

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

VBI Vaccines (Delaware) Inc., *et al.*¹

Debtors in a Foreign Proceeding.

Chapter 15

Case No. 24-11623 (BLS)

Jointly Administered

Hearing Date:

TBD

Objection Deadline:

December 13, 2024 at 4:00 p.m. (ET)

**MOTION OF THE FOREIGN REPRESENTATIVE FOR ENTRY OF AN
ORDER ENFORCING AND GIVING FULL EFFECT TO THE
CCAA THIRD AMENDED DIP ORDER**

VBI Vaccines (Delaware) Inc., solely in its capacity as foreign representative (the “Foreign Representative”) to the above-captioned debtors (the “Chapter 15 Debtors”), hereby moves (the “Motion”)², for entry of an order substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”) enforcing and giving full effect in the United States to the *Order (Stay Extension and Third DIP Amendment)* (the “CCAA Third Amended DIP Order”) issued by the Superior Court of Justice (Commercial List) in Ontario, Canada (the “Canadian Court”) on November 27, 2024. In support of this Motion, the Foreign Representative relies on and incorporates by reference: (a) the *Commercial Endorsement Form* (the “CCAA Third Amended DIP Endorsement”) entered by the Canadian Court on November 27, 2024, a copy of which is attached as **Exhibit B**; (b) the *Affidavit of Jeffrey Baxter sworn November 25, 2024* (the “Sixth Baxter Affidavit”), a copy of which is attached as **Exhibit C**; and (c) the *Fifth Report of the*

¹ The Debtors and the last four digits of its U.S. Federal Employer Identification Numbers or other unique identifier are as follows: VBI Vaccines Inc. (4170) (British Columbia Corporation No.), VBI Vaccines (Delaware) Inc. (9534), Variation Biotechnologies (US) Inc. (6196), and VBI Vaccines B.V. (1726) (Netherlands Corporation No.). The Debtors’ Mailing address is 160 Second Street, Floor 3, Cambridge, MA 02142.

² Capitalized terms used herein but not defined shall have the meanings ascribed to them in the CCAA Initial Order and CCAA ARIQ.

Monitor (the “Fifth Monitor Report”), a copy of which is attached as **Exhibit D**. In further support of this Motion, the Foreign Representative respectfully states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. Recognition of a foreign proceeding and other matters under chapter 15 of the Bankruptcy Code are core matters under 28 U.S.C. § 157(b)(2)(P).

2. The Foreign Representative consents to the entry of final orders or judgments by the Court if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

3. Venue in this district is proper under 28 U.S.C. §§ 1410(1) and (3).

4. The statutory predicates for the relief requested herein are sections 105(a), 1501, 1507, 1520, and 1521 of title 11 of the United States Code (the “Bankruptcy Code”).

RELIEF REQUESTED

5. By this Motion, the Foreign Representative seeks entry of an order enforcing the CCAA Third Amended DIP Order, which is attached to the Proposed Order as **Exhibit 1** and approves, among other relief:

- an increase in the amount of interim financing pursuant to the DIP Facility Agreement from US\$4,600,000 to US\$6,900,000; and
- an increase in the DIP Lender’s Charge from US\$4,850,000 to US\$7,200,000.

BACKGROUND

Procedural History

6. On July 29, 2024, the four (4) entities comprising the Chapter 15 Debtors, along with the remaining subsidiaries of VBI Vaccines Inc. (“VBI”), Variation Biotechnologies Inc. (“VBI Cda”), SciVac Ltd. (“SciVac”), and SciVac Hong Kong Limited (“SciVac HK,” and collectively with the Chapter 15 Debtors, VBI Cda, and SciVac, the “CCAA Debtors” or the “VBI Group”) commenced a proceeding (the “Canadian Proceeding”) under Canada’s Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the “CCAA”).

7. On July 30, 2024, the Canadian Court entered the *Initial Order* (the “CCAA Initial Order”) and endorsement (the “Initial Order Endorsement”), which, among other things, appointed VBI Delaware as the Foreign Representative of the CCAA Debtors, granted a stay of proceedings against the CCAA Debtors, and appointed Ernst & Young (“EY”) as the monitor (the “Monitor”) of the CCAA Debtors in the Canadian Proceeding.

8. Also on July 30, 2024, the Foreign Representative filed petitions and a motion (the “Recognition Motion”) in this Court under chapter 15 of the Bankruptcy Code for recognition of the Canadian Proceeding as a foreign main, or in the alternative, foreign nonmain proceeding, thereby commencing the Chapter 15 Debtors’ cases (the “Chapter 15 Cases”).

9. On August 2, 2024, this Court entered the *Order Granting Provisional Relief Under Sections 105(a), 362, 365, 1517, 1519, and 1521 of the Bankruptcy Code* and on August 27, 2024, this Court entered the *Final Order Granting Recognition of Foreign Main Proceeding and Certain Related Relief Under Sections 105(a), 362, 365, 1517, 1519, 1520 and 1521 of the Bankruptcy Code* (the “Recognition Order”).

10. Also on August 2, 2024, the CCAA Debtors filed a motion in the Canadian Proceeding seeking, among other things, (i) approval of the DIP Facility Agreement, (ii) approval of the KERP, (iii) approval of the Administration, Directors', KERP, and DIP Lender's Charges in increased amounts from the CCAA Initial Order, and (iv) approval of the Solicitation Procedures and authorization to commence the solicitation process.

11. Following a hearing held on August 9, 2024, the Canadian Court entered the *Amended and Restated Initial Order* (the "CCAA ARIO") and the *Order (Solicitation Order)* (the "CCAA Solicitation Order").

12. The Foreign Representative sought enforcement of the CCAA ARIO and CCAA Solicitation Orders from this Court, and the *Order (I) Enforcing and Giving Full Effect To (A) the CCAA Amended and Restated Initial Order and (B) the CCAA Solicitation Order and (II) Granting Related Relief* was entered on September 24, 2024.

13. Following a hearing held on September 20, 2024, the Canadian Court entered the *Order (Stay Extension and DIP Amendment)* (the "CCAA Amended DIP Order"), which extended the stay of proceedings against the CCAA Debtors through October 18, 2024, and increased: (i) the amount of financing available to the CCAA Debtors under the DIP Facility Agreement from US\$2,500,000 to US\$3,600,000; and (ii) the DIP Lender's Charge from US\$2,700,000 to US\$3,850,000.

14. The Foreign Representative sought enforcement of the CCAA Amended DIP Order from this Court, and the *Order Enforcing and Giving Full Effect to the CCAA Amended DIP Order* was entered on October 15, 2024.

15. Following a hearing held on October 16, 2024, the Canadian Court entered the *Order (Stay Extension and Second DIP Amendment)* (the

“CCAA Second Amended DIP Order”), which extended the stay of proceedings against the CCAA Debtors through November 29, 2024, and increased: (i) the amount of financing available to the CCAA Debtors under the DIP Facility Agreement from US\$3,600,000 to US\$4,600,000; and (ii) the DIP Lender’s Charge from US\$3,850,000 to US\$4,850,000.

16. The Foreign Representative sought enforcement of the CCAA Second Amended DIP Order from this Court, and the *Order Enforcing and Giving Full Effect to the CCAA Second Amended DIP Order* was entered on October 30, 2024.

17. Following a hearing held on October 31, 2024, the Canadian Court entered the *Order (Approval and Reverse Vesting Order)* (the “Approval and Reverse Vesting Order”), which, among other things: (i) approved the acquisition agreement entered into between, *inter alia*, certain of the CCAA Debtors and K2 VBI Equity Trust, LLC, as purchaser; and (ii) approved the transaction contemplated therein.

18. The Foreign Representative sought enforcement of the Approval and Reverse Vesting Order from this Court, and the *Order Enforcing and Giving Full Effect to the Approval and Reverse Vesting Order* was entered on November 20, 2024.

19. Due to the time required to obtain recognition of the Approval and Reverse Vesting Order in the Israeli Court, the CCAA Debtors were required to seek a further extension of the stay and an increase in the authorized borrowing limit pursuant to the DIP Facility Agreement through the CCAA Third Amended DIP Order. The CCAA Debtors currently expect to obtain recognition of the Approval and Reserve Vesting Order in December, with the closing of the Sale to take place shortly thereafter.

THE CCAA THIRD AMENDED DIP ORDER

Summary of Key Terms

20. Following a hearing held on November 27, 2024, the Canadian Court entered the CCAA Third Amended DIP Order which contains modifications to relief previously granted in the CCAA Amended DIP Order and the CCAA Second Amended DIP Order, which are summarized herein.

21. The CCAA Third Amended DIP Order extends the stay of proceedings against the CCAA Debtors through November 29, 2024, and increases: (i) the amount of financing available to the CCAA Debtors under the DIP Facility Agreement from US\$3,600,000 to US\$4,600,000; and (ii) the DIP Lender's Charge from US\$3,850,000 to US\$4,850,000.

BASIS FOR RELIEF

The Court Should Enforce the CCAA Third Amended DIP Order

22. Chapter 15 of the Bankruptcy Code is designed to promote cooperation and comity between courts in the United States and foreign courts, protect and maximize the value of a debtor's assets, and facilitate the rehabilitation and reorganization of businesses. 11 U.S.C. § 1501(a). Chapter 15 empowers courts with "broad, flexible rules to fashion relief appropriate for effectuating its objectives in accordance with comity." *In re Vitro SAB de CV*, 701 F.3d 1031, 1053 (5th Cir. 2012); *see also Lavie v. Ran*, 406 B.R. 277, 282 (S.D. Tex. 2009) (stating that post-recognition relief in a chapter 15 case involves weighing "'flexible and pragmatic' subjective considerations and comity"); *In re SPhinX, Ltd.*, 351 B.R. 103, 112 (Bankr. S.D.N.Y. 2006) ("[C]hapter 15 maintains—and in some respects enhances—the 'maximum flexibility' . . . that section 304 provided bankruptcy courts in handling ancillary cases considering principles of international comity and respect for the laws and judgments of other nations.") (internal citations omitted).

23. Sections 1507 and 1521 of the Bankruptcy Code provide the statutory basis to provide relief to a foreign representative following the recognition of a foreign proceeding. Granting the relief requested is consistent with, and permissible under, sections 1520, 1507 and 1521 of the Bankruptcy Code. The Court should exercise its discretion and power to enforce the CCAA Third Amended DIP Order.

I. The Relief Requested Herein is Appropriate and Warranted Pursuant to Section 1521 of the Bankruptcy Code.

24. Section 1521(a)(7) provides, in relevant part, that:

Upon recognition of a foreign proceeding, whether main or nonmain, where necessary to effectuate the purpose of this chapter and to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including—

* * *

(7) granting any additional relief that may be available to a trustee, except for relief available under sections 522, 544, 545, 547, 548, 550, and 724(a).

11 U.S.C. § 1521(a)(7). Thus, a foreign representative may seek any relief available to a trustee, with exceptions not relevant here.

25. Likewise, section 105(a) of the Bankruptcy Code applies in chapter 15 cases and permits the court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” *See id.* 11 U.S.C. § 103(a) (providing that chapter 1 of the Bankruptcy Code, which includes section 105(a), applies in a case under chapter 15); 11 U.S.C. § 105(a). Trustees, including debtors in possession acting as their own trustee, frequently obtain relief like what was granted in the CCAA Third Amended DIP Order. Relief under section 1521(a) of the Bankruptcy Code is conditioned on a determination that the interests of “the creditors and the other interested entities, including the debtor, are sufficiently protected.” 11 U.S.C. § 1522(a).

26. Enforcement of the CCAA Third Amended DIP Order, which grants relief that would generally otherwise be available to debtors in a bankruptcy case under chapter 11, is appropriate and within the Court’s authority pursuant to section 1521 of the Bankruptcy Code.

27. Parties in interest had an opportunity to object and be heard in the Canadian Proceeding with respect to the relief requested within the CCAA Third Amended DIP Order. After careful consideration, the Canadian Court found that the relief requested was proper in light of the facts and circumstances, and entered the CCAA Third Amended DIP Order. The Foreign Representative requests that this Court enforce and give full effect to the CCAA Third Amended DIP Order as a form of “appropriate relief” under section 1521(a) of the Bankruptcy Code.

28. Enforcing the CCAA Third Amended DIP Order as appropriate relief satisfies the requirement under section 1522 of the Bankruptcy Code that the interests of creditors, the debtor, and other interested parties be “sufficiently protected.” 11 U.S.C. § 1522(a). As noted above, although the Bankruptcy Code does not define “sufficient protection,” it “requires a balancing of the interests of Debtors, creditors, and other interested parties.” *In re Petroforte Brasileiro de Petroleo Ltda.*, 542 B.R. 899, 909 (Bankr. S.D. Fla. 2015); *see also In re Better Place, Inc.*, 2018 Bankr. LEXIS 322 at *19 (LSS) (Bankr. D. Del. Feb. 5, 2018) (“The analysis under [section] 1522 is one of balancing the respective interests based on the relative harms and benefits in light of the circumstances presented.”) (citations omitted); H.R. Rep. No. 109-31, pt. 1, at 116 (2005) (providing that such protection is lacking where “it is shown that the foreign proceeding is seriously and unjustifiably injuring United States creditors”).

29. Here, granting the requested relief is appropriate because the interests of all parties in interest are protected throughout the Canadian Proceeding, since creditors and other parties in interest were given notice of the hearing to consider entry of the CCAA Third Amended

DIP Order. Enforcement of and giving full effect to the CCAA Third Amended DIP Order is appropriate and within the Court's authority pursuant to section 1521 of the Bankruptcy Code. Increasing the amount of DIP financing available will allow the CCAA Debtors to maximize value and undergo a successful sale and/or restructuring. The relief requested herein will "assist in the efficient administration of [the] cross-border insolvency proceeding . . . [while] not harm[ing] the interest of the debtors or their creditors." *In re Grant Forest Prods., Inc.*, 440 B.R. 616, 621 (Bankr. D. Del. 2010). Granting full force and effect to the CCAA Third Amended DIP Order within the territorial jurisdiction of the United States will ensure the uniform and efficient administration of the Canadian Proceeding and these Chapter 15 Cases. Accordingly, enforcing and giving full effect to the CCAA Third Amended DIP Order is consistent with the well-established principles underlying the Bankruptcy Code and is appropriate under the circumstances.

II. The Relief Requested Herein is Appropriate and Warranted Pursuant to Section 1507 of the Bankruptcy Code.

30. The Foreign Representative respectfully submits that the relief requested herein is also warranted as "additional assistance" under section 1507 of the Bankruptcy Code. 11 U.S.C. § 1507; *Vitro SAB de CV*, 701 F.3d at 1057 (explaining that section 1507's "broad grant of assistance is intended to be a catch-all"); *see also* H.R. Rep. No. 109-31, pt. 1, at 109 (2005) (noting that section 1507 authorizes "additional relief" beyond that available under section 1521 of the Bankruptcy Code).

31. In determining whether to exercise its discretion to grant additional relief under section 1507(a), the Court's analysis should be guided by the principle of comity. *See* 11 U.S.C. § 1507(b). Additionally, section 1507(b) of the Bankruptcy Code, in relevant part, directs the court to consider "whether such additional assistance, consistent with the principles of comity, will reasonably assure" the:

- (1) just treatment of all holders of claims against or interests in the debtor's property;
- (2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding; [and]
- (3) prevention of preferential or fraudulent dispositions of property of the debtor

11 U.S.C. § 1507(b).

32. Enforcement of and giving full effect to the CCAA Third Amended DIP Order is appropriate under section 1507 of the Bankruptcy Code, as all applicable factors are satisfied. First, reasonable assurance of “just treatment of all holders of claims” is met when “foreign insolvency law provides a comprehensive procedure for the orderly resolution of claims and the equitable distribution of assets among all of the estate’s creditors in one proceeding.” *In re Oi S.A.*, 587 B.R. 253, 267 (Bankr. S.D.N.Y. 2018).

33. As discussed above, the relief being sought under the CCAA Third Amended DIP Order is similar to relief generally available to debtors under chapter 11 of the Bankruptcy Code and routinely granted by bankruptcy courts in chapter 11 cases.

34. Second, requiring reasonable assurance of the “protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding” is satisfied where “creditors are given adequate notice of the timing and procedures for filing claims, and such procedures do not create additional procedures for a foreign creditor seeking to file a claim.” *Oi S.A.*, 587 B.R. at 268. The CCAA Debtors’ creditors and parties in interest have been treated fairly in connection with the issuance of the CCAA Third Amended DIP Order. Such parties have been provided proper and sufficient notice of, and had the opportunity to raise any objections to, the substantive relief requested in the CCAA Third Amended DIP Order. Accordingly, the second factor in the section 1507(b) analysis is satisfied.

35. Third, section 1507(b) requires that the additional assistance reasonably assure “prevention of preferential or fraudulent dispositions of property of the debtor.” 11 U.S.C. § 1507(b)(3). Preferential or fraudulent transfers are not permitted under the CCAA, which provides for the recovery of such transfers. CCAA § 36.1(1) (incorporating by reference sections 38, 95, and 101 of Canada’s Bankruptcy and Insolvency Act, which allows for preferential or undervalued transactions made by a debtor to be set aside). Accordingly, the third factor in the section 1507(b) analysis is satisfied, given the CCAA’s prohibition against preferential and/or fraudulent transfers.

36. Enforcement of and giving full effect to the CCAA Third Amended DIP Order will also provide the CCAA Debtors and parties in interest with certainty that the order will be enforceable not only in Canada, but also with respect to creditors beyond the jurisdiction of the Canadian Court but within the territorial jurisdiction of the United States. Therefore, enforcement of and giving full effect to the CCAA Third Amended DIP Order will protect and prevent prejudice to creditors by ensuring uniform application of the CCAA Third Amended DIP Order in Canada and the United States.

III. Enforcement of and giving full effect to the CCAA Third Amended DIP Order is Not Manifestly Contrary to United States Public Policy.

37. Section 1506 of the Bankruptcy Code provides that “[n]othing in [Chapter 15] prevents the court from refusing to take an action governed by [Chapter 15] if the action would be manifestly contrary to the public policy of the United States.” 11 U.S.C. § 1506. The enforcement of and giving full effect to the CCAA Third Amended DIP Order in the United States is not manifestly contrary to the public policy of the United States and, therefore, section 1506 of the Bankruptcy Code does not present any bar to the enforcement of such order. The legislative history indicates that the “public policy” exception is narrow, applying only to the “most

fundamental policies of the United States.” H. Rep. No. 109-31, pt. 1, 109th Cong., 1st Sess. 109 (2005); *see In re Irish Bank Resolution Corp. Ltd.*, 538 B.R. 692, 698 *D. Del. 2015) (refusing to find a public policy exception where recognition did not “impinge severely a U.S. Constitutional or statutory right” (internal quotations omitted)); *In re Rede Energia*, 515 B.R. at 92 (“[T]he public policy exception is clearly drafted in narrow terms and the few reported cases that have analyzed [section] 1506 at length recognize that it is to be applied sparingly.”).

38. It is typical for debtors in the United States to seek approval of DIP financing for their restructuring proceedings. As such, the requested relief is consistent with the public policy of the United States.

39. Accordingly, the Foreign Representative respectfully requests the Court to enter an order giving full force and effect to the CCAA Third Amended DIP Order in the United States. Doing so is consistent with long standing principles of international comity and cooperation and is warranted under sections 1507 and 1521 of the Bankruptcy Code.

NOTICE

40. The USPS has currently suspended acceptance of mail to Canada due to an ongoing strike by the Canadian Union of Postal Workers.³ Under these circumstances, the Foreign Representative intends to mail a copy of this Motion to the Canadian Mail Parties as soon as the USPS resumes accepting service of mail to Canada.

41. The Foreign Representative will serve a copy of this Motion by first class mail in accordance with the *Order (I) Specifying Form and Manner of Service of Notice of the*

³ See <https://about.usps.com/newsroom/service-alerts/international/canada-suspension.htm>. There are approximately 44 parties that have been served via first-class mail in the Chapter 15 Cases (the “Canadian Mail Parties”) that are affected by this strike. Based on information provided by Stretto, the Foreign Representative’s noticing agent in this case, alternative physical delivery methods to the Canadian Mail Parties would cost approximately \$105 per package, resulting in a cost burden of approximately \$4,620 exclusive of the costs for mailing to hundreds of other parties.

Recognition Hearing Notice Under Sections 105(a), 1514 and 1515 of the Bankruptcy Code and Bankruptcy Rules 2002 and 9007, and (II) Scheduling Hearing and (III) Granting Related Relief (D.I. 16), except to the extent delayed as to the Canadian Mail Parties are explained above. In light of the nature of the relief requested, the Foreign Representative submits that no further notice is required.

WHEREFORE, the Foreign Representative respectfully requests that the Court: (a) enter the Proposed Order, substantially in the form attached hereto as **Exhibit A** and (b) grant such other and further relief as it deems just and proper under the circumstances.

Dated: December 6, 2024
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Derek C. Abbott

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Counsel for the Foreign Representative

EXHIBIT A

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re	)	Chapter 15
VBI Vaccines (Delaware) Inc., <i>et al.</i> ¹	)	Case No. 24-11623 (BLS)
Debtors in a Foreign Proceeding.	)	Jointly Administered
	)	Re D.I. _____

**ORDER ENFORCING AND GIVING FULL EFFECT TO THE
CCAA THIRD AMENDED DIP ORDER**

Upon the motion (the “Motion”) of VBI Vaccines (Delaware) Inc., solely in its capacity as foreign representative (the “Foreign Representative”) to the above-captioned debtors (the “Chapter 15 Debtors”), for entry of an order enforcing and giving effect to the CCAA Third Amended DIP Order attached hereto as **Exhibit 1**, as more fully set forth in the Motion; and upon (a) the *Commercial Endorsement Form* (the “CCAA Third Amended DIP Endorsement”) entered by the Canadian Court on November 27, 2024, (b) the *Affidavit of Jeffrey Baxter sworn November 25, 2024* (the “Sixth Baxter Affidavit”), and (c) the *Fifth Report of the Monitor* (the “Fifth Monitor Report”); and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334 and 11 U.S.C. §§ 109 and 1501; and venue being proper before this Court pursuant to § 1410; and the Motion being a core proceeding pursuant to 28 U.S.C. § 157(b); and adequate and sufficient notice of the filing of the Motion having been given by the Foreign Representative; and it appearing that the relief requested in the Motion is necessary and beneficial to the Chapter 15 Debtors; and this Court having held a hearing if necessary to consider the relief requested in the Motion; and there being no objections or other responses filed that have not been

¹ The Debtors and the last four digits of its U.S. Federal Employer Identification Numbers or other unique identifier are as follows: VBI Vaccines Inc. (4170) (British Columbia Corporation No.), VBI Vaccines (Delaware) Inc. (9534), Variation Biotechnologies (US) Inc. (6196), and VBI Vaccines B.V. (1726) (Netherlands Corporation No.). The Debtors’ Mailing address is 160 Second Street, Floor 3, Cambridge, MA 02142.

overruled, withdrawn, or otherwise resolved; and after due deliberation and sufficient cause appearing therefor, it is hereby

FOUND AND DETERMINED THAT:

A. On August 27, 2024, this Court entered the *Final Order Granting Recognition of Foreign Main Proceeding and Certain Related Relief Under Sections 105(a), 362, 365, 1517, 1519, 1520 and 1521 of the Bankruptcy Code*, recognizing the Canadian Proceeding as a foreign main proceeding.

B. On November 27, 2024, the Canadian Court entered the CCAA Third Amended DIP Order, increasing (i) the amount of financing available under the DIP Facility Agreement to US\$6,900,000 and (ii) the DIP Lender's Charge to US\$7,200,000.

C. The relief granted hereby is necessary and appropriate to effectuate the objectives of chapter 15 of the Bankruptcy Code to protect the Chapter 15 Debtors and the interests of their creditors and other parties in interest, is consistent with the laws of the United States, international comity, public policy, and the policies of the Bankruptcy Code, and will not cause any hardship to any party in interest that is not outweighed by the benefits of the relief granted because the parties in interest in these cases are sufficiently protected by the provisions in the CCAA Third Amended DIP Order, and this Order.

D. Absent the requested relief, the efforts of the CCAA Debtors, the Canadian Court, and the Foreign Representative in conducting the Canadian Proceeding and effectuating the restructuring under Canadian law may be frustrated, a result contrary to the purposes of chapter 15 of the Bankruptcy Code.

E. Based on the affidavits of service filed with, and representations made to, this Court including, among other things, the delayed service to the Canadian Mail Parties:

(i) notice of the Motion was proper, timely, adequate, and sufficient under the circumstances of these chapter 15 cases and these proceedings and complied with the various applicable requirements of the Bankruptcy Code and the Bankruptcy Rules; and (ii) no other or further notice of the Motion, or the entry of this Order is necessary or shall be required.

F. All creditors and other parties in interest, including the Chapter 15 Debtors, are sufficiently protected by the grant of relief ordered hereby.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED.
2. The CCAA Third Amended DIP Order is given full force and effect in the United States.
3. The failure specifically to include any particular provision of the CCAA Third Amended DIP Order in this Order shall not diminish or impair the effectiveness of such provision.
4. The CCAA Third Amended DIP Order is recognized and enforced in the territorial jurisdiction of the United States, any property of the Foreign Debtors within the territorial jurisdiction of the United States is protected from actions inconsistent with or interfering with the enforcement and implementation of the CCAA Third Amended DIP Order.
5. The Foreign Representative is authorized to take all actions it deems necessary to effectuate the relief granted pursuant to this Order.
6. All objections to the entry of this Order that have not been withdrawn, waived, or settled, or otherwise resolved pursuant to the terms hereof, are denied and overruled on the merits, with prejudice.

7. Notwithstanding any provision in the Bankruptcy Rules to the contrary, the terms of this Order shall be immediately effective and enforceable upon its entry.

8. Other than as explicitly set forth herein, this Court shall retain jurisdiction with respect to any and all matters, claims, rights, or disputes arising from or related to the implementation or interpretation of this Order.

EXHIBIT 1

CCAA Third Amended DIP Order

Court File No. CV-24-00724693-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE	)	WEDNESDAY, THE 27 th DAY
	)	
JUSTICE PENNY	)	OF NOVEMBER, 2024

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 VBI VACCINES INC., VARIATION BIOTECHNOLOGIES INC., VBI
VACCINES (DELAWARE) INC., VARIATION BIOTECHNOLOGIES (US), INC., SCIVAC LTD.,
SCIVAC HONG KONG LIMITED AND VBI VACCINES B.V.

Applicants

**ORDER
(STAY EXTENSION AND THIRD DIP AMENDMENT)**

THIS MOTION, made by made by VBI Vaccines Inc., Variation Biotechnologies Inc., VBI Vaccines (Delaware) Inc., Variation Biotechnologies (US), Inc., SciVac Ltd., SciVac Hong Kong Limited and VBI Vaccines B.V. (the "**Applicants**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an Order: (a) extending the stay of proceedings; and (b) authorizing the Applicants to draw an increased maximum amount under the DIP Facility Agreement and granting a corresponding increase to the DIP Lender's Charge (each as defined below), was heard this day by judicial videoconference via Zoom.

ON READING the Motion Record of the Applicants dated November 27, 2024 (the "**Motion Record**"), the Affidavit of Jeffrey Baxter sworn November 22, 2024 (the "**Sixth Baxter Affidavit**"), and the Exhibits thereto, and the Fifth Report of Ernst & Young Inc., in its capacity as monitor of the Applicant (in such capacity, the "**Monitor**") dated November 26, 2024, and,

ON HEARING the submissions of counsel for the Applicants, counsel for the Monitor, counsel for K2 HealthVentures LLC ("**K2HV**") as secured creditor and DIP Lender (as defined below), and such other counsel parties as listed on the Participant Information Form, with no one

else appearing although duly served as appears from the affidavit of service of Philip Yang, filed November 26, 2024.

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service and filing of the Motion Record, is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them in the Amended and Restated Initial Order of the Honourable Madam Justice Kimmel dated August 9, 2024 (the “**ARIO**”).

EXTENSION OF STAY PERIOD

3. **THIS COURT ORDERS** that the Stay Period is extended to and including January 31, 2025, or such later date as this Court may order.

DIP FINANCING

4. **THIS COURT ORDERS** that paragraphs 35 and 36 of the ARIO shall be deleted and replaced with the following:

"35. **THIS COURT ORDERS** that such credit facility shall be on the terms and subject to the conditions set forth in the First Amended and Restated Debtor In Possession Facility Term Sheet between the Applicants and the DIP Lender dated as of August 2, 2024, appended as Exhibit “F” to the Second Baxter Affidavit, as amended by the First Amending Agreement dated as of September 19, 2024, the Second Amending Agreement dated as of October 11, 2024, and the Third Amending Agreement dated as of November 25, 2024 (as may be amended from time to time, the “**DIP Facility Agreement**”).

36. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to borrow, in accordance with the terms and conditions of the DIP Facility Agreement, interim financing of up to US\$6,900,000 during the Stay Period.”

5. **THIS COURT ORDERS** that paragraph 38 of the ARIO shall be deleted and replaced with the following:

“38. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the “**DIP Lender’s Charge**”) on the Property, provided that the DIP Lender’s Charge shall not attach to (i) any property owned by VBI Vaccines (Delaware) Inc. or Variation Biotechnologies (US), Inc., whether real, personal, tangible or intangible, or (ii) any equity interests of subsidiaries of the Borrowers or Guarantors incorporated under the laws of the United States or any state or territory therein, as security for the DIP Obligations, which DIP Lender’s Charge shall be in the aggregate amount of US\$7,200,000. The DIP Lender’s Charge shall not secure an obligation that exists before the Initial Filing Date. The DIP Lender’s Charge shall have the priority as set out in paragraphs 45 and 47 herein.”

6. **THIS COURT ORDERS** that paragraph 45 of the ARIO shall be deleted and replaced with the following:

“45. **THIS COURT ORDERS** that the priorities of the Administration Charge, the Directors’ Charge, the KERP Charge, and the DIP Lender’s Charge (collectively, the “**Charges**”), as among them, shall be as follows:

First – Administration Charge (to the maximum amount of US\$600,000);

Second – Directors’ Charge (to the maximum amount of US\$300,000);

Third – KERP Charge (to the maximum amount of US\$679,005); and

Fourth – DIP Lender’s Charge (to the maximum amount of US\$7,200,000).

GENERAL

7. **THIS COURT ORDERS** that the Applicants or the Monitor or any interested party may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their powers and duties hereunder.

8. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

9. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States of America, Israel or in any other foreign jurisdiction, to give effect to this Order and to assist the Applicants,

the Monitor, the Foreign Representatives and their respective agents in carrying out the terms of this Order. All courts, tribunals, and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants, the Foreign Representatives and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants, the Foreign Representatives and the Monitor, and their respective agents in carrying out the terms of this Order.

10. **THIS COURT ORDERS** that each of the Applicants, the Foreign Representatives and the Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Foreign Representatives are hereby authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

11. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Time on the date of this Order.

12. **THIS COURT ORDERS** that this Order is effective from today's date and is enforceable without the need for entry and filing.



A handwritten signature in blue ink, appearing to read "Ray J.", is written over a horizontal line.

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

AND IN THE MATTER OF PLAN OF COMPROMISE OR ARRANGEMENT OF ARRANGEMENT OF VBI VACCINES INC., VBI VACCINES (DELAWARE) INC., VARIATION BIOTECHNOLOGIES (US) INC., SCIVAC LTD., SCIVAC HONG KONG LIMITED, VBI VACCINES B.V. AND VARIATION BIOTECHNOLOGIES INC.

Applicants

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT TORONTO

**ORDER
(STAY EXTENSION AND THIRD DIP
AMENDMENT)**

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

Lawyers for the Applicants

EXHIBIT B

CCAA Third Amended DIP Endorsement



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-24-00724693-00CL

DATE: 27-NOV-2024

NO. ON LIST: 1

TITLE OF PROCEEDING: VBI VACCINES INC. et al.

BEFORE: JUSTICE PENNY

PARTICIPANT INFORMATION**For Plaintiff, Applicant, Moving Party:**

Name of Person Appearing	Name of Party	Contact Info
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For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Marc-Étienne Boucher Meena Alnajar	Counsel for the Monitor, ERNST & YOUNG INC.	meboucher@mccarthy.ca malnajar@mccarthy.ca

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Spencer Klug Guneev Bhinder	Counsel for K2 HEALTHVENTURES LLC	spencer.klug@mcmillan.ca guneev.bhinder@mcmillan.ca
Caitlin McIntyre	Canadian Counsel for BRII BIOSCIENCES LIMITED	caitlin.mcintyre@blakes.com

ENDORSEMENT OF JUSTICE PENNY:

- [1] The applicants move for an extension of the stay and for an increase in the DIP financing to ensure sufficient cash flows for the period of the extension.
- [2] Although an AVO has been granted, the parties, working diligently, have been unable to accomplish all of the steps required to close the transaction. They need more time.
- [3] I am satisfied that circumstances exist which make an extension of the stay appropriate. I am also satisfied that the applicants have acted, and are acting, in good faith and with due diligence. The stay extension is to the end of January, which I am assured is a conservative assessment of the date by which the transaction is likely to close. The Monitor supports the extension. The cash flows show that, with the increase in the DIP also being requested, there will be sufficient funds to do what needs to be done. The stay is extended to January 31, 2025.
- [4] The increase in the DIP is also justified on the evidence. As noted, the cash flows support the need for and the amount of the DIP financing increase (from \$4.6 to \$6.9 million). The Monitor supports the increase.
- [5] The DIP lender and principal secured creditor is also supportive of the applicants' requests today. There is no opposition.
- [6] Order to issue in the form signed by me this day.


Penny J.

EXHIBIT C

Sixth Baxter CCAA Affidavit

Court File No. CV-24-00724693-00CL

**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 VBI VACCINES INC., VBI VACCINES (DELAWARE) INC., VARIATION
BIOTECHNOLOGIES (US) INC., SCIVAC LTD., SCIVAC HONG KONG LIMITED, VBI
VACCINES B.V. AND VARIATION BIOTECHNOLOGIES INC.**

Applicants

**AFFIDAVIT OF JEFFREY BAXTER
(Sworn November 25, 2024)**

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I, **Jeffrey Baxter**, of the city of Vancouver, in the Province of British Columbia, in my capacity as President and Chief Executive Officer of VBI Vaccines Inc., **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the current President and Chief Executive Officer ("**CEO**") of VBI Vaccines Inc. ("**VBI**"). I was appointed CEO of VBI in May 2016, and in this capacity, have oversight and overview of VBI's wholly owned subsidiaries (collectively, the "**VBI Group**" or the "**Applicants**"). As such, I have been responsible for the overall direction and leadership of VBI and I have personal knowledge of the facts outlined herein. Where I have relied on information from others, I state the source of such information and verily believe it to be true.

2. This affidavit should be read in conjunction with the affidavits that I previously swore in these CCAA Proceedings, including on July 29, 2024 (the "**Initial Baxter Affidavit**"), on August 2, 2024 (the "**Second Baxter Affidavit**"), on September 18, 2024 (the "**Third Baxter Affidavit**"), on October 11, 2024 (the "**Fourth Baxter Affidavit**") and on October 24, 2024 (the "**Fifth Baxter Affidavit**" and, together with the Initial Baxter Affidavit, the Second Baxter Affidavit, the Third Baxter Affidavit, and the Fourth Baxter Affidavit, the "**Baxter Affidavits**"). Capitalized terms used herein and not otherwise defined have the meaning ascribed to them in the Baxter Affidavits. Copies of the Baxter Affidavits, together with all other filings in the CCAA Proceedings, are available on the Monitor's website: [VBI Group \(ey.com\)](https://vbi-group.ey.com). All references to currency in this affidavit are references to United States dollars, unless otherwise indicated.

3. I swear this affidavit in support of a motion (the "**Motion**") by the Applicants seeking:

a) an extension of the Stay Period until and including January 31, 2025;

b) approval of the Third Amending Agreement to the DIP Facility Agreement dated as of November 25, 2024 (the "**Third DIP Amendment**"), which extends the maturity date

of the DIP Facility to January 31, 2025, and permits the Applicants to draw an increased maximum principal amount of up to \$6,900,000 under the DIP Facility; and

c) an increase to the DIP Lender's Charge in the amount of \$7,200,000.

I. BACKGROUND

4. On July 30, 2024, the Applicants were granted protection under the CCAA pursuant to the Initial Order granted by this Court.

5. The Initial Order, among other things:

a) appointed EY as Monitor of the Applicants;

b) granted an initial 10-day Stay of Proceedings in favour of the Applicants until and including August 9, 2024;

c) approved the execution of the Initial DIP Agreement dated July 29, 2024, pursuant to which the Applicants were authorized to borrow up to the initial amount of \$150,000, and granted the corresponding DIP Lender's Charge;

d) authorized VBI DE and EY to act as foreign representatives of the Applicants and to seek recognition of the CCAA Proceedings, with respect to VBI DE, in the United States, and with respect to EY, in Israel; and

e) granted the Administration Charge in the amount of \$400,000 and the Directors' Charge in the amount of \$200,000.

6. At the Comeback Hearing on August 9, 2024, this Court granted the ARIO and the Solicitation Order. The ARIO, among other things:

- 3 -

- a) granted an extension of the Stay Period to and including September 20, 2024;
- b) approved the execution by the Applicants of the First Amended and Restated DIP Facility Agreement, which permitted the Applicants to borrow an increased maximum amount of up to \$2,500,000 under the DIP Facility;
- c) approved the KERP and granted the KERP Charge in the amount of \$679,005;
- d) granted the Applicants the authority to make severance payments to certain employees who were terminated following issuance of the Initial Order;
- e) granted VBI the authority to incur no further expenses in relation to the Securities Filings and ordered that none of the directors, officers, employees, and other representatives of the Applicants, or the Monitor (and its directors, officers, employees and representatives) shall have any personal liability for any failure by the Applicants to make the Securities Filings; and
- f) granted the following Charges against the Property (ordered in priority):
 - i. the Administration Charge in the increased amount of \$600,000;
 - ii. the Directors' Charge in the increased amount of \$300,000;
 - iii. the KERP Charge in the amount of \$679,005; and
 - iv. the DIP Lender's Charge in the increased amount of \$2,700,000.

7. The Solicitation Order, among other things:

- a) approved the Solicitation Process in accordance with the Solicitation Order;
- b) granted the Applicants and the Monitor the authority to immediately commence the

Solicitation Process; and

- c) granted the Applicants, the Monitor, and their respective affiliates, partners, employees, advisors and agents the authority to take any and all actions as may be necessary and desirable to implement the Solicitation Process in accordance with the Solicitation Order.

8. On September 20, 2024, this Court granted the Stay Extension and DIP Amendment Order. Among other things, the Stay Extension and DIP Amendment Order:

- a) extended the Stay Period to and including October 18, 2024;
- b) approved the DIP Amendment, which extended the maturity date of the DIP Facility to October 18, 2024, and permitted the Applicants to draw an increased maximum principal amount of up to \$3,600,000 under the DIP Facility; and
- c) granted an increase to the DIP Lender's Charge in the amount of \$3,850,000.

9. On October 16, 2024, this Court granted the Stay Extension and Second DIP Amendment Order which, among other things:

- a) extended the Stay Period to, and including, November 29, 2024;
- b) approved the Second DIP Amendment, which extended the maturity date of the DIP Facility to November 29, 2024, and permitted the Applicants to draw an increased maximum principal amount of up to \$4,600,000 under the DIP Facility; and
- c) granted an increase to the DIP Lender's Charge in the amount of \$4,850,000.

10. On October 31, 2024, this Court granted the Approval and Reverse Vesting Order and the ARIO Amending Order. The Approval and Reverse Vesting Order, among other things:

- a) approved the Acquisition Agreement dated as of October 24, 2024 between the Purchaser, the Retained Companies, SciVac and K2HV;
- b) approved the Transaction contemplated by the Acquisition Agreement, and authorized and directed VBI to take such additional steps and execute such additional documents as necessary or desirable for the completion of the Transaction; and
- c) granted Releases in favour of the Released Parties from any and all Released Claims.

11. The ARIO Amending Order, among other things, granted the Applicants the authority to dispose of assets not exceeding \$5,000,000 (the “**Residual Assets**”) in the aggregate without Court approval.

12. On October 28, 2024, the Israeli Court issued an order extending the stay of proceedings in favour of SciVac until November 29, 2024. A copy of this order is attached hereto as **Exhibit “A”**.

13. The US Court has recognized each of the Orders granted by this Court, without opposition or objection.

II. OVERVIEW OF THE APPLICANTS’ ACTIVITIES SINCE THE APPROVAL AND REVERSE VESTING ORDER AND THE ARIO AMENDING ORDER

14. Subsequent to obtaining the Approval and Reverse Vesting Order, VBI DE, as foreign representative of the Applicants before the US Court, filed a motion for an order recognizing and giving full force and effect to the Approval and Reverse Vesting Order by the US Court. An objection deadline of November 15, 2024 was set, and no objections were filed by the deadline.

15. On November 20, 2024, the US Court issued an order recognizing and giving full force and effect to the Approval and Reverse Vesting Order in the United States, a copy of which is attached hereto as **Exhibit “B”**.

16. The Applicants are working with the Monitor, the Purchaser, and Israeli counsel to seek recognition of the Approval and Reverse Vesting Order in Israel and to determine the best path of action to obtain such recognition, in order to give effect to certain portions of the Transaction set forth in the Acquisition Agreement. It is expected that this relief will be sought before the Israeli Court in the near future, with a recognition order being granted in a short timeframe.

17. In addition to the foregoing efforts by the Applicants, since the granting of the Approval and Reverse Vesting Order and the ARIO Amending Order, the Applicants, in close consultation and with the assistance of the Monitor, have been working in good faith and with due diligence to continue to stabilize the Applicants' operations, and to close the Transaction provided for in the Acquisition Agreement in accordance with the Approval and Reverse Vesting Order.

A. Amendment to Acquisition Agreement

18. The Applicants have been working with the Purchaser on an amendment to the Acquisition Agreement, which is expected to be finalized and entered into in the next week. Among other things, the contemplated amendments to the Acquisition Agreement include:

- a) recognizing that the Purchased Assets are also owned by the Retained Companies in addition to SciVac;
- b) increasing the cash portion of the consideration for certain Purchased Assets;
- c) permitting the Purchaser to revoke the designation of a Person as a VBI DE Nominee, in order to circumvent a circumstance where the designation has been made but the transaction between the Purchaser and the VBI DE Nominee is not completed, such that the Purchased Assets would continue to vest with the VBI DE Nominee pursuant to the Approval and Reverse Vesting Order; and

d) updating certain Schedules to the Acquisition Agreement.

19. The Approval and Reverse Vesting Order approved the Acquisition Agreement, with such amendments as the Retained Companies, SciVac, and the Purchaser may deem necessary or otherwise agree to, with the approval of the Monitor. I understand that the Monitor has been kept apprised of the foregoing, and subject to review of the final amendment to the Acquisition Agreement, expects to provide its consent to such amendment.

III. RELIEF SOUGHT

A. Approval of the Third DIP Amendment and Increase to the DIP Lender's Charge

20. Pursuant to the DIP Facility Agreement, the DIP Facility is set to mature on November 29, 2024. However, the DIP Facility Agreement provides that the DIP Lender, in its sole discretion, may agree to extend the maturity date of the DIP Facility, and to provide a corresponding increase to the maximum amount which may be withdrawn by the Applicants under the DIP Facility.

21. As at the date of this affidavit, the Applicants have drawn a total of \$4,100,000 under the DIP Facility. As set out in the updated cash flow statement (the "**Updated Cash Flow Statement**") attached hereto as **Exhibit "C"**, the Applicants anticipate the need to draw up to an additional amount of \$2,800,000 under the DIP Facility in order to maintain operations and fund these CCAA Proceedings, to and including January 31, 2025.

22. While the Applicants are working expeditiously to close the Transaction, additional time is required to close same, dispose of certain Residual Assets not included in the Transaction and resolve any open issues prior to the termination of these CCAA Proceedings. Part of the reason for the closing of the Transaction taking longer than anticipated is due to the status of the recognition proceedings in Israel, as outlined above. Given the Applicants' need for additional

time and liquidity, the DIP Lender and the Applicants, in accordance with the terms of the DIP Facility Agreement, entered into the Third DIP Amendment pursuant to which:

- a) the maturity date to repay the DIP Facility was extended to January 31, 2025, in order to provide the necessary breathing room to finalize the Transaction contemplated by the Acquisition Agreement; and
- b) the Applicants are permitted to borrow the increased maximum amount of \$6,900,000 under the DIP Facility.

23. The Third DIP Amendment, which provides for an extension to the maturity date to repay the DIP Facility, and permits the Applicants to borrow additional amounts, is subject to this Court's approval of the same. A copy of the Third DIP Amendment is attached hereto as **Exhibit "D"**.

24. For clarity, while the maturity date to repay the DIP Facility was extended to January 31, 2025, the Applicants do not anticipate that the Transaction will close on or around that time. Rather, the Applicants are hopeful that the Transaction will likely close in early December 2024.

25. I believe that it is in the best interests of the Applicants and their stakeholders that this Court approves the Third DIP Amendment so that the Applicants are able to access additional DIP financing and ensure that the Court-approved Transaction can close, the Residual Assets can be sold, and these CCAA Proceedings can be wound down and terminated in an orderly manner.

26. The Applicants also seek to increase the DIP Lender's Charge to \$7,200,000 to account for the increase in the maximum availability under the DIP Facility. It is proposed that the DIP Lender's Charge will continue to rank subordinate to the other Charges.

27. The Monitor supports the increase to the maximum amount permitted to be drawn on the

DIP Facility by the Applicants and the corresponding increase to the DIP Lender's Charge.

B. Extension of the Stay of Proceedings

28. Pursuant to the Stay Extension and Second DIP Amendment Order, the Stay Period was extended to November 29, 2024. The Applicants are now seeking an extension of the Stay Period from November 29, 2024 to and including January 31, 2025.

29. Since the granting of the Stay Extension and Second DIP Amendment Order, as well as the Approval and Reverse Vesting Order, the Applicants have acted in good faith and with due diligence to, among other things, stabilize their business, address the concerns of various stakeholders, and continue working towards closing the Transaction.

30. Furthermore, since the granting of the Stay Extension and Second DIP Amendment Order and the Approval and Reverse Vesting Order, the Applicants have, among other things:

- a) preserved their liquidity and continued to operate in the ordinary course of business;
- b) obtained recognition of the Approval and Reverse Vesting Order in the United States;
- c) worked towards obtaining recognition of the Approval and Reverse Vesting Order in Israel;
- d) worked collaboratively with the Purchaser on various transition issues and efforts to close the Transaction;
- e) engaged in discussions with various contract counterparties regarding the closing of the Transaction;
- f) prepared the Updated Cash Flow Statement;

- g) solicited and negotiated additional DIP financing from the DIP Lender;
- h) engaged with the applicable regulatory and securities authorities to keep them apprised of the CCAA Proceedings and the Transaction contemplated under the Acquisition Agreement;
- i) prepared materials to advise this Court of recent developments in these CCAA Proceedings; and
- j) responded to creditor and stakeholder enquiries regarding these CCAA Proceedings.

31. The extension of the Stay Period is necessary and in the best interests of the Applicants and their stakeholders, as the additional time afforded by the extension of the Stay Period will provide the Applicants with the stability required to:

- a) continue to operate their business in the ordinary course;
- b) seek recognition of the Approval and Reverse Vesting Order in Israel and finalize the Transaction contemplated by the Acquisition Agreement;
- c) dispose of the Residual Assets; and
- d) implement additional restructuring steps, as necessary, to improve the financial position of the Applicants.

32. As set out in the Updated Cash Flow Statement that was prepared by the Applicants and reviewed by the Monitor, subject to this Court authorizing the Applicants to draw the increased maximum amount of \$6,900,000 under the DIP Facility, the Applicants have sufficient liquidity to operate through the proposed extension of the Stay Period to and including January 31, 2025.

33. I do not believe that any of the Applicants' creditors will be materially prejudiced by the

- 11 -

proposed extension of the Stay Period. Rather, as described above, the Applicants' stakeholders will benefit from the extension of the Stay Period through giving the Applicants the breathing space to finalize the Transaction.

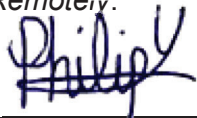
34. The Monitor and the DIP Lender, which is also the VBI Group's largest secured creditor, are both supportive of the proposed extension of the Stay Period.

IV. CONCLUSION

35. For the reasons set out above, I believe that it is in the interest of the Applicants and its stakeholders that the relief sought by the Applicants on this Motion be granted. I understand that the Monitor is also supportive of the relief sought by the Applicants in connection with this Motion.

36. I swear this affidavit in support of the Applicants' Motion, and for no other or improper purpose.

SWORN REMOTELY via videoconference,)
 by Jeffrey Baxter, stated as being located in)
 the Township of Kintnersville, in the State of)
 Pennsylvania, before me at the City of)
 Toronto, in the Province of Ontario, on this)
 25th day of November, 2024, in accordance)
 with O. Reg 431/20, *Administering Oath or*)
Declaration Remotely.)



 A Commissioner for Taking Affidavits, etc.
 PHILIP YANG | LSO #820840



JEFFREY BAXTER

EXHIBIT D

Fifth Monitor Report

Court File No. CV-24-00724693-00CL

**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 AND ARRANGEMENT OF VBI
VACCINES INC., VARIATION BIOTECHNOLOGIES INC., VBI VACCINES (DELAWARE)
INC., VARIATION BIOTECHNOLOGIES (US), INC., SCIVAC LTD., SCIVAC HONG KONG
LIMITED AND VBI VACCINES B.V.**

Applicants

**FIFTH REPORT OF THE MONITOR
NOVEMBER 26th, 2024**

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Court File No. CV-24-00724693-00CL

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 AND ARRANGEMENT OF VBI
VACCINES INC., VARIATION BIOTECHNOLOGIES INC., VBI VACCINES (DELAWARE)
INC., VARIATION BIOTECHNOLOGIES (US), INC., SCIVAC LTD., SCIVAC HONG KONG
LIMITED AND VBI VACCINES B.V.

Applicants

FIFTH REPORT OF THE MONITOR
NOVEMBER 26th, 2024

INTRODUCTION AND BACKGROUND

1. On July 30, 2024, the Ontario Superior Court of Justice ("**Court**") issued an initial order (the "**Initial Order**") under the *Companies' Creditors Arrangement Act*¹ (the "**CCAA**") with respect to VBI Vaccines Inc. ("**VBI**"), Variation Biotechnologies Inc. ("**VBI Cda**"), VBI Vaccines (Delaware) Inc. ("**VBI DE**"), Variation Biotechnologies (US), Inc. ("**VBI US**"), SciVac Ltd. ("**SciVac**"), SciVac Hong Kong Limited ("**SciVac HK**") and VBI Vaccines B.V. ("**VBI BV**") (collectively, the "**Applicants**" or "**VBI Group**"), declaring that the Applicants are debtor companies subject to the CCAA, providing for a stay of proceedings in respect of the Applicants, the appointment of EY as Monitor and various other relief measures, including the approval of a debtor-in-possession financing ("**DIP Financing**").
2. On August 9, 2024, the Court issued an amended and restated initial order (the "**ARIO**") extending the stay of proceedings against Applicants to September 20, 2024, increasing certain CCAA charges, authorizing severance payments to certain employees terminated following the issuance of the ARIO, approving the key employee retention plan (the "**KERP**") and various other relief measures. The Court also issued a solicitation order (the "**Solicitation Order**"), pertaining to a sale and investment solicitation process (the "**SISP**").
3. On September 19, 2024, the Monitor issued its second report (the "**Second Report**").
4. On September 20, 2024, on application from the Applicants, the Court issued a court order extending the stay of proceedings to October 18, 2024, authorizing the amended DIP Financing (referred to in the motion record of the applicants dated September 18th, 2024, as the "**DIP Facility Agreement**") and authorizing the increase in the DIP lender's charge as a result of an increase in the DIP Financing ("**DIP Lender's Charge**").
5. On October 15, 2024, the Monitor issued its third report (the "**Third Report**").

¹ *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended.

6. On October 16, on application from the Applicants, the Court granted a court order (i) extending the stay of proceedings to November 29, 2024 (the “**Stay Period**”), (ii) authorizing the amended DIP Financing (referred to in the motion record of the applicants dated October 11, 2024, as the “**Second DIP Amendment**”) between the Applicants and K2 HealthVentures LLC (“**K2HV**” or “**DIP Lender**”), (iii) authorizing borrowings up to a maximum principal amount of \$4,600K; and authorizing the increase in the DIP Lender’s Charge as a result of the increase in the DIP Financing.
7. On October 31, 2024, on application from the Applicants, the Court granted an order (i) approving of the acquisition agreement dated October 24, 2024, (ii) approving the transaction contemplated in the acquisition agreement (the “**Transaction**”) (iii) granting a sealing order in respect of the confidential summary of the bids received, (iv) granting releases in favour of certain parties, and (v) amending the ARIO to permit the Applicants to dispose of assets not exceeding \$5,000K in the aggregate.
8. On November 25, 2024, the Applicants served a motion seeking, the issuance of an order, *inter alia*: (i) extending the Stay Period up and until January 31, 2025, (ii) approving a third amendment to the DIP financing; and (iii) a correlative amendment of the DIP Charge (the “**Motion**”).
9. The Fifth Report is intended to provide the Court and stakeholders with information relevant to the Applicants’ Motion based on the information that has been made available to the Monitor, including for the most part, by management of the VBI Group.

PURPOSE

10. The purpose of this report (“**Fifth Report**”) is to provide the Court with information about:
 - 9.1. the Monitor’s activities since the Fourth Report;
 - 9.2. the Applicants’ activities since the Fourth Report;
 - 9.3. the Applicants’ extended weekly cash flow forecast for the period ending January 31, 2025 (the “**Updated Cash Flow Forecast**”);
 - 9.4. the Motion, seeking;
 - 9.4.1. approval of the amended DIP Financing (as referred to in the Motion as the “**Third DIP Amendment**”) dated November 25, 2024, between the Applicants and the DIP Lender, authorizing borrowings up to a maximum principal amount of \$6,900K;
 - 9.4.2. extension of the Stay Period until and including January 31, 2025; and
 - 9.4.3. granting of the increase in the DIP Lender’s charge in favour of the DIP Lender in the increased amount of \$7,200K.

TERMS OF REFERENCE AND DISCLAIMER

11. In preparing the Fifth Report and making the comments herein, the Monitor has been provided with and has relied upon certain unaudited, draft and/or internal financial information, company records, management prepared financial information and projections, information from other third-party sources, and has engaged in discussions with the Applicants' directors, senior management team ("**Management**") and the Applicants' legal advisors (collectively, the "**Information**").
 - 10.1. The Monitor has assumed the integrity and truthfulness of the Information and explanations provided to it, within the context in which it was presented. To date, nothing has come to the attention of the Monitor that would cause it to question the reasonableness of this assumption.
 - 10.2. The Monitor has requested that Management bring to its attention any significant matters which were not addressed in the course of its specific inquiries. Accordingly, this Fifth Report is based solely on the Information (financial or otherwise) provided by the Applicants.
 - 10.3. The Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. The Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with generally accepted assurance standards or generally accepted standards for review engagements and, accordingly, the Monitor expresses no opinion or other form of assurance in respect of the Information.
 - 10.4. In view of the purpose of the Fifth Report, some of the financial information therein may not comply with generally accepted accounting principles.
 - 10.5. Some of the information referred to in this Fifth Report consists of forecasts and projections that were prepared based on Management's current estimates and assumptions. Such estimates and assumptions are, by their nature, not ascertainable and as a consequence, no assurance can be provided regarding any such forecasted or projected results. Actual results will vary from the forecasts or projections, even if the estimates and assumptions are accurate, and the variations could be significant.
12. The Fifth Report has been prepared by the Monitor in order to provide additional information to the Court in connection with the Motion. The Fifth Report may not be appropriate for any other purpose and consequently should not be used for any other purpose.
13. Unless otherwise stated all monetary amounts contained herein are expressed in US dollars.

MONITOR'S ACTIVITIES SINCE THE FOURTH REPORT

14. Since the Fourth Report, the Monitor has conducted the following activities:

- 13.1. responded to queries from various stakeholders and dealt with supplier issues;
- 13.2. participated and assisted in discussions between the Applicants and K2HV relating *inter alia* to the Transaction and additional needs in respect of DIP Financing;
- 13.3. worked with the Applicants to review their actual cash flow results as compared to the Applicants' projected cash flow filed with the Fourth Report;
- 13.4. reviewed the Applicants' disbursements as contemplated in the ARIO;
- 13.5. assisted the Applicants in reporting financial information to the DIP Lender; and
- 13.6. monitored the progress of proceedings in foreign jurisdictions (as described in more detail below).

APPLICANTS' ACTIVITIES SINCE THE FOURTH REPORT

14. Since the Fourth Report, the Applicants conducted the following significant activities:

- 14.1. continued to manage the operations at a reduced level;
- 14.2. in the context of the restructuring efforts and to curtail expenses the Applicants have terminated the employment of 5 additional employees;
- 14.3. obtained recognition orders in the United States, in respect especially of the Order issued by the Court on October 31, 2024 and notably approving the Transaction;
- 14.4. negotiated with trade suppliers to obtain necessary goods and services; and
- 14.5. worked with legal counsel and the Monitor, and in coordination and consultation with the DIP Lender, to prepare the materials relating to the Motion.

COMPARISON OF ACTUAL AND PROJECTED CASH FLOWS

- 15. A comparison between the actual and projected receipts and disbursements for the 6-week period ended November 15th, 2024 is attached hereto as Appendix A.
- 16. The Applicants are reporting a \$1,261K favourable variance in net cash flows for the 6-week period ended November 15th, 2024. This variance is mainly due to lower than projected disbursements compared to forecast. The detail of the variances is presented in Appendix A.

UPDATED CASH FLOW FORECAST

17. The Applicants have updated the statement of projected cash flow on a weekly consolidated basis including all of the Applicants, for the eleven (11) weeks ending January 31, 2025 (the "**Updated Cash Flow Forecast**"). The Updated Cash Flow Forecast, the representations of the Applicants and the notes outlining the assumptions are attached to the Fifth Report as Appendix B.
18. The Updated Cash Flow Forecast for the eleven (11) weeks ending January 31, 2025, including the notes attached thereto, has been prepared by the Applicants for the purpose described in the notes accompanying the Updated Cash Flow Forecast, using probable and hypothetical assumptions set out in said notes.
19. Certain unavoidable expenses will need to be incurred after the closing of the Court-approved acquisition transaction to deal with the resolution of the CCAA proceedings. However, it is expected that certain expenses reflected in the Updated Cash Flow Forecast can be reduced if the Transaction is closed expeditiously. The Monitor understands and is advised that the Applicants will consult in good faith with the DIP Lender regarding these unavoidable and avoidable expenses, and will not request advances under the DIP Facility to fund any avoidable costs, it being understood that the cash flow projections were prepared by management based on reasonable assumptions in the circumstances and that actual results may vary resulting in positive or negative variances as the case may be.
20. The Monitor's review consisted of inquiries, analytical procedures and discussions related to information supplied by the Applicants. Since hypothetical assumptions need not be supported, the procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the Updated Cash Flow Forecast. The Monitor also reviewed the support provided by Management for the probable assumptions, and the preparation and presentation of the Updated Cash Flow Forecast.
21. Based on this review, nothing has come to the Monitor's attention that causes it to believe that, in all material respects:
 - 21.1. the hypothetical assumptions are not consistent with the purpose of the Updated Cash Flow Forecast projection;
 - 21.2. as at the date of this Fifth Report, the probable assumptions developed by the Applicants are not suitably supported and consistent with the plans of the Applicants or do not provide a reasonable basis for the projection, given the hypothetical assumptions; or
 - 21.3. the Updated Cash Flow Forecast does not reflect the probable and hypothetical assumptions.

22. Since the Updated 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.
23. Accordingly, the Monitor expresses no assurance as to whether the Updated Cash Flow Forecast will be achieved. The Updated Cash Flow Forecast has been prepared solely for the purpose described in the notes accompanying the Updated Cash Flow Forecast, and readers are cautioned that it may not be appropriate for other purposes.
24. Subject to obtaining the necessary advances under the Third DIP Amendment, the Updated Cash Flow Forecast demonstrates that the Applicants should have sufficient liquidity to operate through the proposed extension of the Stay Period, being until and including January 31, 2025.

FOREIGN PROCEEDINGS – UNITED STATES

25. On July 30, 2024, VBI US and VBI DE, as foreign representative of the Applicants, filed petitions under Chapter 15 of the US Bankruptcy Code in the US Court, in the US Court (collectively “**Chapter 15 Proceedings**”) seeking, *inter alia*: (a) joint administration of the Chapter 15 recognition proceedings; and (b) entry of a provisional order and after notice and a hearing, a final order to recognize the CCAA proceedings as the foreign main proceedings and giving full force and effect in the United States to the ARIO.
26. On August 2, 2024, the US Court granted a provisional order, among other things, recognizing the CCAA proceedings and giving effect in the United States to the Initial Order and the requested ARIO.
27. On September 24, 2024, the US Court issued an order recognizing and giving full force and effect to the ARIO and the Solicitation Order in the United States.
28. On October 1, 2024, VBI DE, as foreign representative of the Applicants before the US Court, filed a motion for an order giving full force and effect to the Stay Extension and DIP Amendment Order in the United States. Although the hearing on this motion was scheduled to be heard on October 16, 2024, judgment was issued by the US Court on October 15, 2024, given the absence of opposition by any party.
29. On October 18, 2024, VBI DE, as foreign representative of the Applicants before the US Court, filed a motion for an order giving full force and effect to the Stay Extension and Second DIP Amendment Order in the United States. Although the hearing on this motion was scheduled to be heard on October 25, 2024, given the absence of opposition by any party, no hearing was considered necessary and the Court order was rendered on October 30, 2024.
30. On November 20, 2024, the US Court issued an order recognizing and giving full force and effect to the approval and reverse vesting order in the United States and no party opposed the relief sought in that context by the Applicants, such that no hearing was held.

FOREIGN PROCEEDINGS - ISRAEL

31. On August 4, 2024, SciVac (the Israeli entity of the Applicants) filed an application for recognition of the CCAA proceedings with the Israeli Court under the relevant provisions of The Israeli Insolvency and Economic Rehabilitation Law, 2018 (the “**Israeli Insolvency Law**”).
32. On August 7, 2024, after certain requests for clarifications, the Israel Court issued a provisional and interim order whereby it ordered, *inter alia* (i) a stay of proceedings until September 6, 2024, (ii) the recognition of the DIP Facility, and (iii) a preclusion of enforcement measures by creditors during the stay of proceedings.
33. On August 29, 2024, the Israeli Court issued an order extending the stay of proceedings until September 20, 2024. The extension was granted in accordance with Section 303 of the Israeli Insolvency Law, following the Israeli Court's decision on August 29, 2024, in which it approved the request to recognize the CCAA proceedings as a secondary foreign proceeding.
34. On September 22, 2024, the Israeli Court issued an order extending the stay of proceedings in favour of SciVac until October 18, 2024.
35. On October 27, 2024 the Israeli Court issued an order extending the stay of proceedings in favour of SciVac until November 29, 2024.
36. The Applicants are working with the Monitor, the Purchaser, and Israeli counsel to seek recognition of the approval and reverse vesting order in Israel.

UPDATE ON THE KEY EMPLOYEE RETENTION PLAN

37. As reported in previous Monitor's Reports, the Applicants have developed a KERP to incentivize key employees to continue working at VBI Group and to remain onboard to support current restructuring efforts. The KERP covers specific employees essential to the continued operations, for a maximum aggregate amount of \$679K. A description of the KERP and a list of the employees and amount of the incentive was provided under seal in Appendix B of the First Report.
38. On August 9, 2024, as part of the ARIO, the Court approved the KERP proposed by the Applicants and authorized to keep the KERP information under seal, in view of the sensitive, personal and confidential nature of the information therein, belonging to third parties.
39. As of the date of the Fifth Report, the Applicants have issued seven (7) KERP payments for a total of \$315K.

INTERIM FINANCING

40. On August 9, 2024, the Court approved the amended and restated DIP Financing dated August 2, 2024 between the Applicants and the DIP Lender, authorizing borrowings up to a maximum principal amount of \$2,500K.
41. On September 6, 2024, the Applicants submitted a DIP draw request totaling \$2,100K. The corresponding funds were deposited to the Applicants' account on September 11, 2024.
42. On September 20, 2024, the Court approved the DIP Facility Agreement dated September 18, 2024 between the Applicants and the DIP Lender, extending the maturity date until October 18, 2024 and increasing the authorized borrowing limit to \$3,600K.
43. On October 16, 2024, the Court approved the second amendment of the DIP Facility Agreement, which extended the maturity date until November 29, 2024 and increased the authorized borrowing limit to \$4,600K and authorized an increase in the DIP Lender's Charge to \$4,850K.
44. On October 23, 2024, the Applicants submitted a DIP draw request totaling \$1,500K. The corresponding funds were deposited to the Applicants' account on October 25, 2024.
45. On November 15, 2024, the Applicants submitted a DIP draw request totalling \$500K. The corresponding funds were deposited to the Applicants' account on November 20, 2024.
46. The Applicants and the DIP Lender, with the assistance of the Monitor, have negotiated a Third DIP Amendment which provides for an extended maturity date until January 31, 2025 and an increase in the authorized limit to \$6,900K, in order to ensure that adequate financing is available to close the Transaction and allow for sufficient liquidity during the proposed extended Stay Period, in accordance also with the Updated Cash Flow Forecast.
47. The Monitor supports the relief sought in relation to the Third DIP Amendment.

SALE AND INVESTMENT SOLICITATION PROCESS

48. Capitalized terms used in this section which are not otherwise defined have the meaning ascribed to them in the Solicitation Order or the acquisition agreement (the "**Acquisition Agreement**"). Reference is also made to updates provided in previous Monitor's Reports.
49. The latest activities related to the SISF have been described in the Fourth Report.
50. On October 24, following negotiations between K2 VBI Equity Trust, LLC (the "**Purchaser**"), VBI, VBI Cda and VBI DE (collectively, the "**Retained Companies**"), SciVac, and K2HV, the Acquisition Agreement was duly executed and the Transaction was subsequently approved by the Court on October 31, 2024 and by the US Court on November 20, 2024. Once the Israeli Court renders a recognition order and the

amendments described herein below are finalized, the parties will be in a position to conclude the Transaction.

51. There are certain Excluded Assets in Israel, which are not part of the Transaction, that will need to be liquidated in order to maximize value for the Applicants and their stakeholders.
52. The Monitor intends to run a focused and separate call for tenders with respect to these assets, in view of disposing of same in an efficient and flexible manner, all while maximizing potential recovery.
53. The Applicants are working with the Purchaser on an amendment to the Acquisition Agreement. Among other things, the contemplated amendment includes:
 - 53.1. recognizing that the Purchased Assets are also owned by the Retained Companies in addition to SciVac;
 - 53.2. increasing the cash portion of the consideration for certain Purchased Assets;
 - 53.3. permitting the Purchaser to revoke the designation of a Person as a VBI DE Nominee, in order to circumvent a circumstance where the designation has been made but the transaction between the Purchaser and the VBI DE Nominee is not completed, such that the Purchased Assets would continue to vest with the VBI DE Nominee pursuant to the Approval and Reverse Vesting Order; and
 - 53.4. updating certain Schedules to the Acquisition Agreement.
54. Subject to review of the final amendment of the Acquisition Agreement, the Monitor expects to provide its consent to such amendment.

OVERALL COMMENTS AND CONCLUSIONS

55. Based on its review of the Applicants' affairs at this stage, the Monitor believes that the Applicants have shown and continue to show diligence and good faith since the issuance of the Initial Order.
56. Considering the information received since the beginning of our engagement, the Monitor believes that the restructuring efforts that the Applicants intend to implement are reasonable and justified under the circumstances. Thus, the Monitor believes that the Applicants' Motion is necessary and appropriate under the circumstances.
57. The Monitor considers that the Updated Cash Flow Forecast is reasonable and that, subject to obtaining the necessary advances under the Third DIP Amendment, the Applicants will have sufficient liquidity to continue operations during the eleven (11) week period ending January 31, 2025.
58. The Monitor is of the opinion that the proposed Stay Period extension until January 31, 2025 is in the best interests of the Applicants and their stakeholders. This extension will

allow for the rendering of the recognition orders in Israel, the closing of the Transaction, and the liquidation of the Excluded Assets in Israel.

59. The Monitor recommends that the Court grant the relief requested by the Applicants, namely:

59.1. the issuance of the Order including the:

59.1.1. approval of Third DIP Amendment, authorizing borrowings up to a maximum principal amount of \$6,900K;

59.2. extension of the Stay Period until and including January 31, 2025; and

59.3. the increase in the DIP Lender's charge in favour of the DIP Lender in the increased amount of \$7,200K.

All of which is respectfully submitted this 26th day of November 2024.

ERNST & YOUNG INC.

Licensed insolvency Trustee

in its capacity as the Monitor in the
matter of the proposed compromise and
arrangement of the VBI Group

Per:

**Martin P
Rosenthal**

Digitally signed by Martin P Rosenthal
DN: cn=Martin P Rosenthal,
email=Martin.Rosenthal@parthenon.ey.com
Date: 2024.11.26 16:09:34 -05'00'

Martin P. Rosenthal, CPA, CIRP, LIT
Senior Vice-President



Matt Kaplan, CPA, CA, CIRP, LIT
Senior Vice President

Appendix A

In the matter of the proposed plan of compromise and arrangement of VBI Group Comparison of the actual vs. forecasted results For the 6-weeks ended November 15th, 2024 Unaudited (in \$USD '000s)					
	Cumulative Actual	Cumulative Budget	Variance (\$)	Variance (%)	
Receipts					
Net operating receipts	14	447	(433)	100%	
Total cash receipts	14	447	(433)	100%	
Disbursements					
Salaries, Benefits, Vacation & Severance	(822)	(1,493)	671	45%	
Suppliers, General and Administrative	(597)	(1,487)	890	60%	
	(1,419)	(2,980)	1,561	52%	
Restructuring Disbursements					
Professional fees	(711)	(844)	133	16%	
	(711)	(844)	133	16%	
Total Disbursements	(2,130)	(3,823)	1,693	44%	
Net Cash Flow	(2,116)	(3,377)	1,261	37%	
Cash Balance					
Opening Available Cash Balance	1,449	1,449	-	0%	
Net Cash Flow	(2,116)	(3,377)	1,261	37%	
DIP Advances	1,500	2,500	(1,000)	40%	
FX adjustment	(6)	-	(6)	100%	
Closing Available Cash Balance	827	572	255	45%	

In the matter of the proposed plan of compromise and arrangement of VBI Group
 Comparison of the actual vs. forecasted results
 For the 6-weeks ended November 15th, 2024

Notes	Line item	Comments
1	Net operating receipts	The cumulative negative variance represents a timing difference relating to a reimbursement by the FDA for payment of the FY2024 prescription drug program fee for PreHevbrio which was subsequently waived by the FDA. Whereas timing is uncertain management does continue to expect that it will collect this amount.
2	Salaries, Benefits, Vacation & Severance	The cumulative positive variance represents a timing difference resulting from the delay in payment of accrued vacation and severance as employment has been extended through November 2024 for certain employees.
3	Suppliers, General and Administrative	The cumulative positive variance represents a temporary difference relating to timing of payment of GBM trial program fees as well as payments of rent and utilities owing to the landlord in Israel. This timing difference is expected to reverse in the coming weeks.
4	Professional Fees	The cumulative positive variance represents a timing difference that is expected to reverse in the coming weeks.

Appendix B

Week ending	1	2	3	4	5	6	7	8	9	10	11	Total
	2024-11-22	2024-11-29	2024-12-06	2024-12-13	2024-12-20	2024-12-27	2025-01-03	2025-01-10	2025-01-17	2025-01-24	2025-01-31	
Receipts												
Net operating receipts	-	-	-	-	-	-	-	-	-	-	517	517
Total cash receipts	-	-	-	-	-	-	-	-	-	-	517	517
Disbursements												
Salaries, Benefits, Vacation & Severance	(136)	-	(382)	-	(93)	-	(133)	-	-	(87)	(782)	(1 613)
Suppliers, General and Administrative	(553)	(183)	(316)	(22)	(43)	(21)	(393)	(8)	(5)	(2)	(136)	(1 681)
Restructuring Disbursements	(688)	(183)	(698)	(22)	(137)	(21)	(526)	(8)	(5)	(89)	(918)	(3 293)
Professional fees	(40)	(40)	(340)	(40)	(40)	(40)	(230)	(40)	(40)	(40)	(455)	(1 345)
	(40)	(40)	(340)	(40)	(40)	(40)	(230)	(40)	(40)	(40)	(455)	(1 345)
Total Disbursements	(728)	(223)	(1 038)	(62)	(177)	(61)	(756)	(48)	(45)	(129)	(1 373)	(4 638)
Net Cash Flow	(728)	(223)	(1 038)	(62)	(177)	(61)	(756)	(48)	(45)	(129)	(856)	(4 122)
Cash Balance												
Opening Available Cash Balance	827	598	875	338	276	100	539	283	235	590	861	827
Net Cash Flow	(728)	(223)	(1 038)	(62)	(177)	(61)	(756)	(48)	(45)	(129)	(856)	(4 122)
DIP Advances	500	500	500	-	-	500	500	-	400	400	-	3 300
Closing Available Cash Balance	598	875	338	276	100	539	283	235	590	861	5	5

Insolvent Person's Report on Cash Flow Statement

In the matter of the proposed plan of compromise and arrangement of VBI Vaccines Inc., Variation Biotechnologies Inc., VBI Vaccine (Delaware) Inc., Variation Biotechnologies (US) Inc., SciVac Ltd., SciVac Hong Kong Limited and VBI Vaccines B.V.

We, VBI Vaccines Inc. ("**VBI**"), Variation Biotechnologies Inc. ("**VBI Cda**"), VBI Vaccine (Delaware) Inc. ("**VBI DE**"), Variation Biotechnologies (US) Inc. ("**VBI US**"), SciVac Ltd. ("**SciVac**"), SciVac Hong Kong Limited ("**SciVac HK**") and VBI Vaccines B.V. ("**VBI BV**") (collectively, the "**Companies**" or "**VBI Group**") have developed the assumptions and prepared the attached statement of projected cash flow for the Companies, consisting of a statement of projected cash receipts and disbursements for the 11-weeks ending January 31st, 2025.

The hypothetical assumptions are reasonable and consistent with the purpose of the projection described in the notes accompanying the statement of projected cash-flow, and the probable assumptions are suitably supported and consistent with the plans of the Company and provide a reasonable basis for the projection. All such assumptions have been disclosed in Notes 1 to 12

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

The projection has been prepared solely for the purpose described in the notes accompanying the statement of projected cash flow, using a set of probable and hypothetical assumptions set out in Notes 1 to 12. Consequently, readers are cautioned that it may not be appropriate for other purposes.

DATED AT MONTREAL, this 26th day of November, 2024.

VBI Group



per: Nell Beattie,
Chief Financial Officer

In the matter of the proposed plan of compromise and arrangement of VBI Vaccines Inc., Variation Biotechnologies Inc., VBI Vaccine (Delaware) Inc., Variation Biotechnologies (US) Inc., SciVac Limited, SciVac Hong Kong Ltd. and VBI Vaccines B.V. (the “Companies”)

**NOTES AND ASSUMPTIONS TO THE
PROJECTED STATEMENT OF CASH FLOW
for the period from November 16th to January 31st, 2025**

1. **Disclaimer:** In preparing this statement of projected cash flow (the “**Updated Cash Flow Forecast**”), the Companies have relied upon unaudited financial information and have not attempted to further verify the accuracy or completeness of such information. The Updated Cash Flow Forecast includes estimates concerning the operations of the Companies and additional assumptions with respect to the impact of a Companies’ Creditor Arrangement Act (“**CCAA**”) filing. Since the Updated Cash Flow Forecast is based on assumptions about future events and conditions that are not ascertainable, the results achieved during the Updated Cash Flow Forecast period will vary from the Updated Cash Flow 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.
2. **Overview:** The Updated Cash Flow Forecast, for the period from November 16th, 2024 to January 31st, 2025 (the “**Forecast Period**”) reflects cash flows from the Companies’ operations. The Companies have prepared the Updated Cash Flow Forecast based primarily on ongoing operations and estimated costs associated with the CCAA proceedings. The Updated Cash Flow Forecast is presented in thousands of United States dollars (“**USD**”).
3. **Purpose:** The Updated Cash Flow Forecast has been prepared by the Companies’ management to present the anticipated cash inflows and outflows resulting from current operations based on the latest available information.

The Applicants have initiated a restructuring process under the *Companies’ Creditors Arrangement Act* (“**CCAA**”), primarily to seek out a purchaser or an investor for the assets, through a sale or investor solicitation process (“**SISP**”). The Updated Cash Flow Forecast reflects the anticipated cash receipts and disbursements, based on substantial changes to the business while the SISP is implemented, to preserve cash.

The significant hypothetical assumptions made in preparing the projected cash flow statement are presented hereunder.

4. **Currency and exchange rates:** All amounts are denominated in US currency. The Updated Cash Flow Forecast assumes that the rate of exchange remains the same throughout the Forecast Period.
5. **Creditor support:** The Updated Cash Flow Forecast assumes that creditors will continue to provide support to the Companies through the delivery of goods and services, and that the Companies will

continue to have access to the cash on hand to provide the liquidity necessary to carry out limited operations.

6. **Changes to the business model:** The changes to the business include suspending all non-essential spending, which is aimed at mitigating the strain on liquidity, while the CCAA process progresses.
7. **Net operating receipts:** The operating receipts consist of refunds as well as returns of deposits.
8. **Debtor-in-possession (“DIP”), advances:** Represents cash advances from K2 Health Ventures LLC (“K2HV”), in agreement with the DIP credit facility, to support the Companies’ operating cash flow.
9. **Salaries, Benefits, Vacation & Severance:** These disbursements represent payments with respect to the payroll and benefits for employees. Payroll is expected to be paid bi-weekly in arrears for all entities with the exception of SciVac which is paid monthly. The vacation and severance disbursements include payment to employees expected to be terminated following the filing of the CCAA application, including payments in accordance with the Key Employee Retention Plan (“KERP”).
10. **Suppliers, General and Administrative:** These disbursements consist primarily of payments to third party logistics suppliers, rent vendors, regulatory authorities, utility carriers, IT specialists and other essential suppliers required to maintain the Companies limited operations as the CCAA process progresses.
11. **Professional fees:** The professional fees include the fees of the Monitor, the Monitor’s counsel, the Companies’ Canadian, US and Israeli counsel.
12. **Debt service:** The Updated Cash Flow Forecast does not provide for any payment of principal or interest during the current period.