

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

In re

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

Debtors in a Foreign Proceeding.<sup>1</sup>

Chapter 15

Case No. 24-11623 ( )

(Joint Administration Requested)

**MOTION OF THE FOREIGN REPRESENTATIVE FOR ENTRY OF PROVISIONAL  
AND FINAL ORDERS GRANTING RECOGNITION OF FOREIGN PROCEEDING  
AND CERTAIN RELATED RELIEF UNDER SECTIONS 105(a), 362, 365, 1517, 1519,  
1520 AND 1521 OF THE BANKRUPTCY CODE**

VBI Vaccines (Delaware) Inc. (“VBI Delaware”), solely in its capacity as authorized foreign representative and not in its personal or corporate capacity (the “Foreign Representative”) of VBI Vaccines Inc. (“VBI”), VBI Delaware, Variation Biotechnologies (US) Inc. (“VBI US”), and VBI Vaccines B.V. (“VBI BV”) (collectively, the “Chapter 15 Debtors”), hereby moves (the “Motion”) as follows.

**RELIEF REQUESTED**

1. Pursuant to sections 105(a), 362, 365, 1517, 1519, 1520 and 1521 of title 11 of the United States Code (the “Bankruptcy Code”), the Foreign Representative respectfully requests entry of:

- (i) a provisional order substantially in the form attached as **Exhibit A** (the “Provisional Order”) enforcing in the United States, on a provisional basis, the order (the “Initial Order”) with respect to the Chapter 15 Debtors and their assets issued and entered on July 30, 2024 by the Ontario Superior Court of Justice (Commercial List) (the

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<sup>1</sup> 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.

- “Canadian Court”), Court File No.: CV-24-00724693-00CL (the “Canadian Proceeding”), and, under sections 105(a), 1519(a) and 1521(a)(7) of the Bankruptcy Code, applying sections 362 and 365(e) of the Bankruptcy Code in these chapter 15 cases on a provisional basis and authorizing the Foreign Representative to operate the Chapter 15 Debtors’ businesses and administer the Chapter 15 Debtors’ assets on a provisional basis, and granting related relief; and
- (ii) after notice and a hearing, a final order substantially in the form attached as **Exhibit B** (the “Final Order”) (a) granting the chapter 15 petitions in these cases and recognizing the Canadian Proceeding as a foreign main proceeding, or in the alternative a foreign nonmain proceeding, under section 1517 of the Bankruptcy Code, (b) giving full force and effect in the United States to the Initial Order, including any and all extensions or amendments thereof authorized by the Canadian Court and extending the protections of the Initial Order to the Chapter 15 Debtors on a final basis, (c) applying section 365 of the Bankruptcy Code in these chapter 15 cases on a final basis under section 1521 of the Bankruptcy Code, and (d) granting related relief.

2. In support of the requested relief, the Foreign Representative respectfully refers the Court to and incorporates the following herein by reference: (a) the *Chapter 15 Petitions for Recognition of Foreign Proceeding* and (b) the *Declaration of Jeffrey Baxter in Support of (I) Chapter 15 Petitions for Recognition of Foreign Proceeding and (II) Motion of the Foreign Representative for Entry of Provisional and Final Orders Granting Recognition of Foreign Proceeding and Certain Related Relief under Sections 105(a), 362, 365, 1517, 1519, 1520 and 1521 of the Bankruptcy Code* (the “Baxter Declaration”).

### **JURISDICTION AND VENUE**

3. 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).

4. The Foreign Representative, solely in its capacity as authorized foreign representative, and not in its personal or corporate capacity, 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.

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

6. The statutory predicates for the relief requested herein are sections 105(a), 362, 365, 1517, 1519, 1520 and 1521 of the Bankruptcy Code.

### **BACKGROUND**

7. On or about July 29, 2024, the four (4) entities comprising the Chapter 15 Debtors, along with the remaining subsidiaries of 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”). On July 30, 2024, the Canadian Court entered the Initial Order and endorsement (the “Endorsement”), which, among other things, appointed VBI Delaware as the Foreign Representative of the CCAA Debtors. The Initial Order and Endorsement are attached hereto as **Exhibit C**.

8. On the date hereof (the “Petition Date”), the Foreign Representative filed petitions under chapter 15 (the “Chapter 15 Petitions”) of the Bankruptcy Code for recognition of the Canadian Proceeding, thereby commencing the Chapter 15 Debtors’ cases (the “Chapter 15 Cases”).

9. Additional information about the VBI Group’s business, the events leading up to the Petition Date, and the facts and circumstances surrounding the VBI Group, the Canadian Proceeding and these Chapter 15 Cases can be found in the Baxter Declaration.

### **BASIS FOR RELIEF**

10. Similar to the protection afforded to debtors under the Bankruptcy Code, upon entry of the Initial Order in the Canadian Proceeding, the CCAA Debtors’ creditors are stayed from taking actions against the CCAA Debtors and their assets, wherever located, and contract counterparties are stayed from terminating, modifying or refusing to perform under contracts with the CCAA Debtors. Additionally, the Initial Order, among other relief, vests the Foreign Representative with broad power and control over the CCAA Debtors’ assets and businesses, including by granting the Foreign Representative express authority to operate the CCAA Debtors’ businesses and administer the CCAA Debtors’ assets. Notwithstanding the worldwide application of the stay imposed by the Initial Order, the prohibitions related to the CCAA Debtors’ contracts, and the grant of authority to operate the CCAA Debtors’ businesses and administer their assets, there is a risk that the VBI Group’s creditors may attempt to take enforcement actions against the Chapter 15 Debtors’ assets located in the United States, terminate or interfere with U.S. contracts with the Chapter 15 Debtors, or refuse to recognize and/or interfere with the Foreign Representative’s authority to operate the Chapter 15 Debtors’ businesses and administer their assets.

11. To protect against these risks, the Foreign Representative commenced these Chapter 15 Cases and, by this Motion, is seeking the entry of the Final Order (i) granting recognition of the Canadian Proceeding, (ii) giving full force and effect in the United States to the Initial Order, and (iii) applying section 365 of the Bankruptcy Code to these Chapter 15 Cases. Entry of the Final Order granting such relief would, among other things, extend the protections of the automatic stay to the Chapter 15 Debtors' assets located in the United States, prevent contract counterparties from modifying, terminating, refusing to perform under, or interfering with the Chapter 15 Debtors' U.S. contracts, and vest the Foreign Representative with authority to operate the Chapter 15 Debtors' businesses and administer their assets located in the United States.

12. In addition, the Foreign Representative is seeking entry of the Provisional Order applying sections 362 and 365(e) on a provisional basis to ensure that, pending entry of the Final Order, creditors do not attempt to bring any enforcement action against the Chapter 15 Debtors or their assets, or attempt to terminate, modify, or refuse to perform under their contracts with the Chapter 15 Debtors. The Provisional Order would also recognize and enforce the Foreign Representative's authority to operate the Chapter 15 Debtors' businesses and administer their assets in the United States, consistent with the authority granted in the Initial Order. This provisional relief is necessary and appropriate to maintain the status quo and preserve the Chapter 15 Debtors' assets in the period before the Court holds a hearing on recognition and entry of the Final Order.

13. Provisional and final relief are appropriate. To be recognized under chapter 15, a proceeding must be a "foreign proceeding," the chapter 15 petition(s) must be filed by an authorized "foreign representative," and the chapter 15 petition(s) must meet the requirements of the Bankruptcy Code. As discussed in more detail below, the Canadian Proceeding qualifies as a

foreign proceeding, the Foreign Representative is an authorized foreign representative within the meaning of the Bankruptcy Code, and the Petitions meet the requirements of chapter 15 of the Bankruptcy Code. Furthermore, the Canadian Proceeding is a foreign main proceeding because the Chapter 15 Debtors' center of main interest is in Canada as discussed further below. To the extent not recognized as a foreign main proceeding, the Canadian Proceeding is a foreign nonmain proceeding because each Debtor has an establishment within the meaning of section 1502 of the Bankruptcy Code in Canada as detailed below.

14. For provisional relief, the familiar standards applicable to an injunction apply: (i) whether there is a substantial likelihood of success on the merits; (ii) whether irreparable harm will be suffered if the requested injunction is denied; (iii) whether granting preliminary relief will result in greater harm to nonmoving parties; and (iv) whether the public interest favors such relief. As discussed below, the Foreign Representative has a substantial likelihood of success, and the balance of harms and public interest strongly favor granting provisional relief.

**I. The Canadian Proceeding should be recognized as a foreign main proceeding.**

15. By this Motion, the Foreign Representative seeks, under sections 1517 and 1520 of the Bankruptcy Code, recognition of the Canadian Proceeding as a foreign main proceeding, recognition and enforcement of the Initial Order in the United States, and related relief. The Canadian Proceeding is entitled to recognition as a "foreign main proceeding" under chapter 15 of the Bankruptcy Code because, among other things:

- a. the Canadian Proceeding is a "foreign proceeding" within the meaning of section 101(23) of the Bankruptcy Code;
- b. the Foreign Representative is a "foreign representative" within the meaning of section 101(24) of the Bankruptcy Code;

- c. the Petitions were filed in accordance with sections 1504 and 1509 of the Bankruptcy Code and meet the requirements of sections 1504 and 1515 of the Bankruptcy Code; and
- d. the Canadian Proceeding is a “foreign main proceeding” because the Chapter 15 Debtors have their center of main interest in Canada.

**A. The Canadian Proceeding is a foreign proceeding.**

16. To be recognized under chapter 15 of the Bankruptcy Code, a proceeding must qualify as a “foreign proceeding.” See 11 U.S.C. § 1517(a). Section 101(23) of the Bankruptcy Code defines “foreign proceeding” as:

a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation.

11 U.S.C. § 101(23). The Canadian Proceeding fits this definition. Proceedings under the CCAA are (1) voluntary insolvency proceedings, (2) in Canada, (3) that occur under the supervision of a Canadian court, (4) in which a debtor reorganizes or liquidates its business and distributes value to creditors pursuant to a plan.

17. In many ways, the CCAA is similar to a case under chapter 11. Absent exceptional circumstances, and subject to oversight by a court-appointed monitor and the consent of the Canadian court, the debtor’s management and board of directors remain in place and the board maintains its power under Canadian law to approve significant actions, including disposing of important assets, entering into financing arrangements, and/or changing corporate structures. Upon the commencement of a CCAA proceeding, the Canadian court appoints a qualified monitor, who functions as an independent observer of the proceedings and the debtor’s business and (i) monitors the company’s ongoing operations, (ii) reports to the court on any major events affecting

the company, (iii) notifies the company's creditors and, if applicable, shareholders of any meetings and tabulates votes at these meetings, if held, (iv) assists with preparing, filing, and holding meetings for voting on the plan of arrangement, (v) approves the disclaimer of contracts and leases, (vi) may prepare reports in conjunction with any interlocutory motions by the company or other stakeholders, and (vii) prepares a report on the plan of arrangement, which is usually included in the mailing of the plan, if one is filed. Consent of the monitor is generally not required for the debtor to manage its business, including the sale of assets in the ordinary course, but the monitor may request that the court enjoin any actions that may prove harmful to the debtor and/or its creditors. Though the monitor need not formally approve significant transactions such as asset sales outside of the ordinary course, court approval is generally required for such transactions and the court gives weight to the monitor's recommendations concerning such transactions.

18. Upon the commencement of a CCAA proceeding, all actions against the debtor and its assets are stayed, wherever located. The stay is granted for a maximum period of 10 days, but is typically extended where the debtor can show it continues to act with good faith and due diligence. There is no limit on the number or duration of these extensions of the stay. In CCAA proceedings, subject to limited exceptions, clauses triggering termination rights upon the debtor's commencement of an insolvency proceeding are not enforceable, so contract counterparties may not terminate contracts solely by virtue of the commencement of the proceedings.

19. During a CCAA proceeding, a debtor is also able to obtain postpetition financing (*i.e.*, DIP financing), subject to a hearing and court approval, after showing that the proposed financing is in the best interests of its estate. Such borrowings would typically have priority status in the CCAA proceeding, and, if unsecured financing is unavailable, the debtor is

permitted to borrow on a secured basis. The Canadian court may also approve priority charges against the company's assets, which take priority over existing secured creditors, where notice of the charge approval hearing is given to the potentially affected creditors and the court is of the opinion that such charges are necessary in the circumstances.

20. In a CCAA proceeding, on or after the day on which the CCAA proceedings commence, the debtor may disclaim or resiliate (*i.e.*, cancel) any agreement (including leases) to which it is a party by giving a notice of at least 30 days (the “Disclaimer Notice Period”). In the case of lease agreements, the CCAA generally requires that the debtor pay post-filing rent due during the Disclaimer Notice Period and until the lease agreement is terminated. In addition, the monitor must approve the proposed disclaimer or resiliation. An agreement as to which a disclaimer notice has been sent is automatically disclaimed or resiliated—which has the legal effect of terminating the lease agreement—at the expiration of the Disclaimer Notice Period unless within 15 days after the day on which the notice was given, the counterparty to the agreement files a challenge, which entitles the counterparty to a hearing before the Canadian Court. Furthermore, a counterparty to the agreement who suffers a loss in relation to the termination resulting from disclaimer or resiliation is considered to have an unsecured claim, the size of which will depend on the damage to the counterparty, which will be paid in accordance with the plan of arrangement sanctioned by the Canadian Court.

21. For a plan of arrangement to be binding on each class of creditors, a majority of the proven creditors in that class, by number, together with two-thirds (2/3) of the proven creditors in that class, by dollar value, must approve the plan presented. If a class of creditors approves the plan, it is binding on all creditors within the class, subject to the Canadian court's approval of the plan. If all of the classes of creditors approve the plan, the Canadian court must

then approve the plan as a final step. Upon Canadian court approval, the company continues forward as outlined under the plan until it has satisfied the requirements under the plan. If a class of creditors or the Court does not approve the plan, the company does not automatically go into bankruptcy, but the stay of proceedings is lifted.

22. Throughout a CCAA proceeding, the court retains broad discretion to issue orders that it considers appropriate under the circumstances. Furthermore, any “interested person” seeking to object to such proposed orders or the plan of arrangement may appeal to the Canadian court.

23. Given, among other things, the similarities between the CCAA and chapter 11, the Canadian court and monitor’s significant oversight in CCAA proceedings and creditors’ ability to meaningfully participate in such proceedings, U.S. courts have routinely and consistently held that Canadian restructuring proceedings under the CCAA qualify as “foreign proceedings” under section 101(23) of the Bankruptcy Code. *See, e.g., In re Canadian Overseas Petroleum Limited*, No. 24-10376 (JTD) [Docket No. 41]; *In re Lighthouse Immersive Inc.*, No. 23-11021 (LSS) [Docket No. 20]; *In re The Aldo Group Inc.*, No. 20-11060 (KBO) (Bankr. D. Del. May 8, 2020) [Docket No. 29]; *In re U.S. Steel Canada Inc.*, No. 17-11519 (MG) (Bankr. S.D.N.Y. June 29, 2017) [Docket No. 12]; *In re Thane Int’l, Inc.*, No. 15-12186 (KG) (Bankr. D. Del. Dec. 1, 2015) [Docket No. 41]; *In re Essar Steel Algoma Inc.*, No. 15-12271 (BLS) (Bankr. D. Del. Dec 2, 2015) [Docket No. 100].

**B. The Foreign Representative is the authorized foreign representative.**

24. The chapter 15 petition(s) for recognition of a foreign proceeding must be filed by a foreign representative that is a person or body. *See* 11 U.S.C. § 1517(a)(2). Section 101(24) of the Bankruptcy Code provides that:

The term “foreign representative” means a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor’s assets or affairs or to act as a representative of such foreign proceeding.

11 U.S.C. § 101(24). Under the Bankruptcy Code, the term “person” includes any “individual, partnership, and corporation” that is not a governmental unit.

25. These Chapter 15 Cases were commenced by the duly-appointed “foreign representative” of the Chapter 15 Debtors within the meaning of the Bankruptcy Code. First, the Foreign Representative is a corporation, and is not a governmental unit, and therefore is a “person” within the meaning of the Bankruptcy Code. Second, the Foreign Representative is the person specifically authorized by the Canadian Court to act as a foreign representative of the Canadian Proceeding and to file these Chapter 15 Cases on behalf of the Chapter 15 Debtors.

26. For these reasons, the Foreign Representative is a proper “foreign representative” within the meaning of the Bankruptcy Code.

**C. The Petitions were properly filed and meet all applicable requirements of the Bankruptcy Code.**

27. To properly commence a chapter 15 case, a foreign representative must file a petition for recognition of a foreign proceeding under section 1515 of the Bankruptcy Code, *see* 11 U.S.C. §§ 1504, 1509(a) & 1515(a). The petition must be accompanied by (i) a certified copy of the decision commencing the foreign proceeding and appointing the foreign representative, (ii) a certificate from the foreign court affirming such order exists, or (iii) other acceptable evidence that the foreign proceeding exists and the foreign representative has been duly appointed, *see id.* § 1515(b). Additionally, the petition must be accompanied by a statement identifying all foreign proceedings with respect to the debtor that are known to the foreign representative. *Id.* § 1515(c). All documents must be in English or translated into English. *See id.* § 1515(d).

28. As required by sections 1504 and 1509 of the Bankruptcy Code, the Foreign Representative duly and properly commenced these Chapter 15 Cases by filing the Petitions under section 1515(a) accompanied by all documents and information required by sections 1515(b)–(d). In particular, the Foreign Representative filed the Petitions with this Court directly as required by sections 1504, 1509(a) and 1515(a). The Foreign Representative attached to the Petitions a certified copy of the Initial Order, which is the decision of the Canadian Court commencing the Canadian Proceeding and appointing the Foreign Representative as foreign representative, thereby satisfying section 1515(b). The forms of the Petitions include a verified statement certifying that the only foreign proceeding of which the Foreign Representative is aware is the Canadian Proceeding thereby satisfying section 1515(c)<sup>2</sup>. Finally, the Initial Order is in English, thereby satisfying section 1515(d).

29. Accordingly, the Petitions were properly filed and meet all applicable requirements of the Bankruptcy Code.

**D. The Canadian Proceeding should be recognized as a foreign main proceeding.**

30. The Canadian Proceeding should be recognized as a “foreign main proceeding,” as defined in sections 101(23) and 1502(4) of the Bankruptcy Code. A foreign proceeding will be recognized as a foreign main proceeding if “it is pending in the country where the debtor has the center of its main interests.” 11 U.S.C. § 1517(b)(1). Section 1516(c) of the Bankruptcy Code establishes a rebuttable presumption that the debtor’s registered office is the debtor’s center of main interests (“COMI”). See 11 U.S.C. § 1516(c). When considering a debtor’s COMI, courts may consider the analogous concept of an entity’s “principal place of business” or

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<sup>2</sup> A foreign proceeding in Israel may be filed in the near future, but as of the date of this filing the only other foreign proceeding is the Canadian Proceeding.

“nerve center.” *Morning Mist Holdings Ltd. v. Krys (In re Fairfield Sentry Ltd.)*, 714 F.3d 127, 132 n.10 (2d Cir. 2013). As such, courts will look to factors such as the location of the debtor’s headquarters, the location of those who actually manage the debtor, and the location of the debtor’s primary assets, among other things, to determine the foreign debtor’s COMI. *Id.* at 130. Additionally, a debtor’s COMI is determined as of the date the chapter 15 case is commenced. *In re O’Reilly*, 2019 WL 1325694, at \*14 (Bankr. W.D. Pa. Mar. 22, 2019) (holding that “the presumptive date from which the Court is to ascertain the debtor’s center of main interests and/or establishment is the date the Chapter 15 petition was filed with this Court.”) (citing *In re Fairfield Sentry Ltd.*, 714 F.3d 127, 134 (2d Cir. 2013) and *In re Ran*, 607 F.3d 1017 (5th Cir. 2010)).

31. The Canadian Court, in its Initial Order and Endorsement, held that the Chapter 15 Debtors’ COMI is in Canada. The Initial Order states that “for the purposes of any applications authorized by paragraphs 50 and 51 [referring to proceedings outside of Canada], the Applicants’ centre of main interest is located in the province of Ontario, Canada.” Initial Order at 52. The Endorsement similarly affirms this finding, stating that: “Given the cross border nature of the Applicants’ operations, the fact that the research, management, decision making, cash management, human resources and other activities take place in Ontario further reinforces the conclusion that the COMI of the VBI Group is Ontario.” Endorsement at 10.

32. The above factors support a finding that the Chapter 15 Debtors’ COMI is Canada. As detailed in the Baxter Declaration, the center of main interests for the Chapter 15 Debtors is in Canada, because, among other things:

- a. VBI, one of the Chapter 15 Debtors, and the parent company to the other three (3) entities that comprise the remaining Chapter 15 Debtors, is a company incorporated under the British Columbia Business Corporations Act, SBC 2002, c 57 with its registered office in Vancouver, British Columbia.

- b. VBI has all of its research operations and a research facility in Ottawa, Ontario managed by VBI Cda, a Canadian subsidiary of VBI which has its registered office in Ottawa, Ontario.
- c. All of the VBI Group's finance team, with the exception of the Chief Financial Officer, is located in Ottawa, Ontario.
- d. Certain of the VBI Group's corporate, strategic and management functions are located in Ottawa, Ontario.
- e. Human resource, treasury (including accounts receivable and accounts payable), and accounting functions of the Chapter 15 Debtors are located in Ottawa.
- f. Approximately two-thirds (or approximately 20 out of 30) of the VBI Group's North American employees are located in Canada.
- g. The Chapter 15 Debtors' banking and cash management systems are also tied to Canada. VBI has three (3) bank accounts with Banque of Montreal. VBI receives all proceeds from share capital issuances and loan proceeds and funds the expenditures of VBI Delaware, VBI US, and VBI BV from its accounts.
- h. The two Canadian registered entities of the VBI Group are the borrowers under the K2HV Loan Agreement, with the remaining VBI Group entities being only guarantors.
- i. The counterparty to the D&O Policy is VBI, with the insurer being a Canadian entity, the choice of law being Canada, and VBI's subsidiaries covered as subsidiaries.
- j. The transaction with Brii Bio (as further detailed and defined in the Baxter Declaration) is pursuant to an agreement in which VBI is the counterparty.
- k. Canada is the readily ascertainable jurisdiction of the majority of the VBI Group's creditors, considering, among other things, that the VBI Group's Canadian entities are the borrowers under the K2HV Loan Agreement, and that a substantial amount of other unsecured claims, such as the Chapter 15 Debtors' accounts payable, are owed to Canadian creditors.

33. Ultimately, the Chapter 15 Debtors are largely run by the British Columbia incorporated, and Ottawa based parent, VBI. As such, this Court and the Chapter 15 Debtors' creditors should objectively view the Chapter 15 Debtors to be conducting the administration of

its affairs from Canada, and the COMI for each of the Chapter 15 Debtors to be Canada. Furthermore, courts have previously recognized CCAA proceedings for non-Canadian subsidiaries as “foreign main proceedings,” where, as is the case here, they were part of a jointly administered CCAA proceeding with their Canadian parent and the debtor presented evidence, as here, of these entities’ COMI being in Canada. *See, e.g., In re The Aldo Group Inc.*, No. 20-11060 (KBO) (Bankr. D. Del. May 8, 2020) [Docket No. 66]; *In re Pac. Exploration & Prod. Corp.*, No. 16-11189 (JLG) (Bankr. S.D.N.Y. June 10, 2016) [Docket No. 25]; *In re John Forsyth Shirt Co. Ltd.*, No. 13-10526 (SCC) (Bankr. S.D.N.Y. Mar. 18, 2013) [Docket No. 24]; *In re Essar Steel Algoma Inc.*, No. 15-12271 (BLS) (Bankr. D. Del. Dec. 2, 2015) [Docket No. 100]; *In re Talon Sys. Inc.*, No. 13-11811 (KJC) (Bankr. D. Del. Aug. 30, 2013) [Docket No. 49]; *In re Arctic Glacier Int’l Inc.*, No. 12-10605 (KG) (Bankr. D. Del. Mar. 16, 2012) [Docket No. 70]; *In re Catalyst Paper Corp.*, No. 12-10221 (PJW) (Bankr. D. Del. March 5, 2012) [Docket No. 89]; *In re Angiotech Pharm., Inc.*, No. 11-10269 (KG) (Bankr. D. Del. Feb. 22, 2011) [Docket No. 83].

34. Accordingly, at the time the Chapter 15 Petitions were filed, the Chapter 15 Debtors’ COMI was in Canada.

**E. The Foreign Representative is entitled to an order granting recognition.**

35. As described above, the Canadian Proceeding is a “foreign main proceeding” within the meaning of section 1502 of the Bankruptcy Code, the Foreign Representative applying for recognition is a “foreign representative” within the meaning of section 101(24) of the Bankruptcy Code, and the Petitions meet the requirements of section 1515 of the Bankruptcy Code. Section 1517(a) of the Bankruptcy Code provides, in pertinent part, that “[s]ubject to section 1506, after notice and a hearing, an order recognizing a foreign proceeding

*shall* be entered if” the foregoing requirements are met. 11 U.S.C. §1517(a) (emphasis added).<sup>3</sup> Accordingly, the Foreign Representative respectfully submits that the Court should enter an order recognizing the Canadian Proceeding as a “foreign main proceeding” under the Bankruptcy Code.

**F. In the alternative, the Canadian Proceeding should be recognized as a foreign nonmain proceeding.**

36. In the event this Court does not recognize the Canadian Proceeding as a foreign main proceeding, the Foreign Representative submits that the Canadian Proceeding should be recognized as a foreign nonmain proceeding as defined in sections 101(23) and 1502(5) of the Bankruptcy Code.

37. A foreign proceeding will be recognized as a foreign nonmain proceeding if “the debtor has an establishment within the meaning of section 1502 in the foreign country where the proceeding is pending.” 11 U.S.C. § 1517(b)(2). Section 1502(2) defines “establishment” as “any place of operations where the debtor carries out a nontransitory economic activity.” 11 U.S.C. § 1502(2). When it is apparent that an entity conducts operations in the country where a foreign proceeding is pending, courts will recognize the proceeding as a foreign nonmain proceeding if foreign main proceeding recognition is denied. *See In re SPhinX, Ltd.*, 351 B.R. 103, 122 (Bankr. S.D.N.Y. 2006) *aff’d*, 371 B.R. 10 (S.D.N.Y. 2007); *see also In re Fairfield Sentry Ltd.*, 2011 WL 4357421, at \*10 n.8 (S.D.N.Y. Sept. 16, 2011) (agreeing with the Bankruptcy Court that if main recognition were not granted, nonmain recognition would have been appropriate because the debtor had an establishment, “i.e. a local place of business”). Like a debtor’s COMI, a debtor’s establishment is determined as of the date the chapter 15 case is commenced. *See, e.g., O’Reilly*,

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<sup>3</sup> *See also* H.R. Rep. 109-31(I), 109 Cong., Sess. 2005, *reprinted in* 2005 U.S.C.C.A.N. 88, 169 at 175 (noting, in enacting chapter 15, that the “decision to grant recognition is not dependent upon any findings about the nature of the foreign proceedings of the sort previously mandated by section 304(c) of the Bankruptcy Code. The requirements of this section, which incorporates the definitions in section 1502 and sections 101(23) and (24), are all that must be fulfilled to attain recognition”).

2019 WL 1325694 at \*14 (holding that “the presumptive date from which the Court is to ascertain the debtor’s center of main interests and/or establishment is the date the Chapter 15 petition was filed with this Court.”).

38. As discussed above, the Chapter 15 Debtors have an establishment in Canada because, among other things, the VBI Group’s research operations, human resource, treasury, cash management and accounting functions are substantially all located and/or executed from Canada.

## **II. Additional relief under section 1521 is appropriate.**

39. In addition to the relief automatically provided by section 1520 of the Bankruptcy Code upon recognition of a foreign main proceeding, the Foreign Representative requests additional relief under section 1521 of the Bankruptcy Code to protect the Chapter 15 Debtors’ assets and their creditors’ interests. Section 1521 of the Bankruptcy Code provides, in relevant part, that the court may grant a foreign representative “any appropriate relief,” including “any relief that may be available to a trustee,” subject to certain limitations (which do not apply here) where necessary to effectuate the purpose of chapter 15 and to protect the debtor’s assets and creditors’ interests. 11 U.S.C. § 1521(a)(7). Accordingly, under section 1521(a)(7) of the Bankruptcy Code, the Foreign Representative requests that the Court extend the protections afforded by section 365 of the Bankruptcy Code to the Chapter 15 Debtors.

40. Section 365 is a fundamental provision under the Bankruptcy Code that enables debtors to preserve valuable commercial relationships, including preventing counterparties from attempting to terminate their contracts or halt performance as a result of the debtor’s insolvency. *See In re Woskob*, 305 F.3d 177, 184–85 (3d Cir. 2002) (explaining that section 365 invalidates provisions of law or contract which specify that a bankruptcy filing per se will terminate

or modify the contract); *In re DBSI, Inc.*, 409 B.R. 720, 728 (Bankr. D. Del. 2009). It also enables the debtors to assume or assume and assign contracts that are beneficial and valuable, and reject those that are burdensome. *See In re Fleming Companies, Inc.*, 499 F.3d 300, 304 (3d Cir. 2007) (stating that section 365 allows a trustee “to maximize the value of the debtor’s estate by assuming executory contracts . . . that benefit the estate and rejecting those that do not”). Application of section 365 in these Chapter 15 Cases is necessary to protect against the disruption that would result from any attempt by a contract counterparty to exercise remedies or cease performance under any executory agreement with the Chapter 15 Debtors.

41. Although contract counterparties, including those whose contracts are governed by state laws in the United States, are subject to the jurisdiction of the Canadian Court and bound by the Initial Order, out of an abundance of caution and in order to fully protect the Chapter 15 Debtors’ rights, the Foreign Representative seeks an order applying section 365 of the Bankruptcy Code in these Chapter 15 Cases.

42. The Foreign Representative must have certainty that counterparties to United States contracts will not terminate or exercise remedies under their prepetition agreements and will continue performing thereunder. Without the preservation of their contractual relationships, the Chapter 15 Debtors and their creditors may lose the benefit of these agreements, litigation may ensue, and counterparties may obtain unfair advantages over other creditors. Accordingly, applying section 365 of the Bankruptcy Code is warranted in these Chapter 15 Cases, similar to how it has been applied in other chapter 15 cases. *See, e.g., In re The Aldo Group Inc.*, No. 20-11060 (KBO) (Bankr. D. Del. May 8, 2020), D.I. 66 (order applying section 365 in chapter 15 cases); *In re Kraus Carpet Inc.*, Case No. 18-12057 (KG) (Bankr. D. Del. Oct. 1, 2018), D.I. 46 (same); *In re RCR Int’l Inc.*, Case No. 18-10112 (LSS) (Bankr. D. Del. Feb. 13, 2018), D.I. 11

(same); *In re Axios Logistics Solutions, Inc.*, Case No. 17-10438 (BLS) (Bankr. D. Del. Mar. 28, 2017), D.I. 27 (same); *Essar Steel Algoma Inc.*, Case No. 15-12271 (BLS), D.I. 97 (Bankr. D. Del. Dec. 1, 2015) (same).

**III. Provisional relief within the scope of section 1519 of the Bankruptcy Code is necessary and appropriate under the circumstances.**

43. By this Motion, the Foreign Representative seeks entry of the Provisional Order recognizing and enforcing the Initial Order on a provisional basis, and making sections 362 and 365(e) of the Bankruptcy Code applicable in these Chapter 15 Cases on a provisional basis pending entry of the Final Order. The Provisional Order would also recognize and enforce the Foreign Representative's authority to operate the Chapter 15 Debtors' businesses and administer their assets in the United States, consistent with the authority granted in the Initial Order. This provisional relief is consistent with the Initial Order and is necessary and appropriate to maintain the status quo and preserve the Chapter 15 Debtors' assets in the period before the Court holds a hearing on recognition and entry of the Final Order.

44. Under section 1517, an order recognizing a foreign proceeding may only be entered after notice and a hearing. *See* 11 U.S.C. § 1517(a). Under Bankruptcy Rule 2002(q), the notice period must be at least 21 days. *See* Fed. R. Bankr. P. 2002(q). Upon recognition of a proceeding as a foreign main proceeding, among other things, section 362 (the automatic stay) applies. *See* 11 U.S.C. § 1520(a)(1). Additionally, upon recognition of a foreign main proceeding, the foreign representative is authorized to operate the debtor's business in the United States. *See* 11 U.S.C. § 1520(a)(3). Absent provisional relief, there is no stay applicable in the United States during the period between filing the chapter 15 petitions and entry of a recognition order, nor is there any express authority under the Bankruptcy Code for the Foreign Representative to operate the Chapter 15 Debtors' businesses or administer their assets. Therefore, provisional relief is

necessary to protect the Chapter 15 Debtors' assets during the period before the recognition hearing. This includes (i) staying under section 362 the commencement or continuation of actions against the Chapter 15 Debtors and their assets in the United States; (ii) ensuring that contract counterparties in the United States continue performing by enforcing section 365(e) of the Bankruptcy Code; and (iii) authorizing the Foreign Representative to operate the Chapter 15 Debtors' businesses and administer the Chapter 15 Debtors' assets in the United States. Accordingly, certain provisional relief is necessary.

**A. Provisional relief is available.**

45. Section 1519(a) of the Bankruptcy Code authorizes the Court to, among other provisional relief, stay execution against the debtor's assets, entrust the foreign representative with administration or realization of all or part of the debtor's assets located in the United States and otherwise authorize the foreign representative to take steps necessary or desirable to protect and preserve the value of assets, and grant any relief available to a trustee (with exceptions not relevant here). *See* 11 U.S.C. §§ 1519(a)(1)–(3); 1521(a)(7). Extending the fundamental protections of the automatic stay of section 362 falls within this power. *See* 11 U.S.C. § 1519(a)(1) (authorizing a stay of execution against the debtor's assets). The same is true with respect to section 365(e). 11 U.S.C. §§ 1519(a)(3) (authorizing the court to grant on a provisional basis any relief available under section 1521(a)(7)); 1521(a)(7) (authorizing the court to grant any relief available to a trustee, with exceptions not relevant here). Moreover, the relief authorized by the Initial Order and under Canadian law is substantially similar to the relief available to a trustee under the Bankruptcy Code, and therefore the Court is merely extending temporary comity—comity that is fully consistent with relief available in a plenary U.S. case—to the Initial Order pending a recognition hearing. In addition, section 105(a) of the Bankruptcy Code further allows

the Court to “issue any order . . . necessary or appropriate to carry out the provisions of [title 11].” 11 U.S.C. § 105(a).

46. Courts within this jurisdiction have granted provisional relief similar to that which is sought herein, including provisionally recognizing and enforcing an order entered in a foreign proceeding and provisionally applying sections 362 and 365(e) of the Bankruptcy Code pending the recognition hearing, including in respect of Canadian CCAA proceedings. *See, e.g., In re The Aldo Group Inc.*, No. 20-11060 (KBO) (Bankr. D. Del. May 8, 2020), Docket No. 29 (order granting provisional relief, including recognition and enforcement of the initial order entered in a foreign proceeding, and application of section 362 and 365(e)); *In re Kraus Carpet Inc.*, Case No. 18-12057 (KG) (Bankr. D. Del. Sept. 12, 2018), D.I. 17 (same); *In re RCR Int’l Inc.*, Case No. 18-10112 (LSS) (Bankr. D. Del. Feb. 14, 2018), D.I. 18 (same); *In re Axios Logistics Solutions, Inc.*, Case No. 17-10438 (BLS) (Bankr. D. Del. Mar. 1, 2017), D.I. 13 (same); *Essar Steel Algoma Inc.*, Case No. 15-12271 (BLS) (Bankr. D. Del. Nov. 10, 2015), D.I. 30 (same).

**B. The provisional relief requested satisfies the standard for an injunction.**

47. Relief under section 1519 of the Bankruptcy Code is available where the foreign representative can satisfy the standard for injunctive relief. 11 U.S.C. § 1519(e); *In re Innua Canada Ltd.*, No. 09-16362, 2009 WL 1025088, at \*3 (Bankr. D.N.J. Mar. 25, 2009). In the Third Circuit, the factors considered for injunctive relief include (i) likelihood of success on the merits; (ii) whether irreparable harm will occur if the requested injunction is denied; (iii) granting preliminary relief will not result in greater harm to the nonmoving party; and (iv) the public interest favors such relief. *U.S. v. Bell*, 414 F.3d 474, 478 n.4 (3d Cir. 2005) (citing *ACLU of N.J. v. Black Horse Pike Reg’l Bd. of Educ.*, 84 F.3d 1471, 1477 n.2 (3d Cir. 1996)); *see also Rogers v. Corbett*, 468 F.3d 188, 192 (3d Cir. 2006) (citations omitted); *Kos Pharm., Inc. v. Andrx Corp.*, 369 F.3d 700, 708 (3d Cir. 2004) (citations omitted). The Foreign Representative submits that this standard

is satisfied here and, therefore, the Foreign Representative is entitled to the requested provisional relief under section 1519 of the Bankruptcy Code, including entry of the Provisional Order.

**1. There is a substantial likelihood of recognition of the Canadian Proceeding as a foreign main proceeding and application of requested additional Bankruptcy Code provisions.**

48. There is a compelling case for recognition of the Canadian Proceeding as a foreign main proceeding as set forth in section I of this Motion, *supra*, and incorporated herein by reference. As set out in more detail above, the Canadian Proceeding is a “foreign proceeding” and the Foreign Representative is a “foreign representative” within the meaning of the Bankruptcy Code. Additionally, the Petitions were filed in accordance with, and meet all the applicable requirements of, chapter 15 of the Bankruptcy Code. Finally, the Canadian Proceeding is a “foreign main proceeding” because the Chapter 15 Debtors have their center of main interest in Canada.<sup>4</sup>

49. Additionally, upon recognition of the Canadian Proceeding as a foreign main proceeding, section 362 of the Bankruptcy Code will automatically apply in the Chapter 15 Cases under section 1520(a)(1) of the Bankruptcy Code and the Foreign Representative will have authority to operate the Chapter 15 Debtors’ business and exercise the rights and powers of a trustee under section 1520(a)(3) of the Bankruptcy Code. *See* 11 U.S.C. § 1520(a)(1),(3). Likewise, the application of section 365(e) on a provisional basis, preventing contract counterparties from terminating or refusing to perform under their prepetition contracts with the Chapter 15 Debtors, is consistent with the injunctive nature of the relief afforded by the automatic stay under section 362. Furthermore, the relief is consistent with the Initial Order, which, if recognized, will be given

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<sup>4</sup> As noted above, even if this Court does not recognize the Canadian Proceeding as a “foreign main proceeding,” the Debtors hold an establishment in Canada and thus the Canadian Proceeding constitutes a “foreign nonmain proceeding.”

effect in the United States. Thus, there is a substantial likelihood that the additional provisional relief requested will ultimately be granted on a final basis on the merits. Furthermore, as discussed above, United States bankruptcy courts have consistently recognized that such relief is available and appropriate in similar circumstances.

50. For these reasons, it is substantially likely that the CCAA Debtors will receive final approval of all of the relief requested.

## **2. Irreparable harm may result absent provisional relief.**

51. Provisional recognition and relief under sections 362, 365(e) and 1519(a) of the Bankruptcy Code in these cases is important to prevent irreparable damage to the interests of the Chapter 15 Debtors' estates, creditors, and the efficacy of the Canadian Proceeding. These Chapter 15 Cases were commenced for the purpose of obtaining the assistance of this Court to give effect in the United States to the Initial Order and other orders of the Canadian Court in the Canadian Proceeding. Although the Initial Order implements a stay preventing parties from taking actions against the CCAA Debtors and their assets wherever located, the Chapter 15 Debtors have assets in the United States that may be subject to enforcement actions by certain creditors and litigants that may not believe they are bound by the Initial Order.<sup>5</sup> *See In re Daebo Int'l Shipping Co.*, 543 B.R. 47, 54 (Bankr. S.D.N.Y. 2015) (holding that "the Court finds that under Canadian law the stay order plainly was intended to have worldwide effect . . . . Canadian law (and the stay order) are clear, and it is consistent with the purpose of Chapter 15 to give effect to them.").

52. Courts in this district have recognized the need to provide provisional relief in order to ensure the orderly distribution of a debtor's assets in a single proceeding, and prevent piecemeal enforcement against a debtor's assets across multiple jurisdictions. *See, e.g., In re The*

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<sup>5</sup> The Foreign Representative reserves all rights and remedies with respect to any party that takes action against the Debtors or their assets inconsistent with the Initial Order and Canadian law.

*Aldo Group Inc.*, No. 20-11060 (KBO) (Bankr. D. Del. May 8, 2020), Docket No. 29 (granting recognition on a provisional basis); *In re Kraus Carpet Inc.*, Case No. 18-12057 (KG) (Bankr. D. Del. Sept. 12, 2018), D.I. 17 (same); *In re RCR Int'l Inc.*, Case No. 18-10112 (LSS) (Bankr. D. Del. Jan. 24, 2018), D.I. 11 (same); *In re Axios Logistics Solutions, Inc.*, Case No. 17-10438 (BLS) (Bankr. D. Del. Mar. 1, 2017), D.I. 13 (same); *In re Essar Steel Algoma Inc.*, Case No. 15-12271 (BLS) (Bankr. D. Del. Nov. 10, 2015), D.I. 30 (same). The provisional relief requested is necessary to protect against potential destruction of asset value and interference with centralized, comprehensive restructuring efforts pending entry of the Final Order. Without the relief, domestic creditors and contract counterparties, upon learning of the Chapter 15 Debtors' insolvency proceedings in Canada, may result to self-help remedies, preferring themselves over the collective judicial proceedings and priority scheme in Canada (which are substantially similar to chapter 11 of the Bankruptcy Code). This would undermine and potentially irreparably impair the centralized nature and fundamental fairness of the Canadian Proceeding, and would be an affront to international comity and the cross-border insolvency regime. Accordingly, to avoid the possibility of irreparable harm to the general interests of the Chapter 15 Debtors' creditors and the Canadian Proceeding, the Foreign Representative requests that the provisional relief be granted.

### **3. Provisional relief will benefit creditors.**

53. As alluded to above, preserving the status quo by imposing the automatic stay, protecting contracts, and authorizing the Foreign Representative to operate the Chapter 15 Debtors' businesses and exercise the rights of a trustee will not prejudice creditors. Granting the request for provisional relief will ensure the value of the Chapter 15 Debtors' assets is preserved, protected, and maximized for the benefit of and fair distribution to creditors in the order of priority, without the "race to the courthouse" or "self-help" that centralized insolvency regimes such as the CCAA and the Bankruptcy Code are specifically designed to forestall.

**4. Public interest favors granting provisional relief.**

54. Provisional relief is consistent with the policies underlying the Bankruptcy Code, including the stay of individual creditor action and equitable treatment of all creditors according to priorities. Moreover, granting the requested relief is in the public interest because it will facilitate the Foreign Representative's efforts to complete restructuring for the benefit of creditors and other stakeholders (including those in the United States). Additionally, granting the provisional relief is in the public interest because it promotes cooperation between jurisdictions in cross-border insolvencies, which is an express purpose of chapter 15 of the Bankruptcy Code. 11 U.S.C. § 1501(a).

55. For the reasons set forth herein, the Foreign Representative respectfully requests that, pending the hearing on the Final Order, the Provisional Order be approved in all respects and that the terms and provisions of the Provisional Order be implemented and that, after the Final Hearing, the Final Order be approved in all respects and the terms and provisions of the Final Order be implemented.

**NOTICE**

56. The Foreign Representative will provide notice of this Motion consistent with Local Rule 9013-1(m). The Foreign Representative proposes to further notify all creditors and parties in interest of the filing of these Chapter 15 Petitions and the Foreign Representative's request for entry of the Final Order in the form and manner set forth in the *Motion of the Foreign Representative for Entry of an Order (I) Specifying Form and Manner of Service of the Recognition Hearing Notice Under Sections 105(a), 1514 and 1515 of the Bankruptcy Code and Bankruptcy Rules 2002 and 9008, (II) Scheduling Hearing, and (III) Granting Related Relief*, which was filed concurrently herewith. 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 Provisional Order, substantially in the form attached hereto as **Exhibit A**; (b) enter the Final Order, upon notice and a hearing, substantially in the form attached hereto as **Exhibit B**; and (c) grant such other and further relief as it deems just and proper.

Dated: July 30, 2024  
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Derek C. Abbott

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**Exhibit A**

Provisional Order

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

In re

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

Debtors in a Foreign  
Proceeding.<sup>1</sup>

Chapter 15

Case No. 24-11623 ( )

(Joint Administration Requested)

**ORDER GRANTING PROVISIONAL RELIEF UNDER SECTIONS 105(a), 362, 365,  
1517, 1519, AND 1521 OF THE BANKRUPTCY CODE**

Upon the motion (the “Motion”)<sup>2</sup> of VBI Vaccines (Delaware) Inc. (“VBI Delaware”), solely in its capacity as authorized foreign representative and not in its personal or corporate capacity (the “Foreign Representative”) of VBI Vaccines Inc. (“VBI”), VBI Delaware, Variation Biotechnologies (US) Inc. (“VBI US”), and VBI Vaccines B.V. (“VBI BV”) (collectively, the “Chapter 15 Debtors”), for entry of provisional and final orders under sections 105(a), 362, 365, 1517, 1519, 1520 and 1521 of the Bankruptcy Code: (i) enforcing in the United States, on a provisional basis, the Initial Order, by applying sections 362, 365(e) and 1520(a) of the Bankruptcy Code in these Chapter 15 Cases on a provisional basis under sections 105(a), 1519(a) and 1521(a)(7) of the Bankruptcy Code, applying section 1519(a)(2) of the Bankruptcy Code on a provisional basis, and granting such other and further relief as this Court deems just and proper; and after notice and a hearing; (ii) on a final basis (a) granting the petitions in these cases and recognizing the Canadian Proceeding as a foreign main proceeding, or in the alternative, as a foreign nonmain proceeding, under section 1517 of the Bankruptcy Code, (b) giving full force and

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<sup>1</sup> 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.

<sup>2</sup> Capitalized terms not defined herein are defined in the Motion.

effect in the United States to the Initial Order, including any and all extensions, amendments and/or supplements thereto authorized by the Canadian Court and extending the protections of the Initial Order to the Chapter 15 Debtors in the United States on a final basis, (c) applying section 365 of the Bankruptcy Code in these Chapter 15 Cases on a final basis under section 1521 of the Bankruptcy Code, and (d) granting related relief, all as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334, 11 U.S.C. §§ 109 and 1501, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012; and consideration of the Motion and the relief requested therein being a core proceeding under 28 U.S.C. § 157(b)(2)(P); and the Foreign Representative having consented in its capacity as foreign representative to the Court's authority to enter a final order consistent with Article III of the U.S. Constitution; and venue being proper before this Court under 28 U.S.C. § 1410(1) and (3); and due and proper notice of the provisional relief sought in the Motion having been provided; and it appearing that no other or further notice need be provided; and upon the Baxter Declaration, and the verified Chapter 15 Petitions, filed contemporaneously with the Motion, the record of the preliminary hearing on the Motion and the proceedings had before the Court; and the Court having found and determined that the provisional relief sought in the Motion is in the best interests of the Chapter 15 Debtors, their creditors, and parties in interest, and is in the interest of international comity and not inconsistent with United States public policy, and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

**THIS COURT HEREBY FINDS AND DETERMINES THAT:**

A. The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law under Rule 7052 of the Federal Rules of Bankruptcy Procedures (the "Bankruptcy Rules") made applicable to this proceeding under Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. This Court has jurisdiction to consider 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 as of February 29, 2012.

C. This is a core proceeding under 28 U.S.C. § 157(b)(2)(P).

D. Venue of these cases is proper before this Court under 28 U.S.C. § 1410(1) and (3).

E. The Foreign Representative has demonstrated a substantial likelihood of success on the merits that (a) the Canadian Proceeding is a "foreign main proceeding" as that term is defined in section 1502(4) of the Bankruptcy Code, or in the alternative a "foreign nonmain proceeding" as that term is defined in section 1502(5) of the Bankruptcy Code, (b) the Foreign Representative is a "foreign representative" as that term is defined in section 101(24) of the Bankruptcy Code, (c) all statutory elements for recognition of the Canadian Proceeding are satisfied in accordance with section 1517 of the Bankruptcy Code, (d) upon recognition of the Canadian Proceeding as a foreign main proceeding, section 362 of the Bankruptcy Code will automatically apply in these Chapter 15 Cases under section 1520(a)(1) of the Bankruptcy Code and the Foreign Representative will automatically have authority to operate the Chapter 15

Debtors' businesses and exercise the rights and powers of a trustee under section 1520(a)(3) of the Bankruptcy Code, (e) upon recognition of the Canadian Proceeding as a foreign nonmain proceeding, the Court may apply sections 362 and 1520(a)(3) of the Bankruptcy Code to these Chapter 15 Cases under section 1521(a)(7) and entrust the administration of the Chapter 15 Debtors' assets within the United States to the Foreign Representative under section 1521(a)(5) of the Bankruptcy Code, and (f) that application of section 365(e) on a provisional basis to protect contracts with the Chapter 15 Debtors is consistent with the injunctive relief afforded by the automatic stay under section 362.

F. The Foreign Representative has demonstrated that (a) the commencement or continuation of any proceeding or action in the United States against the Chapter 15 Debtors and their business and all of their assets should be stayed under sections 105(a), 1519 and 1521 of the Bankruptcy Code, which protections, in each case, shall be coextensive with the provisions of section 362 of the Bankruptcy Code, to permit the fair and efficient administration of the Canadian Proceeding for the benefit of all stakeholders, and (b) the relief requested in the Motion will neither cause an undue hardship nor create any hardship to parties in interest that is not outweighed by the benefits of the relief granted herein.

G. The Foreign Representative has demonstrated that without the protection of sections 362 and 365(e) of the Bankruptcy Code, there is a risk that counterparties to certain of the Chapter 15 Debtors' contracts, creditors, or litigants may take the position that the commencement of the Canadian Proceeding or these Chapter 15 Cases allows them to terminate or refuse to perform under such contracts, take enforcement action, or continue litigation in the United States. Such actions would impair the Foreign Representative's restructuring efforts and result in

irreparable damage to the value of the Chapter 15 Debtors' assets and the efficacy of the Canadian Proceeding, and substantial harm to the Chapter 15 Debtors' creditors and other parties in interest.

H. The Foreign Representative has demonstrated that absent the relief granted herein, there is a risk that one or more parties in interest will take action against the Chapter 15 Debtors or their assets. As a result, the value of the Chapter 15 Debtors' assets may suffer immediate and irreparable injury, loss, or damage for which there is no adequate remedy at law and therefore it is necessary that this Court grant the relief requested in the Motion without prior notice to parties in interest or their counsel. Further, unless this Order is entered, the Chapter 15 Debtors' assets could be subject to efforts by creditors to control, possess, or execute upon such assets and such efforts could result in immediate and irreparable injury, loss or damage by, among other things, creditors (a) interfering with the jurisdictional mandate of this Court under chapter 15 of the Bankruptcy Code, and (b) interfering with or undermining the success of the Canadian Proceeding.

I. The Foreign Representative has demonstrated that no injury will result to any party that is greater than the harm to the Chapter 15 Debtors' business, assets, and property in the absence of the relief requested in the Motion.

J. The Chapter 15 Debtors' creditors will not suffer any significant harm by the requested provisional relief, as the relief will merely preserve the status quo during the short time necessary for the Court to rule on the verified Chapter 15 Petitions. The provisional relief sought will benefit the Chapter 15 Debtors' creditors because it will ensure the value of the Chapter 15 Debtors' assets are preserved, protected and maximized for the benefit of all creditors.

K. The interests of the public and public policy of the United States will be served by entry of this Order.

L. The Foreign Representative and the Chapter 15 Debtors are entitled to the full protections and rights available under section 1519(a)(1)–(3) of the Bankruptcy Code.

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

1. The relief requested in the Motion is GRANTED as set forth herein.
2. While this Order is in effect, the Foreign Representative and the Chapter 15 Debtors are entitled to the full protections and rights under section 1519(a)(1), which protections shall be coextensive with the provisions of section 362 of the Bankruptcy Code, and this Order shall operate as a stay of any execution against the Chapter 15 Debtors' assets within the territorial jurisdiction of the United States (except as otherwise expressly provided herein).
3. While this Order is in effect, under sections 1519(a) and 1521(a)(7) of the Bankruptcy Code, sections 362 and 365(e) of the Bankruptcy Code are hereby made applicable in this case to the Chapter 15 Debtors and their property within the territorial jurisdiction of the United States. Specifically, all entities (as that term is defined in section 101(15) of the Bankruptcy Code), other than the Foreign Representative and its expressly authorized representatives and agents are hereby enjoined from:
  - a) execution against any of the Chapter 15 Debtors' assets;
  - b) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, arbitral, or other action or proceeding, or to recover a claim, including without limitation any and all unpaid judgments, settlements, or otherwise against the Chapter 15 Debtors in the United States;
  - c) taking or continuing any act to create, perfect, or enforce a lien or other security interest, set-off, or other claim against the Chapter 15 Debtors or any of their property;
  - d) transferring, relinquishing, or disposing of any property of the Chapter 15 Debtors to any entity (as that term is defined in section 101(15) of the Bankruptcy Code) other than the Foreign Representative or its expressly authorized representatives and agents;

- e) commencing or continuing an individual action or proceeding concerning the Chapter 15 Debtors' assets, rights, obligations, or liabilities; and
- f) terminating, modifying, or otherwise accelerating obligations or exercising remedies under any contract with any of the Chapter 15 Debtors on the basis of (i) the insolvency or financial condition of the Chapter 15 Debtors at any time before the closing of these cases; (ii) the commencement of the Canadian Proceeding, the entry of the Initial Order, or the commencement of these Chapter 15 Cases under this title; or (iii) the appointment of and taking possession by the Foreign Representative of the Chapter 15 Debtors' assets and contracts;

*provided*, that in each case, the foregoing injunctions shall be effective solely within the territorial jurisdiction of the United States.

4. While this Order is in effect, the Foreign Representative is entitled to operate the Chapter 15 Debtors' businesses and administer their assets.

5. Notwithstanding anything to the contrary contained herein, this Order shall not be construed as (a) enjoining the police or regulatory act of a governmental unit, including a criminal action or proceeding, to the extent not stayed under section 362 of the Bankruptcy Code, or (b) staying the exercise of any rights that section 362(o) of the Bankruptcy Code does not allow to be stayed.

6. Under Rule 65(b) of the Federal Rules of Civil Procedure, made applicable to these proceedings under Bankruptcy Rule 7065, no notice to any person is required prior to entry and issuance of this Order. Under Bankruptcy Rule 7065, the provisions of Federal Rule of Civil Procedure 65(c) are hereby waived, to the extent applicable.

7. The Foreign Representative and its respective agents are authorized to serve or provide any notices required under the Bankruptcy Rules or local rules of this Court.

8. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

9. The Foreign Representative is authorized to take all actions necessary to effectuate the relief granted under this Order in accordance with the Motion.

10. This Court shall conduct a hearing regarding the final relief sought by the Motion at \_\_\_\_\_ on \_\_\_\_\_, 2024. Any objections to such relief shall be filed and served upon the Foreign Representative no later than 4:00 p.m. (ET) seven days before the hearing.

11. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order.

**Exhibit B**

Final Order

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

In re

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

Debtors in a Foreign  
Proceeding.<sup>1</sup>

Chapter 15

Case No. 24-11623 ( )

(Joint Administration Requested)

**FINAL ORDER GRANTING RECOGNITION OF FOREIGN MAIN  
PROCEEDING AND CERTAIN RELATED RELIEF UNDER SECTIONS  
105(a), 362, 365, 1517, 1519, 1520 AND 1521 OF BANKRUPTCY CODE**

Upon the motion (the “Motion”)<sup>2</sup> of VBI Vaccines (Delaware) Inc. (“VBI Delaware”), solely in its capacity as authorized foreign representative and not in its personal or corporate capacity (the “Foreign Representative”) of VBI Vaccines Inc. (“VBI”), VBI Delaware, Variation Biotechnologies (US) Inc. (“VBI US”), and VBI Vaccines B.V. (“VBI BV”) (collectively, the “Chapter 15 Debtors”), for entry of provisional and final orders under sections 105(a), 362, 365, 1517, 1519, 1520 and 1521 of the Bankruptcy Code: (i) enforcing in the United States, on a provisional basis, the Initial Order, by applying sections 362, 365(e) and 1520(a) of the Bankruptcy Code in the Chapter 15 Cases on a provisional basis under sections 105(a), 1519(a) and 1521(a)(7) of the Bankruptcy Code, applying section 1519(a)(2) of the Bankruptcy Code on a provisional basis and granting such other and further relief as this Court deems just and proper; and after notice and a hearing; (ii) on a final basis (a) granting the petitions in these cases and recognizing the Canadian Proceeding as a foreign main proceeding, or in the alternative, as a foreign nonmain proceeding, under section 1517 of the Bankruptcy Code, (b) giving full force and

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<sup>1</sup> 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.

<sup>2</sup> Capitalized terms not defined herein are defined in the Motion.

effect in the United States to the Initial Order, including any and all extensions, amendments and/or supplements thereto authorized by the Canadian Court and extending the protections of the Initial Order to the Chapter 15 Debtors in the United States on a final basis, (c) applying section 365 of the Bankruptcy Code in these Chapter 15 Cases on a final basis under section 1521 of the Bankruptcy Code, and (d) granting related relief, all as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334, 11 U.S.C. §§ 109 and 1501, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012; and consideration of the Motion and the relief requested therein being a core proceeding under 28 U.S.C. § 157(b)(2)(P); and the Foreign Representative having consented in its capacity as foreign representative to the Court's authority to enter a final order consistent with Article III of the U.S. Constitution; and venue being proper before this Court under 28 U.S.C. § 1410(1) and (3); and due and proper notice of the provisional relief sought in the Motion having been provided; and it appearing that no other or further notice need be provided; and the opportunity for a hearing to consider the relief requested in the Motion having been provided; and upon the Baxter Declaration, and the verified Chapter 15 Petitions, filed contemporaneously with the Motion, the record in support of the Motion and the Chapter 15 Petitions, and the proceedings had before the Court; and the Court having found and determined that the provisional relief sought in the Motion is in the best interests of the Chapter 15 Debtors, their creditors, and parties in interest, and is in the interest of international comity and not inconsistent with United States public policy, and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

**THIS COURT HEREBY FINDS AND DETERMINES THAT:**

A. The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law under Rule 7052 of the Federal Rules of Bankruptcy Procedures (the "Bankruptcy Rules") made applicable to this proceeding under Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. This Court has jurisdiction to consider 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 as of February 29, 2012.

C. This is a core proceeding under 28 U.S.C. § 157(b)(2)(P).

D. Venue of these cases is proper before this Court under 28 U.S.C. § 1410(1) and (3).

E. The Canadian Proceeding is a "foreign proceeding" under section 101(23) of the Bankruptcy Code.

F. The Foreign Representative is the duly appointed "foreign representative" of the Chapter 15 Debtors within the meaning of section 101(24) of the Bankruptcy Code.

G. These Chapter 15 Cases were properly commenced under sections 1504, 1509, and 1515 of the Bankruptcy Code.

H. The Foreign Representative has satisfied the requirements of section 1515 of the Bankruptcy Code and Bankruptcy Rule 2002(q).

I. The Canadian Proceeding is entitled to recognition by this Court under section 1517 of the Bankruptcy Code.

J. Canada is the center of main interests of the Chapter 15 Debtors, and accordingly, the Canadian Proceeding is a “foreign main proceeding” as defined in section 1502(4) of the Bankruptcy Code, and is entitled to recognition as a foreign main proceeding under section 1517(b)(1) of the Bankruptcy Code.

K. The Foreign Representative is entitled to all the relief available under section 1520 of the Bankruptcy Code including, without limitation, application of the automatic stay under section 362 of the Bankruptcy Code and operation of the Chapter 15 Debtors’ business and exercise of the rights and powers of a trustee.

L. The Foreign Representative is further entitled to application of section 365 under section 1521 of the Bankruptcy Code.

M. The Foreign Representative has demonstrated that application of section 365 of the Bankruptcy Code, as made applicable by sections 105(a) and 1521(a)(7) of the Bankruptcy Code, is necessary to provide the ability to assume or reject a contract or compel a contract counterparty to perform under a contract and that, absent protections under section 365, there is a risk that one or more of their contract counterparties may terminate agreements or discontinue performance on the incorrect assumption that it is not bound by any decision made in the Canadian Proceeding and any such termination or discontinuance of performance could impose severe economic consequences on the Chapter 15 Debtors’ estates and would interfere with restructuring efforts.

N. The relief granted herein is necessary and appropriate, in the interests of the public and international comity, consistent with the public policy of the United States, and warranted under sections 1517, 1520, and 1521 of the Bankruptcy Code.

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

1. The relief requested by the verified Chapter 15 Petitions and the Motion is GRANTED as set forth herein.

2. The Canadian Proceeding is granted recognition as a foreign main proceeding under section 1517 of the Bankruptcy Code.

3. Subject to sections 1520 and 1521 of the Bankruptcy Code, the Canadian Proceeding and the Initial Order, including any extensions, amendments, or modifications thereto, are hereby recognized on a final basis and shall be granted comity and given full force and effect in the United States to the same extent that they are given effect in Canada, and each is binding of all the creditors of the Chapter 15 Debtors and any of their successors and assigns; provided, however, that any authorization to use, sell, or lease property located in the United States outside the ordinary course of business must be approved by further order of this Court.

4. All relief afforded foreign main proceedings under section 1520 of the Bankruptcy Code is hereby granted to the Canadian Proceeding, the Chapter 15 Debtors, and the Foreign Representative as applicable.

5. Sections 362 and 365 of the Bankruptcy Code shall hereby apply with respect to the Chapter 15 Debtors and the property of the Chapter 15 Debtors that is within the territorial jurisdiction of the United States. All entities (as that term is defined in section 101(15) of the Bankruptcy Code), other than the Foreign Representative and its authorized representatives and agents are hereby enjoined from:

- a) execution against any of the Chapter 15 Debtors' assets;
- b) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, arbitral, or other action or proceeding, or to recover a claim, including without limitation any and all unpaid judgments, settlements, or otherwise against the Chapter 15 Debtors in the United States;

- c) taking or continuing any act to create, perfect, or enforce a lien or other security interest, set-off, or other claim against the Chapter 15 Debtors or any of their property;
- d) transferring, relinquishing, or disposing of any property of the Chapter 15 Debtors to any entity (as that term is defined in section 101(15) of the Bankruptcy Code) other than the Foreign Representative and its expressly authorized representatives and agents;
- e) commencing or continuing an individual action or proceeding concerning the Chapter 15 Debtors' assets, rights, obligations, or liabilities; and
- f) terminating, modifying, or otherwise accelerating obligations or exercising remedies under any contract with any of the Chapter 15 Debtors on the basis of (i) the insolvency or financial condition of the Chapter 15 Debtors at any time before the closing of these cases; (ii) the commencement of the Canadian Proceeding, the entry of the Initial Order, or the commencement of these Chapter 15 Cases under this title; or (iii) the appointment of and taking possession by the Foreign Representative of the Chapter 15 Debtors' assets and contracts;

*provided*, that in each case, the foregoing injunctions shall be effective solely within the territorial jurisdiction of the United States.

6. Under section 1521(a)(6) of the Bankruptcy Code, all prior relief granted to the Chapter 15 Debtors or the Foreign Representative by this Court under section 1519(a) of the Bankruptcy Code shall be extended and the Provisional Order shall remain in full force and effect, notwithstanding anything to the contrary contained therein.

7. Notwithstanding anything to the contrary contained herein, this Order shall not be construed as (a) enjoining the police or regulatory act of a governmental unit, including a criminal action or proceeding, to the extent not stayed under section 362 of the Bankruptcy Code, or (b) staying the exercise of any rights that section 362(o) of the Bankruptcy Code does not allow to be stayed.

8. The Foreign Representative and its agents are authorized to serve or provide any notices required under the Bankruptcy Rules or local rules of this Court.

9. Notwithstanding any applicability of any Bankruptcy Rules, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

10. The Foreign Representative and its agents are authorized and empowered to take all actions necessary to effectuate the relief granted under this Order in accordance with the Motion.

11. The Foreign Representative, the Chapter 15 Debtors and/or each of their successors, representatives, advisors, or counsel shall be entitled to the protections contained in sections 306 and 1510 of the Bankruptcy Code.

12. A copy of this Order, confirmed to be true and correct, shall be served, within three business days of entry of this Order, by mail, upon all persons or bodies authorized to administer foreign proceedings of the Chapter 15 Debtors, all entities against whom provisional relief was granted under section 1519 of the Bankruptcy Code, all parties to litigation pending in the United States in which any of the Chapter 15 Debtors were a party at the time of the filing of the verified Chapter 15 Petitions, the Office of the U.S. Trustee for the District of Delaware, and such other entities as this Court may direct. Such service shall be good and sufficient service and adequate notice for present purpose.

13. This Court shall retain exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order.

**Exhibit C**

Initial Order and Endorsement in the CCAA Proceeding

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

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

|                |   |                      |
|----------------|---|----------------------|
| THE HONOURABLE | ) | TUESDAY THE 30TH DAY |
|                | ) |                      |
| JUSTICE KIMMEL | ) | OF JULY, 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

**INITIAL ORDER**

**THIS APPLICATION**, made by VBI Vaccines Inc., Variation Biotechnologies Inc., VBI Vaccines (Delaware) Inc. ("**VBI DE**"), Variation Biotechnologies (US), Inc., SciVac Ltd., SciVac Hong Kong Limited and VBI Vaccines B.V. (collectively, the "**Applicants**"), for an initial order pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day by judicial videoconference via Zoom.

**ON READING** the affidavit of Jeffrey Baxter sworn July 29, 2024 (the "**Initial Affidavit**") and the Exhibits thereto, the pre-filing report of Ernst & Young Inc. ("**EY**"), in its capacity as proposed monitor of the Applicants dated July 29, 2024 (the "**Pre-Filing Report**"), the consent of EY to act as the Monitor (the "**Monitor**"), on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants, counsel for EY, counsel for K2 HealthVentures LLC ("**K2HV**"), as secured creditor and the DIP Lender (as defined below), and such other parties as listed on the Counsel Slip, with no one else appearing although duly served as appears from the affidavit of service of Philip Yang sworn July 30, 2024,

## **SERVICE**

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

## **APPLICATION**

2. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies.

## **ADMINISTRATIVE CONSOLIDATION**

3. **THIS COURT ORDERS** the consolidation of these CCAA proceedings of the Applicants under one single Court file and that all proceedings, filings, and other matters in the CCAA Proceedings be filed jointly and together in Court file number CV-24-00724693-00CL.

4. **THIS COURT ORDERS AND DECLARES** that the consolidation of these CCAA proceedings in respect of the Applicants shall be for administrative purposes only and shall not effect a consolidation of the assets and property or of the debts and obligations of each of the Applicants including, without limitation, for the purposes of any plan of arrangement or compromise under the CCAA that may be hereafter proposed.

## **POSSESSION OF PROPERTY AND OPERATIONS**

5. **THIS COURT ORDERS** that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the “**Business**”) and Property. The Applicants are authorized and empowered to continue to retain and employ their employees, consultants, agents, experts, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. **THIS COURT ORDERS** that the Applicants shall be entitled to continue to utilize their existing central cash management system currently in place or replace it with another substantially similar central cash management system (the “**Cash Management System**”) and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person or Persons (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under any plan of arrangement or compromise under the CCAA with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

7. **THIS COURT ORDERS** that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order subject to compliance with the Cash Flow Projections (as defined in the DIP Facility Agreement), as may be amended from time to time:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
- (b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.

8. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicants shall be entitled, subject to compliance with the Cash Flow Projections, as may be amended from time to time, but not required to pay all reasonable expenses incurred by the Applicants in carrying on their Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account

of insurance (including directors' and officers' insurance), maintenance and security services; and

- (b) payment for goods or services actually supplied to the Applicants following the date of this Order.

9. **THIS COURT ORDERS** that the Applicants shall, in accordance with legal requirements, remit or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Ontario Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

10. **THIS COURT ORDERS** that, from and after the date of this Order, the Applicants shall not make any payments pursuant to this Order other than those contemplated by the Cash Flow Projections, as may be amended from time to time, and subject to permitted variances under the DIP Facility Agreement (as defined below), or upon further Order of this Court.

11. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as

of this date; (b) to grant no security interests, trust, liens, mortgages, charges or encumbrances upon or in respect of any of the Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

## **RESTRUCTURING**

12. **THIS COURT ORDERS** that the Applicants shall, subject to such requirements as are imposed by the CCAA, have the right to continue negotiations with stakeholders in an effort to pursue restructuring options for the Applicants including without limitation all avenues of refinancing of their Business or Property, in whole or in part, subject to prior approval of this Court being obtained before any material refinancing.

## **NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY**

13. **THIS COURT ORDERS** that until and including August 9, 2024, or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting their Business or their Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting their Business or their Property are hereby stayed and suspended pending further Order of this Court.

## **NO EXERCISE OF RIGHTS OR REMEDIES**

14. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Applicants or the Monitor, or affecting their Business or their Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (a) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (c) prevent the filing of any registration to preserve or perfect a security interest, or (d) prevent the registration of a claim for lien.

### **NO INTERFERENCE WITH RIGHTS**

15. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

### **CONTINUATION OF SERVICES**

16. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses, email addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

### **NON-DEROGATION OF RIGHTS**

17. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

18. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim

against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

#### **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

19. **THIS COURT ORDERS** that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

20. **THIS COURT ORDERS** that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of US\$200,000, as security for the indemnity provided in paragraph 19 of this Order. The Directors' Charge shall have the priority as set out in paragraphs 39 and 41 herein.

21. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 19 of this Order.

#### **APPOINTMENT OF MONITOR**

22. **THIS COURT ORDERS** that Ernst & Young Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor

with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

23. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements and the Applicants' compliance with the Cash Flow Projections;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicants, to the extent required by the Applicants, in their dissemination of financial and other information to the DIP Lender and its counsel on a weekly basis of financial and other information as agreed to between the Applicants and the DIP Lender, or as may reasonably be requested by the DIP Lender;
- (d) advise the Applicants in their preparation of the Applicants' cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than weekly, or as may reasonably be requested by the DIP Lender;
- (e) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;
- (f) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (g) perform such other duties as are required by this Order or by this Court from time to time.

24. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

25. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act, 1999*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, the *Ontario Mining Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order, or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

26. **THIS COURT ORDERS** that that the Monitor shall provide any creditor of the Applicants and the DIP Lender with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

27. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

28. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a weekly basis.

29. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

30. **THIS COURT ORDERS** that the Applicants' counsel, the Monitor and its counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of US\$400,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority as set out in paragraphs 39 and 41 herein.

#### **DIP FINANCING**

31. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to obtain and borrow under a credit facility from K2HV, in its capacity as the debtor-in-possession lender (the "**DIP Lender**") in order to finance the Applicants working capital requirements, and other general corporate purposes and capital expenditures.

32. **THIS COURT ORDERS** that such credit facility shall be on the terms and subject to the conditions set forth in the Debtor-In-Possession Facility Term Sheet between the Applicants and the DIP Lender dated as of July 29, 2024, appended as Exhibit "A" to the Affidavit of Philip Yang sworn July 29, 2024 (the "**DIP Facility Agreement**").

33. **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\$150,000 during the Stay Period.

34. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute and deliver such agreements, instruments, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively with the DIP Facility

Agreement, the “**Definitive Documents**”), as may be contemplated by the DIP Facility Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Definitive Documents (collectively, the “**DIP Obligations**”) as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

35. **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\$300,000. The DIP Lender’s Charge shall not secure an obligation that exists before this Order is made. The DIP Lender’s Charge shall have the priority as set out in paragraphs 39 and 41 herein.

36. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the DIP Lender under this Order or at law, the DIP Lender shall not incur any liability or obligation as a result of the carrying out of the provisions of this Order, save and except for any gross negligence or willful misconduct on its part.

37. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender’s Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender’s Charge, the DIP Lender may accelerate all amounts owing under the DIP Facility Agreement, demand repayment and cease making advances to the Applicants, and upon three business days’ notice to the Applicants and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the Definitive Documents and the DIP Lender’s Charge, including without limitation, to set off and/or consolidate any amounts owing by the DIP Lender to the Applicants against the obligations of the

Applicants to the DIP Lender under the Definitive Documents or the DIP Lender's Charge and give notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and

- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

38. **THIS COURT ORDERS AND DECLARES** that K2HV and the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise under the CCAA, or any proposal filed under the BIA, with respect to any advances made by K2HV, as secured lender to the Applicants, and under the Definitive Documents.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

39. **THIS COURT ORDERS** that the priorities of the Administration Charge, the Directors' 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\$400,000);

Second – Directors' Charge (to the maximum amount of US\$200,000); and

Third - DIP Lender's Charge (to the maximum amount of US\$300,000).

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

41. **THIS COURT ORDERS** that the Charges shall constitute a charge on the Property and shall rank in priority to all other security interests, trusts, deemed trusts in favour of the Crown, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person, provided that the Charges shall rank behind

Encumbrances in favor of any Persons that have not been served with notice of this application. The Applicants and beneficiaries of the Charges shall be entitled to seek priority ahead of such Encumbrances on notice to those parties.

42. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or the proposed amended and restated initial order included in the Applicants' Application Record if granted by the Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicants also obtain the prior written consent of the Monitor and the DIP Lender and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

43. **THIS COURT ORDERS** that the Directors' Charge, the Administration Charge, the Definitive Documents and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal, provincial or other statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Definitive Documents shall create or be deemed to constitute a breach by the Applicants of any Agreement to which they are a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicants entering into the DIP Facility Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicants pursuant to this Order, the Definitive Documents, and the granting of the Charges, do not and will not constitute

preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

44. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property leases.

#### **SERVICE AND NOTICE**

45. **THIS COURT ORDERS** that the Monitor shall (a) without delay, publish in The Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (b) within five days after the date of this Order, (i) make this Order publicly available in the manner prescribed under the CCAA, (ii) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than \$1000, and (iii) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of any individual persons who are creditors available.

46. **THIS COURT ORDERS** that the E-Service Guide of the Commercial List (the "**Guide**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL: [www.ey.com/ca/vbi](http://www.ey.com/ca/vbi)

47. **THIS COURT ORDERS** that the Applicants, the DIP Lender, the Monitor and their respective counsel are at liberty to serve or distribute this Order, and other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicants' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation and notice

requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

48. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Guide is not practicable, the Applicants, the DIP Lender and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

#### **COMEBACK MOTION**

49. **THIS COURT ORDERS** that the comeback motion shall be heard on August 9, 2024, at 8:30 A.M. (Eastern Time).

#### **FOREIGN PROCEEDINGS**

50. **THIS COURT ORDERS** that VBI DE and EY are hereby authorized and empowered, but not required, to act as the foreign representatives (in such capacity, the "**Foreign Representatives**") in respect of the within proceedings for the purpose of having these proceedings recognized and approved in a jurisdiction outside of Canada.

51. **THIS COURT ORDERS** that the Foreign Representatives are hereby authorized to apply for foreign recognition and approval of these proceedings, as necessary, in any jurisdiction outside of Canada, including, with respect to VBI DE, in the United States pursuant to chapter 15 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532, and with respect to EY, in Israel under the relevant provisions of The Israeli Insolvency and Economic Rehabilitation Law, 2018.

52. **THIS COURT ORDERS AND DECLARES** that, for the purposes of any applications authorized by paragraphs 50 and 51, the Applicants' centre of main interest is located in the province of Ontario, Canada.

## GENERAL

53. **THIS COURT ORDERS** that the Applicants, the DIP Lender or the Monitor 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.

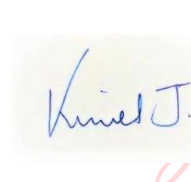
54. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

55. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor, the Foreign Representatives and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants, 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.

56. **THIS COURT ORDERS** that each of the Applicants, the Foreign Representatives and the Monitor shall 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 is 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.

57. **THIS COURT ORDERS** that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

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



Digitally signed  
by Jessica Kimmel  
Date: 2024.07.30  
14:17:05 -04'00'



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 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

|  |                                                                                                                                                                   |
|--|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | <b>ONTARIO</b><br><b>SUPERIOR COURT OF JUSTICE</b><br><b>(COMMERCIAL LIST)</b><br><br>PROCEEDING COMMENCED AT TORONTO                                             |
|  | <b>INITIAL ORDER</b>                                                                                                                                              |
|  | <b>STIKEMAN ELLIOTT LLP</b><br>Barristers & Solicitors<br>5300 Commerce Court West<br>199 Bay Street<br>Toronto, Canada M5L 1B9<br><br>Lawyers for the Applicants |



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL SLIP/ENDORSEMENT**

**COURT FILE NO.:** CV-24-00724693-00CL **DATE:** 30 July 2024

**NO. ON LIST:** 1

**TITLE OF PROCEEDING:** IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
VBI VACCINES INC et al.

**BEFORE JUSTICE:** KIMMEL

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party, Crown:**

| Name of Person Appearing     | Name of Party              | Contact Info                                                                                                                 |
|------------------------------|----------------------------|------------------------------------------------------------------------------------------------------------------------------|
| Phil Yang<br>Nathalie Nouvet | Counsel for the Applicants | <a href="mailto:pyang@stikeman.com">pyang@stikeman.com</a><br><a href="mailto:nnouvet@stikeman.com">nnouvet@stikeman.com</a> |

**For Defendant, Respondent, Responding Party, Defence:**

| Name of Person Appearing | Name of Party | Contact Info |
|--------------------------|---------------|--------------|
|                          |               |              |

**For Other, Self-Represented:**

| Name of Person Appearing               | Name of Party                       | Contact Info                                                                                                                       |
|----------------------------------------|-------------------------------------|------------------------------------------------------------------------------------------------------------------------------------|
| Marc Etienne Boucher<br>Trevor Courtis | Counsel for the Proposed<br>Monitor | <a href="mailto:meboucher@mccarthy.ca">meboucher@mccarthy.ca</a><br><a href="mailto:tcourtis@mccarthy.ca">tcourtis@mccarthy.ca</a> |

|                                                                   |                                   |                                                                                                                                                                                                                                                                                                                                                            |
|-------------------------------------------------------------------|-----------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Martin Rosenthal<br>Tara Serve<br>Andrade Morabito<br>Matt Kaplan | Proposed Monitor                  | <a href="mailto:Martin.rosenthal@parthenon.ey.com">Martin.rosenthal@parthenon.ey.com</a><br><a href="mailto:Tara.n.serve@parthenon.ey.com">Tara.n.serve@parthenon.ey.com</a><br><a href="mailto:Andrade.morabito@parthenon.ey.com">Andrade.morabito@parthenon.ey.com</a><br><a href="mailto:Matt.kaplan@parthenon.ey.com">Matt.kaplan@parthenon.ey.com</a> |
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| Arsalan Muhammad                                                  | Proposed US Counsel to VBI        | <a href="mailto:arsalan.muhammad@haynesboone.com">arsalan.muhammad@haynesboone.com</a>                                                                                                                                                                                                                                                                     |

**ENDORSEMENT OF JUSTICE KIMMEL:**

1. VBI Vaccines Inc. ("VBI") and its wholly owned subsidiaries VBI Vaccines (Delaware) Inc. ("VBI DE"), Variation Biotechnologies (US), Inc. ("VBI US"), SciVac Ltd. ("SciVac"), SciVac Hong Kong Limited ("SciVac HK"), VBI Vaccines B.V. ("VBI BV"), and Variation Biotechnologies Inc. ("VBI Cda" and collectively with VBI, VBI DE, VBI US, SciVac, SciVac HK and VBI BV, referred to as "VBI Group" or the "Applicants") seek protection from their creditors and certain other ancillary relief pursuant to an order (the "Initial Order") made under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA").
2. The Applicants are "debtor companies" or affiliates of "debtor companies" to which the CCAA applies and there are total claims against them in excess of \$5 million. VBI has assets in and does business in Canada. The foreign subsidiaries are all managed and funded through the cash flow, operational and executive management carried out by VBI in Canada. The VBI subsidiaries are also part of a corporate group that operates as a Canadian led company.
3. Although VBI's registered office is in British Columbia, all of VBI's business is carried on in Ontario. Its research facilities, employees, and management are all located in Ontario. The VBI Group operates in the biopharmaceutical domain and has research operations in Ottawa, Canada, where its human resources, treasury, cash management and accounting functions are located.
4. The Applicants are experiencing significant cash flow issues that have and will continue to jeopardize their ability to pursue their strategic and product plans. They have been working on restructuring alternatives, so far without success. In the meantime and despite their restructuring efforts, they are insolvent and require protection and access to DIP financing in order to continue as a going concern while they continue to explore restructuring options.
5. The proposed form of Initial Order is consistent with the Commercial List Model Order. I am satisfied that the requirements for the granting of this Initial Order have been met.
6. The order and initial stay to August 9, 2024 are appropriate to provide the Applicants with the breathing room they need so that they can try to restore solvency and emerge from the CCAA on a going concern basis or to protect the interest of creditors and enable an orderly distribution of the debtor companies' affairs. The Applicants have acted with diligence and in good faith. The relief that has been sought on this initial attendance has been appropriately limited to the relief reasonably necessary for the Applicants to continue to operate in the ordinary course during the initial stay period until the comeback hearing, which has been scheduled for August 9, 2024 commencing at 8:30 a.m.
7. The proposed Monitor has consented to act and satisfies the requirements under s. 11.7 of the CCAA. The Monitor has reviewed the cash flow projections and supports the initial order. The initial order is also supported by the two significant secured creditors, one of which is also providing the DIP financing. None of the other secured creditors that were served with this motion raised any objection to the granting of the initial order today.

8. I am satisfied that it is appropriate to appoint the proposed foreign representatives under s. 56 of the CCAA to act in the intended recognition proceedings in the United States and Israel.
9. I am also satisfied, having regard to the recognized factors that the presumption under s.45(2) of the CCAA that the Centre of Main Interest ("COMI") for VBI would be British Columbia, the locale of its registered office, has been rebutted:
  - a. Ontario is readily ascertainable by creditors;
  - b. Ontario is where the Applicants' principal assets or operations are found; and
  - c. Ontario is where the management of the Applicants takes place.

See *Lightsquared LP (Re)*, 2012 ONSC 2994, at para. 25. See also *Digital Domain Media Group, Inc. (Re)*, 2012 BCSC 1565, at paras. 21-24; *Zochem Inc. (Re)*, 2016 ONSC 958, at para. 22.

10. Given the cross border nature of the Applicants' operations, the fact that the research, management, decision making, cash management, human resources and other activities take place in Ontario further reinforces the conclusion that the COMI of the VBI Group is Ontario. See *In The Matter of Voyager Digital Ltd.*, 2022 ONSC 4553, at para. 21; See also *Angiotech Pharmaceuticals Ltd. (Re)*, 2011 BCSC 115, at para. 7.
11. For the above and more detailed and supplementary reasons that may be provided in an endorsement to follow (in conjunction with the come-back hearing if not beforehand, particularly with respect to the reasons for approval of the DIP Facility and the DIP, Administrative and D&O Charges, all of which are addressed in detail in the factum filed by the Applicants to my satisfaction), the Applicants' request for an initial order under the CCAA is granted. The order may be issued in the form signed by me today.

A handwritten signature in dark ink, appearing to read "Kimmel J.", with a stylized, cursive script.

KIMMEL J.