April 30, 2024

To: All Known Creditors of Antibe Therapeutics Inc.

Pursuant to the Order of the Honourable Justice Osborne of the Ontario Superior Court of Justice (Commercial List) issued on April 30, 2024 (the "**Order**"), FTI Consulting Canada Inc. was appointed as receiver and manager (in such capacities, the "**Receiver**"), without security, of the assets, undertakings and properties of Antibe Therapeutics Inc. effective April 22, 2024 pursuant to the Endorsement of the Honourable Justice Osborne dated April 22, 2024 (the "**Endorsement**").

A copy of the Order, the Endorsement, and other materials filed in connection with the Receivership may be obtained at http://cfcanada.fticonsulting.com/antibe (the "**Receiver's Website**").

Periodic updates on the progress of the receivership will be posted on the Receiver's Website. The Receiver may be contacted by email at antibe@fticonsulting.com or by phone at 1-416-649-8082 or toll-free at 1-833-511-7227.

Enclosed is a copy of the Receiver's Notice and Statement provided in accordance with Subsection 245(1) and 246(1) of the *Bankruptcy and Insolvency Act*.

Yours truly,

FTI Consulting Canada Inc.
Solely in its capacity as the Receiver of
Antibe Therapeutics Inc., and not in its personal
or corporate capacity.

FORM 87

Notice and Statement of the Receiver

(Subsections 245(1) and 246(1)of the Act)

IN THE MATTER OF THE RECEIVERSHIP OF

ANTIBE THERAPEUTICS INC.

The Receiver gives notice and declares that:

1. On the 22nd day of April 2024, FTI Consulting Canada Inc. ("**FTI**"), became the court-appointed receiver and manager (in such capacities, the "**Receiver**") of the assets, undertakings and properties of Antibe Therapeutics Inc. (the **"Debtor"**), described below (in thousands of Canadian dollars):

Description	**Net Book Value**
Cash	$11,339
Term deposits	13,567
Other current assets	3,189
Deferred assets	1,915
Intangible assets	26,352
Total assets	**$56,362**

Note: *The information above are the assets and book values as stated in the audited financial statements of the Debtor as at December 31, 2023. The Receiver has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of the information. The Receiver provides no comment on the realizable value of the assets.*

2. The Receiver was appointed pursuant to an order issued on April 30, 2024 (the "**Receivership Order**") by the Ontario Superior Court of Justice (Commercial List) (the "**Court**"), which was effective retroactively to April 22, 2024 pursuant to an Endorsement of the Court dated April 22, 2024 (the "**Endorsement**"). Copies of the Receivership Order and the Endorsement are attached as Schedule "**A**" and Schedule "**B**", respectively.

3. The undersigned took possession or control of the property described above on the 30th day of April, 2024.

4. The following information relates to the receivership:

(a) Address: 15 Prince Arthur Avenue in Toronto, Ontario M5R 1B2, Canada.

(b) Principal line of business: Biotechnology company developing pain and inflammation-reducing drugs.

(c) Location(s) of business: Toronto, Ontario.

(d) The Receiver is not aware of any secured creditors who currently hold a security interest on the property described above; however, the Receiver understands that Nuance Pharma Ltd. ("**Nuance**"), the largest creditor of the Debtor, intends to seek relief from the Court recognizing a constructive trust claim in favour of Nuance in respect of the prepayment made under a certain license agreement for approximately $19.6 million.

(e) The list of the Debtor's creditors including the amounts owed to each creditor is attached as Schedule "**C**". As at April 22, 2024, the total amount owed to all creditors was approximately $40.97 million.

(f) The intended plan of action of the Receiver during the receivership, to the extent that such a plan has been determined, is to secure the property and to evaluate and execute on the appropriate steps to realize on the assets.

(g) Contact person for receiver:
Jim Robinson
FTI Consulting Canada Inc.
79 Wellington Street West, Suite 2010
Toronto, ON M5K 1G8, Canada
Phone: +1 416 649 8070
Email: jim.robinson@fticonsulting.com

Dated at the city of Toronto, Ontario, this 30th day of April 2024.

FTI Consulting Canada Inc.,
Solely in its capacity as Receiver of
Antibe Therapeutics Inc.,
and not in its personal or corporate capacity.

Jim Robinson
Senior Managing Director

Schedule “A”

Receivership Order

Court File No. CV-24-00719237-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

THE HONOURABLE	)	MONDAY, THE 22nd
	)	
JUSTICE OSBORNE	)	DAY OF APRIL, 2024

NUANCE PHARMA LTD.

Applicant

- and -

ANTIBE THERAPEUTICS INC.

Respondent

ORDER
(appointing Receiver)

THIS MOTION made by the Applicant for an Order pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing FTI Consulting Canada Inc. ("**FTI**") as receiver and manager (in such capacities, the "**Receiver**") without security, of all of the assets, undertakings and properties of Antibe Therapeutics Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavits of Mark Lotter sworn March 28 and April 15, 2024 (collectively, the "**Lotter Affidavits**") and the Exhibits thereto, the affidavits of Scott Curtis dated April 8 and April 17, 2024 and the Exhibits thereto, the Pre-filing Report of Deloitte Restructuring Inc. in its capacity as proposed monitor, and the First Report of Deloitte Restructuring Inc. in its capacity as Monitor all filed in connection with Court File No. CV-24-00717410-00CL, and on

hearing the submissions of counsel for the Applicant, the Respondent, the Receiver and Deloitte Restructuring Inc. in its capacity as court-appointed monitor of the Respondent, no one appearing although duly served as appears from the affidavit of service of Alexander C. Payne sworn April 22, 2024 and on reading the consent of FTI to act as the Receiver,

SERVICE AND DEFINITIONS

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

2. **THIS COURT ORDERS** that capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Lotter Affidavits.

APPOINTMENT

3. **THIS COURT ORDERS** that pursuant to section 101 of the CJA, FTI is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "**Property**").

RECEIVER'S POWERS

4. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

(a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

(b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security

personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

(c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;

(d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

(e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;

(f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;

(g) to settle, extend or compromise any indebtedness owing to the Debtor;

(h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;

(i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed

shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

(j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

(k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,

(i) without the approval of this Court in respect of any transaction not exceeding $1,000,000, provided that the aggregate consideration for all such transactions does not exceed $2,500,000; and

(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, shall not be required.

(l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

(m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

(n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

(o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;

(p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;

(q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and

(r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

5. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

6. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the

Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 6 or in paragraph 7 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

7. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

8. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon

application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

9. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

10. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

11. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

12. **THIS COURT ORDERS** that 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 Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

13. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor 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 Debtor 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 Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet 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 Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

14. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

15. **THIS COURT ORDERS** that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such

amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

16. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

17. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver 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*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver'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.

LIMITATION ON THE RECEIVER'S LIABILITY

18. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

19. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

21. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

22. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed $2,000,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

23. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

24. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certific**ates") for any amount borrowed by it pursuant to this Order.

25. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SEGREGATED FUNDS

26. **THIS COURT ORDERS** that the Receiver be and is hereby authorized to:

(a) Segregate funds in the amount of the Administration Charge, being $250,000, into a separate account of the Receiver (the "**Administration Charge Account**");

(b) segregate funds in the amount of the Directors' Charge, being $150,000, into a separate account of the Receiver (the "**Directors' Charge Account**").

27. **THIS COURT ORDERS** that the Administration Charge Account is subject to the Administration Charge granted in the Initial Order dated April 9, 2024, in the court file CV-24-00717410-00CL, as such charge has been limited by the CCAA Termination Order to be granted in the proceedings having court file number CV-24-00717410-00CL.

28. **THIS COURT ORDERS** that the Directors' Charge Account is subject to the Directors' Charge granted in the Initial Order dated April 9, 2024, in the court file CV-24-00717410-00CL, as such charge has been limited by the CCAA Termination Order to be granted in the proceedings having court file number CV-24-00717410-00CL.

29. **THIS COURT ORDERS** that the Receiver's Charge and the Receiver's Borrowing Charge shall be subordinate to the Administration Charge with resect to the Administration Charge Account and the Directors' Charge with respect to the Directors' Charge Account.

SERVICE AND NOTICE

30. **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 www.cfcanada.fticonsulting.com/antibe.

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

32. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

33. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

34. **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 Receiver and its 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 Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

35. **THIS COURT ORDERS** that the Receiver be at liberty and is 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 Receiver 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.

36. **THIS COURT ORDERS** that the Applicant shall have its costs of this motion, up to and including entry and service of this Order on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

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

_____

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT $_____

1. THIS IS TO CERTIFY that FTI Consulting Canada Inc., the receiver (the "**Receiver**") of the assets, undertakings and properties Antibe Therapeutics Inc. acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 22nd day of April, 2024 (the "**Order**") made in an action having Court file number CV-24-00719237-00CL, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of $_____, being part of the total principal sum of $_____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____, 2024.

FTI Consulting Canada Inc., solely in its capacity as Receiver of the Property, and not in its personal capacity

Per: _____

Name:

Title:

NUANCE PHARMA LTD.
Applicant

-and-

ANTIBE THERAPEUTICS INC.
Respondent

Court File No. CV-24-00719237-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

ORDER
(Appointing Receiver)

BENNETT JONES LLP
3400 One First Canadian Place
P.O. Box 130
Toronto ON M5X 1A4

Lincoln Caylor (#37030L**)**
Email: caylorl@bennettjones.com

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Email: mightonj@bennettjones.com

Sidney Brejak (#87177H)
Email: brejaks@bennettjones.com

Telephone: 416.777.6121

Lawyers for the Applicant

Schedule “B”

Endorsement

ONTARIO SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

ENDORSEMENT

COURT FILE NO.: **CV-24-00717410-00CL** **DATE:** **April 22, 2024**

TITLE OF PROCEEDING: ***In the Matter of a Plan of Compromise or Arrangement of Antibe Therapeutics Inc.***

BEFORE: **Justice Osborne**

PARTICIPANT INFORMATION

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ENDORSEMENT OF JUSTICE OSBORNE:

1. This is the comeback hearing in this *CCAA* proceeding commenced by Antibe Therapeutics Inc. ("Antibe"), which has already had a tumultuous history in its short life.

2. At the conclusion of the hearing, I advised the parties that, pending the release of this Endorsement, the stay of proceedings granted by Justice Black on April 9, 2024 would remain in effect on an interim basis.

Background to the CCAA Application of Antibe and the Receivership Application of Nuance

3. Much of the relevant background is set out in Justice Black's endorsement of April 9, 2024. The matter came before the Court on that date originally scheduled as a case conference to schedule a hearing at the request of Nuance Pharma Ltd. ("Nuance").

4. That case conference was scheduled in the context of an application that Nuance had commenced for the recognition and enforcement of an arbitral award it obtained against Antibe, and the appointment of a receiver over the assets of Antibe.

5. Nuance is a Hong Kong biopharmaceutical company. Antibe is an *OBCA* company, the shares of which traded, until trading was recently suspended, on the TSX Venture Exchange.

6. Nuance is the largest creditor of Antibe, and Antibe has no secured creditors.

7. Antibe is, and has been since 2004, working to develop and commercialize a drug known as Otenaproxesul (the "Drug"). The Drug is a non-steroidal anti-inflammatory ("NSAID") said to have the potential to provide significant pain relief for various conditions such as osteoarthritis while avoiding or at least minimizing some of the side effects frequently associated with the use of NSAIDs, such as effects on the liver and gastrointestinal issues. As further described below, one of the issues is whether the Drug was and is intended for either or both of chronic and/or acute pain management.

8. Antibe entered into a licence agreement dated February 9, 2021 with Nuance pursuant to which, among other things, Nuance obtained exclusive licencing rights for the Drug in China, Hong Kong, Macau and Taiwan. Nuance paid an upfront licence fee of USD $20 million.

9. On January 19, 2021, in the course of the regulatory approval process, Health Canada expressed serious concerns regarding the potential risk of liver-related adverse events related to the use (and particularly the extended use) of the Drug. Nuance alleged that these serious concerns were intentionally withheld from it by Antibe so as to amount to a fraudulent misrepresentation, upon which Nuance relied in entering into the licencing agreement and making the USD $20 million prepayment. That payment was made by Nuance to Antibe in accordance with the licence agreement on February 19, 2021, one month after Health Canada expressed its concerns.

10. On July 30, 2021, a clinical trial being conducted in Canada by Antibe known as an AME Study (described below) was stopped for safety reasons as a result of the concerns expressed by Health Canada.

11. On September 5, 2021, Nuance formally advised Antibe that it was rescinding the licence agreement, and demanded the immediate return of the USD $20 million. Antibe refused, with the result that Nuance filed a Notice of Arbitration (in accordance with the dispute arbitration provisions of the licence agreement) alleging the fraudulent misrepresentation and seeking rescission of the licence agreement.

12. The parties appointed an arbitral tribunal which rendered its final decision on February 27, 2024. The tribunal found, among other things, that:

    a. Antibe and its Chief Executive Officer, Mr. Dan Legeault, made material misrepresentations and/or omissions leading up to the licence agreement;

b. Antibe's response to due diligence inquiries by Nuance could "only be characterized as being so incomplete as to be affirmatively and deliberately misleading, evincing conscious mis-behaviour and recklessness, rather than an intent to be truthful or honest"; and

c. "no amount of due diligence would have enabled [Nuance] to discover that Antibe had omitted/misled it with respect to key regulatory information";

all with the result that the arbitral tribunal determined that the licence agreement was validly rescinded by Nuance.

13. Antibe was ordered to "return to Nuance the sum of USD $20 million that represented Nuance's upfront payment to Antibe, plus interest" together with costs.

14. Antibe still refused to return the funds, with the result that Nuance brought an application here in Ontario for the recognition and enforcement of the arbitral award, and sought the appearance before Justice Black referred to above to schedule the hearing of that application.

15. Nuance's application was issued on March 27, 2024. In addition to the recognition and enforcement of the arbitral award, Nuance sought an order restraining Antibe from selling or encumbering any assets, and an order appointing a receiver pursuant to section 101 of the *Courts of Justice Act*. The scheduling appointment was sought on notice to Antibe and was returnable on April 9, 2024 at 9:45 AM.

16. However, at 2:11 AM that morning (April 9), Antibe delivered an application record to commence a *CCAA* proceeding to seek protection from its creditors.

17. The result was that when the matter came on before Justice Black some seven hours later, both applications were sought to be returnable. The parties jointly advised the Court that they had had discussions which ultimately resulted in an agreement as to the terms of a consent order. Upon hearing the submissions of the parties, Justice Black was satisfied that the proposed order was appropriate, and granted an initial order in the *CCAA* proceeding, imposing, among other terms, an initial 10 day stay of proceedings on the terms set out in the order.

18. Later that day on April 9, 2024, the Canadian Investment Regulatory Organization issued a suspension in trading in the securities of Antibe.

19. In his endorsement released with the order, Justice Black observed that it would be important for Antibe to demonstrate on the comeback hearing that there was a realistic basis to expect that the Drug would be approved for use in the foreseeable future.

20. Nuance advised that it would be seeking the termination of the *CCAA* proceeding, and the appointment of a receiver as it had originally requested, at the comeback hearing.

The Relief Sought on this Comeback Hearing

21. At this comeback hearing, Antibe seeks the following relief:

a. an extension of the stay of proceedings to and including May 24, 2024;

b. an increase in the quantum of the Administration Charge from $250,000 - $500,000; and

c. an increase in the Directors' Charge from $150,000 - $375,000.

22. Antibe relies on the Affidavit of its Chief Operating Officer, Scott Curtis ("Curtis"), affirmed on April 8, 2024, the Affidavit of Scott Curtis affirmed on April 17, 2024 and the Affidavit of Dr. Joseph Stauffer affirmed on April 16, 2024, each together with the respective exhibits thereto, as well as the First Report of the Monitor dated April 16, 2024. Antibe has also filed several letters of support from stakeholders.

23. Nuance opposes the relief sought by Antibe and by way of responding and cross application seeks an order:

    a. declaring that as of September 5, 2021 Antibe held USD $20 million (the licence agreement prepayment) in trust for Nuance;

    b. declaring that as of April 8, 2024, Antibe held CAD $19.6 million (the amount of cash it had on hand as of that date) in trust for Nuance;

    c. a tracing order in respect of the licence agreement prepayment and subsequent rescission; and

    d. an order appointing a Receiver over the property of Antibe.

24. In the alternative, and if the Court grants the relief sought by Antibe extending and continuing the *CCAA* proceeding, Nuance seeks an order lifting the stay to allow it to seek the order originally sought in its application, recognizing and making enforceable the arbitral award as a judgment of this Court.

25. Nuance relies on the Affidavit of Mark Lotter, the Chief Executive Officer of Nuance, sworn April 15, 2024, together with exhibits thereto.

Clinical Development of the Drug - the FDA Hold and the Basis for the Requested Stay Extension

26. The principal basis for the requested stay extension is to allow Antibe to receive an advisory letter from the US Food and Drug Administration ("FDA"), "so that it may consider its restructuring opportunities and options, in consultation with the Monitor and its stakeholders".

27. That letter from the FDA is expected as a result of the fact that, on March 28, 2024, (one month after the date of the arbitral award and approximately two weeks before Nuance commenced its application), the FDA met with Antibe and verbally advised that it was placing a hold on Antibe's pending Phase II trial in respect of the Drug.

28. The FDA advised that it would send, within 30 days, a letter that would contain more details of its reasons for the hold, in response to which Antibe would have an opportunity to provide further data and responses with a view to addressing the concerns of the FDA.

29. Unless and until the FDA hold is lifted, however, the Phase II trial cannot proceed. The Phase II trial is a step, albeit a significant one, on the road to regulatory approval and commercialization of Drug.

30. FDA drug approval typically has five stages:

    a. Stage 1 - discovery and development;

    b. Stage 2 - preclinical research (laboratory and animal testing);

    c. Stage 3 - clinical research (human testing, conducted in phases, to assess safety and efficacy);

    d. Stage 4 - FDA review (of all data submitted, leading to a decision as to whether approve the relevant drug or not); and

    e. Stage 5 - FDA post-market safety monitoring (undertaken while the drug is available for use by the public).

31. Stage 3 includes relatively standard Phases of clinical trials:

    a. Phase I - clinical trials involving a very limited patient population designed to find the highest dose of the drug that can be given safely without causing severe side effects and the best way to administer the proposed treatment;

b. Phase II - clinical trials with a larger patient population in which patients are given the dose and method found to be the safest and most effective in Phase I (i.e., to evaluate the safety and efficacy of the drug); and

c. Phase III - clinical trials with a very large patient population (i.e., where the drug is given to a larger number of patients to confirm safety and efficacy).

32. Stage 5 often includes what are commonly referred to as Phase IV trials, in which patients taking the new drug or treatment are observed, often over a significant period of time, to evaluate the long-term effects of the drug or treatment and identify rare side effects or side effects that appear only after a patient has been taking the drug or treatment for a significant period of time.

33. It is the Phase II clinical trial in respect of the Drug that is on hold by the FDA here.

34. As described in the first Curtis Affidavit, a serious side effect of NSAIDs is an elevation of certain kinds of liver enzymes in the blood. While the levels of liver enzymes in the blood can fluctuate for benign reasons, increases in certain liver enzymes beyond three times the upper limit of normal are commonly called "clinically significant increases," or "liver transaminase elevations" ("LTEs").

35. According to the evidence of Antibe, between 2014 and 2021, while conducting its Phase I and Phase II studies on the Drug for chronic use, Antibe experienced clinically significant instances of LTEs after administration of the Drug during clinical trials. The latest of those trials involved an Absorption, Metabolism and Excretion study (the "AME Study") conducted by Antibe in Canada and described above.

36. Antibe had filed a clinical trial application protocol for the AME Study with Health Canada in December, 2020. On January 19, 2021, Health Canada requested additional information, advising that it had serious concerns regarding the potential risk of liver-related adverse events.

37. Following a dialogue between Antibe and Health Canada that ensued, and the submission of additional data by Antibe, Health Canada advised that it could not issue a favourable decision on the clinical trial application protocol. Antibe then agreed with the suggestion of Health Canada that it withdraw its application, and later resubmitted it when it obtained additional study data requested, and when it had included suggested revisions.

38. Health Canada approved the AME Study in June 2021, and the study began the following month. Almost immediately, however, on July 30, 2021, the study (as expressed by Curtis) "hit the required stopping criteria and Antibe paused the study".

39. Those "stopping criteria" were the result of revisions to the study protocol suggested by Health Canada that mandated a specified stop to the study if two patients exhibited LTEs at levels of five times the upper limit of normal. As set out in the first Curtis Affidavit, increases in LTEs greater than three times the upper limit of normal are clinically significant.

40. The AME Study was then resumed in September, 2021 and the report on the Study was finalized.

41. Ultimately, Antibe reviewed and analyzed the data and the AME Study results, and concluded that the LTEs only occurred in a given period after a certain exposure to the Drug, thus suggesting that a lower cumulative dose, if used for a shorter period, could be effective and safe.

42. As a result, Antibe "began to focus more exclusively on developing the Drug for acute pain relief", as opposed to long-term or chronic pain relief. By Antibe's own admission, it had been working since 2004 until 2021 on developing the Drug for chronic pain, but the biggest hurdle was this very issue of LTEs.

43. Over the last few years, and since what Antibe describes itself as its "pivot" to focusing on acute pain, the company has been working to determine that the issues causing the LTEs would not occur with the development of the Drug for acute use, particularly when used with specifically designed dosing regimens.

44. It was with a view to demonstrating this in a clinical setting that Antibe began undertaking the Phase II trial in the US in late 2023. It is that trial that was subjected to the FDA "hold" on March 28, 2024 that remains in effect today.

45. At this comeback hearing, Antibe's efforts with respect to the Drug (and since development of the Drug is its business, its activities generally) are on hold or in a period of suspension until the concerns of the FDA are addressed and the "hold" is lifted.

46. According to Antibe itself, it "is not yet in a position to fully understand or respond to the FDA's advice." Antibe submits that it is prepared, if needed, to make adjustments to the Phase II trial design to provide sufficient comfort to the FDA, while still providing for a trial that would confirm liver safety, provide good indications of effectiveness of the Drug in patients, and possibly determine the optimal dosing regimen.

47. Also, according to Antibe, the regulatory process within the FDA "can be iterative, and at this juncture, Antibe does not know what a final design for the Phase II trial acceptable to the FDA will look like". Curtis estimates that, using Antibe's current Phase II trial design (and therefore assuming no significant changes mandated by the FDA), enrolment could be completed within three months, with final follow-up patient visits ending following the in-patient dosing.

48. Distilled down, the objective fact today is that the Phase II study is on hold, and Antibe does not know and will not know until it receives the particulars from the FDA, what lies ahead in terms of what protocol amendments are required to allow the Phase II trial to continue, and therefore what the timing and potential profitability of the Drug may look like going forward.

49. For these reasons, its position is effectively that the status quo should be maintained to "wait-and-see", with the result that it seeks the stay extension to May 24 and the increases in the Directors' Charge and the Administration Charge to ensure that the directors remain in office and that the professionals remain engaged so that the company is in a position to respond in a nimble and efficient way to whatever concerns the FDA may express.

50. Antibe also submits vigourously that, whether or not the CCAA proceeding is continued and whether or not a receiver is appointed, Nuance should not be entitled to the constructive trust relief it claims in respect of the prepayment made under the licence agreement, or in respect of the cash that Antibe has on hand. Antibe submits that those issues ought not to be determined on the basis of the limited record before the Court, and should be deferred to be determined on a full record, on notice to all affected parties, and once those parties have had an opportunity to assess their own positions.

51. Antibe is supported by Knight Therapeutics, who appeared on this motion both to support the continued *CCAA* proceeding, and particularly to argue that Nuance's Trust claim should not be determined today. Knight submitted that it had just become aware of this matter, was assessing its own position and rights as a counterparty to a licencing agreement in respect of the Drug just like Nuance (albeit in a different geographic region), and may seek to take a position on the claims regarding trust property.

52. The Monitor supports the relief sought by the Applicant, and submits in the First Report that the stay of proceedings is necessary and justified in the circumstances.

CCAA or a Receivership: the Relevant Law and Application to this Matter

53. Sections 11.02 (2) and (3) of the *CCAA* are clear: on an application other than an initial application, the Court may make a stay order for any period that the court considers necessary. However, the Court shall

not make the order unless the applicant satisfies the Court that circumstances exist that make the order appropriate; and the applicant has acted, and is acting, in good faith and with due diligence. The order is discretionary.

54. In the same way, the appointment of a receiver is discretionary. The test for the appointment of a receiver pursuant to section 101 of the *Courts of Justice Act* ("*CJA")* is not in dispute. The Court may appoint a receiver where it appears just or convenient to do so.

55. In making a determination about whether it is, in the circumstances of a particular case, just or convenient to appoint a receiver, the Court must have regard to all of the circumstances, but in particular the nature of the property and the rights and interests of all parties in relation thereto: *Bank of Nova Scotia v. Freure Village on the Clair Creek*, 1996 O.J. No. 5088, 1996 CanLII 8258.

56. The Supreme Court of British Columbia, citing Bennett on Receivership, 2nd ed. (Toronto, Carswell, 1999) listed numerous factors which have been historically taken into account in the determination of whether it is appropriate to appoint a receiver and with which I agree: *Maple Trade Finance Inc. v. CY Oriental Holdings Ltd*., 2009 BCSC 1527 at para. 25):

    a. whether irreparable harm might be caused if no order is made, although as stated above, it is not essential for a creditor to establish irreparable harm if a receiver is not appointed where the appointment is authorized by the security documentation;

    b. the risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of assets while litigation takes place;

    c. the nature of the property;

    d. the apprehended or actual waste of the debtor's assets;

    e. the preservation and protection of the property pending judicial resolution;

    f. the balance of convenience to the parties;

    g. the fact that the creditor has a right to appointment under the loan documentation;

    h. the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulties with the debtor;

    i. the principle that the appointment of a receiver should be granted cautiously;

    j. the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties efficiently;

    k. the effect of the order upon the parties;

    l. the conduct of the parties;

    m. the length of time that a receiver may be in place;

    n. the cost to the parties;

    o. the likelihood of maximizing return to the parties; and

    p. the goal of facilitating the duties of the receiver.

57. How are these factors to be applied? The British Columbia Supreme Court put it, I think, correctly: "these factors are not a checklist but a collection of considerations to be viewed holistically in an assessment as

to whether, in all the circumstances, the appointment of a receiver is just or convenient: *Pandion Mine Finance Fund LP v. Otso Gold Corp.*, 2022 BCSC 136 at para. 54).

58. It is not essential that the moving party establish, prior to the appointment of a receiver, that it will suffer irreparable harm or that the situation is urgent. However, where the evidence respecting the conduct of the debtor suggests that a creditor's attempts to privately enforce its security will be delayed or otherwise fail, a court-appointed receiver may be warranted: *Bank of Montreal v. Carnival National Leasing Ltd*., 2011 ONSC 1007 at paras. 24, 28-29.

59. Accordingly, where, as here, there are competing applications for a continued insolvency proceeding under the *CCAA*, or the appointment of a receiver, the Court must consider all of the relevant factors in the exercise of its discretion to determine the most appropriate path forward.

60. At its most basic, Antibe seeks more time and concedes, as is apparent on the record, that it cannot really achieve much by way of designing or implementing a restructuring plan, until it knows the scope and breadth of the concerns of the FDA which are to be set out in the letter it expects to receive no later than April 28 (i.e., 30 days from the verbal advice received on March 28). It seeks a stay extension to May 24, in order to give itself an opportunity to digest the letter when received and respond to the FDA.

61. Antibe submits that since the stay extension it is seeking is for a period of approximately six weeks only, this Court ought not to disrupt the status quo with the appointment of a receiver. It submits that the proposed increases to each of the Administration Charge and the Directors' Charge are appropriate for the limited period of the proposed stay extension.

62. It further submits that Antibe's creditors would not be materially prejudiced by the proposed extension but could be prejudiced if the stay was not extended and Antibe was not able to utilize its resources to determine whether the FDA hold on the Phase II trial can be lifted and if so on what terms.

63. Nuance submits that Antibe is not proceeding in good faith, that it commenced the *CCAA* proceeding purely as a defensive tactic to avoid recognition and enforcement of the arbitral award in Ontario and that it is continuing to deplete funds that belong to Nuance.

64. Nuance submits that if the *CCAA* proceeding is permitted to continue, it is forced involuntarily into the role of a *de facto* DIP lender, albeit without the protections usually associated therewith. Nuance submits that there is no plan, or even the germ of a plan, present in this case.

65. Having considered all of the relevant factors and the submissions of the parties, I am not persuaded that it is appropriate to continue the *CCAA* proceeding in the particular circumstances of this case. In my view, it is just or convenient to appoint a receiver.

66. If this case represented a more typical example of competing applications for a continued *CCAA* proceeding and a receivership, I might have been of the view that a stay extension of some six weeks might be appropriate, in order to maintain the status quo and allow the parties to consider their respective positions. Without question, the filing for protection under the *CCAA* by Antibe was done defensively, just as Nuance alleges. But that alone is not determinative of the issue. There are examples of cases where protection under the *CCAA* has been granted in circumstances where protection was sought primarily to stay the enforcement of a claim or a judgment. The *CCAA* proceedings involving the Canadian tobacco manufacturers are such examples.

67. However, in my view, the particular circumstances of this case are unique, and I am not persuaded that the *CCAA* proceedings should continue.

68. The Drug at issue here is for all intents and purposes the entire business of Antibe. The evidence before the Court on these competing motions is clear (and the contrary is not seriously argued by Antibe) that the

success or failure of the company rests with approval and commercialization of the Drug. There is no other viable, let alone ongoing, material business or operations.

69. Second, the Drug is a long way from commercialization and the point at which it might generate operating profits for Antibe. This is not in and of itself the fault of the company, and nor as Antibe vigourously submits, is it unusual in the context of developing and commercializing pharmaceutical compounds. Extensive testing through clinical trials following research, with the attendant delays and hurdles, is part of the process.

70. The challenge here is that even if the stay extension until May 24 were granted, there is, in my view, no prospect whatsoever, let alone a reasonable prospect, of there being a plan, or even the germ of a plan within that proposed stay extension period. On the contrary, and in any event of what the FDA letter says (assuming it is received on or before April 28), a further stay extension, likely of a significant period of time, will be required.

71. One possibility is that the concerns expressed by the FDA that led to the existing and continuing hold on the Phase II trial can be addressed relatively quickly and without significant delay or additional cost, by Antibe. Even if this most optimistic possibility came to pass, however, the Phase II trial would continue, with all of the subsequent steps to be completed before the Drug came to market.

72. Antibe has equally been clear in its submissions that if this optimistic outcome in fact occurred, it would require a subsequent stay extension and would clearly require significant additional capital to continue the Phase II study and complete the various subsequent steps.

73. Antibe has approximately CAD $19 million cash on hand. If the trust claims of Nuance succeed, it has no cash whatsoever. While the latter outcome would clearly be more dire for the company, and whether or not the trust claim succeeds, Antibe will require, by its own admission, very significant additional capital. That will have to be raised in the marketplace through debt or equity or both.

74. Antibe submits that it admittedly cannot raise capital now, but once it is armed with the ability to represent to the marketplace that it has addressed the concerns of the FDA such that the hold is lifted and the Phase II trial can continue, it will be much better positioned to have a reasonable chance of success in raising the necessary funds.

75. In my view, and while Antibe may be correct, the challenge is real and formidable. The first hurdle is the obvious one of satisfying the concerns of the FDA. I cannot make, and do not make, any determination in the disposition of these competing motions about what the likelihood of satisfying those concerns may be. That issue will be significantly better informed in the coming weeks when the FDA letter is received.

76. If the FDA letter is relatively favourable, it is likely that the ability to raise capital would be somewhat less challenging, and if the FDA letter raises significant hurdles to be overcome, or is overwhelmingly negative about proceeding with further clinical trials at all, the ability to raise capital will be very materially impaired.

77. In either event, however, the company is going to have to go into the marketplace in circumstances where, as submitted by Nuance, it faces the claim by Nuance arising from the arbitral award, as well as the specific factual findings made by the arbitral tribunal, some of which are summarized above at paragraph 12.

78. The arbitral award is final and binding. That was clear from the terms of the arbitration agreed to by the parties, and in any event, Antibe did not seek to appeal the award. On the contrary, it issued a public statement on March 4, 2024 to the effect that the award required "Antibe to refund the USD $20 million upfront payment and pay interest and costs of approximately USD $4 million", and it further disclosed that Antibe "respects … the final nature of the award and will accept the decision in good faith."

79. Even if the *CCAA* stay were extended, Antibe still faces this liability (by far its largest). Moreover, and even if that stay is not lifted for the purpose of permitting Nuance to prosecute its recognition and enforcement proceeding, the liability remains and will be a factor taken into account by any potential investor or lender considering whether to commit capital to the company.

80. The challenges faced by Antibe in this regard are exacerbated by the nature of the findings made by the arbitral tribunal summarized above at paragraph 12 to the effect that the non-disclosure by Antibe to Nuance amounted to conduct that was "affirmatively and deliberately misleading, evincing conscious misbehaviour and recklessness, rather than an intent to be truthful or honest", and that no amount of due diligence by Nuance would have enabled it to discover the omission with respect to the regulatory issues.

81. The challenge in raising new capital from an investor or lender is increased further by the fact that the nature of the misrepresentations found by the arbitral tribunal were not unique to the contractual relationship with Nuance, or otherwise unrelated to the core business of Antibe.

82. On the contrary, the findings were to the effect that the company, and particularly its Chief Executive Officer (who has not given any evidence on these motions), misled a significant licensee of the Drug that represents the core and only business of the company, as a result of which that licensee made an advance payment of USD $20 million, as a result of all of which the arbitral tribunal found that the licensee (Nuance) is entitled to rescind its licence agreement.

83. These concerns about the ability of the company to raise capital are real, and none of them is fully answered, even by the most favourable of possible outcomes regarding the FDA hold letter.

84. Antibe submits that some of the concerns about the conduct of the Chief Executive Officer are mitigated by the fact that it has amended its governance structure to impose a management special committee comprised of three members, which committee exercises most of the CEO functions. I pause again to observe that Mr. Legeault remains one of the three members of that committee.

85. Nuance has, as a result of the above events, completely lost confidence in the management of Antibe. There are no secured creditors, and Nuance is the largest creditor of the company today.

86. Moreover, I do not accept the submission of Antibe that a termination of the CCAA proceeding and the appointment of a receiver necessarily represents a fatal blow to any possibility of a successful outcome, let alone a viable going-concern outcome.

87. A Court-appointed receiver owes obligations to the Court and to all stakeholders, notwithstanding that it may have been appointed at the request of one creditor or other stakeholder. As noted above, much in this case will depend upon the FDA letter to be received. However, a receiver is (and will be, in this case) capable of and tasked with the mandate of considering how best to proceed in the circumstances as they may evolve with a view to formulating a course of action to maximize recovery for all stakeholders.

88. Nuance submits on these motions that the "pivot" referred to above from extended use of the Drug for chronic pain relief to temporary acute pain management was significant, and that the commercial potential of the Drug lay in its enhanced efficacy and safety for extended use as compared to other NSAIDs in the marketplace.

89. Nuance also submits that the use of NSAIDs (such as the Drug) for acute pain management (where adverse effects on liver function are reduced because the Drug is administered for a shorter period of time) are not novel and that NSAIDs are "among the most common pain relief medicines in the world" (as was the evidence of Mr. Legeault quoted in the arbitral award).

90. I am not in a position to make any determination on those points and need not do so to dispose of these motions as I have done.

91. I do observe that the Drug is the only potentially marketable product that Antibe has, and that it remains in early stages of development. I am satisfied on the evidence in the record that even if the Phase II clinical trial proceeds, there remain significant hurdles to commercialization and that not only many, but indeed the majority of drug candidates fail at this stage of development. Even if the Phase II clinical trial is completed successfully, there are additional phases of clinical trials to be conducted (summarized above), followed by additional approvals required by regulatory authorities prior to the Drug ever being available in the market.

92. The formidable challenges of commercializing the Drug are illustrated by the fact that Antibe itself has already spent approximately CAD $124 million and approximately 20 years on its development.

93. However, it is far from clear in my view on the record in this case that the market would react more negatively to an investment opportunity if a receiver were in place, than it would, given the facts that have already occurred (including the arbitral award) and the fact that even without a receivership, the company is in *CCAA* protection under the oversight of the Monitor.

94. I do not accept the submission of Nuance to the effect that if the *CCAA* process were continued, it would be an involuntary DIP lender, since such a submission presupposes the conclusion that the funds are in fact owned by Nuance and held in trust for its benefit by Antibe. That may ultimately be the case, but I am not prepared to make that determination today.

95. However, the objective fact is that there is no DIP lender or proposed DIP lender in the *CCAA* proceeding and nor is there even any candidate on the horizon. There is no evidence before me of there even being any discussions between Antibe and any possible source of DIP funding.

96. Here, Antibe did not seek to restructure as a result of the clinical concerns raised by Health Canada, or even as a result of the concerns raised by the FDA. Nor did it seek to restructure even when the arbitral award granting rescission was released. Rather, it waited to seek protection under the *CCAA* until 2 AM in the morning before the hearing of the case conference to schedule the already pending enforcement and recognition proceeding brought by Nuance. Antibe had already publicly disclosed to the market that it accepted "in good faith" the arbitral award, which is now final and binding. In the circumstances, all of the facts militate in favour of the application of a receiver: see *Callidus v. Carcap*, 2012 ONSC 163 at paras. 58 – 62, quoting with approval *Re Inducon Development Corp*., [1992] O.J. No. 8 (Gen. Div.) where the court stated:

> [57] The respondents ask, what is the harm in letting them reorganize? While that is an interesting question, it is not the test. It seems to me this is nothing more than a last ditch effort on the respondents' part to stave off the inevitable. In *Re Marine Drive Properties Ltd.* the court put a similar situation this way: "to put in bluntly, the Petitioners have sought *CCAA* protection to buy time to continue their attempts to raise new funding … they need time to 'try to pull something out of the hat.'" Or, as Farley J. put it in *Re Inducon Development Corp*., "… *CCAA* is designed to be remedial; it is not however designed to be preventative. *CCAA* should not be the last gasp of a dying company; it should be implemented if it is to be implemented, at a stage prior to the death throe."
>
> [58] Here, the respondents only brought their application after Callidus had brought its application for a receiver. The respondents knew in November that Callidus intended to seek a receiver. They waited until they had been served with the receivership application before launching their own effort to restructure. As a result, the cross-application for *CCAA* relief seems more a defensive tactic than a *bona fide* attempt to restructure. The respondents have no restructuring plan. They

have no outline of a plan. They do not have even a "germ of a plan". Again, as the court said in *Inducon*:

> [W]hile it is desirable to have a formalized plan when applying, it must be recognized as a practical matter that there may be many instances where only an outline is possible. I think it inappropriate, absent most unusual and rare circumstances, not to have a plan outline at a minimum, in which case then I would think that there would be requisite for the germ of a plan.

> [59] The respondents have been attempting to refinance for some time. They have failed to meet every deadline for payment they agreed to with Callidus as well as with the TD Bank. Even when I delayed the date for the receivership order to take effect in order to give the respondents time to complete a refinancing, they were unable to do so.
>
> [60] The absence of even a "germ of a plan" militates against granting relief under the *CCAA*.
>
> [61] Finally, in considering the question of whether to grant relief under the *CCAA*, I must also look at the position of the two major secured creditors. Neither will support a plan of arrangement. They represent a considerable part of the respondents' creditors. I have no evidence any other creditors would support a plan, either. I see no merit in making an initial order and imposing a stay in circumstances where a plan of arrangement is most likely going to be defeated.
>
> [62] Having considered all these factors, I decline to grant relief under the *CCAA*.

97. Moreover, in my view, the objective should be to minimize the expenditure of funds pending receipt and consideration of the FDA letter. It is difficult to see why much should be done in the interim period until that occurs, beyond that which is reasonably necessary to ensure the continued viability of the Drug and the value of the intellectual property associated therewith, so that if the FDA concerns can be addressed, and addressed in a cost-effective and timely manner, the value of the Drug has not been lost. Both parties made submissions about the advantages and disadvantages of trying to maintain the company as a going concern, as opposed to, for example, the sale of an asset such as intellectual property. All of those issues are for another day.

98. At present, however, I am satisfied that the appointment of a receiver should minimize costs and the expenditure of financial resources in this interim period and is appropriate in the circumstances.

99. Perhaps most fundamentally, the inescapable fact is that Antibe has been found, in an arbitral award which is not only final and binding but which has been publicly accepted by Antibe, to have deliberately misled a licencing counterparty to a very significant agreement, as a result of which that counterparty advanced USD $20 million and is now entitled to rescission of that agreement. In the circumstances, and considering all of the above factors, in my view, it is appropriate that a receiver be appointed.

100. Finally, I observe that, as discussed below, even if I had been persuaded that it was not just or convenient to appoint a receiver, and that the *CCAA* proceeding should continue, I would have granted leave to lift the stay of proceedings to permit Nuance to continue its application to recognize and enforce the arbitral award.

101. In such circumstances, the balance of convenience favours the granting of a receivership rather than a continuation of the *CCAA* proceedings, since to allow the *CCAA* proceedings to continue but then permit the Nuance application to proceed, would clearly be inefficient and likely result in additional time

and expense, which would not enure to the benefit of the stakeholders generally, or to the maximization of chances of recovery.

102. The proposed receiver has consented to act in that capacity and is qualified to do so.

103. The receiver is appointed effective immediately.

The Proposed Increases in the Administration Charge and the Directors' Charge

104. Given my findings, it is unnecessary for me to consider the appropriateness of the proposed quantum increases in the Administration Charge and the Directors' Charge.

Nuance's Trust Claim

105. Nuance seeks today a declaration that as of September 5, 2021 Antibe held the licence agreement prepayment of USD $20 million in trust for its benefit, or in the alternative, a declaration that as of April 8, 2024 Antibe held the cash remaining on hand of CAD $19.6 million in trust for its benefit.

106. At its core, Nuance's argument is to the effect that the trust arises by operation of law, as a result of the arbitral award granting rescission of the licence agreement. It submits that equity converts the holder of property that was acquired in circumstances where that holder does not retain a beneficial interest, into a trustee of that property for the beneficiary.

107. Nuance also submits that Antibe has been unjustly enriched by possession of the funds in question and, since there is no contract between the parties (which is the result of the rescission), there is no juristic basis on which Antibe can hold the funds.

108. Nuance submits that the arbitral award is final and binding (as acknowledged by Antibe) and that the trust, therefore, automatically arises.

109. In response, Antibe submits that, upon receipt of the licence agreement prepayment amount over which the trust is asserted, it lawfully and in the ordinary course co-mingled the funds with its own funds, including the proceeds of a capital raise in the market. The funds from Nuance were not required to be segregated and Antibe was entitled to use the funds for the continued commercialization of the Drug in the ordinary course, with the result that it should be permitted to continue to do so.

110. Antibe further submits that while Nuance sought the remedy of rescission (and obtained it) in the arbitration proceeding, it did not seek relief in the form of a declaration of trust which it now asserts, all with the result that such a claim is *res judicata*. Finally, it submits that the claim is barred by the expiry of the relevant limitation period.

111. I make no determination today about Nuance's claim that the funds are held in trust, without prejudice to Nuance pursuing that relief in the future. I do accept the position advanced by Antibe that the matter should be determined on the basis of a full record, and that, as submitted by Knight Therapeutics, there may be other parties who assert similar trust claims, and they should have an opportunity to consider their position.

112. In the circumstances, and particularly given my decision to appoint a receiver, in my view, the matter should not be decided today on a rushed basis. It follows that the arguments raised by Antibe that the nature of Nuance's claim make it a holder of equity, rather than a secured creditor, should also be determined another day.

113. As noted above, and had it been necessary to do so, I would have granted leave to lift the stay for the application of Nuance for the recognition and enforcement in Ontario of the arbitral award to be heard. Also as noted above, I do not accept today the argument of Nuance that it would be an involuntary DIP

lender for the reasons expressed above that such a finding presupposes the conclusion that it is entitled to the trust relief it seeks.

114. However, in my view, Nuance would be entitled to have that issue determined before a *CCAA* proceeding continued for a significant period of time, since if Nuance were successful in its trust claim, the result would indeed appear to be that the continued funding of Antibe would be effected through the use of its funds, absent any new DIP lender. Accordingly, the issue of whether the cash on hand at Antibe is held in trust for Nuance, ought to be determined before, for example, a CCAA process continued through to a conclusion.

115. In the circumstances of this case, and given the absence of any plan of Antibe (including but not limited to even any negotiations with the potential DIP lender, let alone a definitive agreement), the significant prejudice to Nuance of its enforcement application not proceeding, the fact that there are no secured creditors of Antibe, and the interests of justice generally, a lifting of the stay would have been appropriate: see *CanWest Global Communications Corp. (Re),* 2009 CanLII 70508 (ONSC) at para. 33.

Result and Disposition

116. For all of the above reasons, the CCAA proceeding is terminated and the receiver is appointed. I make no determination with respect to Nuance's trust claim.

117. Order to go to give effect to these reasons. Nuance should submit to me a draft order. The order is effective immediately and without the necessity of issuing and entering.

Schedule “C”

Listing of Creditors

Schedule C

IN THE MATTER OF THE RECEIVERSHIP OF
ANTIBE THERAPEUTICS INC.

Creditor Listing without admission as to any liability or privilege herein.
Amounts are presented in Canadian Dollars.

UNSECURED CREDITOR	ADDRESS	AMOUNT
14130855 Canada	110 Bloor Street West, Unit 1409, Toronto ON, M5S 2W7, Canada	$ 11,300.00
Axiom Real-Time Metrics	5205 Satellite Drive, Mississauga ON, L4W 5P9, Canada	51,532.13
BCS Statistical Solutions	1501 Estuary Trail, Delray Beach FL, 33483, USA	19,980.87
Bell Canada	1 Carrefour Alexander-Graham-Bell Building A, 4th Floor, Verdun QC, H3E 3B3, Canada	85.85
Bereskin & Parr	6750 Century Avenue, Suite 101, Missisauga ON, L5N 2V8, Canada	30,052.99
Bhito Integrated Solutions	PH10 - 141 Davisville Ave., Toronto ON, M4S 1G7, Canada	1,751.50
Bloom Burton Securities Inc.	181 Bay St. Suite 3410, Toronto ON, M5J 2T3, Canada	33,900.00
BND Projects	39 Stanford Road, Unionville ON, L3R 6M2, Canada	21,655.87
Business Wire	144 Front Street West, STE 340, Toronto ON, M5J 2L7, Canada	5,932.50
Caligor Opco LLC (CalCog)	1500 Business Park Drive, Unit B, Bastrop TX, 78602, USA	4,798.15
CDM Canada Ltd.	1063 Quarry Dr., Innisfil ON, L9S 4X3, Canada	11,300.00
CDS	100 Adelaide St W, Suite 300, Toronto Ontario, M5H 1S3, Canada	565.00
Charles River CANADA	22022 Transcanadienne, Senneville QC, H9X 3R3, Canada	10,399.49
Computershare	100 University Ave, 11th Floor, South Tower, Toronto ON, M5J 2Y1, Canada	9,643.49
Critical Path	1257 Kamato Road, Mississauga Ontario, L4W 2M2, Canada	71.16
CT Corporation	PO Box 4349, Carol Stream IL, 60197-4349, USA	512.72
Deloitte Restructuring	8 Adelaide Street West, Suite 200, Toronto ON, M5H 0A9, Canada	30,076.36
Individual		2,958.38
DILIsym Services	6 David Drive, P.O. Box 12317, Research Triangle Park NC, 27709-2137, USA	50,449.12
DLA Piper	One Liberty Place1650 Market Street, Suite 5000, Philadelphia PA, 19103-7301, USA	20,563.50
DWGilroy Consulting	12 Whitmore Road, Harrow London, HA1 4AB, UK	52,209.72
EKS Business Development	42 Heddington Ave., Toronto ON, M5N 2K5, Canada	10,818.61
Elegen Group	230 Fairlawn Ave., Toronto ON, M5M 1T1, Canada	7,316.75
Employees		TBD
Employees		TBD
Ernst & Young	P.O. Box 57104, Postal Station A, Toronto ON, M5W 5M5, Canada	171,279.75
FG Pharma	404-1062 Charcot, Boucherville QC, J4B 0C1, Canada	13,560.00
Fifteen Prince Arthur	15 Prince Arthur Ave, Toronto ON, M5R 1B2, Canada	5,073.55
Florida Division of Taxation	Mail Stop 3-2000, 5050 W Tennessee St., Tallahassee, FL, 32399-0112, United States	TBD
Individual		4,695.83
Individual		2,741.80
Individual		15,000.00
Individual		1,096.24
Gowling WLG	160 Elgin Street, Suite 2600, Ottawa ON, K1P 1C3, Canada	1,046.14
Hansamed Limited	2830 Argentia Rd, Units 5-9, Mississauga ON, L5N 8L2, Canada	TBD
Individual		4,307.48
Individual		864.45
Individual		12,052.50
Independent Trading Group	33 Yonge St. Suite 420, Toronto ON, M5E 1G4, Canada	1,363.64
Innomar Strategies	3470 Superior Court, Oakville ON, L6L 0C4, Canada	32,719.14
IRS	Centralized Insolvency Operation, P.O. Box 7346, Philadelphia, PA, 19101-7346, United States	TBD
Individual		1,400.00
Klick Health	175 Bloor Street EastNorth Tower, Suite 301, Toronto ON, M4W 3R8, Canada	15,255.00
Lonza Bend	1201 NW Wall Street, Suite 200, Bend OR, 97703, USA	566,730.06
Lonza Nansha	Munchensteinerstrasse 38, Basel -, CH-4002, Switzerland	54,287.64
Lonza Tampa	4910 Savarese Cir, Tampa FL, 33634, USA	20,741.72
Lotus Clinical Research	430 Mountain Avenue, Suite 302, New Providence NJ, 07974, USA	3,803,088.55
Individual		5,250.00
Individual		2,239.13
Minister of Finance - ON	33 King Street West, 3rd Floor, Oshawa ON, L1H 8H5, Canada	TBD
Individual		14,702.22
National Institute of Oncology (Budapest)	1122 BudapestRath Gyorgy u. 7-9, Budapest -, -, Hungary	28,788.90
Norton Rose Fulbright	222 Bay Street, Suite 3000, Toronto ON, M5K 1E7, Canada	19,178.34
Nuance Pharma Limited	Room 639, East Tower, Shanghai Centre, No. 1376 West Nanjing Road, Shanghai -, 200040, PRC	33,816,766.23
Nucro-Technics	2000 Ellesmere Road, Unit 16, Scarborough ON, M1H 2W4, Canada	50,937.01
Oklohoma Division of Taxation	General Counsel's Office, 2501 N. Lincoln Blvd., Oklahoma City, OK, 73105-4301, United States	TBD
Paliare Roland	155 Wellington Street West, 35th Floor, Toronto ON, M5V 3H1, Canada	113,362.87
Passageways	8 N 3rd St., Suite 101, Lafayette IN, 47901, USA	7,950.00
Patheon (Thermo Fisher)	6173 E Old Marion Highway, Florence SC, 29506-9330, USA	1,192,900.97
Paychex	701 Gateway Blvd Suite 200, South San Francisco CA, 94080, USA	202.07
Pharma Medica	6100 Belgrave Rd, Mississauga ON, L5R 0B7, Canada	81,728.31
PharmaWrite	152 Wall Street, Princeton NJ, 08540, USA	29,729.08
Individual		4,307.48
ProPharma Group	1129 Twentieth St, NW, Suite 600, Washington DC, 20036, USA	256,747.29
R. P. Chiacchierini Consulting	17003 Horn Point Drive, Gaithersburg MD, 20878, USA	1,679.35
Receiver General (CRA)	Sudbury tax centre, Post Office Box 20000, Station A, Sudbury ON, P3A 5C1, Canada	TBD
Royal Bank of Canada (Visa)	10 York Mills Rd. 3rd Floor, Toronto ON, M2P 0A2, Canada	4,121.60
Individual		4,307.48

Schedule C

IN THE MATTER OF THE RECEIVERSHIP OF
ANTIBE THERAPEUTICS INC.

Creditor Listing without admission as to any liability or privilege herein.
Amounts are presented in Canadian Dollars.

UNSECURED CREDITOR	ADDRESS	AMOUNT
Scendea	Ground Floor, 20 The Causeway, Bishop's Stortford Hertfordshire, CM23 2EJ, UK	2,734.95
Individual		330.00
Stonehedge Pharma	13121 Old Annapolis Road, Mount Airy MD, 21771, USA	8,122.58
Summit Analytical	8354 E Northfield Blvd, Denver CO, 80238, USA	29,426.37
Toronto Stock Exchange (TSX)	300 - 100 Adelaide St. West, Toronto ON, M5H 1S3, Canada	20,754.99
Troutman Pepper	222 Central Park Avenue, Suite 2000, Virginia Beach VA, 23462, USA	32,397.11
Uppsala Monitoring Centre	Box 1051, Uppsala -, 75140, Sweden	14,477.40
Individual		16,664.03
WeirFoulds	4100 - 66 Wellington Street WestPO Box 35Toronto-Dominion Centre, Toronto ON, M5K 1B7, Canada	75,262.32
Individual		12,338.10
Individual		4,025.00
Total		**$ 40,966,608.83**

Notes:

1. *The listing of unsecured creditors was compiled based on information available to the Receiver as at the date of the Notice and Statement of the Receiver.*
2. *Where applicable, FX rates of 1.3709, 1.7062, 1.4659 and 0.126 were used for CAD/USD, CAD/GBP, CAD/EUR and CAD/SEK, respectively.*
3. *The Receiver understands that Nuance Pharma Ltd. intends to seek relief from the Court recognizing a constructive trust claim in favour of Nuance Pharma Ltd. in respect of the prepayment made under a certain license agreement for approximately $19.6 million.*