Court File No. CV-24-00717410-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

NUANCE PHARMA LTD.

Applicant

- and -

ANTIBE THERAPEUTICS INC.

Respondent

AIDE MEMOIRE OF THE RESPONDENT, ANTIBE THERAPEUTICS INC., FOR THE CASE CONFERENCE ON APRIL 9, 2024

April 8, 2024

Paliare Roland Rosenberg Rothstein LLP
155 Wellington Street West
35th Floor
Toronto ON M5V 3H1
Tel: 416.646.4300

Kenneth T. Rosenberg (LSO#21102H)
Tel: 416.646.4304
Email: ken.rosenberg@paliareroland.com

Massimo Starnino (LSO#41048G)
Tel: 416.6467431
Email: max.starnino@paliareroland.com

Kartiga Thavaraj (LSO# 75291D)
Tel: 416.646.6317
Email: kartiga.thavaraj@paliareroland.com

Evan Snyder (LSO# 82007E)
Tel: 416.646.6320
Email: evan.snyder@paliareroland.com

Lawyers for the Respondent

TO: **Bennett Jones LLP**
3400 One First Canadian Place
P. O. Box 130
Toronto, ON M5X 1A4

Lincoln Carter (LSO #37030L)
Email: caylorl@bennettjones.com

Alexander C. Payne (LSO #70712L)
Email: paynea@bennettjones.com

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

Lawyers for the Applicant

AIDE MEMOIRE OF THE RESPONDENT

1. Antibe Therapeutics Inc. ("**Antibe**") is a publicly-traded Canadian biotechnology company that develops novel pain drugs using its proprietary hydrogen sulfide platform. It has been developing its lead drug, otenaproxesul (the "**Drug**") since 2004. Nuance Pharma Limited ("**Nuance**") is a Hong-Kong incorporated biopharmaceutical company and a subsidiary of CBC Group, the largest healthcare-focused investment firm in Asia.

2. Antibe has raised approximately $124 million since inception to support its research and development of the Drug. In February 2021, Antibe and Nuance entered into a licensing deal for the eventual sale of the Drug in China (the "**Nuance License Agreement**"). The Nuance License Agreement included an upfront payment of USD$20 million, which Nuance paid to Antibe. Shortly after receiving the USD$20 million investment from Nuance, Antibe raised CAD$40 million in the public capital markets.

3. In January of 2022, Nuance commenced an arbitration against Antibe (the "**Arbitration**"), alleging Antibe had improperly induced Nuance to enter into the Nuance License Agreement, including by failing to provide Nuance with certain correspondence between Antibe and Health Canada (the "**Health Canada Correspondence**").

4. Antibe defended Nuance's claim on the basis that Nuance had undertaken little or no relevant due diligence, had not made any information requests that would have required Antibe to provide the Health Canada Correspondence, and that, in any event, the clinical and non-clinical results and reports that had formed the basis for the Health Canada Correspondence had all been provided to Nuance, rendering the Health Canada Correspondence irrelevant to Nuance's investment decision.

5. Contrary to Antibe's expectations, and notwithstanding evidence to the contrary, on March 1, 2024, the arbitral tribunal found that under New York law, the Health Canada Correspondence was material to Nuance's decision to enter into the Nuance License Agreement (in the "**Award**"). The tribunal further found that an omission of these documents by Antibe amounted to a fraudulent misrepresentation—despite the fact that Nuance had asked Antibe only a few questions about the safety or efficacy of the Drug (on which it was spending a hundred million dollars), had only requested a discrete set of regulatory communications, and had never requested all of Antibe's regulatory communications, any correspondence between Health Canada and Antibe or any correspondence between the FDA and Antibe. Regardless, the Award ordered Antibe to repay the USD$20 million, costs and interest, amounting, in the aggregate, to approximately CAD$33 million.

6. Antibe is unable to pay the Award, having regard to its cash accounts and contingent and other liabilities. Antibe has initiated discussions with Nuance in an attempt to agree on terms for the payment of the Award, including a good faith proposal to pay Nuance back in full over time. Nuance did not respond to the proposal. On March 28, 2024, Nuance served Antibe with its application for enforcement of the Award in Ontario.

7. As a result, Antibe has commenced *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") proceedings, to allow Antibe breathing space so that it can restructure in a stabilized environment and maximize value for all affected stakeholders.

8. The progress that Antibe has made towards development of the Drug since 2021 is significant. Prior to 2021, Antibe had been working on a formulation for the Drug for

chronic pain. Since 2021, Antibe has developing the Drug for acute pain, and has achieved significant breakthroughs in the development of the drug since.

9. Since late 2023, Antibe has been undertaking a clinical trial in the United States of America (the "**Phase 2 Trial**"). On March 28, 2024, the U.S.' regulator, the Food and Drug Administration ("**FDA**"), met with Antibe and verbally advised Antibe that it was placing a hold on the Phase 2 Trial, as they were not yet satisfied with the breadth of data provided to the FDA to allow the Phase 2 Trial to proceed. The FDA advised that it would send a letter with details of the FDA's reasons for the hold within 30 days.

10. Antibe intends to continue to engage with the FDA and believes that the reasons for the hold can be addressed such that the Phase 2 Trial can proceed. Continued engagement with the FDA will involve minimal additional financial expenditure by Antibe and a limited amount of time. Conversely, prematurely abandoning the Phase 2 Trial would be value destructive for all stakeholders of Antibe.

11. There is a significant societal value of the Drug for acute purposes. The global acute pain market is estimated to be worth in excess of USD$25 billion, and given the worldwide opioid crisis, there is an urgent unmet need for non-opioid pain alternatives. The Drug is also of value to Antibe's stakeholders, including three other licensees of the commercial rights to the Drug for various regions across the globe.

12. In addition to societal interests, investors' interests, and Nuance's claim, other interests in this case include those of unsecured creditors having claims that are expected to total $8 million, and the interests of Antibe's remaining three licensees whose claims are not quantifiable at this time. Other unexpected claimants may also come forward. The

stay of proceedings proposed by Antibe in its CCAA application will put all stakeholders on an equal footing before this Court, and would also allow Antibe the opportunity to consult with its other stakeholders, together with the proposed monitor.

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PROCEEDING COMMENCED AT
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Paliare Roland Rosenberg Rothstein LLP
155 Wellington Street West 35th Floor
Toronto ON M5V 3H1
Tel: 416.646.4300

Kenneth T. Rosenberg (LSO#21102H)
Tel: 416.646.4304
Email: ken.rosenberg@paliareroland.com

Massimo Starnino (LSO#41048G)
Tel: 416.6467431
Email: max.starnino@paliareroland.com

Kartiga Thavaraj (LSO# 75291D)
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Email: kartiga.thavaraj@paliareroland.com

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Lawyers for the Respondent