

COURT FILE NUMBER: 1603 08336
COURT: COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE: EDMONTON
PLAINTIFF: CELINE MICETICH
DEFENDANT: NAEJA PHARMACEUTICAL INC.



DOCUMENT: **CONSENT ORDER**

I hereby certify this to be a true copy of the original.

N. Hillier

for Clerk of the Court

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT: PARLEE McLAWS LLP
Barristers & Solicitors
1700, 10175 – 101 Street NW
Edmonton, AB T5J OH3
Attention: Jeremy H. Hockin, Q.C.
Telephone: (780) 423-8532
Facsimile: (780) 423-2870
File Number: 75239-1/JHH

DATE ON WHICH ORDER WAS PRONOUNCED: March 3, 2017
LOCATION WHERE ORDER PRONOUNCED: Edmonton, Alberta
NAME OF JUSTICE WHO MADE THIS ORDER: The Hon. Mr. Justice S. D. Hillier

UPON THE APPLICATION of the Plaintiff by application document filed February 9, 2017 returnable February 15, 2017; AND UPON the Plaintiff's Application being adjourned from time to time to this date; AND UPON HAVING READ the Affidavits of Celine Micetich, filed herein on May 10, 2016, and February 13, 2017; and the Affidavit of Service of Leslie Dziatkewich, filed; AND UPON hearing counsel for the Plaintiff, no other party served with notice of this Application appearing; AND UPON noting the consent of Deloitte Restructuring Inc. ("Deloitte") in its capacities as Trustee in Bankruptcy and Court Appointed Receiver/Manager of the Defendant, the Plaintiff, and AiCuris GmbH & Co. KG and AiCuris Anti-Infective Cures GmbH ("AiCuris") endorsed hereon by their respective counsel:

IT IS HEREBY ORDERED AND DECLARED THAT:

1. The time required for service of notice of this Application is abridged to that actually given, and the method of service and the parties served are deemed good and sufficient notice of this Application.
2. The Plaintiff as the priority secured creditor of the Defendant has properly exercised her right to retain the collateral pledged to her by the Defendant under the General Security Agreement described in the Order of the Honourable Madam Justice J.E. Topolniski granted and filed herein on July 7, 2016 and the Plaintiff is the owner of all of the personal property of whatever kind and nature and wheresoever situate of the Defendant, effective October 31, 2016, including without limitation those specific items of property described on Schedule "A" attached.
3. Notwithstanding anything to the contrary contained in this Order, or anything set out in Schedule "A" to this Order, the Plaintiff has not retained and is not retaining or acquiring any of the following:
 - (a) any rights under the Research Collaboration and License Agreement effective January 1, 2009 between AiCuris and the Defendant ("Collaboration Agreement") except for the right to receive any payments due from AiCuris thereunder as provided by paragraph 4 of this Order, and the rights reserved to the Defendant in Article 6 of the Collaboration Agreement, which may be exercised by the Plaintiff in the place and stead of the Defendant;
 - (b) any and all proprietary confidential information or property of AiCuris relating to the Collaboration Agreement (which, for clarity, includes without limitation all know-how, research data, research compounds, candidate compounds, and all information related thereto); and
 - (c) any and all proprietary intellectual property of AiCuris (which, for clarity, includes without limitation all inventions and patents relating to the Collaboration Agreement).
4. AiCuris shall release the milestone payment of \$400,000.00 US currently payable to the Defendant to Deloitte upon confirmation by Deloitte that it is in order to do so and upon

AiCuris being satisfied that the preconditions to the release of the said milestone payment had been met. Any and all future milestone or royalty payments due or accruing due to the Defendant under the Collaboration Agreement shall be paid to the Plaintiff or in such manner as she may direct upon AiCuris being satisfied that the preconditions to the release of the future milestone or royalty payment(s) have been met.

5. The Plaintiff agrees to use her best efforts to cooperate with AiCuris in connection with the prosecution, enforcement and defence of any and all inventions and patents arising from the Collaboration Agreement if requested and to the extent she has or can obtain information or documents relating to same, and shall execute and deliver to AiCuris all such further documents and instruments as AiCuris may reasonably require.
6. Deloitte shall execute any document reasonably required by the Plaintiff to give effect to the terms of this Order. Deloitte shall retain a copy of the fully executed Collaboration Agreement in its possession and shall make it available to the Plaintiff either with the consent of AiCuris or upon further Court Order obtained on notice to AiCuris in the event that a dispute develops between the Plaintiff and AiCuris concerning future milestone or royalty payments called for under the Collaboration Agreement.
7. Deloitte shall fully cooperate with AiCuris in the identification of any and all documentation and computer files relating to the Collaboration Agreement in the possession of Deloitte. Subject to the retention of a fully executed copy of the Collaboration Agreement as provided for in the immediately preceding paragraph, Deloitte shall provide any and all documentation and computer files relating to the Collaboration Agreement in the possession of Deloitte to AiCuris within ninety (90) days of the date of this Consent Order, and until completion of such transfer, Deloitte shall maintain such documentation and computer files and not destroy them. The Plaintiff and AiCuris shall each pay half (50%) of Deloitte's reasonable fees and expenses for its services in identifying, collating and conveying the requested materials to AiCuris which shall not exceed \$10,000 without further approvals (for greater clarity, this cost sharing does not apply to any other of Deloitte's fees and expenses relating to the administration of the insolvency of the Defendant).

**JUSTICE OF THE COURT OF QUEEN'S
BENCH OF ALBERTA**

Consented to by:

Reynolds Mirth Richards & Farmer LLP

Per:

Parlee McLaws LLP

Per:

Michael J. McCabe, Q.C.
Solicitors for Deloitte Restructuring Inc.

Jeremy H. Hockin, Q.C.
Solicitors for Celine Micetich

Baker & McKenzie LLP

Per:



Michael Nowina

Solicitors for AiCuris GmbH & Co. KG and
AiCuris Anti-Infective Cures GmbH


JUSTICE OF THE COURT OF QUEEN'S
BENCH OF ALBERTA

Consented to by:

Reynolds Mirth Richards & Farmer LLP

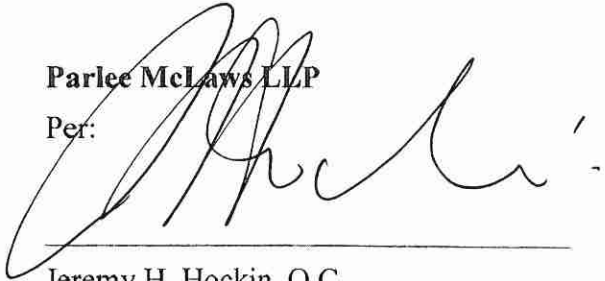
Per:



For Michael J. McCabe, Q.C.
Solicitors for Deloitte Restructuring Inc.

Parlee McLaws LLP

Per:



Jeremy H. Hockin, Q.C.
Solicitors for Celine Micetich

Baker & McKenzie LLP

Per:

Michael Nowina

Solicitors for AiCuris GmbH & Co. KG and
AiCuris Anti-Infective Cures GmbH

SCHEDULE "A"

ORDER GRANTED ON March 3, 2017

BY THE COURT OF QUEEN'S BENCH OF ALBERTA

IN COURT FILE NUMBER 1603 08336

All right, title and interest in and to the present and after acquired personal property of NAEJA PHARMACEUTICAL INC., including proceeds, wherever such property may be located and whether the whereabouts of such property are known or unknown, together with all rights (whether at law, in equity, by contract or otherwise) to enforce, enjoy or otherwise exploit any of such property, including the rights to sue for and remedies against past, present and future infringements or misappropriations of any or all of such property, and rights of priority and protection of interests therein under the laws of any jurisdiction worldwide, including but not limited to the following:

INTELLECTUAL PROPERTY

Any and all intellectual property or other proprietary rights or information of NAEJA PHARMACEUTICAL INC., including but not limited to:

- (a) all trademarks, copyrightable subject matter (whether registered or unregistered), service marks, certification marks, trade names, corporate names and fictitious names, business and product names, logos, Uniform Resource Locators (URLs) and internet domain names, together with all translations, adaptations, derivations and combinations thereof, and all goodwill associated with any of the foregoing, and all applications to register, registrations and renewals directed to or in connection with any of the foregoing;
- (b) all works of authorship, including but not limited to scientific and other scholarly publications, and copyright rights related thereto, and all applications to register, registrations and renewals directed to or in connection with any of the foregoing, and all other rights, including, but not limited to, moral rights;
- (c) all patents and patent applications, patent clearance documents, and all reissues, divisions, renewals, extensions, continuations, continuations-in-part, requests for continued examinations, continued prosecution applications, and reexaminations thereof and all inventions, whether or not patentable, or reduced to practice, together with all research, written reports, test results, or other documentation relating to such assets, in which NAEJA PHARMACEUTICAL INC. has any rights or entitlements, including any right to future assignments or licenses and any right to reversion of intellectual property;
- (d) All trade secrets, technical and confidential information (including data, designs, drawings, plans, charts, specifications, formulas, processes, methods, shop rights, know-how, show-how, and other such business or technical information including

confidential ideas, research and development, know-how, discoveries, improvements, formulas, manufacturing and production processes and techniques, whether or not such rights are patentable, copyrightable, or registrable);

- (e) computer software and hardware programs and systems, software licenses, source code, object code, middleware, know-how, show-how, processes, formula, specifications and designs, data bases and documentation, domain names and web sites;
- (f) any and all other intellectual property or other proprietary rights or information.

RIGHTS TO CAUSES OF ACTION AND OTHER LEGAL CLAIMS

Any and all known or unknown, liquidated or unliquidated, contingent or fixed:

- (a) claims;
- (b) choses in action or causes of action; and
- (c) rights of recovery and rights of set-off;

of every nature and kind which NAEJA PHARMACEUTICAL INC. has or may have against any third party relating to its business or property.

BUSINESS DOCUMENTS AND OTHER RECORDS

1. The benefit of all confidentiality, non-competition, non-solicitation, non-disclosure and similar protective agreements or instruments, which would inure to NAEJA PHARMACEUTICAL INC.'s benefit in connection with its business, including those contained in any employment or consultant agreements;
2. The benefit of all permits, licenses, certifications, and approvals which would inure to NAEJA PHARMACEUTICAL INC.'s benefit in connection with its business;
3. All books, files, ledgers, operating data and records of every kind relating to NAEJA PHARMACEUTICAL INC., wherever located, including:
 - (1) its minute books, stock certificate books and stock ledgers, and wherever located;
 - (2) scientific laboratory books.
4. All legal, accounting and other professional files, and related computer records, wherever held, relating to NAEJA PHARMACEUTICAL INC.

BUSINESS EQUIPMENT

1. Any and all business equipment, media, and other assets of NAEJA PHARMACEUTICAL INC. not surrendered to the Trustee in the bankruptcy by former employees or consultants of NAEJA PHARMACEUTICAL INC., including but not limited to projector equipment, fireproof filing cabinet, employee cell phones, and employee computers and related data.

CASH BALANCES, ACCOUNTS AND RECEIVABLES, MILESTONE PAYMENTS, AND ROYALTIES AND OTHER ENTITLEMENTS TO PAYMENT

1. Any and all accounts and other receivables, whether known or unknown at this time, of NAEJA PHARMACEUTICAL INC. and whether or not reflected in NAEJA PHARMACEUTICAL INC.'s financial statements;
2. Any and all rights to milestone payments, royalty payments, license and sublicense payments, income sharing or any other related financial or other benefits, which NAEJA PHARMACEUTICAL INC. has or may be entitled to in the future, contingent or otherwise;
3. Any and all notes, bonds, debentures, certificates, mortgages, leases or other debt instruments in which NAEJA PHARMACEUTICAL INC. has an interest or may be entitled to an interest in the future, contingent or otherwise.
4. All cash balances in the hands of Deloitte Restructuring Inc. ("Deloitte") in its capacities as Trustee in Bankruptcy and Receiver/Manager of NAEJA PHARMACEUTICAL INC., subject always to the proper fees and disbursements of Deloitte in such capacities as may be approved by the Court of Queen's Bench of Alberta.

SALES, ADVERTISING AND PROMOTIONAL MATERIALS

1. Any and all advertising materials, whether printed or written materials or otherwise, including purchase orders, forms, labels, shipping materials, catalogues, operating manuals, letterhead, business cards, instructional documents, sales brochures, trade show booths and other trade show display materials, presentations, website designs, headings and images, email addresses, and other such related items;
2. Any and all plaques, trophies, certificates of merit, publications, and other items of recognition issued to or in respect of NAEJA PHARMACEUTICAL INC, or its founder, Dr. Ronald G. Micetich;
3. All customer lists and other records pertaining to customers and accounts, personnel records, all lists and records pertaining to suppliers, agents or other business or scientific contacts.

SHARES

1. Any and all right, title and interest in and to all shares of capital stock in EnBiotix, Inc. held by, or for the benefit of, NAEJA PHARMACEUTICAL INC., together with any and all rights and entitlements relating to such interest;
2. Any and all right, title and interest in and to all shares of capital stock in PanTherix, Limited, held by, or for the benefit of, NAEJA PHARMACEUTICAL INC., together with any and all rights and entitlements relating to such interest.

SCIENTIFIC COLLECTIONS

1. Any and all rights of any kind to all microorganism samples collected by or given or otherwise transferred to or acquired by NAEJA PHARMACEUTICAL INC., or any of its agents, officers, consultants or employees, at any time.
2. Any and all rights to chemical compounds created by, collected by or given or otherwise transferred to or acquired by NAEJA PHARMACEUTICAL INC., or any of its agents, officers, consultants or employees, at any time.
3. NAEJA PHARMACEUTICAL INC.'s compound library database, created in order to catalogue its extensive compound library.