party; and

- (y) none of the KERP Participants or KEIP Participants shall have any liability to any person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Key Employee Charge.

8. **THIS COURT ORDERS** that payments made by the Applicants pursuant to this Order do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

GENERAL

9. **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, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.



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PER / PAR: RW

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
Proceeding commenced at Toronto

ORDER
(RE: KEIP APPROVAL & RELATED CHARGE)

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Ashley Taylor LSO#: 39932E
Tel: (416) 869-5236
E-mail: ataylor@stikeman.com

Maria Konyukhova LSO#: 52880V
Tel: (416) 869-5230
Email: mkonyukhova@stikeman.com

Kathryn Esaw LSO#: 58264F
Tel: (416) 869-6820
E-mail: kesaw@stikeman.com

Lawyers for the Applicants