

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



**THE HONOURABLE  
JUSTICE LEDERMAN**

) **TUESDAY THE 8<sup>th</sup>**  
)  
) **DAY OF AUGUST, 2017**

**IN THE MATTER OF THE PROPOSAL OF XAGENIC INC., OF THE CITY OF  
TORONTO, IN THE PROVINCE OF ONTARIO**

**ORDER**

THIS MOTION made by Xagenic Inc. (the "**Company**") for an Order pursuant to sections 50.4(9) and 50.6 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Edward Jonasson sworn August 4, 2017 (the "**Jonasson Affidavit**") and the first report of A. Farber & Partners Inc. (the "**Proposal Trustee**") in its capacity as proposal trustee, dated August 4, 2017 and on hearing the submissions of counsel for the Company and such other parties as may be in attendance and no one appearing for another party on the service list, although duly served as appears from reading the affidavit of service of Julie Laura Peacock sworn August 4, 2017, filed;

**SERVICE**

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

**DIP FINANCING**

2. **THIS COURT ORDERS** that the Company is hereby authorized and empowered to borrow under a credit facility (the "**DIP Facility**") from Shana Kelley, CTI Life Sciences Fund, BDC Capital Inc. and such other debentureholders as may agree to provide financing (collectively, the "**DIP Lenders**") in order to finance the continuation of the Company's

business and preservation of the Company's current and future assets, undertakings and properties of every nature and kind whatsoever and wherever situate, including all proceeds thereof (the "**Property**") provided that the borrowings under the DIP Facility shall not exceed \$750,000 unless permitted by further Order of this Court.

3. **THIS COURT ORDERS** that the DIP Facility shall be made on the terms and subject to the conditions set out in the term sheet dated July 31, 2017, save and except that the maximum amount that may be borrowed under the facility is hereby increased from \$500,000 to \$750,000 (the "**DIP Term Sheet**") between the Company as borrower and Shana Kelley, CTI Life Sciences Fund and BDC Capital Inc. as lenders, a copy of which is attached as Exhibit C to the Jonasson Affidavit.

4. **THIS COURT ORDERS** that the Company is authorized and empowered to execute and deliver such credit agreements, mortgages, charges, deeds of trust, assignments of rents, deposit account control agreements, pledge agreements, security agreements, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**DIP Documents**") as are contemplated by the DIP Term Sheet or as the DIP Lenders may reasonably require pursuant to the terms of the DIP Term Sheet.

5. **THIS COURT ORDERS** that the Company is authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the DIP Lenders under and pursuant to the DIP Term Sheet and the DIP Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

6. **THIS COURT ORDERS** that the DIP Lenders are entitled to the benefit of and are granted a charge on the Property in an amount equal to \$750,000, which charge shall have the priority set out below, and in particular shall be bifurcated into a priority amount of \$150,000 (the "**Priority DIP Charge**") and a subordinate amount of \$600,000 (the "**Subordinate DIP Charge**" and, together with the Priority DIP Charge, the "**DIP Charge**").

7. **THIS COURT ORDERS AND DECLARES** that, unless otherwise agreed by the DIP Lenders (in their sole discretion), the DIP Lenders shall be treated as unaffected in any proposal filed by the Company under the BIA with respect to any advances under the DIP Documents.

8. **THIS COURT ORDERS** that the DIP Charge shall secure amounts owing to the DIP Lenders pursuant to the DIP Facility, and shall not secure any amounts owing to the DIP Lenders by the Company prior to the date of this Order.

#### **ADMINISTRATION CHARGE**

9. **THIS COURT ORDERS** that the Proposal Trustee, counsel to the Proposal Trustee and counsel to the Company shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Company as part of the cost of these proceedings. The Company is hereby authorized and directed to pay the accounts of the Proposal Trustee, counsel to the Proposal Trustee and counsel to the Company on a periodic basis.

10. **THIS COURT ORDERS** that the Proposal Trustee, counsel to the Proposal Trustee and counsel to the Company are entitled to the benefit of and are granted a charge on the Property, which charge shall not exceed an aggregate amount of \$190,000, which charge shall have the priority set out below, and in particular shall be bifurcated into a priority amount of \$40,000 (the “**Priority Administration Charge**”) and a subordinate amount of \$150,000 (the “**Subordinate Administration Charge**” and together with the Priority Administration Charge, the “**Administration Charge**”).

11. **THIS COURT ORDERS** that the Administration Charge shall be security for the fees and disbursements of the Proposal Trustee, counsel to the Proposal Trustee and counsel to the Company, each incurred at their respective standard rates and charges, both before and after the making of this Order, which are related to these proceedings.

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

12. **THIS COURT ORDERS** that the priorities of the Administration Charge, the DIP Charge, and the security granted by the Company in favour of Silicon Valley Bank (the “**SVB Charge**”) as among them, shall be as follows:

First – Priority Administration Charge;

(a) Second – Priority DIP Charge;

Third – SVB Charge (subject to the review and report of the Proposal Trustee on the security in favour of Silicon Valley Bank supporting the SVB Charge);

Fourth – Subordinate Administration Charge; and

Fifth – Subordinate DIP Charge.

13. **THIS COURT ORDERS THAT** any security documentation evidencing, or the filing, registration or perfection of the Administration Charge and the DIP Charge (collectively, the “**Charges**”) shall not be required and 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 or perfected subsequent to the Charges coming into existence, notwithstanding any failure to file, register or perfect any such Charges.

14. **THIS COURT ORDERS** that each of the Priority Administration Charge and the Priority DIP Charge (together, the “**Priority Charges**”) (all as constituted and defined in this Order) constitute a mortgage, security interest, assignment by way of security and charge on the Property and such Priority Charges rank in priority to all other security interests, trusts, liens, mortgages, charges and encumbrances and claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any person, party or entity.

15. **THIS COURT ORDERS** that each of the Subordinate Administration Charge and the Subordinate DIP Charge (together, the “**Subordinate Charges**”) (all as constituted and defined in this Order) constitute a mortgage, security interest, assignment by way of security and charge on the Property and such Priority Charges rank in priority to all Encumbrances in favour of any person, party or entity, other than the SVB Charge (subject to the Proposal Trustee’s review and report on the security in favour of Silicon Valley Bank).

16. **THIS COURT ORDERS** that except as otherwise expressly provided herein, or as may be approved by this Court, the Company shall not grant or suffer to exist any Encumbrances over any Property that rank in priority to or *pari passu* with the Charges unless the Company obtains the prior written consent of the beneficiaries of the applicable Charges and the SVB Charge.

17. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the charges entitled to the benefit of the Charges (collectively, the “**Charges**”) by (a) the pendency of these proceedings and any declarations of insolvency made herein; (b) any applications for bankruptcy orders issued pursuant to the BIA; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; or (d) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances contained in any existing loan document, lease, mortgage, security agreement, debenture, sublease, offer to lease or other agreement (collectively, the “**Agreements**”) which binds the Company and notwithstanding any provision to the contrary in any Agreements the creation of the Charges shall not create or be deemed to constitute a breach by the Company of any Agreements to which it is a party and payments pursuant to this Order or 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.

18. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Company’s interest in such real property leases.

#### **STAY OF PROCEEDINGS**

19. **THIS COURT ORDERS** that the stay of proceedings as a result of the Company having filed a notice of intention to make a proposal pursuant to the BIA on August 1, 2017 is hereby continued and extended to 11:59pm on Monday, October 16, 2017.

#### **SERVICE AND NOTICE**

20. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) 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 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further

orders that a Case Website shall be established in accordance with the Protocol with the following URL: <http://www.farberfinancial.com/insolvency-engagements/xagenicinc>

21. **THIS COURT ORDERS** that the E-Service List Keeper (as defined in the Protocol) for the purpose of this proceeding shall be the Proposal Trustee.

22. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Company and the Proposal Trustee 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 Company's creditors or other interested parties at their respective addresses as last shown on the records of the Company 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.

#### **GENERAL**

23. **THIS COURT ORDERS** that nothing in this Order shall prevent the Proposal Trustee from acting as an interim receiver, a receiver, a receiver and manager, a trustee in bankruptcy or a monitor of the Company or the Property.

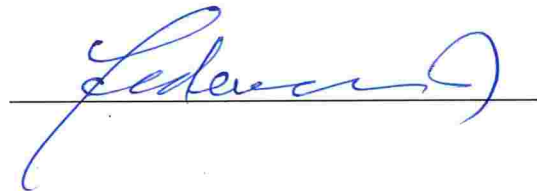
#### **AID AND RECOGNITION**

24. **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 Company and the Proposal Trustee and their 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 Company and the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Company, the Proposal Trustee and their agents in carrying out the terms of this Order.

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

AUG 08 2017

PER / PAR:




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*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

PROCEEDINGS COMMENCED AT TORONTO

ORDER

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**Lawyers for Xagenic Inc.**