



No. S-169829  
Vancouver Registry

**In the Supreme Court of British Columbia**

Between

Acuitas Therapeutics Inc.

Plaintiff

and

Arbutus Biopharma Corporation

Defendant

**COUNTERCLAIM**

Filed by: The defendant Arbutus Biopharma Corporation

To: The plaintiff Acuitas Therapeutics Inc.

This action has been brought by the plaintiff against the defendant for the relief set out in the Notice of Civil Claim filed in this action.

TAKE NOTICE that the defendant claims against you for the relief set out in Part 2 below.

IF YOU INTEND TO RESPOND to the claim made against you in this Counterclaim, or if you have a set-off or counterclaim that you wish to have taken into account at the trial, YOU MUST FILE a response to counterclaim in Form 4 in the above-named registry of this court within the time for Response to Counterclaim described below and SERVE a copy of the filed Response to Counterclaim on the address for service of the defendant bringing this Counterclaim.

YOU OR YOUR LAWYER may file the Response to Counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the Response to Counterclaim within the time for response to counterclaim described below.

## **Time for Response to Counterclaim**

A Response to Counterclaim must be filed and served on the defendant bringing this Counterclaim,

- (a) if you were served with the Counterclaim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the Counterclaim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the Counterclaim anywhere else, within 49 days after that service, or
- (d) if the time for Response to Counterclaim has been set by order of the court, within that time.

## **CLAIM OF THE DEFENDANT BRINGING THE COUNTERCLAIM**

### **PART 1: STATEMENT OF FACTS**

1. Capitalized terms used in this Response have the meanings ascribed to them in the Notice of Civil Claim and the Response to Civil Claim, as the case may be, unless specified otherwise.
2. Arbutus repeats, relies upon and incorporates into this Counterclaim the facts and matters alleged in paragraphs 6 to 34 of Part 1, Division 2 of the Response to Civil Claim.

### **PART 2: RELIEF SOUGHT**

3. Arbutus claims against Acuitas as follows:
  - (a) declarations that:
    - (i) Acuitas has materially breached the Cross-License Agreement;
    - (ii) the Cross-License Agreement terminated as of the end of the day on 31 October 2016; or
    - (iii) alternatively, the Cross-License Agreement terminates on the date of final judgment in this proceeding.

- (b) further and alternatively, interlocutory, interim and permanent injunctions restraining Acuitas, by itself, its employees, agents or otherwise, from directly or indirectly continuing to materially breach the Cross-License Agreement;
- (c) further and alternatively, general, special, exemplary, punitive and aggravated damages;
- (d) further and alternatively, disgorgement of Acuitas' unjust enrichment and wrongful gains as a result of its wrongful conduct;
- (e) further and alternatively, an accounting of Acuitas' profits as a result of Acuitas' wrongful conduct, and judgment for the amount found due on the taking of that accounting;
- (f) interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79, as amended;
- (g) costs, including special costs; and
- (h) such further and other relief as this Honourable Court may deem just.

**PART 3: LEGAL BASIS**

**A. Acuitas Breached its Obligations Under the Cross-License Agreement**

- 4. Acuitas breached the Cross-License Agreement by:
  - (a) granting sublicenses for the use of Arbutus' technology towards a certain target (as opposed to the narrower product licenses permitted under the Cross-License Agreement);
  - (b) further and in the alternative, granting sublicenses for products that are not Supplemental Field Products (*i.e.*, are not an Antisense or a Gene Therapy product);

- (c) further and in the alternative, granting sublicenses and/or sublicensing options for Supplemental Field Products prior to demonstrating their pharmacological effect in a small animal study;
- (d) further and in the alternative, granting sublicenses for products that were not developed by Acuitas;
- (e) further and in the alternative, providing and/or selling Arbutus' technology to third parties independent of a Supplemental Field Product; and
- (f) further and in the alternative, encouraging or permitting third parties to use Arbutus' technology without a license or sublicense.

**B. Arbutus is Entitled to Terminate the Cross-License Agreement**

5. Pursuant to Article 9.1(b) of the Cross-License Agreement, Arbutus is entitled to terminate the Cross-License Agreement if Acuitas commits a material breach of a material obligation under Cross-License Agreement, and such breach remains uncured after 60 days.

6. The Sublicensing Obligations and the Access Obligations are material obligations under the Cross-License Agreement.

7. Acuitas' wrongful conduct constitutes material breaches of the Sublicensing Obligations and the Access Obligations.

8. Acuitas failed or refused to cure its breaches, and the Cross-License Agreement terminated as of the end of the day on 31 October 2016.

9. Further and alternatively, to the extent the Court concludes that the cure period contemplated by the Cross-License Agreement is tolled during the pendency of this proceeding, the Cross-License Agreement terminates on the date of final judgment in this proceeding.

**D. Loss, Damage and Compensation**

10. Arbutus has suffered harm, damage, loss and expense as a consequence of Acuitas' material breaches of the Cross-License Agreement.

11. Further and alternatively, by reason of Acuitas' material breaches of the Cross-License Agreement, Acuitas has been unjustly enriched and Arbutus has suffered a corresponding deprivation, all without any juridical reason.

12. Unless Acuitas is restrained by this Honourable Court from engaging in the wrongful conduct set out in this Response to Civil Claim, Acuitas will continue to engage in the wrongful conduct or repeat the wrongful conduct, and Arbutus will continue to suffer harm, damage, loss and expense.

Counterclaimant's address for service: BORDEN LADNER GERVAIS LLP  
1200 Waterfront Centre  
200 Burrard Street  
P.O. Box 48600  
Vancouver, British Columbia  
V7X 1T2  
Attention: Robert J.C. Deane

Fax number address for service (if any): None

E-mail address for service (if any): None

Date: 15 November 2016



Signature of

defendant  lawyer for the Counterclaimant,  
Arbutus Biopharma Corporation,  
Robert J.C. Deane

Rule 7-1 (1) of the *Supreme Court Civil Rules* states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
  - (a) prepare a list of documents in Form 22 that lists
    - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
    - (ii) all other documents to which the party intends to refer at trial, and
  - (b) serve the list on all parties of record.

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Defendant

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**COUNTERCLAIM**

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