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

SECOND REPORT OF RICHTER ADVISORY GROUP INC., IN ITS CAPACITY AS MONITOR OF ARALEZ PHARMACEUTICALS INC. AND ARALEZ PHARMACEUTICALS CANADA INC.

October 5, 2018

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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
ARALEZ PHARMACEUTICALS INC. AND ARALEZ PHARMACEUTICALS CANADA INC.

SECOND REPORT OF RICHTER ADVISORY GROUP INC., IN ITS CAPACITY AS MONITOR OF ARALEZ PHARMACEUTICALS INC. AND ARALEZ PHARMACEUTICALS CANADA INC.

OCTOBER 5, 2018

I. INTRODUCTION

1. On August 10, 2018 (the "**Filing Date**"), the Ontario Superior Court of Justice (Commercial List) (the "**Court**") issued an order (the "**Initial Order**") granting Aralez Pharmaceuticals Inc. ("**API**") and Aralez Pharmaceuticals Canada Inc. ("**Aralez Canada**" and together with API, the "**Companies**") protection pursuant to the *Companies' Creditors Arrangement Act,* R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), and appointing Richter Advisory Group Inc. ("**Richter**") as Monitor of the Companies in the CCAA proceedings (the "**Monitor**"). The Initial Order provided the Companies with a stay of proceedings until September 7, 2018 (the "**Stay Period**"). The Companies' CCAA proceedings are referred to herein as the "**CCAA Proceedings**".

2. Also on the Filing Date, Aralez Pharmaceuticals Management Inc., Aralez Pharmaceuticals R&D Inc., Aralez Pharmaceuticals U.S. Inc., POZEN Inc.("**Pozen**"), Halton Laboratories LLC, Aralez Pharmaceuticals Holdings Limited and Aralez Pharmaceuticals Trading DAC ("**Aralez DAC**" and collectively with each of the foregoing entities, the "**Chapter 11 Entities**", and with the Companies, collectively the "**Aralez Entities**") each filed voluntary petitions with the United States Bankruptcy Court for the Southern District of New York (the "**U.S. Court**") for relief under title 11 of the United States Bankruptcy Code, 11 U.S.C § 101-1532 (the "**Chapter 11 Proceedings**" and together with the CCAA proceedings, the "**Restructuring Proceedings**").

3. On September 5, 2018, the Court issued the Amended and Restated Initial Order (the "**Amended Initial Order**"), which incorporated certain amendments to the Initial Order granted on August 10, 2018, including the granting of a charge (the "**Transactional Fee Charge**") in favour of Moelis & Company LLC ("**Moelis**"), the Aralez Entities' investment banker and transaction advisor. On September 5, 2018, the Court also issued an order (the "**Stay Extension Order**") extending the stay of proceedings in respect of the Companies to November 14, 2018.

4. Richter, in its capacities as Proposed Monitor and Monitor, has previously provided this Court with two reports (the "**Prior Reports**"). The Prior Reports, the Amended Initial Order and copies of other material documents pertaining to the CCAA Proceedings are available on the Monitor's website at http://insolvency.richter.ca/A/Aralez-Pharmaceuticals.

II. PURPOSE OF REPORT

5. The purpose of this report of the Monitor (the "**Second Report**") is to provide information to the Court pertaining to:

   (i) an overview of the activities of the Companies and the Monitor since August 30, 2018, the date of the Monitor's first report to the Court (the "**First Report**");

(ii) the Companies' reported receipts and disbursements for the period from August 25, 2018, to September 28, 2018, including a comparison of reported to forecast results;

(iii) the Companies' revised cash flow forecast (the "**Revised Cash Flow Forecast**") for the period from September 29, 2018, to December 7, 2018 (the "**Forecast Period**");

(iv) the proposed stalking horse sales process (the "**Sales Process**") pursuant to which the business and assets of the Aralez Entities, including the Companies, will be marketed for sale, including the bidding procedures (the "**Bidding Procedures**") to be used in connection with the Sales Process, and the Monitor's recommendation thereon;

(v) the material terms and conditions of the share purchase agreement (the "**Canadian Stalking Horse Agreement**") dated September 18, 2018, between the Companies and Nuvo Pharmaceuticals Inc. ("**Nuvo**" or the "**Canadian Stalking Horse Bidder**") for the sale of all of the shares of Aralez Canada, which the Canadian Stalking Horse Agreement will, subject to approval by the Court, serve as a stalking horse bid as part of the Sales Process;

(vi) an overview of the Genus Amendment (as defined hereinafter);

(vii) an overview of the claims procedure (the "**Claims Procedure**") proposed by the Companies to solicit claims against the Companies and any of the Companies' current and former directors and officers (the "**Directors and Officers**");

(viii) the Companies' request for an extension of the Stay Period to December 7, 2018; and

(ix) the Monitor's support for the Companies' request that this Court grant Orders:

(a) approving the Sales Process, Bidding Procedures and the Bid Protections Charge (as defined hereinafter);

(b) approving the Canadian Stalking Horse Agreement and authorizing the Companies, *nunc pro tunc*, to execute the Canadian Stalking Horse Agreement;

(c) approving the Genus Amendment and the related relief sought by the Companies;

(d) approving the Claims Procedure and authorizing the Monitor and the Companies to carry out same (the "**Claims Procedure Order**"); and

(e) extending the Stay Period to December 7, 2018.

III. TERMS OF REFERENCE

6. In preparing this Second Report, the Monitor has relied solely on information and documents provided by the Companies and their advisors, including unaudited financial information, declarations and affidavits of the Companies' executives and other information from the Companies' financial advisor, Alvarez & Marsal Canada Inc. ("**A&M Canada**") (collectively, the "**Information**"). In accordance with industry practice, Richter has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Auditing Standards ("**GAAS**") pursuant to the *Chartered Professional Accountants of Canada Handbook* and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.

7. Future orientated financial information contained in the Revised Cash Flow Forecast is based on the Companies' estimates and assumptions regarding future events. Actual results will vary from the information presented even if the hypothetical assumptions occur, and variations may be material. Accordingly, the Monitor expresses no assurance as to whether the Revised Cash Flow Forecast will be achieved.

8. Unless otherwise stated, all monetary amounts noted herein are expressed in United States dollars, which is the Companies' common reporting currency.

9. Capitalized terms used but not defined in this Second Report are defined in the Canadian Stalking Horse Agreement, the Bidding Procedures, or the Affidavit of Mr. Adrian Adams sworn October 1, 2018 (the "**Adams Affidavit**") filed in support of the herein motion. This Second Report should be read in conjunction with the Adams Affidavit, as certain information contained in the Adams Affidavit has not been included herein in order to avoid unnecessary duplication.

IV. ACTIVITIES OF THE COMPANIES

10. Since the Filing Date, the Companies, with the assistance of its advisors and the Monitor, have been managing their operations in the normal course and working to stabilize the business as a result of the CCAA Proceedings. The Companies' primary focus, in addition to the activities listed below, has been to prepare a court-supervised sales process in coordination with the Chapter 11 Entities as well as the Claims Procedure as discussed later in the Second Report.

11. As outlined in the Adams Affidavit, the additional activities of the Companies, with the support of their financial and legal advisors, since the date of the First Report have included:

(i) managing key relationships with customers and suppliers, in particular, managing post-filing supply agreements and the continued availability of products;

(ii) working with A&M Canada, in consultation with the Monitor, in managing their cash flows and making payments to creditors in accordance with the Amended Initial Order;

(iii) providing information and cash-flow reporting to Deerfield Private Design Fund III, LP., and Deerfield Partners, L.P., as lenders (collectively, "**Deerfield**") and Deerfield Management Company L.P., as administrative agent ("**Deerfield Management**", and collectively with Deerfield, the "**DIP Lender**") as required pursuant to the terms of the debtor-in-possession credit agreement dated August 10, 2018 (the "**Canada DIP Credit Agreement**");

(iv) working with the Chapter 11 Entities to advance the Restructuring Proceedings in a coordinated manner on matters of common interest, including the Sales Process, a cross-border protocol, and developing key employee retention and incentive plans for employees and executives (the "**KEIP/KERP Plans**") that are critical to maintaining the going concern value of the Aralez Entities and key to supporting the Sales Process; and

(v) negotiating the terms of the Canadian Stalking Horse Agreement.

12. As noted in the Adams Affidavit, on August 31, 2018, the Companies and the DIP Lender executed the first amendment to the Canada DIP Credit Agreement to revise certain milestone dates in connection with the Canadian Stalking Horse Agreement and the Sales Process, as well as to correct a reporting discrepancy between the Canada DIP Credit Agreement and the debtor-in-possession financing agreement provided to the Chapter 11 Entities (the "**US DIP Credit Agreement**"). On September 14, 2018, the Companies and the DIP Lender executed the second amendment to the Canada DIP Credit Agreement to further revise certain milestone dates in connection with the Canadian Stalking Horse Agreement and the Sales Process. As permitted by the terms of the Canada DIP Credit Agreement, certain provisions of the Canada DIP Credit Agreement, including the case milestones, may be amended or modified with the written consent of the DIP Lender. Copies of the DIP amendments are attached as Exhibit "C" to the Adams Affidavit.

V. ACTIVITIES OF THE MONITOR

13. Since the date of the First Report, the Monitor's activities have included:

(i) monitoring of the Companies' cash flows and reviewing analyses on variances to the Companies' cash flow forecast;

(ii) approving the payment of certain pre-filing obligations of the Companies pursuant to the terms of the Amended Initial Order;

(iii) attending at Court in connection with the Amended Initial Order and the Stay Extension Order;

(iv) attending at the Companies' premises and meeting with the Companies' management to discuss the Companies' operations and the CCAA Proceedings;

(v) reviewing, and where appropriate, commenting on materials filed with the Court in respect of the CCAA Proceedings and Chapter 11 Proceedings;

(vi) corresponding and communicating extensively with the Companies, their legal counsel and A&M Canada with respect to the proceedings to date and extensively planning for further steps in these proceedings;

(vii) corresponding with the Companies, their legal counsel, A&M Canada, Moelis, and the DIP Lender in connection with, among other things, the Sale Process, Bidding Procedures, the KEIP/KERP Plans, the Genus Amendment (as defined hereinafter), the cross-border protocol, and the Canadian Stalking Horse Agreement;

(viii) corresponding with counsel to the Canadian Stalking Horse Bidder with respect to the Sales Process;

(ix) keeping apprised and participating in the negotiation of key documents and agreements in connection with the Sales Process;

(x) corresponding and communicating with the DIP Lender and its legal counsel;

(xi) corresponding and communicating with the proposed counsel to the Official Committee of Unsecured Creditors (the "**UCC**") appointed in the Chapter 11 Proceedings;

(xii) corresponding and communicating with the Monitor's legal counsel, Torys LLP ("**Torys**");

(xiii) responding to calls and enquiries from creditors and other stakeholders regarding the CCAA Proceedings; and

(xiv) preparing this Second Report.

VI. CASH RECEIPTS AND DISBURSEMENTS FROM AUGUST 25, 2018, TO SEPTEMBER 28, 2018

14. The Companies' consolidated cash flow projection for the period from August 25, 2018, to November 16, 2018 (the "**August 25 Cash Flow Forecast**"), was filed with the Court in support of the Companies' application returnable September 5, 2018, seeking, *inter alia*, an extension of the Stay Period.

15. The Companies have continued to provide the Monitor with their co-operation and access to their premises, books and records. The Monitor has implemented procedures for monitoring the Companies' receipts and disbursements on a weekly basis. The Monitor, with the assistance of A&M Canada, has also worked with the Companies to prepare forecast to actual variance analyses with respect to their weekly cash flows as compared to the August 25 Cash Flow Forecast.

16. A comparison of the Companies' actual cash receipts and disbursements as compared to the August 25 Cash Flow Forecast for the period ending September 28, 2018, is summarized as follows:

Aralez Pharmaceuticals Inc. and Aralez Pharmaceuticals Canada Inc. Cash Flow Variance Analysis For the Period August 25, 2018 - September 28, 2018 *(C$ in Millions)*	**Forecast**	**Actual**	**Variance**
OPERATING RECEIPTS			
Net Sales Receipts	$3.5	$3.1	($0.3)
Net Operating Receipts	**$3.5**	**$3.1**	**($0.3)**
OPERATING DISBURSEMENTS			
Inventory Purchases	($3.0)	($0.6)	$2.5
Royalty Payments	(3.6)	(0.5)	3.1
Payroll Related Expenses	(0.8)	(0.7)	0.1
Operating Expenses	(1.4)	(0.9)	0.4
Rent	(0.0)	(0.0)	0.0
API Operating Expenses	(0.8)	(0.0)	0.8
Total Operating Disbursements	**($9.6)**	**($2.7)**	**$6.9**
NET OPERATING CASH FLOW	**($6.1)**	**$0.4**	**$6.5**
NON-OPERATING DISBURSEMENTS			
Professional Fees	($1.7)	($1.2)	0.5
Total Non-Operating Disbursements	**($1.7)**	**($1.2)**	**$0.5**
Net Operating and Non-Operating Cash Flow	**($7.8)**	**($0.8)**	**$7.0**
DIP Drawdown	$4.0	$0.0	($4.0)
Total Net Cash Flow	**($3.8)**	**($0.8)**	**$3.0**
CASH BALANCE			
Beginning Balance	$7.0	$7.0	$0.0
Total Net Cash Flow	(3.8)	(0.8)	3.0
Ending Balance	**$3.2**	**$6.2**	**$3.0**

17. As reflected in the summary table above, the Companies reported a net cash outflow of approximately CAD$0.8 million over the period, and the Companies had a cash balance of approximately CAD$6.2 million, as at September 28, 2018. The actual cash balance was approximately CAD$3.0 million higher than forecast.

18. The favourable cash flow variance of approximately CAD$3.0 million principally relates to:

    (i) timing differences due to lower than anticipated inventory purchases, which are expected to reverse in the coming weeks; and

    (ii) a permanent difference due to certain contingencies or reserves included in the August 25 Cash Flow Forecast for payment of certain pre-filing amounts that have not proven to be necessary during the period, and which have been excluded from the Revised Cash Flow Forecast.

19. In accordance with the Amended Initial Order, any payments made by the Companies for expenses incurred prior to the Filing Date were made in consultation with the Monitor and the DIP Lender. These expenses were determined by the Companies to be necessary for the continued operation of the business or essential for the preservation of value for the Sales Process. As at September 28, 2018, the Companies have made approximately CAD$1.0 million in payments relating to expenses incurred prior to the Filing Date.

VII. REVISED CASH FLOW FORECAST

20. Pursuant to the Canada DIP Credit Agreement, the Companies were required to provide an updated 13-week cash flow forecast to the DIP Lender prior to October 1, 2018, in a form acceptable to the DIP Lender. The Companies, with the assistance of A&M Canada and in consultation with the Monitor, prepared the Revised Cash Flow Forecast, representing a revised forecast of its receipts, disbursements and financing requirements during the Forecast Period. The Monitor understands from its discussions with the Companies and A&M Canada that the Revised Cash Flow Forecast was approved by the DIP Lender on or about October 2, 2018.

21. A copy of the Revised Cash Flow Forecast, including the notes and assumptions thereto, together with Management's Report on the Revised Cash Flow Forecast is attached hereto as **Appendix "A"** and is summarized below:

Aralez Pharmaceuticals Inc. and Aralez Pharmaceuticals Canada Inc. 10-Week Cash Flow Forecast For the Period Ending December 7, 2018	
(C$ in Millions)	
OPERATING RECEIPTS	
Net Sales Receipts	$5.5
Net Operating Receipts	**$5.5**
OPERATING DISBURSEMENTS	
Inventory Purchases	(2.7)
Royalty Payments	(2.1)
Payroll Related Expenses	(1.1)
Operating Expenses	(2.5)
Rent	(0.1)
API Operating Expenses	(1.6)
Total Operating Disbursements	**($10.1)**
NET OPERATING CASH FLOW	**($4.6)**
NON-OPERATING DISBURSEMENTS	
Professional Fees	(3.0)
Total Non-Operating Disbursements	**($3.0)**
Net Operating and Non-Operating Cash Flow	**($7.6)**
DIP Drawdown	4.8
Total Net Cash Flow	**($2.8)**
CASH BALANCE	
Beginning Balance	**$6.2**
Total Net Cash Flow	(2.8)
Ending Balance	**$3.4**

22. As noted, the Companies had approximately CAD$6.2 million of cash on hand as at September 28, 2018,. The Revised Cash Flow Forecast projects that the Companies will experience a net cash outflow, prior to any DIP draws, of approximately CAD$7.6 million over the Forecast Period, comprised of:

    (i) cash receipts of approximately CAD$5.5 million, primarily related to the collection of existing receivables and new sales generated from the product portfolio of Aralez Canada; and

    (ii) cash disbursements of approximately CAD$13.1 million, primarily related to payroll and benefits, operating expenses, procurement of post-filing inventory, as well as the payment of certain pre-filing royalties, inventory and other expenses (as provided for in the Amended Initial Order) and the costs of the CCAA Proceedings.

23. The Revised Cash Flow Forecast projects borrowings under the Canada DIP Credit Agreement in the amount of CAD$4.8 million over the Forecast Period, which will result in an ending cash balance of approximately CAD$3.4 million as at December 7, 2018.

24. The Monitor is of the view that the material assumptions supporting the Revised Cash Flow Forecast are reasonable in the circumstances. The Monitor's Report on the Revised Cash Flow Forecast is attached hereto as **Appendix "B"**.

VIII. THE CANADIAN STALKING HORSE AGREEMENT

25. The Companies and Nuvo entered into the Canadian Stalking Horse Agreement on September 18, 2018, pursuant to which Nuvo has agreed to purchase all of the shares of Aralez Canada (the "**Canadian Assets**"), subject to higher or otherwise better offers, and approval of the Court.

26. Concurrently with the execution of the Canadian Stalking Horse Agreement, certain of the Chapter 11 Entities entered into agreements to sell certain of the assets of the Aralez Entities in the U.S., as follows:

    (i) Nuvo Pharmaceuticals (Ireland) Limited (the "**Vimovo Purchaser**"), an affiliate of the Canadian Stalking Horse Bidder, entered into an agreement (the "**Vimovo Stalking Horse Agreement**") with Pozen and Aralez DAC for the purchase of, among other things, Vimovo-related royalties (the "**Vimovo Assets**") for the purchase price of $47,500,000; and

    (ii) Toprol Acquisition LLC (the "**Toprol Purchaser**" and together with the Vimovo Purchaser and the Canadian Stalking Horse Bidder, the "**Stalking Horse Bidders**"), an affiliate of Deerfield Management, entered into an agreement (the "**Toprol Stalking Agreement**" and together with the Vimovo Stalking Horse Agreement and the Canadian Stalking Horse Agreement, the "**Stalking Horse Agreements**") with Aralez DAC for the purchase of, among other things, the Toprol-XL Franchise (the "**Toprol Assets**" and

together with the Vimovo Assets and the Canadian Assets, the "**Purchased Assets**") for consideration of $130,000,000 through a credit bid of the DIP Lender's outstanding advances to the Aralez Entities, including the outstanding advances to the Chapter 11 Entities pursuant to the US DIP Credit Agreement and the balance credited against the prepetition amounts owed by the Aralez Entities to Deerfield.

27. The Companies are not parties to either the Vimovo Stalking Horse Agreement or the Toprol Stalking Horse Agreement, and neither of the agreements are subject to approval by the Court. However, the Canadian Stalking Horse Agreement and the Vimovo Stalking Horse Agreement are cross-conditioned on one another, meaning that the Canadian Stalking Horse Bidder has the right to terminate the Canadian Stalking Horse Agreement in the event the Vimovo Purchaser is not the Successful Bidder (as defined hereinafter) with respect to the Vimovo Assets. The Monitor notes that in that case, the Canadian Stalking Horse Bidder and the Vimovo Purchaser would each be entitled to payment of the respective termination fee and expense reimbursement pursuant to the applicable Stalking Horse Agreement. The Toprol Stalking Horse Agreement is not conditioned on either of the other Stalking Horse Agreements. Further details on the Vimovo Stalking Horse Agreement and the Toprol Stalking Horse Agreement are each included in the Adams Affidavit and not repeated herein.

28. The material terms of the Canadian Stalking Horse Agreement, a copy of which is attached as Exhibit "D" to the Adams Affidavit, are as follows:

    (i) Purchaser: Nuvo Pharmaceuticals Inc., subject to the right of Nuvo to designate any Affiliate as purchaser at least three days prior to Closing, provided that, in such a case, Nuvo shall continue to remain liable, on a joint and several basis, with such Affiliate for its obligations under the Canadian Stalking Horse Agreement.

    (ii) Purchased Shares: Nuvo will purchase from API all of the issued and outstanding shares in the capital of Aralez Canada, free and clear of all Liens except Permitted Liens.

    (iii) Purchase Price: $62,500,000 (the "**Canadian Gross Purchase Price**") payable in cash on closing, subject to adjustments, if any, with respect to Net Working Capital, less Closing Indebtedness and plus Closing Net Cash, as detailed in Canadian Stalking Horse Agreement.

    (iv) Deposit: $2,500,000, which represents 4% of the gross purchase price, which was received by the Escrow Agent on September 20, 2018.

    (v) Termination Fee: $2,187,500, which represents 3.5% of the Canadian Gross Purchase Price.

    (vi) Expense Reimbursement: up to $575,000, which represents 0.9% of the Canadian Gross Purchase Price, for reasonable out-of-pocket expenses incurred by Nuvo relating to the transactions contemplated by the Canadian Stalking Horse Agreement. In the event Nuvo is the Successful Bidder, but the

Canadian Stalking Horse Agreement is terminated due the failure of the Companies to obtain a certain Required Consent as required pursuant to the Canadian Stalking Horse Agreement, the Expense Reimbursement will increase by $1,000,000 such that Nuvo will be entitled to total Expense Reimbursement of $1,575,000, which represents 2.5% of the Canadian Gross Purchase Price. However in this scenario, the Canadian Stalking Horse Bidder would not be entitled to the Termination Fee.

(vii) Outside Date: three months from the date of the Canadian Stalking Horse Agreement, being December 18, 2018.

(viii) CCAA Termination Order: if the Canadian Stalking Horse Bidder is the Successful Bidder pursuant to the Bidding Procedures, then concurrently with the motion seeking the Approval Order (as defined herein), the Companies shall bring a motion for an order (the "**CCAA Termination Order**") terminating the CCAA Proceedings as they relate to Aralez Canada.

(ix) Termination: the Canadian Stalking Horse Agreement may be terminated prior to Closing upon the occurrence of, but not limited to, the following:

(a) by mutual agreement of API and the Canadian Stalking Horse Bidder;

(b) if the Canadian Stalking Horse Bidder is not the Successful Bidder or the Back-up Bidder (as hereinafter defined and as determined pursuant to the Bidding Procedures);

(c) if the Canadian Stalking Horse Bidder is not the Successful Bidder but required to serve as the Back-up Bidder, provided however, that any termination pursuant to this clause shall not be effective until the earlier of the Outside Date and the closing of a transaction with the Successful Bidder;

(d) if Closing has not occurred by the Outside Date;

(e) by the Canadian Stalking Horse Bidder if the Bidding Procedures Order is not entered by the Court within 30 days from the execution of the Canadian Stalking Horse Agreement, or if the Court does not enter the CCAA Termination Order and an order approving (the "**Approval Order**") the transactions contemplated under the Canadian Stalking Horse Agreement within 50 days of the Bidding Procedures Order; and

(f) by the Canadian Stalking Horse Bidder if the Vimovo Stalking Horse Agreement is terminated.

(x) Claims Procedure: it is a requirement of the Companies under the Canadian Stalking Horse Agreement to bring a motion for approval of the Claims Procedure pursuant to which claims against the Companies and the Directors and Officers shall be solicited, and such process shall have a claims bar date that is before the Closing Date.

(xi) Closing Conditions: the Canadian Stalking Horse Agreement is subject to certain conditions including, but not limited to:

(a) satisfaction or waiver of certain conditions in the Vimovo Stalking Horse Agreement;

(b) entry by the Court of the Bidding Procedures Order, the CCAA Termination Order and the Approval Order, each in a form and substance satisfactory to the Canadian Stalking Horse Bidder;

(c) each of the Required Consents have been obtained or the Court shall have granted such relief relating to the Required Consents as the Canadian Stalking Horse Bidder considers necessary in its sole and absolute discretion; and

(d) the Toronto Stock Exchange shall have conditionally approved the Debt Financing on the terms set forth in the Commitment Letter (as hereinafter defined), subject only to the satisfaction of the customary listing conditions of the Toronto Stock Exchange.

(xii) Financing: the Canadian Stalking Horse Bidder has obtained a commitment letter (the "**Commitment Letter**") from Deerfield Management to make loans to Nuvo in order to enable the Canadian Stalking Horse Bidder to fund the Purchase Price.

(xiii) No Shop: From the date of execution of the Canadian Stalking Horse Agreement until the date of entry of an order approving the Bidding Procedures, the Companies shall not solicit bids or respond to any inquiries from parties regarding a potential Alternative Transaction.

29. As noted above, the Canadian Stalking Horse Agreement provides for payment of the Termination Fee (of $2,187,500) and the Expense Reimbursement (of up to $575,000 or $1,575,000, as the case may be) (together, the "**Canadian Bid Protections**") to the Canadian Stalking Horse Bidder upon the occurrence of certain events, including, but not limited to:

Event	Termination Fee	Expense Reimbursement	Total ($)	Total as % of Canadian Gross Purchase Price
Canadian Stalking Horse Bidder is not the Successful Bidder with respect to the Canadian Assets	$2,187,500	up to $575,000	$2,762,500	4.4%
Canadian Stalking Horse Bidder is the Successful Bidder with respect to the Canadian Assets but elects not to close the transaction because a particular Required Consent is not obtained	$0	up to $1,575,000	$1,575,000	2.5%
Termination fee and expense reimbursement are payable to the Vimovo Purchaser pursuant to the Vimovo Stalking Horse Agreement	$2,187,500	up to $575,000	$2,762,500	4.4%

30. As security for payment of the Canadian Bid Protections, the Companies are seeking, as part of the within motion, a priority charge (the "**Bid Protections Charge**") in favour of the Canadian Stalking Horse Bidder. The proposed Bid Protections Charge would rank in priority to all other Charges in the Amended Initial Order, other than the Administration Charge and the DIP Lenders' Charge (as defined in the Amended Initial Order).

31. The Canadian Bid Protections range between 2.5% and 4.4% of the Canadian Gross Purchase Price, with the lower end of the range representing the scenario where the Canadian Stalking Horse Bidder is the Successful Bidder with respect to the Canadian Assets but elects not to close the transaction because certain Required Consents are not obtained.

32. The Monitor and its counsel have reviewed recent comparable stalking horse agreements wherein bid protections have been approved in transactions of this nature, and note that the Canadian Bid Protections are on the higher end of market parameters, which typically range between 1.5% to 3.5% of the purchase price for a break-fee and 0.5% to 1.0% for expense reimbursement. Further, the Monitor notes that the increase in the Expense Reimbursement in the event that the Canadian Stalking Horse Bidder elects not to close because a condition precedent is not satisfied (being the failure to obtain a particular Required Consent), is also a non-standard/non-market condition.

33. The Monitor notes that the Canadian Gross Purchase Price is subject to certain closing adjustments related to Net Working Capital, Indebtedness and Net Cash. The Monitor understands that Indebtedness, as defined in the Canadian Stalking Horse Agreement, does not include normal course liabilities, but rather specific extraordinary obligations or liabilities of Aralez Canada, all as detailed in the Disclosure Letter provided by API to the Canadian Stalking Horse Bidder. The Monitor understands the Disclosure Letter will be filed with this Court on a sealed and confidential basis, but will be made available to potential acquirers in the data room as part of the Sales Process.

34. Based on the Information provided to the Monitor by the Companies and A&M Canada, the Monitor understands Closing Indebtedness could be approximately $3.5 million or higher, pending the outcome of the Claims Procedure. As noted, Closing Indebtedness would be deducted from the Canadian Gross Purchase Price if not paid or otherwise satisfied by the Companies prior to Closing. However, the Monitor notes that any payment of Indebtedness by the Companies prior to Closing would result in a corresponding increase in borrowings under the Canada DIP Credit Agreement, and therefore, no net impact on the estate.

35. Notwithstanding the foregoing, the Monitor is of the view that the Canadian Bid Protections, including the requested priority charge, are fair and reasonable in the circumstances, for the following reasons:

(i) the Canadian Bid Protections were heavily negotiated between the Companies and the Canadian Stalking Horse Bidder, are integral to the Canadian Stalking Horse Agreement, and the Canadian Stalking Horse Bidder was not willing to execute the Canadian Stalking Horse Agreement without the inclusion of the Canadian Bid Protections;

(ii) approval of the Canadian Stalking Horse Agreement, which would not be possible without approval of the Canadian Bid Protections, will provide stability to the Companies during the CCAA Proceedings by informing stakeholders, such as employees, customers and vendors, that there is a going-concern buyer for the business;

(iii) the Bid Protections, while on the higher end of market parameters, are reasonable in the circumstances to compensate the Canadian Stalking Horse Bidder for costs and expenses in relation to entering into the Canadian Stalking Horse Agreement, and will not unduly "chill" bidding on the Canadian Assets as part of the proposed Sales Process (as described in further detail below); and

(iv) Deerfield is supportive of the Canadian Bid Protections, including the priority ranking of the Bid Protections Charge.

36. The Stalking Horse Agreements set a "floor price" for the Purchased Assets. The Bidding Procedures, as discussed later in the Second Report, will provide for a fair and transparent marketing process that should allow the Aralez Entities to maximize realizations by seeking higher or otherwise better offers for the Purchased Assets.

IX. GENUS AMENDMENT

37. Prior to the Filing Date, on July 10, 2018, API entered into a purchase agreement (the "**Genus APA**") with Genus Lifesciences, Inc. ("**Genus**"), pursuant to which API and certain of the Chapter 11 Entities transferred or licensed certain assets relating to the drug Yosprala, which was marketed by the Aralez Entities in the U.S. In order to correct certain provisions of the Genus APA relating to certain patents, API, Pozen and Genus entered into an amendment (the "**Genus Amendment**") to the Genus APA dated September 17, 2018. Details of the Genus Amendment, a copy of which is attached as Exhibit "F" to the Adams Affidavit, are extensively detailed in Adams Affidavit and not repeated herein.

38. The Genus Amendment will permit Pozen to continue to have clear and valid title to the Specified Patents and properly include those patents in the Vimovo Assets under the Vimovo Stalking Horse Agreement. As such, it is a condition of the Vimovo Purchaser, to proceed as stalking horse, that the U.S. Court authorizes Pozen's entry into and performance under the Genus Amendment. Further, the Bidding Procedures contemplate that

the Vimovo Purchaser or any other Successful Bidder for the Vimovo Assets affirmatively assumes the obligations under the Genus Amendment.

39. The Genus Amendment requires that API seek approval from this Court of the Genus Amendment, the assumption of the Genus APA, as amended, the assumption of the licenses granted under the Genus APA, and approval of such obligations required to give effect to the Genus APA. The Monitor understands the Chapter 11 Entities are also simultaneously seeking approval of same from the U.S. Court. Other than the aforementioned approvals, the Monitor understands, from its discussions with counsel to the Companies, that the Genus Amendment does not impose any material obligations on the Companies.

X. SALES PROCESS

Pre-Filing Marketing Efforts

40. Prior to the Filing Date, in the face of mounting financial difficulties, management of the Aralez Entities deemed it prudent to consider various strategic alternatives, including potential refinancing transactions, product divestures and a sale of the Aralez Entities. The Monitor understands from its discussions with the Companies that, in order to pursue its strategic alternatives, the Aralez Entities engaged Moelis to commence a marketing process, which included preparing marketing materials and canvassing the market for potential strategic and financial investors and/or buyers for the Aralez Entities and its assets (the "**Pre-Filing Marketing Process**"). As per the Adams Affidavit, as part of the Pre-Filing Marketing Process, Moelis reached out to 68 potential acquiring parties in respect of a transaction for the Toprol Assets, and 38 potential acquiring parties in respect of a transaction for either the entire company or a combination of the Vimovo Assets and certain of the Canadian Assets.

41. The Aralez Entities ultimately distributed a confidential presentation to: (i) 27 potential acquirers who signed a nondisclosure agreement ("**NDA**") with respect to the Toprol Assets and (ii) 26 potential acquirers who signed an NDA with respect to a combination of the Vimovo Assets and certain of the Canadian Assets. All parties that signed NDAs received a confidential presentation and 14 parties received confidential presentations with respect to both groups of assets.

42. The Monitor conducted a review of the Pre-Filing Marketing Process, which included a review of certain key transaction documents. As part of the Pre-Filing Marketing Process, the Monitor understands that Moelis conducted preliminary diligence on the financial records of the Aralez Entities to: (i) assess the business and other risks to potential transactions and, (ii) prepare standard documentation for marketing the Aralez Entities to potential acquirers, including an opportunity summary and confidential management presentations. Moelis also

assisted with the preparation/assembly of an electronic data room which housed financial, operational and other data of the Aralez Entities.

43. Based on a review of documents prepared/assembled in connection with the Pre-Filing Marketing Process, including those contained in the data room, the Monitor is of the view that sufficient information pertaining to the Aralez Entities and its assets was made available to enable potential acquirers to evaluate the transaction opportunity.

44. Ultimately, after consideration of the alternatives, the board of directors of the Aralez Entities (the "**Board**"), with input and advice from its legal and financial advisors, determined that the appropriate approach was for the Aralez Entities to proceed with a court-supervised sale process for certain of its assets pursuant to the CCAA, with respect to the Companies, and the United States Bankruptcy Code, with respect to the Chapter 11 Entities. Furthermore, the Board directed Moelis to: (i) invite potential acquirers to participate in more extensive due diligence and (ii) conduct a final round of bidding to secure a stalking horse purchaser(s).

45. On the Filing Date, the Aralez Entities announced their intentions to enter into the Stalking Horse Agreements to sell the Purchased Assets.

Bid Procedures

46. The Companies and the Chapter 11 Entities intend to conduct the Sales Process in a coordinated fashion, with the same procedures and timelines, in an effort to maximize value of the Aralez Entities, maintain flexibility and reduce overall costs to the Aralez Entities.

47. The Bidding Procedures were negotiated with the Stalking Horse Bidders, in consultation with the Monitor, and designed to promote a competitive, fair, and expedient Sales Process that seeks to maximize the value of the Purchased Assets. If approved, the Bidding Procedures will allow the Aralez Entities to solicit and identify bids from potential buyers that constitute the highest or otherwise best offer for the Purchased Assets on a schedule that is consistent with the milestones set forth in the Stalking Horse Agreements, the DIP financing agreements, and with the overall objectives of the Aralez Entities' Restructuring Proceedings.

48. The following table summarizes the key dates and timelines pursuant to the Bidding Procedures:

Date	Activity
November 19, 2018 at 5:00 p.m. (EST)	Bid Deadline

November 21, 2018 at 5:00 p.m. (EST)	Deadline to notify "Potential Bidders" of their status as "Qualified Bidders"
November 27, 2018 at 11:00 a.m. (EST)	Auction Date (if required) to be held at the offices of Willkie Farr & Gallagher LLP, New York, NY
November 28, 2018 at 5:00 p.m. (EST)	Notice of Successful Bidders
November 29, 2018 at 11:00 a.m. (EST) in the U.S. Court The earliest date available after November 29, 2018 in the Court	Sale Hearings to approve and authorize the sale transaction(s) to the Successful Bidder(s)

49. The key features of the Bidding Procedures, a copy of which is attached as Exhibit "H" to the Adams Affidavit, are outlined below:

(i) Consultation Parties: the Aralez Entities are required to consult with the Consultation Parties, but the Aralez Entities shall retain decision-making authority with respect to Bids and the Auction, subject to any orders entered by the Court or the U.S. Court. The Consultation Parties consist of the Monitor and its counsel with respect to the Canadian Assets and the Vimovo Assets, or any other assets proposed to be purchased that are conditioned upon the purchase of the Canadian Assets, and proposed counsel to the UCC with respect to the Toprol Assets and the Vimovo Assets. The DIP Lender is also a Consultation Party but as it is an affiliate of the Toprol Bidder and the financing source for the Canadian Stalking Horse Bidder and the Vimovo Purchaser, the DIP Lender is not required to be consulted.

(ii) Notice Parties: A Qualified Bidder must provide a copy of its bid to the Notice Parties, consisting of: (a) counsel to the Companies, counsel to the DIP Lender, the Monitor and its counsel, with respect to the Canadian Assets; and (b) counsel to the Chapter 11 Entities, counsel to the DIP Lender, and proposed counsel to the UCC, with respect to the Toprol Assets and/or the Vimovo Assets.

(iii) Qualified Bidder: Each of the Stalking Horse Bidders is considered a "Qualified Bidder" and each of the Stalking Horse Agreements is considered a "Qualified Bid" pursuant to the Bidding Procedures. In order to be considered a "Qualified Bid", the party submitting the bid must, among other things:

(a) disclose whether the bid is for some or all of the Purchased Assets;

(b) state that the Qualified Bidder offers to purchase, in cash, some or all of the Canadian Assets, Vimovo Assets and/or Toprol Assets upon terms and conditions that are at least as favourable as the applicable Stalking Horse Agreements;

(c) include a commitment to close the transaction(s) within the timeframes contemplated in the applicable Stalking Horse Agreements;

(d) subject to subsection (e) below, include a written statement that such offer be binding and irrevocable unless and until the Aralez Entities accept a higher or otherwise better bid and such Qualified Bidder is not selected as a Back-Up Bidder;

(e) include an acknowledgement that if such Qualified Bidder is selected as the Successful Bidder, its offer shall remain irrevocable until the earlier of one month after the designation of the Successful Bid at the Auction or the closing of a transaction(s) with the Successful Bidder(s);

(f) be accompanied by a deposit equal to 4% of the purchase price;

(g) provide a duly authorized and executed copy of an asset and/or share purchase agreement, including the purchase price for the applicable Purchased Assets, with copies marked to show any amendments and modifications to the applicable Stalking Horse Agreement(s);

(h) not include any conditions that are less favorable to the Aralez Entities than the conditions in the applicable Stalking Horse Agreement(s);

(i) with respect to the Canadian Assets (in combination with any other bids for some or all of such assets), provide for a cash purchase price that exceeds the Canadian Gross Purchase Price by at least $3,262,500, which represents the sum of: (i) the Bid Protections and (ii) $500,000, and otherwise have a value that is greater or otherwise better than the value offered under the Canadian Stalking Horse Agreement; and

(j) be received by the applicable Notice Parties on or prior to 5:00 p.m. (prevailing Eastern Time) on November 19, 2018 (the "**Bid Deadline**").

(iv) Auction: significant aspects of the Auction include the following:

(a) if the Aralez Entities do not receive a Qualified Bid with respect to any of the Toprol Assets, Vimovo Assets or the Canadian Assets, other than the applicable Stalking Horse Bid, the Aralez Entities, after consultation with the Consultation Parties, will not hold an Auction (as defined herein) with respect to such Purchased Assets, and the applicable Stalking Horse Purchaser will be deemed the Successful Bidder on the Bid Deadline with respect to such Purchased Assets;

(b) if one or more Qualified Bids (in addition to the applicable Stalking Horse Agreement) are received by the Bid Deadline for some or all of the Purchased Assets, the Aralez Entities will conduct an auction(s) at 11:00 a.m. on November 27, 2018 at the offices of Willkie Farr & Gallagher LLP in New York, NY (the "**Auction**") and Qualified Bidders for such Purchased Assets will be invited to attend in order to determine the Successful Bidder(s);

(c) only the Aralez Entities, the applicable Notice Parties and Consultation Parties, the Stalking Horse Bidders and any other Qualified Bidders, along with their respective representatives and advisors, will be entitled to attend the Auction;

(d) at least one day prior to the Auction, the Aralez Entities will send a notice to all Qualified Bidders indicating which of the Qualified Bid(s) will be the Starting Bid(s) at the Auction;

(e) to the extent that a Qualified Bidder(s) provides a Qualified Bid on two or more of the Canadian Assets, Vimovo Assets and/or Toprol Assets, the Aralez Entities reserve the right to require such Qualified Bidder(s), at or before the Auction, to allocate the purchase price between and/or among the Canadian Assets, Vimovo Assets and/or Toprol Assets;

(f) bidding at the Auction will begin with the Starting Bid(s) and continue in bidding increments (each a "**Subsequent Bid**") providing a net value to the applicable estate of at least an additional: (i) $1,000,000 above the prior bid for the Toprol Assets, (ii) $500,000 above the prior bid for the Vimovo Assets and (iii) $500,000 above the prior bid for the Canadian Assets;

(g) after each round of bidding, the Aralez Entities will announce the Subsequent Bid that the Aralez Entities have determined to be the highest or otherwise best offer for the Toprol Assets, the Vimovo Assets and the Canadian Assets (each or collectively, as applicable, the "**Highest Bid**"). A round of bidding will conclude after each participating Qualified Bidder has had an opportunity to submit a Subsequent Bid with full knowledge of the Highest Bid;

(h) prior to the conclusion of the Auction, the Aralez Entities, in consultation with the applicable Consultation Parties, will determine which offer or group of offers is the highest or otherwise best offer or offers for the applicable Purchased Assets (such bid or bids, as applicable, the "**Successful Bid(s)**" and the bidder(s) making such bid, the "**Successful Bidder(s)**"), and communicate to the applicable Stalking Horse Bidder(s) and the other applicable Qualified Bidders the identity of the Successful Bidder(s) and the material terms of the Successful Bid(s). The Aralez Entities shall also determine the Qualified Bidder with the next highest or otherwise best bid for the Purchased Assets and deem that party to be the "**Back-Up Bidder**". If there is more than one Successful Bid, the Aralez Entities shall have the ability to designate a Back-Up Bidder for each Successful Bid;

(i) the determination of the Successful Bid(s) by the Aralez Entities at the conclusion of the Auction shall be final, subject only to approval by the U.S. Court as to the Toprol Assets and Vimovo Assets, and this Court as to the Canadian Assets; and

(j) within one (1) business day after conclusion of the Auction, the Aralez Entities shall file a notice identifying the Successful Bidder(s) with the applicable Courts.

50. The Aralez Entities may, after consultation with the Consultation Parties, modify or amend the rules, procedures and deadlines set forth in the Bidding Procedures, provided that no modifications or amendments shall be permitted to the Bid Protections afforded to a Stalking Horse Bidder in accordance with the applicable Stalking Horse Agreement, unless agreed to in writing by the applicable Stalking Horse Bidder and the Aralez Entities or otherwise ordered by the Courts.

51. The Bidding Procedures provide for an orderly and appropriately competitive process through which potential acquirers may submit bids for some or all of the Purchased Assets. Given the time constraints, and in light of the Pre-Filing Marketing Process, the Aralez Entities, with the assistance of their advisors, have structured the Bidding Procedures to market the Purchased Assets for a period of approximately 40 days in order to promote active bidding by potential acquirers and to confirm the highest or otherwise best offer reasonably available for the Purchased Assets. The Monitor notes that the market has been aware for some time that the assets of the Aralez Entities are for sale as this was disclosed in the Prior Reports, as well as the Companies' application materials filed previously in these CCAA Proceedings. Additionally, the Bidding Procedures will allow the Aralez Entities to conduct the Auction, if required, in a fair and transparent manner that will encourage participation by financially capable bidders with demonstrated ability to consummate a timely transaction(s).

52. In the Monitor's view, the Bidding Procedures are consistent with market practice, provide a reasonable opportunity for potential acquirers to submit higher or otherwise better offers to the Stalking Horse Agreements, and are reasonable and appropriate in the circumstances.

53. The Monitor notes that although the Canadian Stalking Horse Agreement is currently structured as a share purchase agreement, the Bidding Procedures allow potential acquirers to purchase the assets of Aralez Canada rather than the shares of Aralez Canada as contemplated under the Canadian Stalking Horse Agreement, which may exclude certain liabilities currently assumed under the Canadian Stalking Horse Agreement. If a Qualified Bid is received for the Canadian Assets as part of the Sales Process, it is the intention of the Monitor, in consultation with the Companies and its advisors, to evaluate this offer in its entirety to fully understand the impact on all stakeholders.

XI. CLAIMS PROCEDURE

54. The following section provides an overview of the proposed Claims Procedure. All interested parties are strongly encouraged to read the Claims Procedure Order, as full details of the Claims Procedure are provided therein. The information contained in this section is provided in summary format only.

55. Unless otherwise defined, capitalized terms used in this section shall be as defined in the Amended Initial Order, or the Claims Procedure Order, as applicable.

56. As a requirement under the Canadian Stalking Horse Agreement, the Companies are seeking approval of the Claims Procedure for the solicitation of claims against the Companies and its Directors and Officers. The Monitor, with the assistance of the Companies, will be responsible for the administration of the Claims Procedure. The Claims Procedure will address: (i) Pre-filing Claims; (ii) Restructuring Claims; and (iii) D&O Claims (collectively "**Claims**").

57. The Claims Procedure will not solicit claims secured by any of the Court-ordered charges in the CCAA Proceedings or pre-filing secured debt in favour of Deerfield.

58. Pursuant to the Amended Initial Order, the Companies indemnified the Directors and Officers against certain claims and liabilities incurred after the Filing Date. The Directors were also granted a Directors' Charge as security for this indemnity in an amount not to exceed CAD$1.0 million. It is necessary to understand the scope and nature of any potential claims that may be secured by the Directors' Charge and to discharge the Directors' Charge in connection with any potential Plan or sale as part of the CCAA Proceedings. Accordingly, the Companies have sought to solicit any such D&O Claims now.

59. The key terms of the Claims Procedure Order are summarized below:

Notice

(i) The Monitor shall no later than three (3) Business Days following the making of the Claims Procedure Order send a copy of the Claims Package, by ordinary mail or electronic transmission, on behalf of the Companies to each of the Known Creditors (to the last known address per the Companies' books and records as provided by the Companies to the Monitor) and to any Claimant or D&O Claimant who requests a Claims Package;

(ii) the Monitor shall cause to be published, for at least one (1) Business Day, on or before October 17, 2018, the Notice Letter in The Globe and Mail (National Edition);

(iii) with respect to Restructuring Claims arising from the restructuring, disclaimer, resiliation, termination or breach of any lease, contract, or other agreement or obligation, on or after the date of this Claims Procedure Order, the Monitor shall send to the counterparty(ies) to such lease, contract or other agreement or obligation a Claims Package no later than five (5) Business Days following the date of the restructuring, disclaimer, resiliation, termination or breach of any lease, contract, or other agreement or obligation;

(iv) the Monitor shall post a copy of the Claims Procedure Order, the Companies' Motion Record in respect of the Claims Procedure Order, and the Claims Package on the Monitor's Website at http://insolvency.richter.ca/A/Aralez-Pharmaceuticals as soon as practicable and no later than 5:00 p.m. on the first Business Day following the date of this Order; and

(v) upon request by a Claimant for a Claims Package or documents or information relating to the Claims Procedure prior to the Claims Bar Date, as applicable, the Monitor shall forthwith send a Claims Package, direct such Person to the documents posted on the Monitor's Website, or otherwise respond to the request for information or documents as the Monitor considers appropriate in the circumstances.

Claims Bar Date

(i) All creditors making Pre-Filing Claims or D&O Claims will be required to file claims with the Monitor by November 29, 2018, by 5:00 p.m. (EST) (the "**Claims Bar Date**");

(ii) all creditors making Restructuring Claims will be required to file claims with the Monitor by the later of: (i) the Claims Bar Date and (ii) 10 days after the date on which the Monitor sends a Claims Package with respect to a Restructuring Claim (the "**Restructuring Claims Bar Date**"); and

(iii) any Claimant that does not file a Proof of Claim by the Claims Bar Date or Restructuring Claims Bar Date, as applicable, will, *inter alia*: (i) not be entitled to receive any distribution under a Plan or otherwise; and (ii) be forever barred from making or enforcing any such Claim against the Companies and/or the Directors and Officers, and such Claim shall be extinguished without any further act or notification.

60. The Monitor believes the Claims Bar Date and the Restructuring Claims Bar Date are reasonable in that they provide Claimants with approximately 50 days from the date of the Claims Procedure Order to evaluate and submit any Claim that they may have against the Companies and the Directors and Officers.

61. As the Canadian Stalking Horse Agreement only calls for solicitation and not the resolution of Claims against the Companies and the Directors and Officers, a process to adjudicate disputed claims is not part of the Claims Procedure Order. The Monitor understands from discussions with counsel to the Companies that the Companies intend, if necessary, to return to the Court at a later date to seek an order with respect to the

adjudication of Claims. Furthermore, the process for evaluating and determining intercompany claims is not contemplated in the Claims Procedure Order and will also be addressed at a later date. The Monitor will report to Court at a later date regarding the process to adjudicate claims and determine/resolve intercompany claims.

62. The Companies believe that the proposed Claims Procedure will allow the Companies to establish Claims against them and the Directors and Officers, as is required pursuant to the Canadian Stalking Horse Agreement. Additionally, in the event that the Companies intend to proceed with a distribution and/or one or more creditor meetings for the purpose of voting in respect of a restructuring plan, running the Claims Procedure will facilitate their ability to complete the CCAA proceedings on a timely basis and complete a distribution amongst Claimants with proven Claims.

63. The Monitor believes that the Companies have proposed an achievable timetable to complete the Claims Procedure. The Monitor believes that the Claims Procedure is fair and reasonable and respectfully recommends that the Company's request for the approval of the Claims Procedure be granted.

XII. STAY EXTENSION

64. The current stay period expires on November 14, 2018, which is prior to the completion of the Sales Process and the Claims Procedure. The Companies are seeking an extension of the Stay Period to December 7, 2018, in order to avoid the cost of a further stay extension motion while the Sales Process and Claims Process are ongoing.

65. The Monitor supports the Companies' request for an extension of the stay of proceedings from November 15, 2018, to December 7, 2018, for the following reasons:

(i) the Companies are acting in good faith and with due diligence;

(ii) the extension will provide the opportunity to complete the Sales Process;

(iii) it will allow the Monitor and the Companies the opportunity to complete the Claims Procedure;

(iv) the granting of the extension does not materially prejudice any creditor of the Companies as the Revised Cash Flow Forecast reflects that the Companies are projected to have sufficient funding to continue to operate in the normal course through the proposed stay extension period; and

(v) Deerfield, being the Secured Lender and DIP Lender in these CCAA Proceedings, supports the stay extension.

XIII. UPDATE ON CERTAIN MATTERS IN THE CHAPTER 11 PROCEEDINGS

66. The Chapter 11 Entities intend to seek approval of, among other things, the Bidding Procedures, the Vimovo Stalking Horse Agreement and the Toprol Stalking Horse Agreement in the U.S. Court at their omnibus hearing scheduled for 10:30am (EST) on October 10, 2018.

67. While the Monitor is not monitoring the Chapter 11 Proceedings, the Monitor understands that, as of the date of the Second Report, the Chapter 11 Entities received the following objections in respect of its motion for an order approving the Bidding Procedures:

    (i) objection from the UCC on the Bidding Procedures and the Stalking Horse Agreements, including the bid protections provided therein. A copy of the UCC objection is attached hereto as **Appendix "C"**; and

    (ii) limited objection and reservation of rights of Mylan Pharmaceuticals Inc., Mylan Laboratories Ltd., and Mylan Inc., who takes no position with the respect to the approval of the Bidding Procedures but is a generic drug manufacturer and was engaged in litigation with Pozen over Vimovo patent infringements, prior to the Filing Date. A copy of the objection is attached hereto as **Appendix "D"**.

68. The Monitor understands that the Office of the United States Trustee for Region 2 (the "**U.S. Trustee**") may also have potential objections, but as of the date of the Second Report has not filed any formal objections. Further, the Chapter 11 Entities are engaged in discussions with the U.S. Trustee with a view to resolving any such concerns prior to the hearing.

69. The Monitor understands that the Chapter 11 Entities are discussing the concerns raised with the relevant parties, and that the Companies will update the Court at the hearing on October 10, 2018 as to the resolution in full or in part of these issues. Further, it is the Monitor's expectation that any changes agreed to by the relevant parties (including Nuvo) with respect to the Bidding Procedures and the Stalking Horse Agreements (including any reduction in termination fees or more favourable terms for the Aralez Entities) would also be made, as applicable, in these CCAA Proceedings and the Canadian Stalking Horse Agreement.

Upcoming Matters in the Chapter 11 Proceedings

70. The Chapter 11 Entities have scheduled the following omnibus hearing dates with the U.S. Court::

    (i) 10:00 a.m. on October 30, 2018 in respect of, among other things, the Chapter 11 Entities' motion for an order approving the KEIP/KERP Plan; and

    (ii) 11:00 a.m. on November 29, 2018, in respect of a Sale Hearing to approve and authorize the sale transaction(s) to the Successful Bidder(s), subject to approval of the Bidding Procedures.

XIV. MONITOR'S CONCLUSION AND RECOMMENDATIONS

71. For the reasons set out in the Second Report, the Monitor is of the view that the relief requested by the Companies is both appropriate and reasonable. As such, the Monitor recommends that this Court make orders:

(i) approving the Sales Process, Bidding Procedures and the Bid Protections Charge;

(ii) approving the Canadian Stalking Horse Agreement and authorizing the Companies, *nunc pro tunc*, to execute the Canadian Stalking Horse Agreement;

(iii) approving the Genus Amendment and the related relief sought by the Companies;

(iv) approving the Claims Procedure and authorizing the Monitor and the Companies to carry out same; and

(v) extending the Stay Period to December 7, 2018.

All of which is respectfully submitted this 5th day of October, 2018.

Richter Advisory Group Inc.
In its capacity as Monitor of
Aralez Pharmaceuticals Inc. and
Aralez Pharmaceuticals Canada Inc. and not
in its personal or corporate capacity

Per:

Paul van Eyk,
CPA, CA-IFA, CIRP, LIT, Fellow of INSOL
Senior Vice President

Pritesh Patel,
MBA, CFA, CIRP, LIT
Vice President

APPENDIX “A”

Aralez Pharmaceuticals Inc. and
Aralez Pharmaceuticals Canada Inc.
10-Week Cash Flow Forecast
For the Period Ending December 7, 2018

(C$ in Millions)	Notes	10/5/18	10/12/18	10/19/18	10/26/18	11/2/18	11/9/18	11/16/18	11/23/18	11/30/18	12/7/18	Total
OPERATING RECEIPTS												
Net Sales Receipts	2	$0.6	$0.4	$0.5	$0.5	$0.5	$0.5	$0.5	$0.5	$0.5	$0.6	$5.5
Net Operating Receipts		**$0.6**	**$0.4**	**$0.5**	**$0.5**	**$0.5**	**$0.5**	**$0.5**	**$0.5**	**$0.5**	**$0.6**	**$5.5**
OPERATING DISBURSEMENTS												
Inventory Purchases	3	(0.1)	(0.3)	(0.1)	(0.3)	0.0	(0.1)	(0.4)	(1.3)	0.0	0.0	(2.7)
Royalty Payments	4	0.0	0.0	(0.1)	(0.4)	(1.1)	(0.0)	(0.3)	(0.2)	0.0	0.0	(2.1)
Payroll Related Expenses	5	0.0	0.0	(0.2)	0.0	(0.2)	0.0	(0.4)	0.0	(0.2)	0.0	(1.1)
Operating Expenses	6	(0.3)	(0.5)	(0.4)	(0.1)	(0.4)	(0.1)	(0.3)	(0.1)	(0.3)	(0.1)	(2.5)
Rent	7	(0.0)	0.0	0.0	0.0	(0.0)	0.0	0.0	0.0	0.0	(0.0)	(0.1)
API Operating Expenses	8	(0.3)	(0.1)	(0.3)	(0.1)	(0.1)	(0.1)	(0.1)	(0.1)	(0.1)	(0.1)	(1.6)
Total Operating Disbursements		**($0.7)**	**($0.9)**	**($1.1)**	**($0.9)**	**($1.9)**	**($0.4)**	**($1.6)**	**($1.6)**	**($0.6)**	**($0.3)**	**($10.1)**
NET OPERATING CASH FLOW		**($0.1)**	**($0.5)**	**($0.6)**	**($0.4)**	**($1.3)**	**$0.1**	**($1.1)**	**($1.1)**	**($0.1)**	**$0.4**	**($4.6)**
NON-OPERATING DISBURSEMENTS												
Professional Fees	9	(0.6)	(0.6)	(0.3)	(0.2)	(0.3)	(0.2)	(0.2)	(0.1)	(0.2)	(0.3)	(3.0)
Total Non-Operating Disbursements		**($0.6)**	**($0.6)**	**($0.3)**	**($0.2)**	**($0.3)**	**($0.2)**	**($0.2)**	**($0.1)**	**($0.2)**	**($0.3)**	**($3.0)**
Net Operating and Non-Operating Cash Flow		**($0.7)**	**($1.1)**	**($0.9)**	**($0.6)**	**($1.6)**	**($0.1)**	**($1.3)**	**($1.2)**	**($0.2)**	**$0.1**	**($7.6)**
DIP Drawdown		0.0	0.0	0.0	0.3	1.6	0.1	1.3	1.2	0.2	0.0	4.8
Total Net Cash Flow		**($0.7)**	**($1.1)**	**($0.9)**	**($0.3)**	**$0.0**	**$0.0**	**$0.0**	**$0.0**	**$0.0**	**$0.1**	**($2.8)**
CASH BALANCE												
Beginning Balance	10	$6.2	$5.6	$4.5	$3.6	$3.3	$3.3	$3.3	$3.3	$3.3	$3.3	$6.2
Total Net Cash Flow		(0.7)	(1.1)	(0.9)	(0.3)	0.0	0.0	0.0	0.0	0.0	0.1	(2.8)
Ending Balance		**$5.6**	**$4.5**	**$3.6**	**$3.3**	**$3.3**	**$3.3**	**$3.3**	**$3.3**	**$3.3**	**$3.4**	**$3.4**

Aralez Pharmaceuticals Inc. and
Aralez Pharmaceuticals Canada Inc.
10-Week Cash Flow Forecast
Notes and Summary of Assumptions

In the Matter of the CCAA Proceedings of Aralez Pharmaceuticals Inc. ("API") and Aralez Pharmaceuticals Canada Inc. (collectively with API, the "Companies").

Disclaimer

In preparing this cash flow forecast (the "**Canadian Forecast**"), the Companies have relied upon unaudited financial information and have not attempted to further verify the accuracy or completeness of such information. Since the Canadian Forecast is based on assumptions about future events and conditions that are not ascertainable, the actual results achieved during the Canadian Forecast period may vary from the Canadian Forecast, even if the assumptions materialize, and such variations may be material. There is no representation, warranty or other assurance that any of the estimates, forecasts or projections will be realized.

The Canadian Forecast is presented in millions of Canadian dollars. Receipts and disbursements denominated in U.S. currency or the Euro have been converted to Canadian dollars at an exchange rate of US/CAD = $1.31 and Euro/CAD = $1.53, respectively.

Note 1 Purpose of Canadian Forecast

The purpose of the Canadian Forecast is to present the estimated cash receipts and disbursements of the Companies for the period from September 29, 2018 to December 7, 2018 in respect of its proceedings under the *Companies' Creditors Arrangement Act* (the "**CCAA**"). The Canadian Forecast has been prepared by management of the Companies ("**Management**") based on available financial information at the date of the Companies' application for, *inter alia*, an extension of the stay period to December 7, 2018. Readers are cautioned that this information may not be appropriate for other purposes.

Note 2 Net Sales Receipts

Net Sales Receipts are forecasted based on current sales forecast prepared by Management. Adjustments have been made to reflect returns, rebates, and discounts, based on Management's best estimate using historical rates. Net Sales Receipts are net of over-the-counter fees and wholesaler fees-for-service related to distribution and selling costs charged by customers. The majority of these fees are deducted from sales when sales collections are remitted to the Companies.

Note 3 Inventory Purchases

The Companies purchase inventory from various third-party suppliers. The timing of disbursements for inventory purchases is based on expected monthly shipping windows and delivery dates of on-order goods and future expected purchases and, as such, is subject to large fluctuations in timing.

Note 4 Royalty Payments

The Companies pay royalties and/or license and milestone payments to third-party partners for the right to distribute and sell certain products. The timing and amount of disbursements for royalty payments is based on forecasted sales of the products and timing of receipt of invoices and, as such, is subject to large fluctuations in timing and magnitude.

Note 5 Payroll Related Expenses

Payroll and related payments include salaries, payroll taxes, remittances, quarterly commissions, RRSP contribution matching for salaried employees and monthly fees paid to the directors. Payroll related expenses are forecasted based on historical run-rates. Employees are paid bi-weekly, no weeks in arrears.

Note 6 Operating Expenses

Operating expenses include general business expenses including: marketing costs, sales team expenses, regulatory filing fees, research and development related costs, general and administration expenses and freight and distribution costs (excluding the OTC and fee-for-service fees which are included in Net Sales Receipts, as noted in note 2 above). Operating expenses are forecasted to be paid bi-weekly by cheque.

Note 7 Rent

The Canadian Forecast assumes that rent and occupancy costs for the Mississauga head office are paid on the first day of each month. Occupancy costs include utilities (hydro, gas, internet and telephone), CAM, and realty taxes.

Note 8 API Operating Expenses

The Canadian Forecast includes operating expenses related to API, which primarily relate to legal fees incurred for compliance, patent and trademark work, employment matters, audit fees, accounting and SOX related fees and tax fees.

Note 9 Professional Fees

These disbursements include payments to: (i) the Companies' secured creditor's counsel, financial advisor and legal counsel, (ii) the Monitor and its legal counsel, and (iii) Moelis & Company LLC, investment banker to the Companies and their affiliates.

Note 10 Opening Cash Balance

This balance includes cash from the Companies' three bank accounts denominated in Canadian dollars, US Dollar and the Euro as at September 29th, 2018, net of outstanding cheques. The US Dollar and Euro denominated accounts have been translated to Canadian dollars based on the exchange rates noted above.

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.

MANAGEMENT'S REPORT ON CASH FLOW STATEMENT

The management of Aralez Pharmaceuticals Inc. and Aralez Pharmaceuticals Canada Inc. (the **"Companies"**) have developed the assumptions and prepared the attached statement of projected cash flow as of the 2nd day of October, 2018 for the period from September 29, 2018 to December 7, 2018 (the "**Cash Flow Forecast**").

The hypothetical assumptions are reasonable and consistent with the purpose of the Cash Flow Forecast described in the notes therein, and the probable assumptions are suitably supported and consistent with the plans of the Companies and provide a reasonable basis for the Cash Flow Forecast. All such assumptions are disclosed in the notes therein.

Since the Cash Flow Forecast is based on assumptions regarding future events, actual results will vary from the information presented, and the variations may be material.

The Cash Flow Forecast has been prepared solely for the purpose described in the notes therein, using the probable and hypothetical assumptions set out therein. Consequently, readers are cautioned that the Cash Flow Forecast may not be appropriate for other purposes.

Dated at Mississauga, in the Province of Ontario, this 2nd day of October 2018.

Aralez Pharmaceauticals Inc. and
Aralez Pharmaceuticals Canada Inc.

James Hall
General Manager

APPENDIX “B”

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.

MONITOR'S REPORT ON CASH FLOW STATEMENT

(paragraph 23(1)(b) of the CCAA)

The attached statement of projected cash flow of Aralez Pharmaceuticals Inc. and Aralez Pharmaceuticals Canada Inc. (collectively, the "**Companies**"), prepared as of the 2nd day of October, 2018, consisting of the period from September 29, 2018 to December 7, 2018 (the "**Cash Flow Forecast**"), has been prepared by management of the Companies for the purpose described in Note 1, using the probable and hypothetical assumptions set out in the notes to the Cash Flow Forecast.

Our review consisted of inquiries, analytical procedures and discussions related to information supplied by management and employees of the Companies. Since hypothetical assumptions need not be supported, our procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the Cash Flow Forecast. We have also reviewed the support provided by management for the probable assumptions and the preparation and presentation of the Cash Flow Forecast.

Based on our review, nothing has come to our attention that causes us to believe that, in all material respects:

(a) the hypothetical assumptions are not consistent with the purpose of the Cash Flow Forecast;

(b) as at the date of this report, the probable assumptions developed by management are not suitably supported and consistent with the plans of the Companies or do not provide a reasonable basis for the Cash Flow Forecast, given the hypothetical assumptions; or

(c) the Cash Flow Forecast does not reflect the probable and hypothetical assumptions.

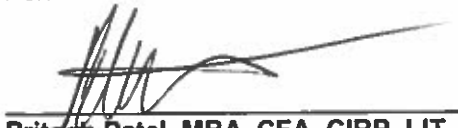
Since the Cash Flow Forecast is based on assumptions regarding future events, actual results will vary from the information presented even if the hypothetical assumptions occur, and the variations may be material. Accordingly, we express no assurance as to whether the Cash Flow Forecast will be achieved.

The Cash Flow Forecast has been prepared solely for the purpose described in the notes thereto and readers are cautioned that it may not be appropriate for other purposes.

Dated at Toronto, in the Province of Ontario, this 4th day of October 2018.

Richter Advisory Group Inc.
In its capacity as proposed CCAA Monitor of
Aralez Pharmaceuticals Inc. and
Aralez Pharmaceuticals Canada Inc.
And not in its personal or corporate capacity

Per:



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Proposed Counsel to the Official Committee of Unsecured Creditors

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
Aralez Pharmaceuticals US Inc., *et al.*, [1]	:	Case No. 18-12425-mg
Debtors.	:	(Jointly Administered)

OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO THE DEBTORS' MOTION FOR ORDER APPROVING BID PROCEDURES

[1] The Debtors in these Chapter 11 cases and the last four digits of each Debtor's federal taxpayer identification number and/or its equivalent are as follows: Aralez Pharmaceuticals Holdings Limited (5824); Aralez Pharmaceuticals Management Inc. (7166); POZEN Inc. (7552); Aralez Pharmaceuticals Trading DAC (1627); Aralez Pharmaceuticals US Inc. (6948); Aralez Pharmaceuticals R&D Inc. (9731); Halton Laboratories LLC (9342). For purposes of these chapter 11 cases, the Debtors' mailing address is Aralez Pharmaceuticals, c/o Prime Clerk LLC, P.O. Box 329003, Brooklyn, NY 11232.

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The Official Committee of Unsecured Creditors (the "Committee"), appointed in the Chapter 11 cases of Aralez Pharmaceuticals US Inc. and its affiliated debtors and debtors in possession (collectively, the "Debtors" and "Aralez"), by its proposed undersigned counsel, hereby submits this Objection to the Bid Procedures Motion.[1] In support of its Objection, the Committee respectfully states as follows:

PRELIMINARY STATEMENT

1. When the Debtors filed for Chapter 11 and CCAA relief, they explained the purpose and game-plan of their bankruptcies as follows: (i) these would be very quick cases; (ii) the company's U.S. operations had already transitioned to a "virtual" business, with most employees terminated pre-petition; (iii) all estate assets would be rapidly sold outside of a plan; (iv) the Debtors' secured lender, Deerfield, would be the "stalking horse" bidder for the principal assets of the Debtors and provide financing to the purchaser of the other assets; and (v) given the nature of the assets in question and level of "stalking horse" bids, unsecured creditors should not expect any value from the cases. As for the Debtors' Toprol-XL assets, Deerfield would take them directly, via Section 363(k) credit bid. As for the Vimovo and Canadian assets, Deerfield would take them indirectly, rolling its Aralez debt into financing for Nuvo Pharmaceuticals Inc. ("Nuvo"), a micro-cap concern with a market capitalization of approximately $25 million, that would, in turn, "front" the bid.

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[1] *Debtors' Motion for Entry of Orders: (I)(A) Authorizing and Approving Bid Procedures in Connection With Sales of Certain of the Debtors' Assets, (B) Authorizing and Approving Bid Protections, (C) Scheduling Related Auction and Hearing to Consider Approval of Sales, (D) Approving Procedures Related to Assumption and Assignment of Executory Contracts and Unexpired Leases, (E) Approving Form and Manner of Notice Thereof, (F) Authorizing Debtors' Entry Into and Performance Under Amendment of Prepetition Asset Purchase Agreement and Assumption of Agreement, as Amended, and Licenses Granted Thereunder, and (G) Granting Related Relief; and (II)(A) Authorizing and Approving Sales of Certain of the Debtors' Assets Free and Clear of Liens, Claims, Encumbrances and Other Interests, (B) Authorizing and Approving Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Related Thereto, and (C) Granting Related Relief* [Docket No. 113] (the "Bid Procedures Motion"). Capitalized terms not otherwise defined herein shall have the meaning given them in the Bid Procedures Motion.

2. This is, to be sure, a controversial way to prosecute a bankruptcy case. Bankruptcy is not intended to be a federal foreclosure device, inuring benefits solely for the secured lender. Further, secured lenders are not bestowed "free and clear" orders, with requisite "good faith" findings, simply because the debtor ran some talismanic "market test" of the credit bid. To the contrary, as the jurisprudence makes clear—and as the Court recognized at the "second day" hearing—the kind of process envisioned here (where not even "job preservation" is part of the justification) warrants particular scrutiny by the Court. Here, the relief requested in the Bid Procedures Motion does not survive such scrutiny.

3. With respect to the Bid Procedures themselves, the law imposes several considerations before they may be approved by the Court. As the authorities cited herein make clear, the Bid Procedures: (i) must be necessary, as established by evidence; (ii) must be tailored to foster and encourage competitive biddings; and (iii) must, if containing "stalking horse" bid protections, comport with market standards and be a necessary inducement to a bid that is feasible and likely to close according to schedule. The Debtors' proposed bid procedures do not comply.

4. *First*, the "stalking horse" bid protections are unnecessary, and are tantamount to incremental value grabs. Again, the "stalking horse" bids are made by or for the benefit of Deerfield, and are intended to substantially repay Deerfield's pre-petition purportedly secured debt. It is commercial absurdity to contend that Deerfield requires "stalking horse" protections to encourage a bid that is, essentially, foreclosure on collateral. Even the proposed expense reimbursement seems an end-run around the Bankruptcy Code's prohibition on reimbursements to an under-secured lender or to a creditor whose actions are too self-serving to qualify as a "substantial contribution" under Section 503(b), and not properly payable under Section 506(b).

5. *Second*, the Bid Procedures do not foster and encourage bidding. Given the nature of this proposed bidding process, the Debtors assuredly need to shower the market (as well as the Court) with evidence that: (a) this will be a full and fair auction process; (b) it is worth a potential bidder's time and money to conduct diligence, submit a bid, and participate at the auction; and (c) this is not a "rigged" or "inside-track" process unduly favoring Deerfield. We do not have that. The history of Aralez shows an uncomfortably close relationship between management and Deerfield (discussed more fully herein). There is no meaningful opportunity to police the Debtors; the Committee receives only ad hoc information and "consultation" rights. But, then, so does Deerfield. Deerfield even gets to receive initial bids. The process needs added assurances of integrity, and Deerfield needs to be walled off.

6. But, even with improved systems, the structure of the "stalking horse" bids will naturally chill bidding. That is because any acquirer of Toprol-XL will need access to assets, services, information and/or personnel now housed in the Debtors' Irish affiliate, and that Irish affiliate is being bought by Nuvo/Deerfield. That works just fine for Deerfield, given its ability to control both buyers post-closing. Not so for anyone else interested in just the Toprol-XL business segment. Some form of satisfactory "transition services" arrangement needs to be installed.

7. *Third*, the "stalking horse" bids may not be feasible or likely to close according to schedule. While the Committee appreciates that sale objections are reserved for a later date, it seems appropriate to indicate here and now that the "stalking horse" bids are subject to substantial legal issues that, if not cured or settled, render them unlikely to achieve Court approval and consummation. Among other things: (i) Deerfield's Toprol-XL credit bid is conditioned on the Court finding that it may assume some, but not all, inter-related contracts

with AstraZeneca, raising substantial "contract integration" questions; (ii) given the rather unusual genesis and structure of the Deerfield financing, as well as Deerfield's historically close relationship with management, its debt is subject to serious "recharacterization" questions; and (iii) Deerfield's indirect credit bid (via its financial backing of Nuvo) purports to purchase avoidance actions, which is an obvious end-run around the legal principle that avoidance claims are not for secured lender allocation. As of today, the Sale Hearing looks to be an evidentiary proceeding, perhaps of a broad-ranging scope. To the extent that the Bid Procedures are approved, a detailed discovery plan should run in tandem.

8. The Committee is, nonetheless, prepared to support the Bid Procedures, provided that the following modifications are made: (1) no "stalking horse" protections in the form of termination fees, expense reimbursements, or attending "topping" increments are included; (2) the Debtors are ordered to provide regular status reports to the Committee, the Committee is authorized to report to the Court on an emergency basis if it has reason to suspect process improprieties, and the Committee is given consent rights to any changes in process; (3) appropriate and satisfactory "transition service" arrangements should be provided to all bidders, so as to prevent value impairment if business segments are sold individually; (4) neither Deerfield nor Nuvo shall be entitled to notice of any bids prior to the auction, they shall not have consultation rights respecting any aspect of the sales process, and they shall instead be walled-off from all decision-making; (5) any and all substantive objections to the "stalking horse" bids—including contract integration, recharacterization, and any other arguments under Section 363(k) or otherwise—shall be fully preserved for continued objection at the Sale Hearing; and (6) the Debtors and Deerfield will be ordered to promptly meet and confer with the Committee to develop a discovery plan that will enable timely preparation for the Sale Hearing. If such

modifications are unacceptable to the Debtors and/or Deerfield, then the Committee respectfully requests that the Court deny the relief requested in the Bid Procedures Motion.

BACKGROUND

I. General Case Background.

9. On August 10, 2018 (the "Petition Date"), each of the Debtors filed with this Court a voluntary petition for Chapter 11 relief. On that same date, the Debtors' parent-company (Aralez Pharmaceuticals Inc.) as well as a Canadian affiliate (Aralez Pharmaceuticals Canada Inc.) filed for CCAA relief with the Ontario Superior Court of Justice.[2] Respecting the United States proceedings, the Debtors remain in the possession of their assets pursuant to Bankruptcy Code Sections 1107 and 1108.

II. Aralez's Formation, Rapid Ascent And Equally Rapid Financial Collapse.

10. Aralez is primarily a pharmaceuticals marketing concern. Prior to bankruptcy, the Debtors' business involved buying the rights to drugs invented by others, marketing those drugs towards increased market-share, and outsourcing all manufacturing.[3] Prior to the Petition Date, it had a large sales force; as of the Petition Date, no longer so.[4]

11. The Debtors were founded only about 2½ years before their bankruptcy filings.[5] They are the culmination of a merger, occurring on February 5, 2016, involving (i) POZEN Inc.,

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2 The Canadian debtors intend to resolve their CCAA proceedings by stock sale to Nuvo, which transaction may facilitate full satisfaction of all Canadian unsecured claims. Thus, claim impairment in these cross-border bankruptcies may be limited to unsecured creditors in the U.S.

3 *See Declaration of Michael Kaseta in Support of Chapter 11 Petitions and First Day Pleadings*, dated Aug. 10, 2018 [Docket No. 4] (the "First Day Declaration") ¶¶ 3, 7, 13.

4 *Id.* ¶ 34.

5 *Id.* ¶ 7.

a Delaware corporation, and (ii) Tribute Pharmaceuticals Canada, Inc., a Canadian corporation.[6] Each company brought to the merger certain developed and developing products, as well as cross-border marketing footprints. But, the combined company did not have a strong asset base, let alone one that could reliably generate positive cash flow; indeed, at the time of the merger, the company was forecasting $40 million in annual operating losses.[7] The focus was not, however, on the Debtors' assets at that particular point in time. Aralez was focused on its future: receiving royalties for sales of one drug (Vimovo); developing another drug (Yosprala); and, above all else, acquiring rights to market new drugs.

12. Within months, Aralez hit the M&A market. In September 2016, the Debtors acquired Zontivity from Schering-Plough for $25 million.[8] In October 2016, they acquired the U.S. rights to Toprol-XL from AstraZeneca.[9] This second transaction was more transformative: Toprol-XL cost Aralez $175 million, plus future royalty and milestone payments, as well as inventory costs.[10] As described below, the Toprol-XL transaction was documented in several inter-related agreements, and was housed largely in the Debtors' Irish affiliate (a Debtor in these chapter 11 cases).

13. The business did not take off, however. Sales of Yosprala were poor, despite significant commercial and financial efforts by Aralez.[11] Losses continued throughout 2017[12] as

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6 *Id.*

7 *See* March 15, 2016 Aralez Pharmaceuticals Inc. Form 8-K.

8 *See* First Day Declaration ¶ 16.

9 *See id.* ¶ 15.

10 *Id.*

11 *See* First Day Declaration ¶ 34.

12 *See* March 9, 2017 Form 10-Q.

SG&A continued to exceed total revenues.[13] In March 2018, Aralez declared that it had sufficient liquidity to fund operations for the following twelve months; but only two months later, in May 2018, its SEC filings included a "going concern" qualification and the announcement that the company had eliminated its entire U.S. sales force.[14] The bankruptcies occurred shortly thereafter.

III. The Deerfield Relationship.

14. Deerfield occupies a particularly important role, not only in the bankruptcy proceedings, but also in the history, development and operation of the business enterprise. To Aralez, Deerfield was not some detached lender looking for covenant compliance, debt service and eventual principal repayment. It was a business "partner" with longstanding and personal ties to management, interest in the company's equity "upside," and willingness to participate directly in the company's key decision-making.

15. The relationship apparently originated with the Debtors' Chief Executive Officer, Adrian Adams, and Chief Business Officer, Andrew Koven. Prior to their tenures with Aralez, Adams and Koven held executive positions at four public companies that counted Deerfield as a prominent investor.[15] Prior to the POZEN/Tribute merger, Adams served as Chief Executive Officer of POZEN.[16] It was Mr. Adams who suggested that the merger be financed by Deerfield. Deerfield financing was, in other words, sourced internally.[17]

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13 *See* March 15, 2016 Aralez Pharmaceuticals, Inc. Form 10-K ("Selling, general and administrative expenses increased by $40.2 million to $50.3 million for the year ended December 31, 2015, as compared to the same period in 2014.")

14 *See* March 14, 2018 Aralez Pharmaceuticals Inc. Form 10-K at 4, 61-62; May 8, 2018 Aralez Pharmaceuticals Inc. Form 10-Q at 8.

15 *See* December 28, 2015 POZEN Inc. Schedule 14A (the "Proxy Statement") at 60.

16 *See* June 1, 2015 POZEN Form 8-K.

17 *See* Proxy Statement at 60.

16. As initial funding, Deerfield bought $10 million in stock, and it also provided the Debtors $75 million in the form of notes convertible into Aralez equity.[18] This $75 million investment had two particularly unusual attributes. First, it took the form of ***secured*** convertible notes.[19] This is unusual because convertible notes are a quasi-debt/quasi-equity instrument that tends to have very weak covenants and, commensurately, are almost always unsecured. Second, and more fundamental, the Debtors could not then support debt financing. It bears repeating that, at this time, the Debtors lacked a strong asset base, were forecasting (and realizing) substantial operating losses, and entrusted the company's profitability to future acquisitions of drugs not yet identified.[20] The financing was designed to offer "the best of both worlds," meaning that Deerfield could realize substantial equity profits if the company took off, while potentially reducing the downside if it failed, as it did.

17. Under the same Credit Agreement, Deerfield also committed to supply up to $200 million for "Permitted Acquisitions."[21] To access this financing, Aralez needed to propose a transaction to Deerfield, and Deerfield would then investigate and potentially approve the acquisition.[22] This occurred on two occasions: (i) the $25 million acquisition of Zontivity; and (ii) the $175+ million acquisition of Toprol-XL.[23] To obtain Deerfield's consent, Aralez entered into an amendment to the Credit Agreement providing Deerfield significant downside control,

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18 *See* Credit Agreement § 2.4(b).

19 *See id.*

20 *See* March 15, 2016 Aralez Pharmaceuticals Inc. Form 8-K.

21 *See* Credit Agreement §§ 1.1; 2.3 (providing that the $200 million could only be used for "Permitted Acquisitions," and only after providing Deerfield three days' notice, an executed term sheet and/or commitment letter and any other information requested by Deerfield); Limited Consent dated October 3, 2016, attached as Ex. 10-1 to October 7, 2016 Aralez Pharmaceuticals Inc. Form 8-K (the "October 2016 Limited Consent").

22 *See id.*

23 *See* October 2016 Limited Consent.

allowing Deerfield to quickly amortize the $200 million term loan if Toprol-XL sales failed to meet certain targets.[24] But, pertinent to both acquisition financings, Deerfield always retained the equity "upside" opportunity through the conversion feature of its $75 million convertible note investment.

18. Moreover, throughout the financing relationship, Deerfield behaved more like an equity sponsor than a traditional lending institution. According to Adams, Deerfield was "heavily involved in giving [Aralez] advice and support in relation to the acquisitions of Zontivity and Toprol-XL and its authorized generic."[25] According to Aralez Chief Financial Officer, Scott Charles, Deerfield had always been "a tremendous partner" that was "step-by-step . . . all the way through this journey at Aralez and in every transaction that we have done."[26] Also according to Charles, Deerfield demonstrated a "commitment to the organization . . . not just the planning of the formation of the Company, but also, as . . . we've looked at an awful lot of different opportunities from a business development and licensing perspective."[27]

IV. The Toprol-XL Contracts.

19. The Debtors' acquisition of Toprol-XL was memorialized in a series of inter-related contracts, including: (1) an Asset Purchase Agreement, wherein the Toprol-XL franchise was sold to Aralez; (2) a Supply Agreement, wherein AstraZeneca agreed to manufacture and continually supply product for Aralez; (3) a License Agreement, conveying attendant intellectual

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24 *See* Amendment to Second Amended and Restated Facility Agreement, dated Oct. 3, 2016, by and among Aralez Pharmaceuticals, Inc., POZEN, Inc., Tribute Pharmaceuticals Canada, Inc., Deerfield Private Design Fund III, L.P., Deerfield International Master Fund, L.P., and Deerfield Partners, L.P.

25 *See* Statement of Aralez CEO Adrian Adams at November 16, 2016 Jefferies Healthcare conference, attached hereto as Exhibit A.

26 *See* December 14, 2016 BMO Healthcare Conference, Aralez CFO Scott Charles, attached hereto as Exhibit B.

27 *See* Statement of Aralez CEO Adrian Adams at November 16, 2016 Jefferies Healthcare conference, attached hereto as Exhibit A.

property rights to Aralez; (4) certain Quality and Pharmacovigilance Agreements, for coordination regarding quality and regulatory requirements; and (5) a Transitional Services pursuant to which AstraZeneca temporarily performed certain services for and on account of Aralez in connection with the Toprol-XL business. These agreements were expressly contemplated by, and entered into relatively contemporaneously with, the sale by AstraZeneca and the purchase by Aralez of the Toprol-XL business.

20. According to the Debtors, AstraZeneca holds large unsecured claims against the estates for payments due under certain agreements.[28] Deerfield's "stalking horse" bid for Toprol-XL does not, however, provide for assumption and assignment of the Purchase Agreement and the Transitional Services Agreement.[29] Deerfield, therefore, does not intend to fund cure payments to AstraZeneca in respect to these contracts. Rather, they shall remain unpaid general unsecured claims.

21. Deerfield does, however, intend for assumption and assignment of all other agreements memorializing the Debtors' purchase of Toprol-XL from AstraZeneca, including the Supply, License, Quality and Pharmacovigilance Agreements.[30] This may require the Court to determine a complex integration issue, in light of: (i) foundational deal logic, given that each agreement reflects an attribute of a unified, cohesive sales transaction and, in turn, that execution of the Supply, License, and Transitional Services Agreements were necessary to close the Purchase Agreement; (ii) the express terms of the deal, given that each contract contained an "entire agreement" provision that referenced the other agreements; and (iii) other deal context,

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28 *See* Sept. 13, 2018 Hr'g Tr. at 26:4-11.

29 *See* Motion ¶ 14(d), (e).

30 *See id.*

given that the Purchase Agreement references and attaches a form of Supply Agreement key terms, License Agreement, and Transitional Services Agreement.

V. The "Stalking Horse" Bids And Troubling Attributes Of The Bid Procedures.

22. As mentioned above, Deerfield is behind the two "stalking horse" bids for all estate assets. Deerfield is the proposed "stalking horse" bidder for Toprol-XL, extending a $130 million (down from $140 million as of the Petition Date) credit bid for the franchise.[31] Deerfield is also financing—essentially rolling its debt into—Nuvo's $47.5 million bid for Vimovo and Yosprala, and $62.5 million bid for the stock of the Canadian companies (inclusive of the Debtors' Irish affiliate).[32] As part of this bid, Nuvo/Deerfield intends to also acquire all avoidance claims.[33] The two "stalking horse" bids total approximately $240 million, or about $40 million less than the aggregate amount of Deerfield's prepetition claims.

23. The Bid Procedures afford Deerfield and Nuvo "stalking horse" protections, including: (i) $500,000 Expense Reimbursement Fee to Deerfield under the Toprol APA;[34] (ii) Termination Fee of $1,662,500 (3.5% of the Vimovo APA purchase price) and Expense Reimbursement of no more than $425,000 for Nuvo under the Vimovo APA;[35] and (iii) Canadian Purchaser Termination Fee of $2,187,500 (3.5% of the Canadian Share Purchase

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31 *See* Motion ¶ 14(c).

32 *See* Motion ¶¶ 12, 16(d). Nuvo is a small operator that had only approximately $17.5 million (Canada) revenue in 2017 and, thus, has no ability on its own to bid for Aralez assets. Deerfield's support for Nuvo includes debt, warrants, and secured convertible debt. *See* Nuvo Pharmaceuticals Announces Signing of Definitive Agreements to Acquire Commercial Products and Infrastructure from Aralez Pharmaceuticals, PRNEWSWIRE (Sept. 19, 2018), https://www.prnewswire.com/news-releases/nuvo-pharmaceuticals-announces-signing-of-definitive-agreements-to-acquire-commercial-products-and-infrastructure-from-aralez-pharmaceuticals-300715139.html.

33 *See* Vimovo APA § 2.1.1(i).

34 *See* Toprol APA §§ 1.1, 8.3

35 *See* Vimovo APA §§ 1.1, 8.3

Agreement purchase price) and Expense Reimbursement of no more than $575,000 for Nuvo under the Canadian Share Purchase Agreement.[36] The applicable Stalking Horse Purchaser may credit bid for such fees and reimbursements.[37]

24. The Bid Procedures do not compel any sort of "transition services" arrangement ensuring that a bidder for Toprol-XL will have access to the assets, services, information and/or personnel of the Irish subsidiary.[38] This presents a fundamental issue for any party—other than Deerfield—intending to bid for Toprol-XL.

25. Finally, the Bid Procedures do not provide meaningful assurances that Deerfield (or its historical relationship with management) will not unduly influence the auction outcome. The Committee is only afforded ad hoc information and "consultation" rights; it is not afforded an opportunity to police the bidding process. Deerfield, meanwhile, enjoys the same information and consultation rights afforded to the Committee. Indeed, Deerfield has the right to receive copies of all bids, "consult" with the Debtors, and otherwise interface with management throughout the process.[39] To any outside observer, the Deerfield relationship seems unduly close, and not conducive to a fair bidding process.

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36 *See* Canadian Share Purchase Agreement §§ 1.1, 9.3

37 *See* Bid Procedures ¶ B.8(g).

38 The Committee has been informed by Deerfield that a Transition Services Agreement will be made available to other bidders, but as of this date, the Committee has not seen a draft. Accordingly, the bid procedures should not be approved until the Committee is provided sufficient time and an opportunity to review the Transition Services Agreement and confirm it will be timely made available to bidders.

39 *See* Bid Procedures ¶ B.4.5.

BASES FOR OBJECTION

I. Applicable Legal Standard Governing Consideration Of The Bid Procedures Motion.

26. A Bankruptcy Code Section 363 sales process should not be run solely for the benefit of the debtor's secured lender. *See, e.g.*, *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656-67 (S.D.N.Y. 1992) (bidding procedures should encourage bidding and maximize the value of the debtor's assets for all creditors); *In re Metaldyne Corp.*, 409 B.R. 661, 667-68 (Bankr. S.D.N.Y. 2009).

27. Section 363 is not, in other words, a federal foreclosure device. *See, e.g.*, *In re Flour City Bagels, LLC*, 557 B.R. 53, 83-84 (W.D.N.Y. 2016), *leave to appeal denied*, No. 16 CV 6667 FPG, 2017 WL 1433339 (W.D.N.Y. Apr. 24, 2017) (denying Section 363 asset sale where "the essence of the proposed transaction is a foreclosure" and a "transfer of the debtors' assets to its secured creditor with benefits that the creditor could not achieve through foreclosure").

28. To obtain approval of proposed bid procedures, the debtor must show that they are reasonable and necessary. *See, e.g.*, *In re O'Brien Envtl. Energy*, 181 F.3d 527, 535 (3d Cir. 1999) ("[T]he allowability of break-up fees, like that of other administrative expenses, depends upon the requesting party's ability to show that the fees were actually necessary to preserve the value of the estate."). If a bidder is reasonably likely to extend the offer irrespective of proposed "stalking horse" protections, such protections should not be authorized. *See id.* (bid protections will not be approved when the bidder would have bid even without bid protections).

29. The debtor must also show that the procedures encourage, rather than discourage or chill, bidding. *See In re APP Plus, Inc.*, 223 B.R. 870, 875 (Bankr. E.D.N.Y. 1998) (topping fee agreement denied because it would not "enhance the bidding, or result in and substantial

benefit to [the] estate"); *In re Bidermann Indus. U.S.A., Inc.*, 203 B.R. 547, 554 (S.D.N.Y. 1997) (rejecting success fee, topping fee, and expense reimbursement "designed not to encourage but to stifle bidding").

30. Finally, any proposed "stalking horse" protections must not only comport with applicable market standards, they also should pertain to a bid that is feasible and likely to close according to schedule. *See In re Integrated Res., Inc.*, 147 B.R. at 656-67.

31. The relief requested in the Bid Procedures Motion does not abide by these authorities.

II. The Bid Procedures Motion Should Be Denied Because The "Stalking Horse" Protections Are Unnecessary, The Bid Procedures Do Not Foster And Encourage Bidding, And The Stalking Horse Bids Do Not Appear Feasible Or Likely To Close As Scheduled.

A. The Bid Procedures Motion Should Be Denied Because The "Stalking Horse" Protections Are Unnecessary.

32. Again, the proposed Bid Procedures lock in protections for Deerfield and Nuvo, including: (i) $500,000 Expense Reimbursement Fee to Deerfield under the Toprol APA, *see* Toprol APA §§ 1.1, 8.3; (ii) Termination Fee of $1,662,500 (3.5% of the Vimovo APA purchase price) and Expense Reimbursement of no more than $425,000 for Nuvo under the Vimovo APA, *see* Vimovo APA §§ 1.1, 8.3; and (iii) Canadian Purchaser Termination Fee of $2,187,500 (3.5% of the Canadian Share Purchase Agreement purchase price) and Expense Reimbursement of no more than $575,000 for Nuvo under the Canadian Share Purchase Agreement, *see* Canadian Share Purchase Agreement §§ 1.1, 9.3. The bid protections are afforded allowed super-priority administrative expense status under Bankruptcy Code Sections 503(b) and 507.

33. Deerfield (and, by extension, Nuvo) do not need such "stalking horse" protections; their bids do not need to be coaxed and encouraged; they are a natural extrapolation

of Deerfield's presumed foreclosure rights under state law. Deerfield has, in essence, engineered a process through its prepetition financial structure benefitting only one party-in-interest: Deerfield.[40] This does not meet the applicable legal standards. *See In re O'Brien Envtl. Energy*, 181 F.3d at 535 (bid protections are not "necessary to preserve the value of the estate" and will not be approved when the bidder would have bid even without bid protections). Such provisions should be disallowed.

B. The Bid Procedures Motion Should Be Denied Because They Do Not Foster And Encourage Bidding.

34. First, the Bid Procedures do not ensure sufficient process integrity. The personal ties between the C-Suite and Deerfield are long-standing and run deep. Deerfield, again, has long been viewed by management as a "tremendous partner."[41] From the vantage point of an alternative bidder, the process has unattractive, "inside job," atmospherics. A close review of the Bid Procedures does not obviate that concern, it reinforces it. The Committee is not enabled to police the auction process; it has only ad hoc information and "consultation" rights. *See* Bid Procedures ¶ B.4(c),(k), 8(f). Deerfield is not "walled-off" from the decision-making; it too is a "consultation" party. *See* Bid Procedures ¶ B.4. It even has a right to receive competitive bids. *See id*. This warrants remedy.

35. Second, the "stalking horse" bid structure disincentivizes business-segment bidding. Any purchaser of Toprol-XL will need access to the Irish affiliate for some period of time; but, that affiliate is going to Nuvo/Deerfield or an alternative bidder. No provision is made

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40 In this regard, the Bid Procedures also circumvent the Bankruptcy Code's prohibition on expense reimbursements to an under-secured creditor or to a creditor whose actions are too self-serving to qualify as a "substantial contribution" under Bankruptcy Code Section 503(b). *See Lebron v. Mechem Fin. Inc.*, 27 F.3d 937, 944 (3d Cir. 1994); *In re Nair*, 320 B.R. 119, 128 (Bankr. S.D. Tex. 2004).

41 *See* December 14, 2016 BMO Healthcare Conference, Aralez CFO Scott Charles.

for the acquirer of Toprol-XL to have post-closing access to that affiliate, creating a structural impediment to owning that business segment. This, too, warrants remedy.

C. The Bid Procedures Motion Should Be Denied Because The Stalking Horse Bids Do Not Appear Feasible Or Likely To Close As Scheduled.

1. Deerfield's Toprol-XL Credit Bid Faces Significant "Contract Integration" Questions.

36. As indicated above, Deerfield's "stalking horse" bid for Toprol-XL is conditioned on a ruling by this Court that the Debtors may assume and assign only certain agreements pertaining to Aralez's acquisition of the drug. Deerfield would take over the Supply, License, Quality and Pharmacovigilance Agreements, thus ensuring that AstaZeneca remains, among other things, a "captured" manufacturer of product post-closing. *See* Motion ¶ 14(d), (e). But, Deerfield will not assume the Debtors' responsibilities under the AstraZeneca Purchase Agreement and the Transitional Services Agreement; Deerfield will not provide AstraZeneca cure payments for amounts now due, thus leaving a substantial unsecured claim against the estates. *See* Toprol APA § 2.1.2. It is a condition precedent to that bid that the Court approve such piecemeal assumption and assignment to Deerfield. *See* Motion ¶ 14(d), (e).

37. This is a significant condition precedent. The law recognizes that individual agreements comprising a unified transaction should be viewed as a single, integrated contract. *See In re Teligent, Inc.*, 268 B.R. 723, 728-29 (Bankr. S.D.N.Y. 2001) (merger and non-disclosure agreements were integrated where, *inter alia*, an integration clause defined the agreements as the parties' final and complete contract and an executed non-disclosure agreement was a closing condition of the merger agreement); *see also J. Remora Maint. LLC v. Efromovich*, 103 A.D.3d 501, 501 (N.Y. App. Div. 2013) (purchase and guaranty agreements read as a unified contract where they were executed simultaneously as part of a single transaction, the purchase

agreement required execution of the guaranty and attached it as an exhibit, and the purchase agreement defined "Agreement" and "Ancillary Agreements" as including the guaranty).

38. Further, if related contracts are viewed as one integrated agreement, a debtor must assume all such contracts *in toto*, or may assume none of them. *See, e.g.*, *Philip Servs. Corp. v. Luntz (In re Philip Servs., Inc.)*, 284 B.R. 541, 547-48 (Bankr. D. Del. 2002), *aff'd*, 303 B.R. 574 (D. Del. 2003).

39. Here, whether the Purchase Agreement and the Transitional Services Agreement are severable from the Supply, License, Quality and Pharmacovigilance Agreements presents a complex issue that may require significant litigation in the absence of a settlement. There are arguments that the deal structure involves attributes indicative of a single integrated agreement, including that: (i) the Agreements were executed within a short period of each other; (ii) the Agreements involved the same parties; (iii) the Agreements contain an integration clause stating that the Agreements, collectively, contain the "entire agreement" between the parties; (iv) execution of the Supply, License, and Transitional Services Agreements was necessary to close the Purchase Agreement; and (v) the Purchase Agreement references and attaches a form of each of the Supply, License, and Transitional Services Agreements. *See In re Teligent, Inc.*, 268 B.R. at 728-29; *J. Remora Maint. LLC*, 103 A.D.3d at 501. There are also potential counterarguments in support of severability.

40. The Court should, in sum, view the credit bid with certain skepticism, anticipate a robust contest over this issue at the Sale Hearing and, more to the point, evaluate the Bid Procedures—including "stalking horse" protections—with the view that the bid is not easily deserving of such protections. Any Bid Procedures approved by the Court should be conditioned on an appropriate discovery plan, enabling due preparation for the Sale Hearing.

2. Deerfield's Presumed Credit-Bid Entitlements Are Subject To Substantial "Recharacterization" Attack.

41. Parties touting liens do not have an unfettered right to credit bid. Bankruptcy Code Section 363(k) preserves credit bidding only to the extent of "a lien that secures an allowed claim." 11 U.S.C. § 363(k). Even then, Section 363(k) enables a Court to disallow credit bidding "in the interest of any policy advanced by the Code, such as to ensure the success of the reorganization or to foster a competitive bidding environment." *In re Fisker Auto. Holdings Inc.*, 510 B.R. 55, 59-60 (Bankr. D. Del. 2014) (citing *In re Philadelphia Newspapers, LLC*, 599 F.3d 298, 316, n.14 (3d Cir. 2010); *see In re The Free Lance-Star Publ'g Co. of Fredericksburg, VA*, 512 B.R. 798, 805 (Bankr. E.D. Va. 2014) (collecting cases).

42. "Cause" for denying credit bidding arises where the validity of the lien securing a claim is subject to dispute, thus throwing into doubt whether there is an "allowed" secured claim. *See In re Aéropostale, Inc.*, 555 B.R. 369, 415 (Bankr. S.D.N.Y. 2016) ("Courts have . . . limited the right to credit bid when the validity of a creditor's lien is in dispute."); *see also In re SubMicron Sys. Corp.*, 432 F.3d 448, 459 (3d Cir. 2006) (same).

43. "Recharacterization" is one basis for disputing a lien and underlying claim. This theory relies on the Court's "broad authority to modify creditor-debtor relationships," deeming debt as equity, thus ensuring "that substance will not give way to form . . . ." *In re Lyondell Chem. Co.*, 544 B.R. 75, 92-93 (Bankr. S.D.N.Y. 2016); *see also In re BH S & B Holdings LLC*, 420 B.R. 112, 157 (Bankr. S.D.N.Y. 2009) (Glenn, Bankr. J.) ("Recharacterization is appropriate where the circumstances show that a debt transaction was actually an equity contribution *ab initio*.").

44. In evaluating a recharacterization claim, the lead question is whether the parties at the time of the financing intended the investment to be equity or debt. *See In re SubMicron Sys.*

Corp., 432 F.3d at 456 (recharacterization "is typically a commonsense conclusion that the party infusing funds does so as a banker . . . or as an investor").[42] To assist in this determination, courts often employ the so-called *AutoStyle* factors: (1) the names given to the instrument, if any, evidencing the indebtedness; (2) the presence or absence of a fixed maturity date and schedule of payments; (3) the presence or absence of a fixed rate of interest and interest payments; (4) the source of repayments; (5) the adequacy or inadequacy of capitalization; (6) the identity of interest between the creditor and the stockholder; (7) the security, if any, for the advances; (8) the corporation's ability to obtain financing from outside lending institutions; (9) the extent to which the advances were subordinated to the claims of outside creditors; (10) the extent to which the advances were used to acquire capital assets; and (11) the presence or absence of a sinking fund to provide repayments. *See Bayer Corp. v. MascoTech, Inc. (In re AutoStyle Plastics, Inc.)*, 269 F.3d 726, 750 (6th Cir. 2001).

45. Involvement of the party infusing funds in a debtor's key strategic decisions is strongly probative of equity intent. For example, in one case, the court recharacterized a loan provided under a note that, like the one at issue here, was secured yet convertible, and that gave the financier veto rights over the company's management decisions. *See In re AtlanticRancher, Inc.*, 279 B.R. 411, 416-19 (Bankr. D. Mass. 2002). The financier used these contractual rights to involve himself in managerial decision-making and was "in many respects . . . an equal partner" in the business. *Id.* at 421, 435-36; *see also Matrix IV, Inc. v. Am. Nat'l Bank and Tr. Co. of Chicago (In re S.M. Acquisition Co.)*, No. 05 C 7076, 2006 WL 2290990, at *10 (N.D. Ill. Aug. 7, 2006) (reversing dismissal of recharacterization claim where bank obtained an equity

[42] *See In re Lyondell Chem. Co.*, 544 B.R. at 93 (describing *SubMicron* as "the leading case on recharacterization doctrine in bankruptcy").

interest in and some managerial control over a undercapitalized borrower that used its line of credit for capital investments).

46. Moreover, in the recharacterization context, courts are skeptical of unusual hybrid instruments that purport to give the financier the security of debt (repayment secured by collateral) and the upside of equity. To use the words of the *AtlanticRancher* court, the convertible notes at issue there (as here) provided the financier with "the best of both worlds." *In re AtlanticRancher, Inc.*, 279 B.R. at 435; *cf. In re Am. Hous. Found.*, No. 09-20232-RLJ, 2015 WL 1543585, at *15 (Bankr. N.D. Tex. Mar. 31, 2015) (citing wariness of attempts "to 'mold' a transaction into a financially amorphous product that can conveniently be either a loan or an investment" and finding that instrument was equity).

47. Based on this jurisprudential framing, there is substantial doubt that Deerfield actually holds "debt" bearing Section 363(k) entitlements. Notwithstanding the instrument form chosen by Deerfield, surrounding circumstances give rise to a substantial recharacterization argument reliant on, among other things: (i) the convertible feature of the initial $75 million funding, creating a "best of both worlds" hybrid opportunity for Deerfield; (ii) the lack of a strong asset base or anticipated positive cash flow to support such "debt" at the time of the financing; (iii) Deerfield's legacy relationship with executives and its role in the very creation of Aralez; (iv) how the Debtors' executives characterized Deerfield's role as a "partner . . . all the way through this journey"; (v) the structure of subsequent acquisition financing, conditioned on Deerfield's pre-review and pre-approval, while the equity conversion feature of Deerfield's initial $75 million investment remained extant; and (v) the way in which the Debtor's executives characterized the acquisition vetting process, as "heavily involv[ing]" Deerfield, including "advice and support" from Deerfield, and synergistically helping management evaluate "an

awful lot of different opportunities from a business development and licensing perspective." This is the behavior of an equity sponsor, not a lender.

48. Again, the Court should view the credit bid with skepticism, anticipate a Section 363(k) challenge at the Sale Hearing and, more to the point, evaluate the Bid Procedures—including "stalking horse" protections—with the view that the bid is not easily deserving of such protections. Any Bid Procedures approved by the Court must be conditioned on an appropriate discovery plan, facilitating the submission of evidence at the Sale Hearing.

3. The Nuvo Bid Inappropriately Provides For The Acquisition Of All Avoidance Claims.

49. As noted above, as part of its Vimovo bid, Nuvo/Deerfield intends to purchase all avoidance claims related to Vimovo.[43] It is almost axiomatic, avoidance actions are not assignable property rights of the Debtors but are, instead, a statutorily created power to recover property for the benefit of unsecured creditors. *See Buncher Co. v. Official Comm. of Unsecured Creditors of GenFarm Ltd. P'ship IV*, 229 F.3d 245, 250 (3d Cir. 2000) ("[A]ny recovery [under Bankruptcy Code Section 544(b)] is for the benefit of all unsecured creditors."); *In re Tribune Co.*, 464 B.R. 126, 171 (Bankr. D. Del. 2011) (noting "that case law permits all unsecured creditors to benefit from avoidance action recoveries").

50. This is, therefore, a highly controversial sale term. The Bankruptcy Code only provides for assignment of avoidance powers under a plan of reorganization—not through a sale. *See* 11 U.S.C. § 1123(b)(3)(B); *In re Metro. Elec. Mfg. Co.*, 295 B.R. 7, 12 (Bankr. E.D.N.Y. 2003) ("Because this grant of authority to bring avoidance actions under the various sections of the Bankruptcy Code is specific to the trustee or debtor in possession, cases entertaining a

[43] The Vimovo APA provides that, upon Closing, the Vimovo Purchaser will be entitled to all "Avoidance Actions, to the extent primarily arising out of, relating to or in respect of any Purchased Asset or Assumed Liability, along with any and all recoveries by settlement, Order or otherwise in connection with any such Avoidance Action." Vimovo APA § 2.1(i).

request for a 'transfer' of such right are rare, and are rarely granted."); *In re Greenberg*, 266 B.R. 45, 51 (Bankr. E.D.N.Y. 2001) ("Bankruptcy courts are properly hesitant to authorize the sale or assignment of a trustee's avoidance powers or causes of action to a single creditor."). The circumstances of this case, and the very nature of Deerfield's "foreclosure" bids, do not support such transfer here.

51. The Court should anticipate a challenge to the purchase of avoidance actions at the Sale Hearing, which is in clear contravention of established case law and, more to the point, should evaluate the Bid Procedures—including "stalking horse" protections—with the view that the bid is not easily deserving of such protections.

CONCLUSION

WHEREFORE the Committee respectfully requests that the Court: (i) sustain the Objection; (ii) deny the Debtors' request for entry of the proposed Bid Procedures Order unless the Bid Procedures are modified as requested in Paragraph 8 hereof; and (iii) grant the Committee such other and further relief as it deems just and proper.

Dated: October 3, 2018
New York, New York

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Proposed Counsel to the Official Committee of Unsecured Creditors

EXHIBIT A

THOMSON REUTERS STREETEVENTS

EDITED TRANSCRIPT

ARLZ - Aralez Pharmaceuticals Inc at Jefferies Healthcare Conference

EVENT DATE/TIME: NOVEMBER 16, 2016 / 4:40PM GMT

CORPORATE PARTICIPANTS

Adrian Adams *Aralez Pharmaceuticals Inc. - CEO*

CONFERENCE CALL PARTICIPANTS

Dave Steinberg *Jefferies LLC - Analyst*

PRESENTATION

Dave Steinberg - *Jefferies LLC - Analyst*

Good afternoon everyone. I'm Dave Steinberg from Jefferies, and we are delighted to have with us Adrian Adams. I've been an analyst for 23 years, and I've covered five companies that Adrian has been CEO of, and he's sold every one. So Adrian, I hope -- I don't know if this will be your last meeting at our conference. But I'd like to introduce Adrian Adams, Chief Executive Officer of Aralez.

Adrian Adams - *Aralez Pharmaceuticals Inc. - CEO*

We hope not. Well, thank you for those introductory words. I see a few familiar faces in the audience, but I just wanted to provide a little bit of background on myself. I had the pleasure of working for three big pharmaceutical companies before running public companies, that is AstraZeneca -- ICI AstraZeneca, SmithKline Beecham, and Novartis. And then my first public company was Kos Pharmaceuticals, which was acquired by Abbott, and Sepracor, which was acquired by Dainippon Sumitomo, then Inspire that was acquired by Merck, and then more recently Auxilium that was acquired by Endo Pharmaceuticals. And I now have the privilege of being CEO of Aralez Pharmaceuticals.

So what I wanted to do is to, first of all, give a little bit of background on the transaction. It seems a long time ago, but it wasn't. We set up the company formally in February of this year. And we set it up in that particular point in time with a Canadian domicile combining two companies, a small Canadian company, Tribute Pharmaceuticals, with a public company from North Carolina, POZEN Incorporated, to form Aralez. At that time, we were very strongly supported by a Deerfield-led consortium where we had around about $150 million made available on the balance sheet at the time of the formation, and a line of credit for access up to $200 million for acquisitions on a going-forward basis, should we move forward in that direction.

As you'll see, I think we have been relatively busy in the first nine or 10 months of the formation of the Company. On this slide here, you see a broad picture of the kind of broad portfolio that we have, both in Canada and clearly in the United States. And we think we are very well poised for the direction as we move forward into 2017.

The broad investment thesis that I'd like to put across, we've been saying this to quite a number of investors over the course of time, we are an emerging global specialty pharmaceutical company. I think -- and clearly I think we have a broad portfolio of assets that predominantly focus on the cardiovascular now, and the pain areas. I think if one looks broadly as the thesis that we have, it would be funds and capital that we have available. We believe that, on an ongoing basis, we have access to acquisitions of products and potentially companies that would grow significant shareholder value over the course of time.

Just to give you a flavor of the Company -- and clearly we are at the very early stages. You can quite clearly see that, when we formed the Company, the 2015 pro forma number was around about $45 million in revenue split relatively equally between Tribute Pharmaceuticals and POZEN. And as we exit this year, just given here the midpoint of our guidance that we've recently shared with the community, revenues of roundabout $58 million. So, clearly, 2017 is going to be the year of significant growth for the Company, where we will start to leverage and maximize on the acquisitions that we've made just over the course of the last two months.

You can see here that, in addition to the Canadian revenues, we have ongoing royalties from VIMOVO and TREXIMET. And in addition to Fibricor in the United States, and the recently launched YOSPRALA, which we launched on October 3, we've also now got within our portfolio two assets

that we acquired recently. One is Zontivity that we acquired from Merck, and more recently, from AstraZeneca, we acquired Toprol-XL and its authorized generic. So, that gives you kind of a flavor of the overall kind of business at this particular point in time.

Now, I just wanted to give you kind of a perspective on YOSPRALA. This is a product that we submitted to the FDA. We were happy that we got approval for the product and launched the product in the United States on October 3. It is a combination of aspirin and omeprazole in an immediate-release protein pump inhibitor. And conceptually, I think one of the things you may not know that, although aspirin is very widely used and a gold standard in the treatment of kind of protection in relation to after strokes and heart attacks, one of the challenges with overall compliance with aspirin is that you have a lot of GI side effects, and in particular formation of ulcers. So YOSPRALA was formed with this in mind. And in essence, what happens is you take the YOSPRALA tablet. It goes down into the gut. The film coat is released, omeprazole is released, and gets the pH level of the stomach up to a level around about 5.5. So that when the aspirin (technical difficulty) is released, you don't have the GI side effects. So a relatively simple story, but one which obviously is resonating well with the physician community.

Looking now at just some snapshot of some of the Phase III data, you can quite clearly see, when one looks at the reduction in terms of overall GI side effects and the results in terms of reduction of ulcers, etc., a very significant difference between before and after YOSPRALA.

In addition, I think one of the points that we get asked an awful lot, as we've communicated the message on YOSPRALA, is that, very importantly, I think the essence behind this asset is that physicians put patients on aspirin because they want them to receive the cardio protection on an ongoing basis. And clearly, in the event that they stop taking their aspirin, then clearly they have a much higher risk than they had previously. And this particular data here shows the kind of risk associated with removing aspirin -- not taking aspirin on an ongoing basis. And in particular, if they don't get the GI protection, then you can see a very significant increase in the risk profile for patients. So in essence, there is a very strong rationale behind the product.

In terms of market opportunity, I think, in any one year, there are around about 26 million patients that are actively treated for the secondary prevention of heart attack and stroke. Of those, around about 70% get aspirin. And within any one year, there are around about 6 million to 7 million patients who take or are prescribed both aspirin and a proton pump inhibitor. So a very large market size. And clearly, what we have referred to is that, in terms of our modeling for the Company, is that we would anticipate that we would have a mid-single-digit market share of this particular market. And from a broader perspective, the way in which we try to picture this is that we anticipate that YOSPRALA could have peak sales revenue in excess of $200 million per year.

Now, when we were actually sharing the overall communication of the assets and developing our core positioning, we did a tremendous amount of qualitative and indeed quantitative market research. And within that, one exercise that we did was to look at the current prescribing patterns of physicians and their treatment in relation to the secondary prevention of heart attack and stroke, and then compared that to what their perceptions were in relation to YOSPRALA. And you can quite clearly see that, if one looks at the current approach to treating the secondary prevention of heart attack and stroke, it's dominated by Plavix and indeed aspirin.

When they have seen the core visual aid in detail in relation to the overall messaging, you can see two things -- firstly, a significant increase in the proportion of patients that were seen as being given aspirin-based therapy, but also a very significant projected market share for YOSPRALA in this patient population.

Now, having been an ex-market researcher myself over the course of time, I recognize that qualitative market research at times can be exaggerated. But even if you take half of these particular numbers, it points to the perspective in relation to potential opportunity for YOSPRALA in this marketplace.

So, these are all core commercialization objectives. since we've set the organization. We are very, very early in the launch phase of the product. And clearly, I think we want to make sure that, over the course of the next number of months, we establish a strong managed care physician. We did a lot of research prior to commercialization of the asset to look at the potential pricing of the product and make sure that we positioned it appropriately within managed care.

In addition, we want to broaden the awareness levels of YOSPRALA, particularly amongst the cardiologists and high prescribing primary care physician population. And clearly, over the course of time, we want to make sure that we get the product available in a simple and easy way at the pharmacist and physician levels.

Now, as I mentioned, I've been inundated with calls from the investor and shareholder communities saying how is it going, how is it going, how are prescriptions, etc.? And we are five weeks into the launch of the product, so we are still very, very early days.

But as you can see on this particular slide here, we track and monitor a large number of metrics. In particular, I think, qualitatively and quantitatively, we identified a number of analogues that we are going to measure the performance of YOSPRALA against. And you can see them on this slide here. They include BRILINTA, Xarelto, Vascepa, Effient, so obviously core products that we see as being important metrics in relation to how we track the performance of YOSPRALA. So, it is very early days, but as we look at the early prescription numbers, we are tracking online with those particular analogues, and it's going to be a classic uptake curve where, over the course of the next number of months and as we move into 2017, we will start to see the ramp up in line with the analogs.

In addition, I think, if one looks at the overall kind of reaction we are getting from cardiologists and primary care physicians, very positive. And again, I think I recognize that, in the early stages of launch, you get a lot of nodding heads and, clearly, positive reactions. But of all the new product launches that I've been involved in, I've been involved in a lot, this reaction that we are getting is pretty positive at this particular point in time.

So, critically, I think what we are trying to do at this particular point in time is to develop the reach and frequency of detailing with these key cardiologists and primary care physicians to make sure that they remember YOSPRALA, YOSPRALA, YOSPRALA instead of aspirin on an ongoing basis.

I mentioned a few moments ago that we had spent a lot of time in terms of preparing the market and making sure that we have very good qualitative and quantitative market research to back up some of our assumptions. Critically, and in the course of this, was to determine how we position the product from a pricing perspective and in particular as it relates to the managed care environment. And we are delighted that, at this particular point in time, again, five to six weeks into the launch of the product, that we already have around about 50% of lives covered, which is pretty good compared to other products at this particular point in time. Now, clearly, as we evolve to the end of this year, we'd like to increase that number, and in particular, I think we'd like to lower the proportion of patients who require a prior authorization. So, we've made some very good progress I think. Over the course of the next two or three weeks, we have meetings and presentations with a number of the key managed care organizations, and we are optimistic that that's going to lead to even better positioning from an overall perspective.

So, overall, from a YOSPRALA point of view, I think we are pleased with the progress to date. I think, as we move into the early part of next year, I think we'll get a very good feel as to the rate of uptake and the positioning of the product from an overall revenue perspective as we provide guidance in the course of the early part of next year.

And now I want to move onto Zontivity just to give a little bit of information in relation to the two products that we've acquired quite recently. I think Zontivity is a product that some of you may remember from the Schering-Plough/Merck merger. I think it is a PAR-1 agonist. And clearly, I think, within the market for treatment of thrombosis and stroke, I think this is a product that obviously is positioned really well.

I think, from a clinical profile point of view, a very large clinical database that was available made the formation of the approval of the product, around about 26,000 patients, and clearly I think, when it was launched by Merck, and even there you admit that the product was not particularly well-launched. In fact, in the first year of revenues, it achieved around about $2 million in revenues. And this is for operating within a market where the two competitive, key competitive products, are Brilinta and Effient. Brilinta is averaging around about $600 million to $620 million in sales per year, and Effient is tracking towards a $300 million to $350 million product. So, a performance like that is certainly something that was a cause for concern. And clearly, we became aware that Merck were selling the product, and we got involved in terms of doing due diligence. And we are delighted that, for a $25 million acquisition fee, we were able to bring this product into the Aralez portfolio. And if one looks at the market that we are aiming this product for, I think it's a perfect fit with YOSPRALA. The key target physician audience are cardiologists, and clearly a lot of the cardiologists that we are calling on at this particular point in time already have a significant awareness of the product because it's available. And what we intend to do is to relaunch this product in 2017 with kind of a repositioning of the product and consideration of the pricing perspective.

So right now, I think we've not given specific dates as to when we intend to relaunch the product. One thing we want to do is to make sure that, when it is relaunched, that it's done in the right way with the right degree of preparation, and with the right core messaging.

Importantly, one of the things that is very apparent to us with the profile is that, unlike Brilinta, and unlike Effient, the product label for Zontivity not only has the coverage in the core indication of reduction of the robotic events, but also peripheral arterial disease. That is currently within the label.

And it has not gone unnoticed that, quite recently, AstraZeneca announced the results of a very, very large study of Brilinta in peripheral arterial disease, and it failed. So we see --and this news came out about a week, a week and a half, after we had acquired Zontivity. So, again, I think that's obviously a consideration as we develop the profile and positioning of the product for relaunch in 2017.

So, again, it's a product that we think, for a figure of $25 million, this is a product that Merck spent over $800 million to $900 million developing. And we see a nice opportunity where we can perhaps have a diamond in the rough from a profiling perspective.

Toprol-XL is one that we very recently acquired along with the authorized generic from AstraZeneca. I think it's -- this is a product that we acquired for an upfront payment of around $175 million.

And last week, AstraZeneca announced their third-quarter results, and within the body of the text, there was a number as it relates to the nine months year-to-date in relation to Toprol-XL and its authorized generic sales. And you clearly can see on this chart here revenues of around about $81 million for nine months of this year, which compares to a number of around about $83 million for the 2015 timeframe. So, a run rate above $100 million for the year. So, again, we see a nice opportunity for this product within our modeling. We have assumed that there may be other generics that come into the market. This is obviously a genericized product.

We also note that Toprol-XL is not an easy product to make. In fact, a number of generics had to leave the market because they could not consistently manufacture and develop the product to the right quality at the right quality standards. So, this predominantly is a product that will take very little sales force resource. In many ways, it's a financial play. It supports, from a cash perspective, it supports the ongoing launches of YOSPRALA, and next year Zontivity as well as providing significant cash on the balance sheet.

Very importantly, if one looks at these transactions and looks in particular at the way in which we are positioning these products, when we set up the Company at the beginning of this year, we anticipated that we would achieve profitability for Aralez Pharmaceuticals by the end of 2018. With these transactions, we anticipate that, on an adjusted basis, EBITDA basis, that we would become profitable next year. So, again, I think the transformation of the Company from a company that was hoping to get YOSPRALA to a company now where we have YOSPRALA and we also have Zontivity, we also have Toprol-XL and its authorized generic, puts us in a very strong position for 2017 and indeed beyond.

Last week, we announced our third-quarter results, and within the course of that, we enhanced our guidance on all of the three parameters. Clearly, I think the impact of Zontivity and Toprol-XL and its authorized generic will be an impact in 2017. So, you can clearly see here that, on a revenue basis, still relatively small, but we've enhanced the kind of revenue guidance for the year, and we've done that whilst reducing expenses that we anticipate at the end of this year. So we were delighted to obviously improve our guidance for this fiscal year, and we are looking forward to actually presenting our guidance in 2017.

So, it's been a very busy year. Having run a number of public companies before, I recognize the importance of setting the right expectations and not just meeting those, looking to exceed those on an ongoing basis.

What we shared with the investment community last week is how we are tracking against those core objectives that we put in place at the beginning of this year, in February of this year, when we formed the Company. And we feel that it's been a very strong year, and it's positioned us extremely well for 2017, particularly in a specialty pharma sector that appears to be having a bit of a resurgence at this particular point in time now that the uncertainty surrounding the election is behind us.

So, again, if one looks at the formation of Aralez and the merger of POZEN and Tribute closed in a very timely fashion. When one looks at the evolution of YOSPRALA, I think this is a product that, before we got involved, had had two complete response letters. We were able to deal with that and get it approved and launched within the United States.

We've put to work the kind of capital that we had available from Deerfield with the acquisitions of Zontivity and Toprol-XL and its authorized generic. So, really, we've transformed the Company from a small Canadian revenue base to having a portfolio of cardiovascular assets that will deliver strong organic growth from a long-term point of view, and we are pleased to have done that.

In addition, I think Deerfield's commitment to the organization has been very, very strong throughout not just the planning of the formation of the Company, but also, as we've gone through the course of this year, we've looked at an awful lot of different opportunities from a business development and licensing perspective. And most certainly, they were heavily involved in giving us advice and support in relation to the acquisitions of Zontivity and Toprol-XL and its authorized generic.

In addition, demonstrated commitment was also reflected in the fact that they put in place an additional line of credit, so $250 million, such that, if we see additional opportunities from a business development and licensing perspective, that we will be in a position to act on those quickly.

I would say that, clearly, from a business development and licensing perspective, I think we've been very successful this year. If we did nothing else as a specialty pharmaceutical company now but just execute well with the assets that we have, continue the momentum with YOSPRALA, do a very good job at relaunching Zontivity and making sure that the financial management and the aspects of Toprol-XL and its authorized generic go well, then I think this could be a very successful and will be a very successful specialty pharmaceutical company. But obviously, having the resources available to do other transactions in 2017 and beyond, that is a very nice position for us to be in.

So, this is a slide, my final slide, which just touches on the near-term business priorities for the organization. Clearly, we want to make sure that we continue with some strong momentum with YOSPRALA, raise the awareness levels, make sure that the 110 person sales force that we have in place continues to drive that reach and frequency which will drive good and strong commercial execution.

Fibricor, which is a relatively small product which is also a number three product within the sales representative's bag, will also benefit from increased sales force resource. And clearly, from an ongoing point of view, we want to make sure that the positioning from a managed care perspective with YOSPRALA continues to be evolved over the course of time in a beneficial manner.

In addition, we are in a position where we are ready to submit YOSPRALA in Europe in the fourth quarter of this year, and we will be looking for a partner in that regard. We will also be submitting both YOSPRALA and MT 400, which is TREXIMET, in Canada. And clearly, from a business development and licensing point of view, we will continue to assess and look for opportunities, providing that they make sense from a shareholder value point of view.

So, in summary, I think we've been very pleased at how things have evolved during the course of this year. We believe that we have exceeded every expectation that we set for the organization. And I recognize, and one thing that I've learned in running all of the public companies that I have, is that you are only as good as the job you're in. And we intend to execute well commercially, from a corporate perspective, and build shareholder value.

I am very proud of the fact that, in the four previous companies that I run, I created $10 billion worth of shareholder value, and I look forward to creating some significant shareholder value with this company as well. We are beautifully poised for 2017 and beyond.

So, with that, I'm quite happy to answer any questions that you may have. Thank you.

QUESTIONS AND ANSWERS

Dave Steinberg - *Jefferies LLC - Analyst*

I have one. So, Adrian, most companies in specialty pharma that pull back from making acquisitions are highly levered, and there are all sorts of other considerations. I was just curious. As you scour for assets, the valuations of the public companies have come down a lot. But are you -- specifically for product acquisitions, are people or potential sellers realizing the new realities or are the asset prices still relatively high, in your opinion?

Adrian Adams - *Aralez Pharmaceuticals Inc. - CEO*

I think there is, in our view, a better reality that is coming into play. Clearly, we've seen a manifestation of that with Zontivity, and with Toprol-XL, and its authorized generic, where, with Toprol-XL, the kind of multiples with a run rate of $100 million and we paid $175 million, we think that's a pretty good multiple.

From a broad perspective, as I mentioned I think during the course of this year, I think we've looked at around about 90 different opportunities, both company and product acquisitions, and so we have a pretty good feel for the overall landscape.

And again, I think one of the reasons why I'm very confident for 2017 is that not only do we now have the election behind us and the uncertainty associated with that, there's no doubt that the specialty pharmaceutical sector has been impacted during the whole of this year, but I think it's going to see a resurgence in next year.

If one looks at big pharma companies, I think a lot of them are kind of reengineering themselves, and clearly a number of them are considering, as I'm sure you know, a divestment of assets. And we think there is a reality that it's putting in place there.

In addition, from our point of view, we've come across a lot of private and indeed public companies that have the dream of commercializing assets, but also don't like the idea of the risk profile. So there is a kind of a reality that is setting in place there as well.

And very importantly and one of the reasons why we believe we've been successful in this short time frame I think is products or assets that move the needle for Aralez Pharmaceuticals are very different from products or assets valuation-wise that are needed to move the needle for the Endos and for the Horizons and companies like that. So, again, what is a very good acquisition for us and will significantly grow shareholder value is something that may not be as attractive to other companies. So we think that puts us in a good position. But the landscape we feel is getting stronger, not weaker.

Dave Steinberg - *Jefferies LLC - Analyst*

Any other questions? Are you going to be back here next year?

Adrian Adams - *Aralez Pharmaceuticals Inc. - CEO*

I sincerely hope so. I've seen all the -- I get -- every time I run a pharmaceutical company, I get asked the same question. Is that -- am I building to sell? And every time, I say that I am not building the Company to sell. I like to control those things that I can control. And what I can control is execution. And in the event that that causes some strong interest and awareness generation of the Company, I have no control over that. So my focus is on execution.

Dave Steinberg - *Jefferies LLC - Analyst*

Okay. Thanks a lot.

Adrian Adams - *Aralez Pharmaceuticals Inc. - CEO*

Thank you very much.

EXHIBIT B

THOMSON REUTERS STREETEVENTS

EDITED TRANSCRIPT

ARLZ - Aralez Pharmaceuticals Inc at BMO Capital Markets Prescriptions for Success Healthcare Conference

EVENT DATE/TIME: DECEMBER 14, 2016 / 4:00PM GMT

DECEMBER 14, 2016 / 4:00PM, ARLZ - Aralez Pharmaceuticals Inc at BMO Capital Markets Prescriptions for Success Healthcare Conference

CORPORATE PARTICIPANTS

Adrian Adams *Aralez Pharmaceuticals Inc. - CEO and Director*

Scott Charles *Aralez Pharmaceuticals Inc. - CFO*

CONFERENCE CALL PARTICIPANTS

Gary Nachman *BMO Capital Markets - Analyst*

PRESENTATION

Gary Nachman - *BMO Capital Markets - Analyst*

I am Gary Nachman, the specialty pharma analyst at BMO. We are very excited to have with us Adrian Adams, CEO of Aralez, and Scott Charles, CFO of Aralez. Adrian joined the Company a little over a year ago and has quite track record as CEO of numerous companies, including Auxilium, Inspire, Sepracor and Kos, just to name a few. And Scott joined soon after Adrian coming over from Ikaria. You guys have been quite busy building out the portfolio since you joined Aralez. So great to have you both with us. Thanks for coming today.

Adrian Adams - *Aralez Pharmaceuticals Inc. - CEO and Director*

It is good to be here.

Gary Nachman - *BMO Capital Markets - Analyst*

Okay. So, Adrian, please, start by providing an overview of your portfolio and how that has evolved pretty quickly over the last several months with the launch of YOSPRALA and the deal for Toprol-XL, and how comfortable are you with the overall durability of your portfolio?

Adrian Adams - *Aralez Pharmaceuticals Inc. - CEO and Director*

Thank you for the question. We formed the Company, Aralez, in February of this year, and at that particular point in time, we were hoping that we will get the YOSPRALA approved and launched, and we also had funds available in the event that we saw any appropriate transactions. And, as we exit this year, we obviously got approval and we have launched YOSPRALA. It is still very early days yet. But we also acquired ZONTIVITY from Merck for $25 million, and more recently, we acquired the Toprol-XL franchise from AstraZeneca for $175 million. So we've kind of transformed the Company in a relatively short period of time. And I think ZONTIVITY has a very long life. I think the Toprol-XL franchise has got very stable revenue [best], and so it gets to the aspect of durability. And YOSPRALA, I think, has a pretty long life as well. So we think, from an organic growth perspective, I think we have got a great nice platform from which to grow, and it is an execution story as we move into 2017.

Gary Nachman - *BMO Capital Markets - Analyst*

Great. So, on that, let's talk about the launch of YOSPRALA. And you said it is early days, but how satisfied are you so far, and just highlight for people that may not be familiar the benefits that the product offers and how you have been positioning it in the market?

Adrian Adams - *Aralez Pharmaceuticals Inc. - CEO and Director*

Well, first of all, the products itself, it is the first time I have launched many products in my particular lifetime, but I think this is the first time I have launched a product for which there is 100% awareness of one of the core ingredients, aspirin.

So, in any one year, I think there are round about 26 million patients who are diagnosed with a heart attack or a stroke, and 70% of those are given aspirin. The challenge is that that counter protective aspect of aspirin is not maintained because a lot of patients tend to not be compliant. Because they get GI side effects -- ulcers, et cetera -- that cause people to move off therapy.

So YOSPRALA is a fixed combination of aspirin with omeprazole, and it is the sequence of delivery that is important in the product. It goes down into the gut. The PPI inhibitor is released. It gets the PH level of the stomach up to the right levels such that when you release the aspirin, you don't get the GI side effects. So that, in essence, is what YOSPRALA is all about.

So we launched the product on October 3, so it is still very early days. We launched with a 110-person sales force. All 110 were hand selected. It worked for us in the past and were high performance in their previous companies. And we had given them contingent offers and once we got the approval, we pressed the button, they all resigned, and joined, and a week later they were launching the product. So it is early days, and I think critical to the success of any product at this point in time in this sector, I think, is managed care coverage. And we remain very confident that we are going to exit this year with over 80% of lives covered with this product. So that is going to be fundamental as we move into 2017.

Qualitatively, the feedback from cardiologists and primary care physicians has been very strong, that it is very logical, the product, and clearly I think prescriptions are being generated. I think the key to those prescriptions being filled is managed care, and we are making some very good progress in that area. So we remain very optimistic and confident for 2017.

Gary Nachman - *BMO Capital Markets - Analyst*

Could you expand on the Managed Care Act has been -- maybe, Scott, you want to chime in just in terms of the growth to net and how you are modeling that in the early days? We hear from any company launching a new product, there are these new to market blocks, and it is very difficult to get around, and you have to have aggressive co-pay reimbursement. So if you could just give a little bit more color on that.

Adrian Adams - *Aralez Pharmaceuticals Inc. - CEO and Director*

I will give a comment, and then Scott can comment on the growth of that, et cetera. Clearly, when we -- we recently had our third-quarter call, and we mentioned at that particular point in time that, even relatively early after the launch, we had around about 50% of lives covered. The challenge was that a significant proportion of those required prior authorizations. So, clearly, I think what we want to do and we are confident we will exit in this way at the end of this year is to broaden that access. So we are very pretty confident that, as of the end of this year, we will have over 80% of lives covered, which is pretty good for a product so early in its lifecycle. And, in particular, I think the number of prior authorizations -- the proportion of prior authorizations will drop significantly. So -- and, obviously, I think part of our assumptions within that that some of the big plans that we are currently under discussions with will obviously be part of that 80% coverage. So, on the gross to net?

Scott Charles - *Aralez Pharmaceuticals Inc. - CFO*

Yes. So, on the gross to net side, obviously, as Adrian mentioned, we are still in the early days of having the discussions with the key managed care plans. So, at this point, we can't give guidance on specific gross to net gross percentages, but what I can say is that we are having very productive discussions. We are confident that we are going to be able to get on these plans, and we are carefully balancing what the rebate percentage that we are looking to give versus what tier that we are looking to put in to make sure we are optimizing volume and price at the same time. So we are having very good discussion. I think we will be very well positioned as we get into 2017 to give a little bit more guidance once we have had these discussions with the plans.

Gary Nachman - *BMO Capital Markets - Analyst*

Okay. Let's shift over to Toprol-XL, and what are the dynamics with that product, how much generic competition are you expecting for it, and anything that you plan to do differently from what AstraZeneca was doing previously maybe to accelerate growth?

Adrian Adams - *Aralez Pharmaceuticals Inc. - CEO and Director*

Well, as it relates to acceleration, I think, clearly, when we completed this transaction, and up from payment of $175 million, I think one of the things that we were very focused on was what was the kind of (inaudible) with the brand. I think at the end of 2015, I think the combined revenues of the brand Toprol-XL and the authorized generic were around about $89 million. I think we were very pleased that when AstraZeneca shared the quarter results, that for nine months of this year, around about $81 million in sales. So clearly, tracking towards $100 million-plus for the year. So I think, clearly, this was a very competitive transaction. There are lot of people who were interested in this asset. Toprol-XL is a very well established brand, and it is not an easy product to make.

So, clearly, I think there are a couple of generics that I think are available in addition to the authorized generic. That has been relatively stable, and there are two generics that actually went off market during the course of last year because they had challenges producing it to the right quality.

So this, in essence, was that the strategic rationale behind this was that it adds significant revenue to the organization, a lot of which falls straight to the bottom line. It is a financial transaction. There is no sales force resource behind this, but clearly it significantly raises our revenue outlooks for next year and, in particular, helps -- the cash that has spun off from this helps to fuel the growth of launches of both YOSPRALA and ZONTIVITY, which we are pretty excited about as well.

Gary Nachman - *BMO Capital Markets - Analyst*

Yes. And I think when you look at the growth from 2015 to 2016 for Toprol-XL, you can see it is actually very nice growth. Some of that is driven by both the branded side and the authorized generic side. The branded side has been helped by a five-year contract that AstraZeneca designed in the second quarter, so that has obviously accelerated the growth on the branded side. We see that as a five-year contract that is going to help us sustain revenues into the future on the branded business. And the authorized generic part of the business that it is with Par Pharmaceutical, has done incredibly well as well, and they have done a great job with the product, and we see that as a solid base as we look forward, too.

Gary Nachman - *BMO Capital Markets - Analyst*

Okay. It is worth noting that you guys accelerated profitability as a result of this Toprol-XL deal. So now that is supposed to happen sometime next year.

Scott Charles - *Aralez Pharmaceuticals Inc. - CFO*

Yes. Good point, Gary. So obviously, we launched the company (inaudible) in February of this year. We had initially planned on being profitable on an EBITDA basis in 2018.

Now, with the Toprol-XL transaction and the revenues and the significant EBITDA that that product brings, we believe that we can now accelerate our profitability on an EBITDA basis into 2017, which puts us in a much stronger position financially. It also diversifies our revenue base and puts us in a better position to be able to refinance at some point earlier in the future.

Gary Nachman - *BMO Capital Markets - Analyst*

Okay. And you will give your guidance on the next earnings call (inaudible)?

Scott Charles - *Aralez Pharmaceuticals Inc. - CFO*

Yes.

Gary Nachman - *BMO Capital Markets - Analyst*

Okay. Can't wait. Adrian, talk about your strategy for building out the pipeline more. I know it is not a priority right now to you guys because you have a lot on your plate in terms of commercial execution, but at what point do you think that will be more of a focus?

Adrian Adams - *Aralez Pharmaceuticals Inc. - CEO and Director*

Yes. I think, increasingly, it is a focus. I mean, we have been executing against the plan that we put in place when we launched the Company in February, and we have exceeded those expectations. We said, though, our initial priority was obviously to launch YOSPRALA and to put the cash that we had available to the transactions to effect and with a strong focus on revenue-generating assets. And the Toprol-XL transaction is one example of that.

Now, clearly, this year has been very challenging for the broad healthcare sector, and clearly, I think if one looks at the business model for Aralez, we have always been very consistent that our model does not revolve around acquiring assets and putting in significant price increases to move forward.

That said, I think there is still a view that, perhaps, our business model is similar to other companies like [Baylons], like the [Endors] and Horizon, et cetera, which it isn't.

So I think from an execution perspective, as we move into next year, clearly, from a business development to licensing point of view, if we did nothing else but just execute with what we have with YOSPRALA, the relaunch of ZONTIVITY, and maximizing the Toprol-XL franchise, that would be a very nice specialty pharma company.

Well, clearly, I think, from a business development perspective, the world of business development, having done many, many transactions in my time, never stands still. So we are going to have one eye on execution and one eye with a glint on it in terms of ongoing transactions. And those transactions that we are interested in are in the specialty pharmaceutical area and, in particular, not just revolve around getting revenue, but also building a pipeline. We are going to reverse back into pipeline. Not into the Phase 1/2 area, but obviously we are going to, in a financially disciplined way, differentiate our business model to one of organic growth driven off execution with the assets that we have and evolving a pipeline that will come through M&A activity.

Gary Nachman - *BMO Capital Markets - Analyst*

And, with that one eye that you are just using partially looking at M&A, is it going to be more products like Toprol-XL? Are there a lot of mature assets out there? Could they be more financially driven, or is it really going to be -- I just want to confirm what you just said -- that you are really going to look for more durable assets and potentially bringing in more pipeline?

Adrian Adams - *Aralez Pharmaceuticals Inc. - CEO and Director*

I mean, certainly, I think every business development deal that you look at has different goals and different products. I would never say that we wouldn't do something like a Toprol-XL. But clearly, we are very interested in developing a business model that revolves around organic -- durable, organic growth. And by definition, I think one can do that from acquiring assets that will deliver that long-term growth, but also developing a pipeline that also gives some juice to the story as well on an ongoing basis.

Gary Nachman - *BMO Capital Markets - Analyst*

And maybe you just want to add the capacity. You have another line that you can tap into.

Scott Charles - *Aralez Pharmaceuticals Inc. - CFO*

Yes. Thanks, Gary. So from a capacity perspective, we have got from Deerfield, obviously, they have been a tremendous partner and supporter of the Company. They have invested in all four of Adrian's prior public companies, and they have been step-by-step with us all the way through this journey at Aralez and in every transaction that we have done. And they have -- they provide the initial $200 million of capital that we used to fund both Toprol-XL and ZONTIVITY, and they have put aside another $250 million of capital for future business development transactions that are mutually agreeable between us and Deerfield.

So we think we are in a great position, obviously, to be able to fund future deals as we look forward. We obviously are going to be cognizant of leverage ratio. That is something, obviously, right now we don't have positive EBITDA, so we want to keep an eye on leverage ratio as we look forward. So that will be something we are very cognizant of. So, as we look forward, obviously, we can utilize equity at the right point in time when we feel good as well to fund future transactions. So there's a couple different ways we can finance them.

Gary Nachman - *BMO Capital Markets - Analyst*

Okay. By the way, if there are any questions, just raise your hand. We will get a mic to you. In a few more minutes here, maybe you could touch on your Canadian business, which I don't think really gets much play. How you are looking at different ways of growing it, if you are. Will you be investing more behind that business?

Adrian Adams - *Aralez Pharmaceuticals Inc. - CEO and Director*

Yes. I think, obviously, when we formed Aralez, it was from a merger of Tribute Pharmaceuticals, a small pharmaceutical company, and POZEN, which was a development-oriented company from North Carolina. So, as we exit this year, around about 50% of our revenues exiting this year are from the Canadian organization. So they have a product portfolio with a number of growth drivers within the portfolio. And -- but, obviously, prior to us merging the two companies, I think they had a business model which revolved around acquisition of products and growing the Company accordingly.

So we've focused the organization now in terms of driving organic growth moving forward. That does not mean that in the event that we see a nice opportunity that is either Canadian specific or a broader opportunity that we won't further invest in acquiring products or, indeed, companies to bolster the Canadian portfolio. But our strategy right now is, in addition to the growth drivers that are currently within the Canadian business, we have just launched BLEXTEN in Canada, an allergy treatment, and we also have YOSPRALA and Treximet to submit in Canada. So there is a number of organic growth drivers that will help us to transform the business moving forward.

Scott Charles - *Aralez Pharmaceuticals Inc. - CFO*

We also approved for ZONTIVITY in Canada. So that is another opportunity that we can potentially launch into Canada and it is a great product, as we all know, and could really help grow that business, too.

Gary Nachman - *BMO Capital Markets - Analyst*

Yes. And I was just going to ask you about ZONTIVITY more in the US, but what do you think the market opportunity is for that product? And you're not going to (inaudible) any sales reps, right? You are just going to drop it into the existing portfolio.

Adrian Adams - *Aralez Pharmaceuticals Inc. - CEO and Director*

Correct. I think it is a perfect fit for the sales force. 110 that calls predominantly on cardiologists and high prescribing primary care physicians. And I think ZONTIVITY will compete with BRILINTA and EFFIENT, which are the two branded promotable products within this space. So, clearly, the differentiating feature for ZONTIVITY, it was a failed launch with Merck. So we believe that a lot of core drivers would allow us to do a much better job at launching the products. And if one looks at the profile of ZONTIVITY versus BRILINTA and versus EFFIENT, the key component is that within our label, at this point in time, we have reduction of thrombotic events like BRILINTA and EFFIENT, but we also have peripheral arterial disease unlike the others.

So not profiling in the way in which we are going to position that is going to be something that we are going to be focused on as we elaborate on the launch dates of ZONTIVITY next year.

Gary Nachman - *BMO Capital Markets - Analyst*

Okay. Excellent. Let's end on that note. Thank you, Adrian and Scott.

Adrian Adams - *Aralez Pharmaceuticals Inc. - CEO and Director*

All right. Thank you.

Gary Nachman - *BMO Capital Markets - Analyst*

Thanks for coming today. Thanks, everyone, for listening.

APPENDIX “D”

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
ARALEZ PHARMACEUTICALS US INC., *et al.*,[1]	:	Case No. 18-12425 (MG)
Debtors.	:	(Jointly Administered)
	:	**Hearing Date: October 10, 2018**

LIMITED OBJECTION AND RESERVATION OF RIGHTS OF MYLAN PHARMACEUTICALS INC., MYLAN LABORATORIES LTD., AND MYLAN INC. WITH RESPECT TO DEBTORS' MOTION FOR (I)(A) AUTHORIZING AND APPROVING PROCEDURES IN CONNECTION WITH SALES OF CERTAIN OF THE DEBTORS' ASSETS, (B) AUTHORIZING AND APPROVING BID PROTECTIONS, (C) SCHEDULING RELATED AUCTION AND HEARING TO CONSIDER APPROVAL OF SALES, (D) APPROVING PROCEDURES RELATED TO ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (E) APPROVING FORM AND MANNER OF NOTICE THEREOF, (F) AUTHORIZING DEBTORS' ENTRY INTO AND PERFORMANCE UNDER AMENDMENT OF PREPETITION ASSET PURCHASE AGREEMENT AND ASSUMPTION OF AGREEMENT, AS AMENDED, AND LICENSES GRANTED THEREUNDER, AND (G) GRANTING RELATED RELIEF; AND (II)(A) AUTHORIZING AND APPROVING SALES OF CERTAIN OF THE DEBTORS' ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS, (B) AUTHORIZING AND APPROVING ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES RELATED THERETO, AND (C) GRANTING RELATED RELIEF

[1] The Debtors in these chapter 11 cases and the last four digits of each Debtor's federal taxpayer identification number are as follows: Aralez Pharmaceuticals Holdings Limited (5824); Aralez Pharmaceuticals Management Inc. (7166); POZEN Inc. (7552); Aralez Pharmaceuticals Trading DAC (1627); Aralez Pharmaceuticals US Inc. (6948); Aralez Pharmaceuticals R&D Inc. (9731); Halton Laboratories LLC (9342). For purposes of these chapter 11 cases, the Debtors' mailing address is Aralez Pharmaceuticals, c/o Prime Clerk LLC, P.O. Box 329003, Brooklyn, NY 11232.

Mylan Pharmaceuticals Inc., Mylan Laboratories Ltd., and Mylan Inc. (collectively, "Mylan") hereby submits this Limited Objection and Reservation of Rights (the "Limited Objection") to *Debtors' Motion for (I)(A) Authorizing and Approving Procedures in Connection with Sales of Certain of the Debtors' Assets, (B) Authorizing and Approving Bid Protections, (C) Scheduling Related Auction and Hearing to Consider Approval of Sales, (D) Approving Procedures Related to Assumption and Assignment of Executory Contracts and Unexpired Leases, (E) Approving Form and Manner of Notice Thereof, (F) Authorizing Debtors' Entry Into and Performance Under Amendment of Prepetition Asset Purchase Agreement and Assumption of Agreement, as Amended, and Licenses Granted Thereunder, and (G) Granting Related Relief; and (II)(A) Authorizing and Approving Sales of Certain of The Debtors' Assets Free and Clear of Liens, Claims, Encumbrances and Other Interests, (B) Authorizing and Approving Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Related Thereto, and (C) Granting Related Relief* (the "Motion") and, in support thereof, respectfully state as follows:

I. BACKGROUND

1. Debtor POZEN Inc. ("Pozen" or "Debtor") is a Delaware corporation focused on the development of pharmaceutical products and owns related intellectual property. ECF No. 4, ¶7. Vimovo® (naproxen/esomeprazole magnesium) is a drug product developed by Pozen in conjunction with AstraZeneca for the treatment of various forms of arthritis while decreasing the risk of patients developing NSAID-related gastric ulcers. *Id.*, ¶18.

2. In 2010, Debtor transferred its Investigational New Drug Application ("IND") and New Drug Application ("NDA") to AstraZeneca. *Id*, ¶19.

3. Mylan is a generic drug manufacturer which has sought approval of the United States Food and Drug Administration (the "FDA") to make, use, and sell a generic version of Vimovo.

A. *Pozen Inc. v. Mylan Pharms. Inc.*, C.A. No. 13-cv-4022 (D.N.J.), ("Case I")

4. On May 16, 2013 Mylan sent Debtor and AstraZeneca a Notice Letter stating that it had submitted Abbreviated New Drug Application ("ANDA") No. 204920 to the FDA seeking approval to manufacture, use and/or sell generic naproxen/esomeprazole magnesium tablets prior to the expiration of seven United States Patents, including United States Patent No. 6,926,907 ("'907 patent"), that were listed in the FDA's Orange Book as purporting to cover the Vimovo drug product.

5. On June 28, 2013 Debtor, AstraZeneca, and KBI-E Inc. sued Mylan in the United States District Court for the District of New Jersey (Case No. 13-cv-4022, or "Case I"), alleging that Mylan's proposed ANDA product would infringe *inter alia* the '907 patent. Mylan filed an answer, affirmative defenses, and counterclaims on September 26, 2013. Case I, ECF No. 13. In the answer, Mylan asserted affirmative defenses of non-infringement and invalidity with respect to the '907 patent, as well as, declaratory judgment counterclaims of non-infringement and invalidity. *Id.* On October 21, 2013 Debtor, AstraZeneca, and KBI-E answered Mylan's counterclaims. Case I, ECF No. 21.

6. In November 2013, AstraZeneca entered into a license agreement with Horizon Pharma USA, Inc. ("Horizon"). ECF No. 4, ¶19. On December 16, 2013 Pozen, AstraZeneca, and KBI-E moved to join Horizon as a plaintiff in Case I. Case I, ECF No. 38.

7. On April 10, 2014 Debtor, Horizon, AstraZeneca, and KBI-E amended the Case I complaint to include U.S. Patent No. 8,557,285 ("the '285 patent"). Case I, ECF No. 49.

8. On July 23, 2014, Case I was consolidated with *Horizon Pharma, Inc. v. Dr. Reddy's Laboratories, Inc.*, Case No. 11-cv-2317 ("Consolidated Case I") as the lead case and two other civil actions, one involving another generic pharmaceutical company, Lupin Ltd. and Lupin Pharmaceuticals, Inc. (collectively, "Lupin") (Case No. 11-cv-4275) and another involving Dr. Reddy's Laboratories, Inc. and Dr. Reddy's Laboratories, Ltd. (collectively, "DRL") (Case No. 13-cv-91). Case I, ECF No. 61.

9. Three years later, the New Jersey District Court conducted a bench trial from January 12-20, 2017, with closing arguments on May 17, 2017. Case No. 11-cv-2317, ECF No. 498. The Court issued its trial opinion on July 12, 2017 in favor of Debtor and Horizon and entered judgment on July 21, 2017. Case No. 11-cv-2317, ECF Nos. 498, 499.

10. The Judgment is subject to a timely-filed appeal pending in the United States Court of Appeals for the Federal Circuit. On August 17, 2017, Mylan filed notice of appeals in Consolidated Case I and Case I., which were docketed by the Federal Circuit on August 25, 2017, Appeal Nos. 17-2484 and 17-2486. *See* Case No. 11-cv-2317, ECF No. 501; Case I, ECF No. 88; *see also* Fed. Cir. Case No. 17-2484, ECF No. 1; Fed. Cir. Case No. 17-2486, ECF No. 1.

11. The Federal Circuit cases were consolidated into lead case *Pozen Inc. v. Dr. Reddy's Laboratories Inc.*, No. 17-2473. The case was fully briefed by April 2, 2018. *See* Fed. Cir. Case No. 17-2473, ECF No. 49. On August 21, 2018, the Federal Circuit set oral argument for October 3, 2018. *See id.*, ECF No. 63.

12. On August 27, 2018, Debtor filed a suggestion of bankruptcy. *Id.*, ECF No. 64. The Federal Circuit then cancelled the oral argument set for October 3rd and requested Mylan, DRL, Lupin, and plaintiff-cross-appellant Horizon to file a response to the bankruptcy notice. *Id.*, ECF No. 66.

13. On September 10, 2018, Mylan jointly responded with DRL and Lupin to the Federal Circuit's request disputing that the automatic stay provisions applied but agreed to move for such a determination in this Court. *Id*, ECF No. 67.

B. *Pozen Inc. v. Mylan Pharms. Inc.*, C.A. No. 15-cv-3327 (D.N.J.) ("Case II")

14. Two years after the filing of Case I, on May 13, 2015, Debtor and Horizon filed suit against Mylan for infringement of two additional patents[2] listed in the Orange Book relating to Vimovo. Case II, ECF No. 1.

15. One month later, Debtor and Horizon filed an amended complaint against Mylan for infringement of yet another patent[3] listed in the Orange Book relating to Vimovo. *Id.*, ECF No. 6. Mylan filed an answer, affirmative defenses, and counterclaims on August 31, 2015. Case II, ECF No. 12. In the answer, Mylan asserted affirmative defenses of non-infringement and invalidity with respect to the '636, '996, and '190 patents, as well as, declaratory judgment counterclaims of non-infringement and invalidity. *Id.* On September 17, 2015, Debtor, and Horizon answered Mylan's counterclaims. *Id.*, ECF No. 22.

16. On December 1, 2015 Case II was consolidated with other related Vimovo litigations filed by Debtor and Horizon against yet another generic pharmaceutical company Actavis Laboratories FL., Inc., Actavis Pharma, Inc., and Actavis, Inc. (collectively, "Actavis") (Case No. 15-cv-3322), DRL (Case No.15-cv-3324), and Lupin (Case No. 15-cv-3327). *Id.*, ECF No. 24. The lead case for the consolidated case was *Pozen Inc. v. Actavis Laboratories FL, Inc.*, No. 15-cv-3322.[4] *Id.*

[2] U.S. Patent Nos. 8,852,636 ("the '636 patent) and 8,858,996 ("the '996 patent").
[3] U.S. Patent No. 8,865,190 ("the '190 patent").
[4] All Vimovo litigations against Actavis were later dismissed on February 8, 2017. Case No. 15-cv-3322, ECF No. 93.

17. Over a year later, Debtor and Horizon filed a second amended complaint against Mylan alleging infringement of two additional patents[5] listed in the Orange Book relating to Vimovo, bringing the total number of patents at issue up to five. Case II, ECF No. 32. Mylan filed an amended answer, affirmative defenses, and counterclaims on February 19, 2016. Case II, ECF No. 33. In the amended answer, Mylan asserted affirmative defenses of non-infringement and invalidity with respect to Debtor's '920, and '888 patents, as well as, declaratory judgment counterclaims of non-infringement and invalidity. *Id.* Mylan also separately counterclaimed for declaratory judgment of non-infringement and invalidity of the'698 patent. *Id.* On March 7, 2016 Debtor and Horizon answered Mylan's counterclaims. *Id.*, ECF No. 34. On February 23, 2017 the parties stipulated to dismiss Mylan's counterclaims regarding the '698 patent. *Id.*, ECF No. 40.

C. *Pozen Inc. v. Mylan Pharms. Inc.*, C.A. No. 16-cv-4921 (D.N.J.), ("Case III")

18. On August 11, 2016, Debtor and Horizon filed suit against Mylan for infringement of two additional patents[6] listed in the Orange Book relating to Vimovo. Case III, ECF No. 1.

19. Mylan filed and answer, affirmative defenses, and counterclaims on September 13, 2016. Case III, ECF No. 8. In the answer, Mylan asserted affirmative defenses of non-infringement and invalidity of the '621, '698 and '695 patents, as well as, declaratory judgment counterclaims of non-infringement and invalidity of the patents. *Id.* On October 7, 2016 Debtor and Horizon answered Mylan's counterclaims. *Id.*, ECF No. 14.

20. On December 6, 2016, Debtor and Horizon filed an amended complaint against Mylan for infringement of yet another patent[7] listed in the Orange Book relating to Vimovo. *Id.*,

[5] U.S. Patent Nos. 8,945,621 ("the '621 patent"), 9,220,698 ("the '698 patent").
[6] U.S. Patent Nos. 8,852,636 ("the '636 patent) and 8,858,996 ("the '996 patent").
[7] U.S. Patent No. 9,393,208 ("the '208 patent).

ECF. No. 20. Mylan filed an amended answer, affirmative defenses, and counterclaims on December 20, 2016. *Id.*, ECF No 27. In the amended answer, Mylan asserted affirmative defenses of non-infringement and invalidity with respect to the '208 patent, as well as, declaratory judgment counterclaims of non-infringement and invalidity. *Id.* On December 20, 2016, Mylan also filed a motion to dismiss the claims regarding the '621 patent. *Id.*, ECF No. 26. On January 24, 2017, Debtor and Horizon answered Mylan's counterclaims. *Id.*, ECF No. 42.

21. The District Court granted Mylan's motion to dismiss the '621 patent claims on August 18, 2017. *Id.*, ECF No. 75.

D. *Pozen Inc. v. Dr. Reddy's Labs., Inc.*, C.A. No. 15-cv-3324 (D.N.J.), ("Consolidated Case II")

22. Case II, which had been previously consolidated with three other Vimovo litigations, was eventually consolidated with Case III. On April 28, 2017 the seven Vimovo litigations filed by Debtor and Horizon against DRL (Case Nos. 15-2v-3324, 16-cv-2918, and 16-cv-9035), Lupin (Case Nos. 15-cv-3326 and 16-cv-4920), and Mylan (Case Nos. 15-cv-3327 and 16-cv-4921) were consolidated. Consolidated Case II, ECF No. 43.[8]

23. According to the Case Management order close of fact discovery was to occur on August 9, 2017, the close of expert discovery on November 17, 2017, and the filing of dispositive motions was to occur on December 8, 2017. *Id.*

24. In July 2017, Debtor and Horizon moved to stay the litigation pending the outcome of the Case I appeal before the Federal Circuit. Consolidated Case II, ECF No. 56. Mylan, DRL, and Lupin (collectively, "Defendants") did not oppose a stay as to the patents related to those at issue in the Case I appeal, but did oppose the remainder of Debtor's and Horizon's request. *Id.*,

[8] Consolidated Case II had previously included Actavis as the lead case (Case No. 15-cv-3322), but when the Actavis litigation settled the lead case in the Consolidated Case II litigation became the *Pozen Inc. v. Dr. Reddy's Laboratories, Inc.*, C.A. No. 15-cv-3324 action.

ECF Nos. 59, 60. On August 25, 2017 the District Court agreed with Defendants and stayed the litigation as to the patents related to those in the Case I appeal,[9] but denied the motion for the remaining patents, the '208 and '698 patents. *Id.*, ECF No. 68.

25. Fact discovery was completed on December 15, 2017.

26. Debtor and Horizon made a second attempt to stay the Consolidated Case II action in May 2018. Debtor and Horizon argued that the issues in the co-pending Patent and Trial Appeal Board ("PTAB") and district court proceedings were duplicative and once again asked the district court to stay the Consolidated Case II actions. Consolidated Case II, ECF No. 107. The Defendants opposed. *Id.*, ECF No. 108. The District Court agreed with the Defendants, holding that a stay would cause "substantial delay to Defendants, at a time when the case is poised to move forward with a motion for summary judgment." *Id.*, ECF No. 117 at 3-4.

27. On July 28, 2018, nearly a year after the original date set in the case management order, expert discovery came to a close.

28. On August 10, 2018, unaware of Debtor's petition for bankruptcy, the Defendants filed a motion for summary judgment. Consolidated Case II, ECF No. 118.

29. Debtor, not notifying the District Court of the bankruptcy petition, requested an extension to respond to Defendants motion for summary judgment along with Horizon. *Id.*, ECF No. 122. Then on August 24, 2018, Debtor and Horizon filed their own motion for summary judgment, still not notifying the District Court of the bankruptcy petition. *Id.*, ECF No. 123.

30. Finally, on August 27, 2018, after Debtor's requested extension to respond to the Defendants' motion for summary judgment and after jointly filing a motion for summary judgment against the Defendants Debtor filed a suggestion of bankruptcy. *Id.*, ECF No. 125.

[9] '996, '636, '190, '920, '888, and '695 patents.

31. Since Debtor's filing of the suggestion of bankruptcy, the District Court has conducted three status conferences with the parties. During the September 14, 2018 status conference Debtor and Horizon confirmed that they intend to continue pursuing their patent infringement claims against the Defendants. At the same time, they asserted that the stay applied to the Defendants defenses to those claims. Upon the order of the District Court, Debtor and Horizon provided a response to the District Court's questions pertaining to the automatic stay and Defendants responded on September 25, 2018. *Id.*, ECF Nos. 144, 145. In addition, to avoid unnecessarily prolonging the case, the District Court ordered the Defendants to move forward expeditiously with any request for relief from this Court. On October 1, 2018, the District Court determined that the automatic stay did not apply to Defendants' affirmative defenses. ECF No. 153.

32. On September 24, 2018 Mylan submitted a proposed order to the District Court to dismiss without prejudice its invalidity and non-infringement counterclaims pertaining to the '698 and '208 patents in Case No. 16-cv-4921. *Id.*, ECF No. 143. This order was entered on October 1, 2018. ECF No. 154.

33. The Defendants' opposition to Debtor's and Horizon's motion for summary judgment was filed on September 26, 2018. *Id.*, ECF No. 147. However, Debtor and Horizon requested leave to withdraw this motion, and the Court granted such leave. ECF No. 155.

34. Debtor's and Horizon's response to Defendants motion for summary judgment was filed on September 28, 2018. *Id.*, ECF No. 149.

E. The *Inter Partes* Review ("IPR") Proceedings

Mylan filed petitions for *inter partes* review of the '698 and '208 patents before the PTAB on August 24, 2017 and December 4, 2017, respectively. IPR2017-01995, Paper No. 2; IPR2018-00272, Paper No. 2.

35. The PTAB instituted the IPRs on March 8, 2018, and June 14, 2018, respectively. IPR2017-01995, Paper No. 18; IPR2018-00272, Paper No. 9. DRL moved to join the IPR proceedings.[10] IPR2017-01995, Paper No. 47.

36. Discovery with respect to the '698 patent IPR (IPR2017-01995) was near completion and a final determination was expected by March 8, 2019. Discovery with respect to the '208 IPR (IPR2018-00272) was underway and a final determination was expected by June 14, 2019.

37. On August 28, 2018, Debtor filed a Suggestion of Bankruptcy in the IPR Proceedings. IPR2017-01995, Paper No. 50; IPR2018-00272, Paper No. 12. The PTAB issued an order suspending the case deadlines and requiring Debtor to file monthly status reports. IPR2017-01995, Paper No. 51; IPR2018-00272, Paper No. 13.

II. LIMITED OBJECTION AND RESERVATION OF RIGHTS

38. Mylan takes no position with respect to the Debtor's Motion insofar as it seeks approval of bid procedures. However, given the pending appeal, District Court litigations, and *inter partes* review proceedings, Mylan files this Limited Objection and Reservation of Rights to alert the Court of the pendency of these actions and to ensure that bidders are not misled by the Motion and related notices.

39. The Debtor's Motion covers both the bid procedures and the sale of assets free and clear of competing claims and interests. While the Motion is not free of ambiguity, and it contains quite broad "free and clear" language, Mylan does not believe the Debtor is attempting to sell the Vimovo assets free and clear of the above pending proceedings. That is, the sale will be free and

[10] DRL moved to join IPR2018-00272 concerning the '208 patent but the PTAB has not ruled on that motion.

clear of monetary and similar encumbrances, but the proceedings described above will continue, and the only effect the sale will have on any of those proceedings is that after the closing of the sale, the successful bidder will be substituted in for Pozen. Other than that, the parties' rights in the proceedings will be unaffected by the sale.

40. If Mylan's understanding of the Debtor's intent is correct, the bid procedures and associated documentation should be clarified in order to reflect that understanding and ensure that no prospective overbidders are misled by the "free and clear" language in the Motion.

41. If Mylan's understanding of the Debtor's intent is incorrect, and the Debtor actually does intend to attempt to affect the above proceedings by means of the sale, Mylan objects to any such attempt. Patent law will not countenance such a result, and bankruptcy law will not countenance such a result. In such case, the bid procedures and associated documentation should be clarified in order to reflect the existence of the dispute over just what is being sold and what can be sold, again to ensure that no prospective overbidders are misled by the Motion.

42. If the Debtor actually is attempting to affect the above proceedings by means of the sale, Mylan will object on that basis at the appropriate time and provide the Court with relevant authorities.

43. Mylan hereby reserves its rights to object to the sale of the Debtor's assets on any other grounds. Mylan further reserves all of its rights and remedies concerning the applicability (or inapplicability) of the automatic stay with respect to the appeal, District Court litigations, and *inter partes* review proceedings.

Dated: October 3, 2018

PERKINS COIE LLP
Attorneys for Mylan[11]

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[11] As defined herein.

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

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

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

SECOND REPORT OF THE MONITOR

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