

Court File No. CV-18-591684-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE *MISTER*)
JUSTICE *G. HAINES*)
TUESDAY, THE 20TH
DAY OF FEBRUARY, 2018



IN THE MATTER OF AN APPLICATION UNDER SECTION
182 OF THE *BUSINESS CORPORATIONS ACT*, R.S.O.
1990, Ch. B.16 AND RULES 14.05(2) AND 14.05(3) OF THE
RULES OF CIVIL PROCEDURE

AND IN THE MATTER OF a proposed arrangement of
NUUVERA INC. involving APHRIA INC.

NUUVERA INC.

Applicant

INTERIM ORDER

THIS MOTION made by the Applicant, Nuuvera Inc. (**Nuuvera**), for an interim order for advice and directions pursuant to section 182 of the *Business Corporations Act*, R.S.O. 1990, Ch. B.16, as amended (the **OBCA**) was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, the Notice of Application issued on February 7, 2018, the Affidavit of Ronald Schmeichel sworn February 14, 2018 (the **Schmeichel Affidavit**), including the Plan of Arrangement, which is attached as Appendix "C" to the draft management proxy circular of Nuuvera (the **Information**

Circular), which is attached as Exhibit A to the Schmeichel Affidavit, the Affidavit of Jordan Greenberg sworn February 20, 2018 and the interim order issued on February 20, 2018, and on hearing the submissions of counsel for Nuuvera and counsel for Aphria Inc. (**Aphria**),

Definitions

1. **THIS COURT ORDERS** that all definitions used in this Interim Order shall have the meaning ascribed thereto in the Information Circular or otherwise as specifically defined herein.

The Meeting

2. **THIS COURT ORDERS** that Nuuvera is permitted to call, hold and conduct a special meeting (the **Meeting**) of the holders of common shares (the **Shareholders**) in the capital of Nuuvera to be held at Norton Rose Fulbright Canada LLP, Royal Bank Plaza, South Tower, Suite 3800, 200 Bay Street, Toronto, Ontario M5J 2Z4 on March 20, 2018 at 10:00 a.m. (Toronto time) in order for the Shareholders to consider and, if determined advisable, pass a special resolution authorizing, adopting and approving, with or without variation, the Arrangement and the Plan of Arrangement (collectively, the **Arrangement Resolution**).

3. **THIS COURT ORDERS** that the Meeting shall be called, held and conducted in accordance with the OBCA, the notice of meeting of Shareholders, which accompanies the Information Circular (the **Notice of Meeting**) and the articles and by-laws of Nuuvera, subject to what may be provided hereafter and subject to further order of this court.

4. **THIS COURT ORDERS** that the record date (the **Record Date**) for determination of the shareholders entitled to notice of, and to vote at, the Meeting shall be February 15, 2018.

5. **THIS COURT ORDERS** that the only persons entitled to attend or speak at the Meeting shall be:

- a) the Shareholders or their respective proxyholders;
- b) the officers, directors, auditors and advisors of Nuuvera;
- c) representatives and advisors of Aphria and Nuuvera; and
- d) other persons who may receive the permission of the Chair of the Meeting.

6. **THIS COURT ORDERS** that Nuuvera may transact such other business at the Meeting as is contemplated in the Information Circular, or as may otherwise be properly before the Meeting.

Quorum

7. **THIS COURT ORDERS** that the Chair of the Meeting shall be determined by Nuuvera and that the quorum at the Meeting shall be not less than two persons holding in the aggregate 25% of the issued and outstanding shares of Nuuvera present in person at the opening of the Meeting who are entitled to vote at the Meeting either as Shareholders or proxyholders.

Amendments to the Arrangement and Plan of Arrangement

8. **THIS COURT ORDERS** that Nuuvera is authorized to make, subject to the terms of the Arrangement Agreement, and paragraph 9, below, such amendments, modifications or supplements to the Arrangement and the Plan of Arrangement as it may determine without any additional notice to the Shareholders, or others entitled to receive notice under paragraphs 12 and 13 hereof and the Arrangement and Plan of Arrangement, as so amended, modified or supplemented shall be the Arrangement and Plan of Arrangement to be submitted to the Shareholders at the Meeting and shall be the subject of the Arrangement Resolution. Amendments, modifications or supplements may be made following the Meeting, but shall be subject to review and, if appropriate, further direction by this Honourable Court at the hearing for the final approval of the Arrangement.

9. **THIS COURT ORDERS** that, if any amendments, modifications or supplements to the Arrangement or Plan of Arrangement as referred to in paragraph 8, above, would, if disclosed, reasonably be expected to affect a Shareholder's decision to vote for or against the Arrangement Resolution, notice of such amendment, modification or supplement shall be distributed, subject to further order of this Honourable Court, by press release, newspaper advertisement, prepaid ordinary mail, or by the method most reasonably practicable in the circumstances, as Nuuvera may determine.

Amendments to the Information Circular

10. **THIS COURT ORDERS** that Nuuvera is authorized to make such amendments, revisions and/or supplements to the draft Information Circular as it may determine and

the Information Circular, as so amended, revised and/or supplemental, shall be the Information Circular to be distributed in accordance with paragraphs 12 and 13.

Adjournments and Postponements

11. **THIS COURT ORDERS** that Nuuvera, if it deems advisable and subject to the terms of the Arrangement Agreement, is specifically authorized to adjourn or postpone the Meeting on one or more occasions, without the necessity of first convening the Meeting or first obtaining any vote of the Shareholders respecting the adjournment or postponement, and any such adjournment or postponement shall not change the Record Date, and notice of any such adjournment or postponement shall be given by such method as Nuuvera may determine is appropriate in the circumstances. This provision shall not limit the authority of the Chair of the Meeting in respect of adjournments and postponements.

Notice of Meeting

12. **THIS COURT ORDERS** that, in order to effect notice of the Meeting, Nuuvera shall send the Information Circular (including the Notice of Application and this Interim Order), the Notice of Meeting, the form of proxy and the letter of transmittal, along with such amendments or additional documents as Nuuvera may determine are necessary or desirable and are not inconsistent with the terms of this Interim Order (collectively, the **Meeting Materials**), to the following:

- a) the registered Shareholders at the close of business on the Record Date, at least twenty-one (21) days prior to the date of the Meeting, excluding

the date of sending and the date of the Meeting, by one or more of the following methods:

- i) by pre-paid ordinary or first class mail at the addresses of the Shareholders as they appear on the books and records of Nuuvera, or its registrar and transfer agent, at the close of business on the Record Date and if no address is shown therein, then the last address of the person known to the Corporate Secretary of Nuuvera;
 - ii) by delivery, in person or by recognized courier service or inter-office mail, to the address specified in (i) above; or
 - iii) by facsimile or electronic transmission to any Shareholder, who is identified to the satisfaction of Nuuvera, who requests such transmission in writing and, if required by Nuuvera, who is prepared to pay the charges for such transmission;
- b) non-registered Shareholders by providing sufficient copies of the Meeting Materials to intermediaries and registered nominees in a timely manner, in accordance with National Instrument 54-101 of the Canadian Securities Administrators; and
- c) the respective directors and auditors of Nuuvera by delivery in person, by recognized courier service, by pre-paid ordinary or first class mail or by facsimile or electronic transmission, at least twenty-one (21) days prior to

the date of the Meeting, excluding the date of sending and the date of the Meeting;

~~and that compliance with this paragraph shall constitute sufficient notice of the Meeting.~~

13. **THIS COURT ORDERS** that, in the event that Nuuvera elects to distribute the Meeting Materials, Nuuvera is hereby directed to distribute the Information Circular (including the Notice of Application, and this Interim Order), and any other communications or documents determined by Nuuvera to be necessary or desirable (collectively, the **Court Materials**) to the holders of Nuuvera options and warrants as of the Record Date by any method permitted for notice to Shareholders as set forth in paragraphs 12(a) or 12(b), above, concurrently with the distribution described in paragraph 12 of this Interim Order (provided that delivery need only be made once notwithstanding that a person may be entitled to Court Materials under more than one paragraph hereof). Distribution to such persons shall be to their addresses as they appear on the books and records of Nuuvera or its registrar and transfer agent at the close of business on the Record Date.

14. **THIS COURT ORDERS** that accidental failure or omission by Nuuvera to give notice of the meeting or to distribute the Meeting Materials or Court Materials to any person entitled by this Interim Order to receive notice, or any failure or omission to give such notice as a result of events beyond the reasonable control of Nuuvera, or the non-receipt of such notice shall, subject to further order of this Honourable Court, not constitute a breach of this Interim Order nor shall it invalidate any resolution

passed or proceedings taken at the Meeting. If any such failure or omission is brought to the attention of Nuuvera, it shall use its best efforts to rectify it by the method and in the time most reasonably practicable in the circumstances.

15. **THIS COURT ORDERS** that Nuuvera is hereby authorized to make such amendments, revisions or supplements to the Meeting Materials and Court Materials, as Nuuvera may determine in accordance with the terms of the Arrangement Agreement (**Additional Information**), and that notice of such Additional Information may, subject to paragraph 9, above, be distributed by press release, newspaper advertisement, pre-paid ordinary mail, or by the method most reasonably practicable in the circumstances, as Nuuvera may determine.

16. **THIS COURT ORDERS** that distribution of the Meeting Materials and Court Materials pursuant to paragraphs 12 and 13 of this Interim Order shall constitute notice of the Meeting and good and sufficient service of the within Application upon the persons described in paragraphs 12 and 13 and that those persons are bound by any orders made on the within Application. Further, no other form of service of the Meeting Materials or the Court Materials or any portion thereof need be made, or notice given or other material served in respect of these proceedings and/or the Meeting to such persons or to any other persons, except to the extent required by paragraph 9, above.

Solicitation and Revocation of Proxies

17. **THIS COURT ORDERS** that Nuuvera is authorized to use the letter of transmittal and proxies substantially in the form of the drafts accompanying the Information Circular, with such amendments and additional information as Nuuvera

may determine are necessary or desirable, subject to the terms of the Arrangement Agreement. Nuuvera and Aphria are authorized, at their expense, to solicit proxies, directly or through their officers, directors or employees, and through such agents or representatives as they may retain for that purpose, and by mail or such other forms of personal or electronic communication as they may determine. Nuuvera may waive generally, in its discretion, the time limits set out in the Information Circular for the deposit or revocation of proxies by Shareholders, if Nuuvera deems it advisable to do so.

18. **THIS COURT ORDERS** that Shareholders shall be entitled to revoke their proxies in accordance with section 110(4) of the OBCA (except as the procedures of that section are varied by this paragraph) provided that any instruments in writing delivered pursuant to section 110(4)(a) of the OBCA: (a) may be deposited at the registered office of Nuuvera, located at 5 Hazelton Avenue, Suite 300, Toronto, Ontario, M5R 2E1, Toronto, Ontario or with Nuuvera's transfer agent, Computershare Investor Services Inc. (the "Transfer Agent") at its offices at 100 University Avenue, 8th Floor, Toronto, ON, M5J 2Y1; and (b) any such instruments must be received by Nuuvera or its Transfer Agent not later than 5:00 p.m. (Toronto time) on the last business day preceding the day of the Meeting (or any adjournment or postponement thereof).

Voting

19. **THIS COURT ORDERS** that the only persons entitled to vote in person or by proxy on the Arrangement Resolution, or such other business as may be properly brought before the Meeting, shall be those Shareholders who hold voting common

shares of Nuuvera as of the close of business on the Record Date. Illegible votes, spoiled votes, defective votes and abstentions shall be deemed to be votes not cast.

Proxies that are properly signed and dated but which do not contain voting instructions shall be voted in favour of the Arrangement Resolution.

20. **THIS COURT ORDERS** that votes shall be taken at the Meeting on the basis of one vote per common share and that in order for the Plan of Arrangement to be implemented, subject to further Order of this Honourable Court, the Arrangement Resolution must be passed, with or without variation, at the Meeting by:

- (i) an affirmative vote of at least two-thirds ($66\frac{2}{3}\%$) of the votes cast in respect of the Arrangement Resolution at the Meeting in person or by proxy by the Shareholders; and
- (ii) a simple majority of the votes cast in respect of the Arrangement Resolution at the Meeting in person or proxy by Shareholders excluding the votes of the persons whose votes may not be included in determining minority approval of a business combination under Multilateral Instrument 61-101 – *Protection of Minority Shareholders in Special Transactions*.

Such votes shall be sufficient to authorize Nuuvera to do all such acts and things as may be necessary or desirable to give effect to the Arrangement and the Plan of Arrangement on a basis consistent with what is provided for in the Information Circular without the necessity of any further approval by the Shareholders, subject only to final approval of the Arrangement by this Honourable Court.

21. **THIS COURT ORDERS** that in respect of matters properly brought before the Meeting pertaining to items of business affecting Nuuvera (other than in respect of the Arrangement Resolution), each Shareholder is entitled to one vote for each voting common share held.

Dissent Rights

22. **THIS COURT ORDERS** that each registered Shareholder shall be entitled to exercise Dissent Rights in connection with the Arrangement Resolution in accordance with section 185 of the OBCA (except as the procedures of that section are varied by this Interim Order and the Plan of Arrangement) provided that, notwithstanding subsection 185(6) of the OBCA, any Shareholder who wishes to dissent must, as a condition precedent thereto, provide written objection to the Arrangement Resolution to Nuuvera in the form required by section 185 of the OBCA and the Arrangement Agreement, which written objection must be received by Nuuvera not later than 5:00 p.m. (Eastern time) on the second business day immediately preceding the Meeting (or any adjournment or postponement thereof), and must otherwise strictly comply with the requirements of the OBCA. For purposes of these proceedings, the "court" referred to in section 185 of the OBCA means this Honourable Court.

23. **THIS COURT ORDERS** that, notwithstanding section 185(4) of the OBCA, Aphria, not Nuuvera, shall be required to offer to pay fair value, as of the close of business on the Business Day prior to approval of the Arrangement Resolution, for voting common shares held by Shareholders who duly exercise Dissent Rights, and to pay the amount to which such Shareholders may be entitled pursuant to the terms of the Plan of Arrangement. In accordance with the Plan of Arrangement and the

Information Circular, all references to the "corporation" in subsections 185(4) and 185(14) to 185(30), inclusive, of the OBCA (except for the second reference to the "corporation" in subsection 185(15)) shall be deemed to refer to Aphria in place of the "corporation", and Aphria shall have all of the rights, duties and obligations of the "corporation" under subsections 185(14) to 185(30), inclusive, of the OBCA.

24. **THIS COURT ORDERS** that any Shareholder who duly exercises such Dissent Rights set out in paragraph 22 above and who:

- i) is ultimately determined by this Honourable Court to be entitled to be paid fair value for his, her or its voting common shares, shall be deemed to have transferred those voting common shares in accordance with the Plan of Arrangement, without any further act or formality and free and clear of all liens, claims, encumbrances, charges, adverse interests or security interests to Aphria in consideration for a payment of cash from Aphria equal to such fair value; or
- ii) is for any reason ultimately determined by this Honourable Court not to be entitled to be paid fair value for his, her or its common shares pursuant to the exercise of the Dissent Right, shall be deemed to have participated in the Arrangement on the same basis and at the same time as any non-dissenting Shareholder;

but in no case shall Nuuvera, Aphria or any other person be required to recognize such Shareholders as holders of voting common shares of Nuuvera at or after the date upon which the Arrangement becomes effective and the names of such Shareholders

shall be deleted from Nuuvera's register of holders of voting common shares at that time.

Hearing of Application for Approval of the Arrangement

25. **THIS COURT ORDERS** that upon approval by the Shareholders of the Plan of Arrangement in the manner set forth in this Interim Order, Nuuvera may apply to this Honourable Court for final approval of the Arrangement.

26. **THIS COURT ORDERS** that distribution of the Notice of Application and the Interim Order in the Information Circular, when sent in accordance with paragraphs 12 and 13 shall constitute good and sufficient service of the Notice of Application and this Interim Order and no other form of service need be effected and no other material need be served unless a Notice of Appearance is served in accordance with paragraph 27.

27. **THIS COURT ORDERS** that any Notice of Appearance served in response to the Notice of Application shall be served on the solicitors for Nuuvera, with a copy to counsel for Aphria, as soon as reasonably practicable, and, in any event, no less than 5 days before the hearing of this Application at the following addresses:

NORTON ROSE FULBRIGHT CANADA LLP
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84
Toronto, Ontario M5J 2Z4 CANADA
Attention: Andrew McCoomb

STIKEMAN ELLIOTT LLP
5300 Commerce Court West
199 Bay Street
Toronto, Ontario M5L 1B9 CANADA

Attention: Alexander D. Rose

28. **THIS COURT ORDERS** that, subject to further order of this Honourable Court, the only persons entitled to appear and be heard at the hearing of the within application shall be:

- i) Nuuvera;
- ii) Aphria;
- iii) any person who has filed a Notice of Appearance herein in accordance with the Notice of Application, this Interim Order and the *Rules of Civil Procedure*; and
- iv) any person who is entitled to receive securities to be issued pursuant to the Arrangement and has filed a Notice of Appearance herein in accordance with the foregoing paragraph of this Interim Order.

29. **THIS COURT ORDERS** that any materials to be filed by Nuuvera in support of the within Application for final approval of the Arrangement may be filed up to one day prior to the hearing of the Application without further order of this Honourable Court.

30. **THIS COURT ORDERS** that in the event the within Application for final approval does not proceed on the date set forth in the Notice of Application, and is adjourned, only those persons who served and filed a Notice of Appearance in accordance with paragraph 27 shall be entitled to be given notice of the adjourned date.

Precedence

31. **THIS COURT ORDERS** that, to the extent of any inconsistency or discrepancy between this Interim Order and the terms of any instrument creating, governing or collateral to the common shares, Nuuvera options or warrants or the articles or by-laws of Nuuvera, this Interim Order shall govern.

Extra-Territorial Assistance

32. **THIS COURT** seeks and requests the aid and recognition of any court or any judicial, regulatory or administrative body in any province of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province and any court or any judicial, regulatory or administrative body of the United States or other country to act in aid of and to assist this Honourable Court in carrying out the terms of this Interim Order.

Variance

33. **THIS COURT ORDERS** that Nuuvera shall be entitled to seek leave to vary this Interim Order upon such terms and upon the giving of such notice as this Honourable Court may direct.



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IN THE MATTER OF AN APPLICATION UNDER SECTION 182, BUSINESS CORPORATIONS
ACT, R.S.O. 1990, Ch. B.16, as amended

Court File No: CV-18-591684-00CL

AND IN THE MATTER OF a proposed arrangement of NUUVERA INC. involving
APHRIA INC

ONTARIO
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(COMMERCIAL LIST)
Proceeding commenced at Toronto

INTERIM ORDER

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