

**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 ARALEZ PHARMACEUTICALS INC. AND
ARALEZ PHARMACEUTICALS CANADA INC.**

Applicants

**MOTION RECORD OF THE APPLICANTS
(Returnable December 17, 2018)
(Re Distribution Order)**

December 12, 2018

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Lawyers for the Applicants

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**

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

I N D E X

TAB	DOCUMENT
1.	Notice of Motion, returnable December 17, 2018
A.	Distribution Order
2.	Affidavit of Adrian Adams, sworn December 12, 2018

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 ARALEZ PHARMACEUTICALS INC. AND
ARALEZ PHARMACEUTICALS CANADA INC.

Applicants

NOTICE OF MOTION
(Returnable December 17, 2018)
(Re Distribution Order)

Aralez Pharmaceuticals Inc. ("API") and Aralez Pharmaceuticals Canada Inc. ("Aralez Canada", and with API the "Applicants"), will make a motion to the Justice presiding over the Commercial List on December 17, 2018 at 10:00 a.m. at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING:

The motion is to be heard orally.

THE MOTION IS FOR:

1. An order (the "**Distribution Order**"), substantially in the form of the draft order attached as Schedule "A" to this Notice of Motion authorizing API and Richter Advisory Group Inc. in its capacity as Monitor of the Applicant (the "**Monitor**") to distribute the Sale Proceeds and any other cash on hand, subject to the Reserve (as these terms are defined below); and
2. Such further and other relief as the Court deems just.

THE GROUNDS FOR THE MOTION ARE:

Background

3. The Applicants, 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 Applicants, the “**Aralez Entities**”) are in the business of acquiring, developing, marketing and selling specialty pharmaceutical products, with a focus on cardiovascular health and pain management, in Canada, the U.S. and Ireland;

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

5. On August 10, 2018, the Applicants sought and were granted creditor protection and related relief under the CCAA pursuant to the Initial Order of the Honourable Justice Dunphy (as subsequently amended and restated, the “**Initial Order**”);

6. 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 Sales Process

7. The Aralez Entities have been working towards the going concern sale of substantially all of their assets by means of a comprehensive marketing process (the “**Sales Process**”);

8. At the end of the Sales Process, the transactions contemplated in three stalking horse agreements, each dated September 18, 2018 (the “**Stalking Horse Agreements**”) were determined to be the best outcome for the Aralez Entities;

9. One of the Stalking Horse Agreements contemplated a sale of all of the shares of Aralez Canada, which are held by API, to Nuvo Pharmaceuticals Inc., as the purchaser, for the purchase price of \$62.5 million (the “**SPA Transaction**”);

10. The SPA Transaction was approved by this Honourable Court on December 7, 2018;

11. The SPA Transaction excluded the sale of non-core assets and agreements related to the medicinal ingredient bezafibrate, which assets and agreements now form part of an asset purchase agreement with Intercept Pharmaceuticals, Inc. (the “**Bezafibrate APA**”);

12. The Applicants are seeking approval of the Bezafibrate APA on December 17, 2018;

The Distribution Order

13. The proceeds generated from the SPA Transaction and the Bezafibrate APA (together, the “**Sale Proceeds**”) and any other cash on hand will need to be distributed;
14. The Distribution Order provides for an orderly distribution of the Sale Proceeds and other cash on hand in a manner that reflects the relative priorities of certain of the Applicants’ stakeholders;
15. These distributions are subject to setting up a reserve, as described in greater detail in the attached Distribution Order (the “**Reserve**”);
16. Subject to the requirements under the Reserve, the Distribution Order authorizes various disbursements by the Monitor in consultation with API or by API with the prior written consent of the Monitor. These include:
 - (a) Distributions to the DIP Lender up to the maximum amount of the obligations owing under the Canadian DIP Credit Agreement (as those terms are defined in the Distribution Order);
 - (b) Distributions to Deerfield up to the maximum amount of the obligations owing under the Facility Agreement (as those terms are defined in the Distribution Order);
 - (c) Payment of amounts owing by API in respect of various professional expenses;
 - (d) Payment of amounts owing by API in respect of obligations incurred by API since the commencement of these CCAA proceedings;
 - (e) Payment of amounts owing by API with respect to certain Priority Claims; and
 - (f) Payment of amounts owing with respect to certain post-closing adjustments under the SPA Transaction;

17. The Distribution Order further mandates that any portion of the Reserve that is ultimately determined to no longer be necessary shall be distributed to Deerfield, and provides the Monitor with various protections in respect of the discharge of its obligations thereunder.

GENERAL

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

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

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

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

21. The Affidavit of Adrian Adams, sworn December 12, 2018;

22. A report of the Monitor to be filed; and

23. Such further and other materials as counsel may advise and this Court may permit.

December 12, 2018

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Lawyers for the Applicants

Schedule "A"

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ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.)	MONDAY, THE 17 TH
)	
JUSTICE DUNPHY)	DAY OF DECEMBER, 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: 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 ● sworn ● 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 and Deerfield, 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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Lawyers for the Applicants

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. ET AL.

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

**NOTICE OF MOTION
(RETURNABLE DECEMBER 17, 2018)**

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Lawyers for the Applicants

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 ARALEZ PHARMACEUTICALS INC. AND ARALEZ PHARMACEUTICALS CANADA
INC.

Applicants

AFFIDAVIT OF ADRIAN ADAMS
(Sworn December 12, 2018)

I, Adrian Adams, of the Town of Devon, in the State of Pennsylvania, **MAKE OATH AND SAY:**

1. I am the Chief Executive Officer of Aralez Pharmaceuticals Inc. ("**API**"), which is the parent company of Aralez Pharmaceuticals Canada Inc. ("**Aralez Canada**" and, together with API, the "**Applicants**"). 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 the Applicants and have spoken with and relied upon certain of the directors, officers, employees and/or advisors of the Applicants, as necessary and applicable. Where I have relied upon such information, I believe such information to be true.

2. All references to currency in this affidavit are references to United States dollars, unless otherwise indicated.

3. This affidavit is sworn in support of a motion brought by the Applicants under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**" and such proceedings, the "**CCAA Proceedings**") seeking:

- (a) an order (the "**Distribution Order**"), substantially in the form of the draft order attached at Schedule "A" of the Applicants' Notice of Motion, authorizing and directing both Richter Advisory Group Inc. in its capacity as Monitor of the Applicants (the "**Monitor**") in consultation with API and API, with the prior

written consent of the Monitor, to distribute the Sale Proceeds (as defined below) and other cash on hand; and

(b) such further and other relief as the Court deems just.

A. BACKGROUND AND STATUS OF THESE PROCEEDINGS

i. Background to these CCAA Proceedings

4. The Applicants are two entities within a larger corporate structure that includes 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 ("**Aralez DAC**", and collectively, the "**Chapter 11 Entities**" and, with the Applicants, the "**Aralez Entities**"). The current corporate structure of the Aralez Entities is the result of a business combination completed in early 2016 between Pozen and what is now Aralez Canada.¹

5. As described in greater detail in the affidavit of Andrew I. Koven, sworn August 9, 2018 in support of the Applicants' application for protection under the CCAA (the "**Initial Affidavit**"), the Aralez Entities are in the business of acquiring, developing, marketing and selling speciality pharmaceutical products. API, a company incorporated under the laws of British Columbia, is the public holding company that is the ultimate parent of the other Aralez Entities. Canadian operations are largely conducted through Aralez Canada, with supply chain management and quality assurance conducted by Aralez DAC. Aralez Canada is incorporated under the laws of Ontario.

6. As a result of certain negative events described in the Initial Affidavit, on August 10, 2018, the Applicants sought and were granted creditor protection and related relief under the CCAA pursuant to an Order (as amended and restated, the "**Initial Order**") of this Court.

¹ Originally, Tribute Pharmaceuticals Canada Inc., but pursuant to an internal reorganization, Aralez Canada.

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

8. A copy of each of the Initial Affidavit, the Initial Order and all other filings in the CCAA Proceedings, is available on the Monitor's website for these proceedings at: <<http://insolvency.richter.ca/A/Aralez-Pharmaceuticals>>.

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.

B. THE SALES PROCESS

i. The Sale of the Aralez Entities' Core Assets

10. The Aralez Entities have been working toward the going concern sale of substantially all of their assets following a comprehensive marketing process (the "**Sales Process**").

11. The Sales Process and its recent developments are described in greater detail in the affidavit of Adrian Adams sworn November 29, 2018, in support of the Applicants' motion for, *inter alia*, approval of the sale transaction (the "**SPA Transaction**") contemplated by a share purchase agreement (the "**Share Purchase Agreement**") among API, as vendor, Aralez Canada, as the corporation, and Nuvo Pharmaceuticals Inc., as the purchaser (the "**Purchaser**") dated September 18, 2018. The Share Purchase Agreement, which acted as a stalking horse bid, contemplates the sale of all of the shares of Aralez Canada, which are held by API, to the Purchaser for the purchase price of \$62.5 million, subject to certain adjustments.

12. Two other stalking horse agreements were entered into on September 18, 2018, by certain of the Chapter 11 Entities (the "**Chapter 11 Stalking Horse Agreements**", and together with the Share Purchase Agreement, the "**Stalking Horse Agreements**"). One of the Chapter 11 Stalking Horse Agreements is conditional upon the satisfaction or waiver of certain conditions in the Share Purchase Agreement and vice versa.

13. The Stalking Horse Agreements were designed to act as the floor, or minimum acceptable bid, for the Sales Process, and were subject to higher or otherwise better offers canvased through the Sales Process. A concerted effort to solicit higher or otherwise better offers for the Aralez Entities' assets began following the approval of the bidding procedures by order of this Court dated October 10, 2018 (the "**Bidding Procedures Order**").

14. No Qualified Bids (as defined in the Bidding Procedures Order) for the shares or assets of Aralez Canada or the Toprol-XL assets were received by the Bid Deadline (as defined in the Bidding Procedures Order). A bid was received for the Vimovo assets, but in light of the lack of a competing bid for Aralez Canada and the cross conditionality of the two agreements, no auction was held with respect to any of the assets subject to the three Stalking Horse Agreements.

15. The SPA Transaction was approved by this Court on December 7, 2018, and the Applicants are hopeful that it will close prior to the end of this calendar year.

ii. The Bezafibrate Sale

16. The Share Purchase Agreement excluded the sale of the following non-core assets (collectively, the "**Bezafibrate Assets**"):

- (a) an agreement between a predecessor to Aralez Canada and a predecessor to Allergan Pharmaceuticals International Limited effective as of May 4, 2011 and subsequently amended, which specifies that Aralez Canada has agreed to develop and, if approved, market products containing the medicinal ingredient bezafibrate in the United States;
- (b) the Purchased Regulatory Documentation, as defined in the Asset Purchase Agreement by and between Aralez Canada and Intercept Pharmaceuticals, Inc. dated December 6, 2018 (the "**Bezafibrate APA**"); and
- (c) the Product IP Licence, as defined in the Bezafibrate APA.

17. On December 17, 2018, the Applicants will seek approval of the Bezafibrate APA, which contemplates the sale of the Bezafibrate Assets. If such approval is granted, the Applicants

expect to close the transaction contemplated in the Bezafibrate APA on December 18, 2018, and in any event prior to the SPA Transaction and the end of this calendar year.

C. DISTRIBUTION ORDER

18. The SPA Transaction will generate gross proceeds in excess of \$60 million (the “**Sale Proceeds**”). The Applicants are seeking approval of the Distribution Order in order to provide for the distribution of the Sale Proceeds and any other cash on hand (including as a result of the sale of the Bezafibrate Assets, if approved by the Court) in accordance with the legal priorities of the Applicants’ creditors.

19. The Distribution Order is subject to the closing of the SPA Transaction and the receipt of the Sale Proceeds.

20. The Distribution Order specifies that any distributions are at all times subject to an appropriate reserve of funds (the “**Reserve**”) being retained by the Monitor or API in an amount that the Monitor, in consultation with the Applicants and Deerfield, understands to be sufficient:

- (a) to secure the obligations under the Charges (as defined in the Initial Order and including the Bid Protections Charge as defined in the Bidding Procedures Order and the Key Employee Charge as defined in the Order (Re KEIP Approval & Related Charge) dated November 28, 2018);
- (b) for the payment of fees and expenses of the Monitor, the Monitor’s legal counsel, legal counsel to the Applicants and any other professionals retained pursuant to the Initial Order (collectively, the “**Professional Fees**”) and amounts owing by API in respect of obligations incurred by API since the commencement of the CCAA Proceedings (the “**Post-Filing Expenses**”);
- (c) for the payment of any other obligations of API that rank in priority to the applicable debt held by Deerfield Private Design Fund III, L.P. and Deerfield Partners, L.P. (collectively, “**Deerfield**”) and any other contingent amounts appropriate under the circumstances (the “**Priority Claims**”); and

- (d) to account for any amounts reasonably estimated by the Monitor to be potentially owing to the Purchaser as a result of the reconciliation of the Adjustment Amount under the SPA Transaction (as such term is defined therein).

21. The Distribution Order specifies that, subject to the Reserve and following the filing of the Monitor's Certificate under the Nuvo SPA, the Monitor or API is authorized to make distributions to the DIP Lender, up to a maximum amount of the obligations under the Canadian DIP Credit Agreement (as defined in the Initial Order).

22. The Distribution Order further provides that API or the Monitor is authorized to distribute funds to Deerfield.

23. Deerfield is owed money pursuant to a long-term loan agreement dated June 8, 2015 (as amended) (the "**Facility Agreement**"). API is the borrower under the Facility Agreement, which is in the principal amount of \$275.0 million. As of August 6, 2018, API owed \$281.5 million under the Facility Agreement. Under the Facility Agreement, Deerfield has a first priority security interest in substantially all present and after-acquired property (including intangible property) of API and the guarantors under the Facility Agreement (which guarantors include Aralez Canada). The Monitor has previously reported with respect to the security opinion conducted by the Monitor's counsel.

24. The Professional Fees are presently being paid in accordance with the provisions of the Initial Order and the Canadian DIP Credit Agreement; nevertheless, it is anticipated that certain of the Professional Fees will be unpaid upon the closing of the SPA Transaction, and further Professional Fees will be incurred post-closing. Accordingly, some amount of the Professional Fees will need to be paid post-closing.


25. The Post-Filing Expenses are being paid in the normal course or as otherwise agreed upon with suppliers. The Applicants, however, anticipate that certain Post-Filing Expenses may be incurred by API post-closing. Accordingly, some amount of the Post-Filing Expenses may need to be paid post-closing.

26. Any portion of the Reserve determined by the Monitor, in consultation with API and Deerfield, to no longer be necessary or appropriate to retain, is to be distributed to Deerfield following such a determination, up to the maximum amount of the obligations owing under the Facility Agreement.

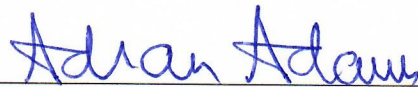
D. CONCLUSION

27. I am of the view that approving the proposed Distribution Order is fair and reasonable in the circumstances and is in the best interests of the Applicants and their stakeholders. By making distributions as soon as possible, the Applicants will save interest expense.

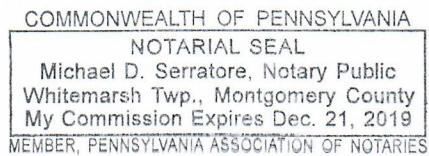
SWORN BEFORE ME at the City of Devon,
State/Province of Pennsylvania, on
December 12, 2018.

 *Michael D. Serratore*

Commissioner for Taking Affidavits

 *Adrian Adams*

ADRIAN ADAMS



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

**AFFIDAVIT OF ADRIAN ADAMS
SWORN DECEMBER 12, 2018**

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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 ARALEZ PHARMACEUTICALS INC. AND ARALEZ PHARMACEUTICALS CANADA INC.**

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

**MOTION RECORD OF THE APPLICANTS
(Returnable December 17, 2018)
(Re Distribution Order)**

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