

**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 SYNAPTIVE MEDICAL INC.**

**FACTUM OF THE MONITOR
(Motion for Approval and Reverse Vesting Order and
Stay Extension and Termination Order,
returnable June 18, 2025)**

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TO: THE SERVICE LIST

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SUBMISSIONS OF THE MONITOR

1. The Monitor submits this factum to address two issues raised in Synaptive's motion to approve the Subscription Agreement and related relief:

(a) The designation of affected employees under the WEPPA¹ and the WEPP Regulations²; and

(b) The need for a sealing order in respect of the Monitor's Confidential Bid Summary.

2. This Factum should be read in conjunction with the factum of Synaptive Medical Inc. ("**Synaptive**") dated June 16, 2025 (the "**Applicant's Factum**"). Capitalized terms used but not defined herein have the meanings ascribed thereto in the Applicant's Factum.

A. This Court should declare that Synaptive meets the criteria in section 3.2 of the WEPP Regulations

3. Synaptive is seeking a declaration pursuant to Section 5(5) of WEPPA and submits that it is appropriate to grant such relief in this CCAA proceeding. The Monitor supports that request. Absent such an order from this Court, any Synaptive employee terminated as part of Synaptive's down-sizing activities prior to, and during the course of this CCAA proceeding, and any employees terminated as part of the Closing of the Subscription Agreement (collectively, the "**Terminated Employees**") would not be eligible to receive payments under the WEPPA.

¹ *Wage Earner Protection Program Act*, SC 2005, c 47, s 1 (the "**WEPPA**").

² *Wage Earner Protection Program Regulations*, SOR/2008-222 (the "**WEPP Regulations**").

4. The WEPPA was established to provide for payments to individuals in respect of wages owed to them by employers who are insolvent.³ The WEPPA provides certain eligibility criteria that must be met for an individual to receive payment.⁴

5. In particular, the WEPPA provides that terminated employees of a former employer subject to CCAA proceedings may be eligible to receive a payment if a court determines such employer meets the criteria prescribed by the WEPP Regulations.⁵

6. Section 3.2 of the WEPP Regulations provides that “for the purposes of subsection 5(5) of the Act, a court may determine whether the former employer is the former employer of all whose employees in Canada have been terminated other than any retained to wind down its business operations.”⁶

7. As discussed in Synaptive’s Factum, the execution of the Subscription Agreement represents the culmination of this CCAA proceeding and the Court supervised SISP. The Transaction has been structured as a “reverse vesting” structure, in order to ensure the seamless continuation of Synaptive’s business as a going concern for the benefit of many of Synaptive’s stakeholders.

8. The “reverse vesting” structure, however, results in all amounts due and owing to the Terminated Employees forming part of the Excluded Liabilities assumed by ResidualCo, which entity will ultimately be assigned into bankruptcy. Ordinarily the bankruptcy of ResidualCo would entitle such Terminated Employees to make claims under WEPPA. However, the application of

³ [WEPPA](#), s. 4.

⁴ [WEPPA](#), s. 5(1).

⁵ [WEPPA](#), s. 5(1)(b)(iv).

⁶ [WEPP Regulations](#), s. 3.2.

the “reverse vesting” structure artificially separates the legal entity who owes the obligation to the Terminated Employees and which will be assigned in bankruptcy (ResidualCo) from the legal entity that technically employed the employees. As a result, a narrow reading of the WEPPA and the WEPP Regulation could arguably disentitle such Terminated Employees from the right to make a claim under WEPPA.

9. The WEPPA and WEPP Regulations were modified prior to the emergence of the “reverse vesting” structure as a means to sell the business and the assets of debtor companies. As such, the WEPPA and WEPP Regulations do not account for the particularities of the “reverse vesting” structure and its impact on the treatment of former employees of a debtor company. Such employees, who have no control over the structure of any CCAA transaction, should not be prejudiced by the reasonable commercial choices made by Synaptive and the Purchaser. Moreover, had the transaction been implemented in an ordinary asset sale and vesting structure, the Terminated Employees would be entitled to benefits under the WEPPA.

10. In *Just For Laughs*, the Quebec Superior Court held that the WEPPA applies to former employees of insolvent corporations that are restructured under an RVO issued pursuant to the CCAA.⁷ The Quebec Court’s ruling in *Just for Laughs* was recently applied in very similar circumstances to the current case in *Intelgenx* and *Valeo*, wherein each case the employment liabilities of the terminated employees of the debtor company were transferred to a residual company, other than KERP payments and vacation pay obligations.⁸ Declarations that a debtor

⁷ *Arrangement relatif à Former Gestion Inc.*, 2024 QCCS 3645, [paras 32-35](#).

⁸ *Syndic d’Intelgenx Corp.*, 2024 QCCS 3678, [paras 40-44](#); *Arrangement relatif à Valeo Pharma Inc.*, 2025 QCCS 580, [paras 17-20](#).

company meets the criteria prescribed by section 3.2 of the WEPP Regulations have been granted by this Court.⁹

11. In the Third Report, the Monitor has takes the view that it is appropriate for this Court to declare that Synaptive complies with the criteria as prescribed and that former employees of Synaptive should be entitled to receive payments under the WEPPA.

12. In light of the foregoing, it is respectfully submitted that it is appropriate at this time for this Court to declare that Synaptive meets the criteria established by section 3.2 of the WEPP Regulations, as such declaration would help alleviate the impact of this CCAA proceeding on its former employees by providing them with the relief described in the WEPPA.

B. This Court should seal the Confidential Bid Summary

13. The Monitor is providing a confidential summary of the Phase I and Phase II Bids received by the Monitor (the “**Confidential Bid Summary**”). The Confidential Bid Summary contains commercially sensitive information that, if disclosed at this time, could pose a serious risk to maximizing value for Synaptive’s stakeholders in this CCAA proceeding, including because disclosure of the economic terms of the Phase I and Phase II Bids received in the SISF may impair any efforts to remarket Synaptive if the Transaction does not close.

14. Synaptive is seeking a sealing order in respect of the Confidential Bid Summary (the “**Sealing Order**”), which Sealing Order is limited to the earlier of (i) the closing of the Transaction,

⁹ *In the Matter of The Body Shop Canada Limited*, 2024 ONSC 7052, [paras 39-43](#).

or (ii) further order of this Court.

15. Pursuant to the *Courts of Justice Act* (Ontario), this Court has the discretion to order that any document filed in a civil proceeding be treated as “confidential”, sealed and not form part of the public record.”¹⁰

16. The test to determine if a sealing order should be granted is set out in *Sierra Club* and was reframed in *Sherman Estate*:

- (a) court openness poses a serious risk to an important public interest;
- (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and
- (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.¹¹

17. The Supreme Court in *Sierra Club* and *Sherman Estate* explicitly recognized that commercial interests such as preserving confidential information or avoiding a breach of a confidentiality agreement are an “important public interest” for purposes of this test.¹²

18. Courts have applied the *Sierra Club* and *Sherman Estate* frameworks in insolvency proceedings and have granted sealing orders over confidential or commercially sensitive materials to safeguard the interests of debtor companies. In particular:

¹⁰ *Courts of Justice Act*, R.S.O. 1990, c C.43, [s. 137\(2\)](#).

¹¹ *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, [para 53](#); *Sherman Estate v. Donovan*, 2021 SCC 25, [paras 38-43](#).

¹² *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, [para 55](#); *Sherman Estate v. Donovan*, 2021 SCC 25, [paras 41-43](#).

- (a) Chief Justice Morawetz granted a sealing order in *Bridging Finance* in respect of bids and a receiver's summary of the economic terms of such bids, because they contained confidential information;¹³
- (b) Justice Penny granted a sealing order in both *Acerus* and *VBI* in respect of a confidential summary of bids received in a SISP;¹⁴ and
- (c) Justice Osborne granted a sealing order in *Fire & Flower* in respect of a confidential summary of the economics of competing bids received in a SISP.¹⁵

19. Synaptive is seeking the Sealing Order in respect of the Confidential Bid Summary, which outlines the financial and commercial terms of the Phase 1 and Phase II Bids submitted in connection with the Court supervised SISP. This document contains commercially sensitive information, the disclosure of which could prejudice Synaptive's ability to preserve or maximize the value of its business should the Transaction fail to close and a future sale process become necessary. Premature disclosure of this information could distort the market or undermine future negotiations with prospective purchasers.

20. The salutary effects of protecting this commercially sensitive information outweigh any deleterious effects. Sealing the Confidential Bid Summary is necessary to preserve the integrity of the Court supervised SISP and to safeguard Synaptive's ability to achieve the best possible outcome for stakeholders in the event the Transaction does not close. Further, the Monitor has already disclosed certain economic terms of the Bids received, which allows the public and

¹³ *Ontario Securities Commission v Bridging Finance Inc.*, 2022 ONSC 1857, [paras 50-54](#).

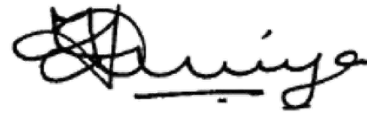
¹⁴ *Acerus Pharmaceuticals Corporation (Re)*, 2023 ONSC 3314, [para 39](#); *VBI Vaccines Inc v. Ernst & Young Inc. et al.*, 2024 ONSC 6604, [para 19](#).

¹⁵ *Plan of Arrangement of Fire & Flower Holdings Corp. et al.*, 2023 ONSC 4934, [paras 35-36](#).

stakeholders to understand the basis upon which the Purchaser's Bid was selected as the Successful Bid, thereby maintaining transparency to the extent possible without compromising future value.

21. The proposed sealing order is also time-limited to the earlier of (i) the closing of the Transaction, or (ii) further order of this Court. This limitation ensures that the confidentiality protections are narrowly tailored and do not extend beyond what is necessary to protect Synaptive's and its stakeholder's commercial interests during the pendency of the Transaction.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 16th day of June, 2025.



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SCHEDULE “A”

LIST OF AUTHORITIES

1. *Arrangement relatif à Former Gestion Inc.*, [2024 QCCS 3645](#)
2. *Syndic d’Intelgenx Corp.*, [2024 QCCS 3678](#)
3. *Arrangement relatif à Valeo Pharma Inc.*, [2025 QCCS 580](#)
4. *In the Matter of The Body Shop Canada Limited*, [2024 ONSC 7052](#)
5. *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002 SCC 41](#)
6. *Sherman Estate v. Donovan*, [2021 SCC 25](#)
7. *Ontario Securities Commission v Bridging Finance Inc.*, [2022 ONSC 1857](#)
8. *Acerus Pharmaceuticals Corporation (Re)*, [2023 ONSC 3314](#)
9. *VBI Vaccines Inc v. Ernst & Young Inc. et al.*, [2024 ONSC 6604](#)
10. *Plan of Arrangement of Fire & Flower Holdings Corp. et al.*, [2023 ONSC 4934](#)

I certify that I am satisfied as to the authenticity of every authority.

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).

Date June 16, 2025



Signature

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY – LAWS

Courts of Justice Act, R.S.O. 1990, c C.43, s. 137(2).

Sealing documents

[137 \(2\)](#) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

Wage Earner Protection Program Act, SC 2005, c 47, s 1

Establishment

4 The Wage Earner Protection Program is established to provide for payments to individuals in respect of wages owed to them by employers who are insolvent.

Conditions of eligibility

5 (1) An individual is eligible to receive a payment if

(a) the individual’s employment ended for a reason prescribed by regulation;

(b) one of the following applies:

(i) the former employer is bankrupt,

(ii) the former employer is subject to a receivership,

(iii) the former employer is the subject of a foreign proceeding that is recognized by a court under subsection 270(1) of the Bankruptcy and Insolvency Act and

(A) the court determines under subsection (2) that the foreign proceeding meets the criteria prescribed by regulation, and

(B) a trustee is appointed, or

(iv) the former employer is the subject of proceedings under Division I of Part III of the Bankruptcy and Insolvency Act or under the Companies’ Creditors Arrangement Act and a court determines under subsection

(5) that the criteria prescribed by regulation are met; and

(c) the individual is owed eligible wages by the former employer.

Wage Earner Protection Program Regulations, SOR/2008-222

Proceedings Under Bankruptcy and Insolvency Act or Companies' Creditors Arrangement Act

3.2 For the purposes of subsection 5(5) of the Act, a court may determine whether the former employer is the former employer all of whose employees in Canada have been terminated other than any retained to wind down its business operations.

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

Court File No. CV-25-00739279-00CL

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ARRANGEMENT OF SYNAPTIVE MEDICAL INC.

Applicant

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at TORONTO.

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