

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

B E T W E E N:

NATIONAL BANK OF CANADA

Applicant

- and -

**DROP TECHNOLOGIES INC. (FORMERLY KNOWN AS DROP LOYALTY INC.),
DROP TECHNOLOGIES USA INC., AND DROP TECHNOLOGIES HOLDINGS
ULC**

Respondents

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, C. C.43, AS AMENDED**

**COMPENDIUM OF APPLICANT AND PROPOSED RECEIVER
(Returnable February 9, 2025)**

December 7, 2025

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TO: SERVICE LIST

*Lawyers for the Applicant and
Proposed Receiver*

Court File No. CV-25-00749775-00CL

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

B E T W E E N:

NATIONAL BANK OF CANADA

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COURTS OF JUSTICE ACT, R.S.O. 1990, C. C.43, AS AMENDED**

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TAB 1

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

THE HONOURABLE MR.)	THURSDAY, THE 19 TH
)	
JUSTICE CAVANAGH)	DAY OF OCTOBER, 2023

B E T W E E N:

MARSHALLZEHR GROUP INC.

Applicant

- and -

LA PUE INTERNATIONAL INC.

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c.B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

**ORDER
(Appointing Receiver)**

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing KSV Restructuring Inc. as receiver (the "**Receiver**") without security, of all of the assets, undertakings and properties of La Pue International 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.

ON READING the affidavit of Cecil Hayes sworn June 7, 2023 and the Exhibits thereto, the affidavit of Cecil Hayes sworn on October 16, 2023 and the affidavits of Pawel Fugiel sworn on July 5, July 17, August 9, 2023 and October 18, 2023, and on hearing the submissions of counsel for the Applicant and for the Respondent, and on reading the consent of KSV Restructuring Inc. to act as the Receiver,

APPOINTMENT

1. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, KSV Restructuring Inc. 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**"), including, without limitation, the real property described in **Schedule "A"** attached hereto.

RECEIVER'S POWERS

2. **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 \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$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*, or section 31 of the Ontario *Mortgages Act*, as the case may be, 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

3. **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.

4. **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 5 or in paragraph 6 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.

5. **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.

6. **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

7. **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

8. **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

9. **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

10. **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

11. **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

12. **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

13. **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

14. **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

15. **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

16. **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

17. **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.

18. **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.

19. **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

20. **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 \$100,000 (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.

21. **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.

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

23. **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.

RETENTION OF COUNSEL

24. **THIS COURT ORDERS** that the Receiver may retain lawyers to represent and advise the Receiver in connection with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order. Such lawyers may include Chaitons LLP, lawyers for the Applicant herein, in respect of any matter where there is no conflict of interest. The Receiver shall, however, retain independent lawyers in respect of any legal advice or services where a conflict exists, or may exist.

SERVICE AND NOTICE

25. **THIS COURT ORDERS** that the E-Service Guide of the Commercial List (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/) 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 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL “<https://www.ksvadvisory.com/experience/case/lapue>”.

26. **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.

27. **THIS COURT ORDERS** that the Applicant, the Receiver and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Debtor's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

GENERAL

28. **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.

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

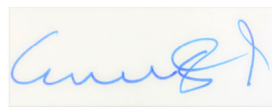
30. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, 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.

31. **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.

32. **THIS COURT ORDERS** that the Applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Applicant from the Debtor's estate with such priority and at such time as this Court may determine.

33. **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.

34. **THIS COURT ORDERS** that this order is effective from the date it is made, and it is enforceable without any need for entry and filing, provided that any party may nonetheless submit a formal order for original, signing, entry and filing, as the case may be.



Digitally signed by
Mr. Justice
Cavanagh

SCHEDULE “A”

Municipal Address: 5528 Ferry Street, Niagara Falls, Ontario

PIN: 64349-0285 (LT)

Property Description: FIRSTLY: LOTS 46, 51, 52, 61, 62, 63, 64 & 65, PLAN 273 & PART LOTS 43, 44, 45, 47, 48, 49 & 50, PLAN 273, VILLAGE OF NIAGARA FALLS, PARTS 1 & 3 PLAN 59R17206; SECONDLY: SURFACE RIGHTS ONLY (AS IN RO718049), PART LOTS 47, 48, 49 & 50 PLAN 273, VILLAGE OF NIAGARA FALLS, PART 2 PLAN 59R17206; SUBJECT TO AN EASEMENT OVER PARTS 1 & 2 59R17292 IN FAVOUR OF PART LOTS 41 & 42 PLAN 273 AS IN RO441658 AS IN SN754703; CITY OF NIAGARA FALLS

SCHEDULE "B"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that KSV Restructuring Inc., the receiver (the "**Receiver**") of the assets, undertakings and properties of La Pue International Inc. (the "**Debtor**") 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 15th day of June, 2023 (the "**Order**") made in an application having Court file number CV-●, 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 _____, 202__.

KSV RESTRUCTURING INC., solely in its capacity as Receiver of the Property, and not in its personal capacity

Per: _____

Name:

Title:

MARSHALLZEHR GROUP INC.
Applicant

-and-

LA PUE INTERNATIONAL INC.
Respondent

Court File No. CV-23-00695238-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

ORDER
(Appointing Receiver)

CHAITONS LLP

5000 Yonge Street, 10th Floor
Toronto, Ontario M2N 7E9

Maya Poliak (LSO #54100H)

Tel: (416) 218-1161

E-mail: maya@chaitons.com

Laura Culleton (LSO #82428R)

Tel: (416) 218-1128

E-mail: laurac@chaitons.com

Lawyers for the Applicant



SUPERIOR COURT OF JUSTICE

ENDORSEMENT

COURT FILE NO.: CV-23-00700695-00CL

DATE: October 19, 2023

NO. ON LIST: 2

TITLE OF PROCEEDING: MARSHALLZEHR GROUP INC. v. LA PUE INTERNATIONAL INC. et al

BEFORE: JUSTICE CAVANAGH

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Maya Poliak	Lawyer for the Applicant, MarshallZehr Group Inc.	maya@chaitons.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
William Friedman	Lawyer for the Respondent, La Pue International Inc.	wf@friedmans.ca
Mark Russell		mr@friedmans.ca
Fernando Souza	Lawyer for the Buttcon Limited	fsouza@lawtoronto.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Anthony Gabriele	Lawyer for HC Matcon Inc.	gabriele@paveylaw.com

ENDORSEMENT

[1] The Applicant seeks an order appointing a receiver pursuant to the terms of a Settlement Agreement. The Settlement Agreement provides for certain obligations to be met by the Respondent. The Respondent has breached the terms of the Settlement Agreement. Under the Settlement Agreement, The Respondent consented to the issuance of a receivership order in the event of default.

[2] I am satisfied that the Applicant is entitled to the receivership order under the terms of the Settlement Agreement. I am satisfied that it is just and convenient for the requested order to be made.

[3] Order to issue in form of Order signed by me today.



Digitally signed by
Mr. Justice
Cavanagh

Justice Cavanagh

Date: October 19, 2023

TAB 2

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE)	FRIDAY, THE 21 ST
)	
JUSTICE NATHALIE CHAMPAGNE)	DAY OF JUNE, 2024



CARE LENDING GROUP INC.

Applicant

- and -

1000209217 ONTARIO LTD.

Respondent

ORDER
(appointing Receiver)

THIS APPLICATION made by the applicant Care Lending Group Inc. (“**Care Lending**”) for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”) appointing msi Spergel Inc. (“**Spergel**”) as receiver and manager (in such capacities, the “**Receiver**”) without security, of all of the assets, undertakings and properties of 1000209217 Ontario Ltd. (the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, was heard this day via Zoom videoconference.

ON READING the affidavit of Dan Gilchrist sworn June 12, 2024 and the exhibits thereto and on hearing the submissions of counsel for Care Lending and of Andrew Hanna, and on reading the consent of the Debtor, filed, and no other person appearing although duly served as appears from the affidavit of service of Kim Sellers sworn June 18, 2024 and on reading the consent of Spergel to act as the Receiver,

SERVICE

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

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, Spergel 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

3. **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 pharmacists, 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, and, if necessary, to deposit such monies in a separate bank account controlled by the Receiver and pay such disbursements that are necessary for the continued operation of the business of the Debtors;
- (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 summarily dispose of Property that is perishable or likely to depreciate rapidly in value;

- (l) 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 \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$250,000 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.

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

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

4. **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, including, but not limited to the Ontario College of Pharmacists, the Ministry of Health and Long-Term Care, the Ontario Drug Benefit Program and any insurance company (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.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any client/patient records and prescription information (“**Patient Records**”) billing privileges, 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, subject to Paragraph 6A herein, 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 5 or in paragraph 6 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.

5A. **THIS COURT ORDERS** that, should the Receiver deem it necessary to seek from any insurance company or its pharmacy benefits manager personal information regarding persons covered pursuant to benefit plans which might have had claims under such plans relating to the Debtor, such information shall be sought pursuant to a motion on notice to the insurance company and its pharmacy benefits manager. Such information shall only be released by the insurance company or its pharmacy benefits manager on the agreement of such insurance company or as provided in the order so obtained.

6. **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.

6A. **THIS COURT ORDERS** that with respect to the Patient Records, the Receiver shall: (i) take all steps reasonably necessary to maintain the integrity of the confidential aspects of the Patient Records; (ii) if necessary, appoint a pharmacist licensed and qualified to practice in the Province of Ontario to act as custodian (the “**Custodian**”) for the Patient Records; (iii) not allow anyone other than the Receiver or the Custodian to have access to the Patient Records; and (iv) allow the Debtor supervised access to the Patient Records for any purposes required pursuant to the *Regulated Health Professions Act, 1991*, the *Pharmacy Act, 1991*, or any other governing

Ontario or Canadian statute that requires the Debtor, from time to time, to perform certain obligations.

7. **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

8. **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

9. **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

10. **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

11. **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

12. **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 claims processing services, computer software, communication and other data services, centralized banking services, payment processing 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

13. **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

14. **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

15. **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.

16. **THIS COURT ORDERS** that, pursuant to section 42 of the *Ontario Personal Health Information Protection Act* ("**PHIPA**"), the Receiver shall only disclose personal health information to prospective purchasers or bidders who are potential successor(s) to the pharmacy business of the Debtor (the "**Pharmacy**") as Health Information Custodian(s) (as defined in the PHIPA) for the purposes of allowing the potential successor to assess and evaluate the operations of the Pharmacy. Each potential successor to whom such personal health information is disclosed is required in advance of such disclosure to review and sign an acknowledgement of this Order

indicating that it agrees to keep the information confidential and secure and not to retain any of the information longer than is necessary for the purposes of the assessment or evaluation, and if such potential successor does not complete a Sale, such potential successor shall return all such information to the Receiver, or in the alternative shall destroy all such information. Such acknowledgement shall be deemed to be an agreement between the Receiver and the potential successor for the purposes of section 42 of PHIPA.

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 \$250,000 (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 Certificates**") 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.

SERVICE AND NOTICE

26. **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 <https://www.spergelcorporate.ca/engagements>.

27. **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.

RETENTION OF LAWYERS

28. **THIS COURT ORDERS** that the Receiver may retain solicitors to represent and advise the Receiver in connection with the exercise of the Receiver's powers and duties, including, without limitation, those conferred by this Order. The Receiver is specifically authorized and permitted to use Miller Thomson LLP, solicitors for the Applicant herein, as its own counsel in respect of any matter where there is no conflict of interest. In respect of any legal advice or issue where a conflict may exist or arise in respect of the Applicant and the Receiver or a third party, the Receiver shall utilize independent counsel.

GENERAL

29. **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.

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

31. **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.

32. **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.

33. **THIS COURT ORDERS** that the Applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estates with such priority and at such time as this Court may determine.

34. **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.

35. **THIS COURT ORDERS** that this Order and is effective as of June 24, 2024, at 10:00AM prevailing Eastern Time and is enforceable without the need to entry and filing.

36. **THIS COURT ORDERS** that Elizabeth & Co. Holdings Inc. shall make best efforts, until the date and time specified in paragraph 35 of this Order, to bar the public from accessing the Pharmacy (as defined in paragraph 16 hereof), including by, among other things, locking any doors used to access the Pharmacy and posting signage advising the public to access any other tenants located in the same building as the Pharmacy via other entrances.

37. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, paragraph 36 of this Order shall be effective as of the date hereof and is enforceable without the need to entry and filing.



SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that msi Spergel Inc., the receiver (the "**Receiver**") of the assets, undertakings and properties 1000209217 Ontario Ltd. (the "**Debtor**") 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 (the "**Court**") dated the ____ day of _____, 2024 (the "**Order**") made in an action having Court file number _____, 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 Newmarket, 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.

Msi Spergel Inc., solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Name:

Title:

CARE LENDING GROUP INC.
Applicant

AND

1000209217 ONTARIO LTD.
Respondent

Court File No. CV-24-00000103-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding Commenced at
Cornwall

RECEIVERSHIP ORDER

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Lawyers for the Applicant



Superior Court of Justice – East Region
29 Second Street West
Cornwall, Ontario K6J 1G3

ENDORSEMENT SHEET FOR CIVIL MOTION/APPLICATION

SHORT TITLE OF PROCEEDINGS: CARE LENDING GROUP INC. v. 1000209217 ONTARIO LTD.

COURT FILE NO.: CV24-103

BEFORE: The Honourable Justice N. Champagne

COUNSEL:
Plaintiff – ~~P. Corney~~ and M. Cressatti

Dr. Hannah

☐ **ORDER SIGNED**

☐ **ON CONSENT**

☐ **UNOPPOSED**

☐ **NO ONE APPEARED**

☐ **ADJOURNED TO**

ENDORSEMENT:

The applicant, Care Lending Group Inc (Lender). Brings an application for the appointment of msi Spergel Inc. as receiver and manager of the assets of 1000209217 Ontario Ltd. which operated the Cotton Mill Pharmacy (debtor).

On October 3, 2022 the lender advanced a five-year term loan of \$600,450.00 to the debtor. Interest on the loan was compounded monthly at a rate of 7.75% per annum. The interest on any overdue amounts accrued at a rate of 18% per annum. The loan was registered under the *Personal Property Security Act* R.S.O. 1990 c. P 10 (PPSA)

The debtor defaulted on the loan in the spring of 2024 and effectively closed the pharmacy's doors, abandoning the business. As of June 12, 2024 the amount owing to the lender was \$669,214.79.

The lender issued a notice of intention to enforce security on May 29, 2024.

The lender attended at the pharmacy June 5, 2024 and learned that the pharmacy had not had any employees including pharmacists in the store since early May 2024. The lender noted non-prescription drugs were left on the pharmacy's shelves creating a risk of theft. While narcotics are in a locked room, some prescription drugs have been left behind the counter. Prescriptions that had been filled remained behind the counter, ready for pick-up by patients who are obviously unable to access them or make payment.



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The debtor's CEO has advised the lender that the debtor lacks the ability or willingness to reinvest the working capital necessary to reopen the pharmacy and it has no intention of doing so.

The lender's evidence is that msi Spergel would reopen and operate the pharmacy, using the necessarily qualified personnel in accordance with the applicable regulations, while the pharmacy is marketed for sale. This would mitigate concerns about theft and loss of goodwill and preserve the value of the property.

The debtor consents to the appointment of a receiver.

Analysis

Ordinarily where a notice of intention to enforce security is sent pursuant to section 244(1) of the *Bankruptcy and Insolvency Act* R.S.C. 1985 c. B-3A, the court cannot appoint a receiver until 10 days after the notice is sent unless the insolvent person consents to earlier enforcement. Such is the case here. In any event the lender issued notice of intention to enforce security on May 29, 2024. As a result, more than 10 days have passed since the issuing of that notice.

Pursuant to section 243(1) of the *BIA* a court may appoint a receiver on an application of a secured creditor if it is "just or convenient to do". The appointment of a receiver would allow it to take possession of all or substantially all of the inventory, accounts receivable or other property and exercise any control the court considers advisable over that property.

In considering whether the appointment of a receiver is just inconvenient, the court is required to have regard to all of the circumstances in the situation. Factors to be considered by the court are the nature of the property, the likelihood of preserving and maximizing the return on the subject property, the relationship between the debtor and its creditors, the conduct of the parties, the risk of the lender's security deteriorating, loss of confidence in the debtor's management, the potential costs of the receiver and whether a court appointment is required to enable the receiver to carry out its duties efficiently.

On the facts before me, taking the above factors into consideration, I conclude that the appointment of a receiver is appropriate and is just and convencient. At present the pharmacy is closed and is not operating. The debtor's CEO expresses absolutely no intention of reopening the business. Apart from the risk of theft, it is losing money each and every day its doors are closed. Clients will no doubt go to other pharmacies and inventory will expire over time. In my view a receivership would provide the stability, structure and supervision required to preserve the value of the pharmacy.

In all of the circumstances there shall be in order to go appointing msi Spergel as receiver of the debtor's property, in the form provided to the court by the applicant.


Justice Nathalie Champagne



Superior Court of Justice – East Region
29 Second Street West
Cornwall, Ontario K6J 1G3

Date: June 21, 2024

The Honourable Justice N. Champagne

TAB 3



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO: CV-24-00719237-00CL

DATE: January 29, 2025

NO. ON LIST: 3

TITLE OF PROCEEDING: Nuance Pharma Ltd. v. Antibe Therapeutics Inc. et al

BEFORE: JUSTICE OSBORNE

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Rebecca Kennedy	Counsel for the Receiver, FTI Consulting Canada Inc.	rkennedy@tgf.ca
Ines Ferreira	Counsel for the Receiver, FTI Consulting Canada Inc.	iferreira@tgf.ca

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Alex Payne Sidney Brejak Aiden Nelms	Counsel for Nuance Pharma Ltd.	paynea@bennettjones.com brejaks@bennettjones.com nelmsa@bennettjones.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Andrew Winton	Counsel to the Former Directors	awinton@lolg.ca
Roger Jaipargas	Counsel for the Purchaser, Taro	rjaipargas@blg.com
Jim Robinson	Receiver, FTI Consulting Canada Inc.	jim.robinson@fticonsulting.com

ENDORSEMENT OF JUSTICE OSBORNE:

[1] The Receiver moves for various relief:

a. an approval and reverse vesting order:

- i. approving the sale transaction between the Receiver as vendor and Taro Pharmaceuticals Inc. as Purchaser dated January 15, 2025;
- ii. vesting all right, title and interest in the Purchased Shares to be issued to the Purchaser, free and clear of encumbrances;
- iii. cancelling and terminating without consideration all equity interests of Antibe except for the Purchased Shares;
- iv. granting releases in favour of the Receiver and other parties;
- v. deeming Antibe to cease being a Respondent in these proceedings, upon delivery by the Receiver of its certificate; and
- vi. sealing the unredacted Transaction Agreement until the Transaction is closed or further order of the Court; and

b. an Ancillary Order:

- i. approving the Second Report of the Receiver dated January 15, 2025 and the activities of the Receiver and its counsel as described therein;
- ii. approving the fees of the Receiver and its counsel;
- iii. approving an interim distribution of funds to proven unsecured creditors on a *pro rata* basis, subject to certain sufficient holdbacks for costs to complete the administration of the Receivership and claims that have not yet been proven; and
- iv. a distribution of funds in Canadian dollars equivalent to USD \$519,000 of Traceable Funds, plus accrued interest, converted at the prevailing foreign exchange rate on the date of transfer, to Nuance as a permanent and indefeasible repayment of the indebtedness and obligations secured by the Nuance Constructive Trust.

[2] The Receiver relies on the Second Report. Defined terms in this Endorsement have the meaning given to them in the motion materials unless otherwise stated.

- [3] The Service List has been served. I note in particular, given the nature and scope of the relief sought (and in particular, the proposed reverse vesting structure intended in part to preserve the value of tax loss carry forwards, certain scientific and research tax credits, and the transfer of certain patents and intellectual property), that the Service List includes the Department of Justice, the Canada Revenue Agency, the Ontario Securities Commission and the Ministry of Finance.
- [4] The relief sought today is unopposed, including by the Former Directors, given the agreement reached with respect to the scope and terms of the order sought.
- [5] For the reasons set out below, the relief sought is granted, with the exception of the proposed interim distribution of funds to proven unsecured creditors.
- [6] With respect to the Transaction with Taro, the Sale Process was conducted in accordance with the Sale Process Approval Order I granted earlier in this proceeding. It consisted of two phases. Following receipt of the Phase 2 Bids and further negotiations, the Receiver declared the Purchaser as the Successful Party and proceeded to negotiate the Transaction Agreement which was executed on January 15, 2025.
- [7] The terms of the Transaction Agreement are set out in the materials. The Purchaser will own 100% of the issued and outstanding shares of Antibe free and clear of encumbrances. The Purchase Price is set out in the materials proposed to be the subject of a sealing order, and is to be satisfied in part by a deposit equal to 10%. That has already been paid. The Transaction is on an “as is, where is” basis, scheduled to close no later than March 7, 2025.
- [8] The Receiver is of the view that the Transaction provides the best possible outcome for the stakeholders in the circumstances given that it represents the highest and best offer received in the Sale Process. It is supported by the Financial Advisor.
- [9] The Transaction contemplates a reverse vesting structure because the Purchaser requires certain intellectual property that is registered globally in approximately 41 jurisdictions around the world. In addition, the reverse vesting structure will preserve certain tax attributes including tax loss carry forwards and Scientific, Research and Experimental Development (SRED) credits, the value of which are an integral component of the consideration for the Purchaser.
- [10] This Court and other courts have granted reverse vesting orders in receiverships brought pursuant to section 101 of the *Courts of Justice Act* and section 243 of the *Bankruptcy and Insolvency Act*, as well as in CCAA proceedings. While they remain the exception and not the rule, in certain circumstances such as I am satisfied are present in this case, these structures are appropriate, and are consistent with the well-established purposes of a receivership to enhance and facilitate the preservation and realization of the assets of the debtor for the benefit of creditors.

- [11] I am satisfied that the Taro Transaction meets the *Soundair Principles*. Sufficient effort was made to obtain the best price. The Receiver did not act improvidently, and it considered the interests of all parties, and those are best served by the Transaction Agreement. The Sale Process was run efficaciously and with integrity and there was no resulting unfairness.
- [12] The *Harte Gold* factors applicable to a consideration of whether a reverse vesting order should be granted have also been satisfied here. Such a structure is necessary in this case as the debtor operates in a highly regulated environment in which its existing permits, licences and other rights are difficult or impossible to assign to a purchaser.
- [13] Moreover, and as set out above, maintaining the existing legal entities will preserve tax attributes and SRED credits, and avoid the very material cost, delay and risk relating to what would otherwise be necessary requests for approval of patent transfers which are registered in 41 separate international jurisdictions, but which also represent the core assets of Antibe and as such, are integral to the Transaction.
- [14] The Transaction yielded the highest value from all competitive bids submitted in the Sale Process. The Receiver is strongly of the view that the Transaction Agreement with Taro could not have proceeded except by way of a reverse vesting structure. I am satisfied that the proposed reverse vesting order produces the best economic outcome. I am also satisfied that stakeholders are not worse off under such a structure, and that major creditors are not prejudiced. The Receiver submits that no creditor will be prejudiced by transferring the Excluded Assets, the Excluded Contracts, and the Excluded Liabilities to ResidualCo, which will stand in the place of Antibe for the purposes of distributions to stakeholders.
- [15] Moreover, the purchase price proceeds attributable to the Property of Antibe will vest in ResidualCo and any creditor claims shall attach to those proceeds.
- [16] I am also satisfied that the proposed limited release in favour of the Receiver Released Parties is appropriate here. Each was critical to the identification, execution and completion of the Transaction.
- [17] I am further satisfied that Confidential Appendices “A” and “B” to the Second Report should be sealed as requested on the limited basis, pending closing of the Transaction, or until further order of the. These materials include information on the Phase 1 and 2 bids received and the unredacted Transaction Agreement. If the Transaction does not close and the property that is the subject of the Transaction is required to be remarketed and sold, the disclosure of this information would materially impair both the integrity of the subsequent sales process and the likely recoveries for stakeholders.
- [18] For all of these reasons, the sealing order is granted pursuant to section 137(2) of the *Courts of Justice Act* as it meets the factors articulated by the Supreme Court of Canada in *Sierra Club* and refined in *Sherman Estate*.

- [19] The Second Report and the activities set out therein are also approved, as is appropriate from time to time: see *Target Canada Co., Re*. The activities of the Receiver as set out in the Second Report are consistent with the mandate given to the Receiver in the original appointment order and are accretive to the progress of this proceeding and the steps necessary to be taken to maximize recovery for stakeholders.
- [20] The fees and disbursements of the Receiver and its counsel are fully set out in the Fee Affidavits. I am satisfied that they are reasonable, consistent with the activities described above, and are appropriate. They meet the overriding principle of reasonableness reflecting the knowledge, experience and skill of the Receiver and its counsel, the diligence displayed, responsibilities assumed, results of the efforts and cost of comparable services. See *Laurentian University of Sudbury, Re* and *Bank of Nova Scotia v. Diemer*.
- [21] Finally, and with respect to the proposed distributions, I am satisfied that the distribution of the Traceable Funds should be approved. As noted, it is not opposed. More substantively, the Receiver has conducted an extensive analysis and determined that the Traceable Funds constitute property that is subject to a constructive trust in favour of Nuance. It follows that those funds are beneficially owned by that party and should be paid out for its benefit.
- [23] However, I am not prepared today to approve the proposed interim distribution to unsecured creditors with Proven Claims. While this relief was initially opposed by the Former Directors, those parties reached an agreement with the Receiver that would essentially provide that the Receiver would serve and file a Supplementary Report setting out a summary of the proposed distributions prior to proceeding with any interim distributions, and the parties on the Service List would be provided with a notice period of seven days within which they could file any notices of dispute. Absent such a notice, the Receiver would be authorized to proceed with an interim distribution, and if disputes remained, the Receiver would seek directions from the Court.
- [24] The challenge for me is that an interim distribution is appropriate where the court is satisfied that no creditors will be prejudiced and that sufficient holdbacks or reserves are made for unproven claims. See: *Maple Bank GmbH (Re)*, 2017 ONSC 2536 at para. 34. The evidence in the record today is such that I cannot be so satisfied.
- [25] The problem is that, through no fault of its own, the Receiver is not yet able to quantify the value of all unresolved claims (such as outstanding claims against the Former Directors advanced under the claims process or corresponding indemnity claims of those Former Directors against Antibe), and there is no evidence as to the exact quantum of the proposed holdbacks or reserves relative to the estimated value of, or maximum exposure in respect of, unresolved claims.
- [26] The proposed accommodation is essentially an agreement to make the necessary calculations later, give affected parties seven days to decide whether to object, and then if none does, make the distribution. While I acknowledge the practical approach this represents

(something encouraged by the Commercial List), I am not comfortable that it is sufficient in the circumstances to meet the test set out in *Maple Bank* today.

- [27] I have advised the Receiver and the other parties that I will make myself available to hear a distribution approval motion on an expedited basis once these issues are resolved.
- [28] For all of these reasons, the requested relief (with the exception of the proposed interim distribution to unsecured creditors with proven claims) is granted.
- [29] Orders to go in the form I have signed today which are effective immediately and without the necessity of issuing and entering.

Oliver J.



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

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

THE HONOURABLE

)

WEDNESDAY, THE 29th

JUSTICE OSBORNE

)

DAY OF JANUARY, 2025

)

B E T W E E N:

NUANCE PHARMA LTD.

Applicant

- and -

ANTIBE THERAPEUTICS INC.

Respondent

**IN THE MATTER OF AN APPLICATION UNDER SECTION 101 OF THE
COURTS OF JUSTICE ACT**

**ORDER
(Approval and Reverse Vesting Order)**

ON THIS MOTION, made by FTI Consulting Canada Inc. (“**FTI**”) in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”) without security, of all of the present and future assets, undertakings and real and personal property of Antibe Therapeutics Inc. (“**Antibe**”), was heard this day via Zoom videoconference at 330 University Avenue, Toronto, Ontario.

AND UPON READING the second report (including the appendices thereto) of the Receiver dated January 15, 2025 (the “**Second Report**”), and on hearing the submissions of counsel for the Receiver, counsel for Taro Pharmaceuticals Inc. (the “**Purchaser**”) and those

other parties listed on the Participant Information Form, no one else appearing although duly served as appears from the affidavit of service, sworn and filed;

SERVICE

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

DEFINITIONS

2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meaning ascribed to them in the Transaction Agreement.

APPROVAL AND VESTING

3. **THIS COURT ORDERS** that the Transaction Agreement and the Transaction be and are hereby approved, and that the execution of the Transaction Agreement by the Receiver is hereby authorized, approved and ratified, with such minor amendments as the parties thereto may deem necessary. The Receiver is hereby authorized and directed to perform its obligations under the Transaction Agreement and to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction, including the filing of the Articles of Reorganization, the issuance of the Purchased Shares and the termination and cancellation of the Existing Shares, and to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction including, without limitation, the Implementation Steps.

4. **THIS COURT ORDERS** that notwithstanding any provision hereof, the closing of the Transaction shall be deemed to occur in the manner, order and sequence set out in the Transaction Agreement, including in accordance with the Implementation Steps, with such alterations, changes or amendments as may be agreed to by the Purchaser and the Receiver, provided that such alterations, changes or amendments do not materially alter or impact the Transaction or the consideration which applicable stakeholders will benefit from as part of the Transaction.

5. **THIS COURT ORDERS** that this Order shall constitute the only authorization required by the Receiver to proceed with the Transaction including, without limitation, the Implementation Steps, and having been advised of the provisions of Multilateral Instrument 61-101 “Protection of Minority Security Holders in Special Transactions” relating to the requirement for “minority” shareholder approval in certain circumstances, neither a meeting of shareholders or other holders of Existing Shares of Antibe is required in respect of the Transaction nor is there a requirement to send any disclosure document related to the Transaction to shareholders of Antibe or other holders of Existing Shares nor is director or shareholder approval required and, other than obtaining the Required Orders as contemplated by the Transaction Agreement, no other approval, authorization or other action by or notice to or filing with any Governmental Authority (as defined below) or regulatory body exercising jurisdiction in respect of Antibe is required for the due execution, delivery and performance by the Purchaser and Antibe of the Transaction Agreement and the completion of the Transaction. For greater certainty, the Receiver is hereby authorized to incorporate ResidualCo and permitted to execute and file the Articles of Reorganization or any other documents or instruments as may be required to permit or enable and effect the Transaction, and the Articles of Reorganization or any such other documents or instruments shall be deemed to be duly authorized, valid and effective

notwithstanding any requirement under federal or provincial law to obtain director or shareholder approval with respect to such actions or to deliver any statutory declarations that may otherwise be required under corporate law.

6. **THIS COURT ORDERS** that upon the Receiver's delivery of a certificate substantially in the form attached hereto as Schedule "A" (the "**Receiver's Certificate**") to the Purchaser (the "**Effective Time**"), the following steps shall occur and shall be deemed to have occurred in the sequence as set out in the Implementation Steps and as set out below, provided that the Implementation Steps as set out below may be amended to implement the Transaction on such terms as may be agreed by the Parties, or with further Order of the Court:

- (a) all of Antibe's right, title and interest in and to the Excluded Assets shall vest absolutely and exclusively in ResidualCo, with all applicable Claims and Encumbrances (each as defined below) continuing to attach to the Excluded Assets and to the Proceeds (as defined below) in accordance with paragraph 10 of this Order, in either case with the same nature and priority as they had immediately prior to the transfer;
- (b) all Excluded Assets, Excluded Contracts, Excluded Liabilities, which for greater clarity includes all Taxes owed or owing or accrued by the Purchased Entity, as well as any Taxes arising from or in connection with the consummation of the Transaction and the transfer of the Excluded Assets, Excluded Contracts and Excluded Liabilities to ResidualCo (other than any Taxes on the account of debt forgiveness recognized under the the *Income Tax Act*, R.S.C. 1985 c. 1 (5th Supp.) to Antibe arising from the transfer of the Excluded Assets and Excluded Liabilities to ResidualCo), together with any audits or reassessments with respect

to any Taxes that relate to a time period occurring, or facts arising, prior to the Closing Date, regardless upon when such audit was commenced or completed, and any and all such refunds or obligations with respect to such audits or reassessments shall be channeled to, assumed by and vested absolutely and exclusively in ResidualCo, such that the Excluded Assets, Excluded Contracts and Excluded Liabilities shall become the obligations of ResidualCo, and shall no longer be obligations of Antibe and all of Antibe's respective assets, licenses, undertakings and properties of every nature and kind whatsoever and wherever situate, including property held in trust for Antibe (the "**Antibe Property**"), shall be and are hereby forever released and discharged from such Excluded Assets, Excluded Contracts and Excluded Liabilities and all related Claims and all Encumbrances affecting or relating to the Antibe Property are to be expunged and discharged as against the Antibe Property;

- (c) in consideration for the Purchase Price, all right, title and interest in and to the Purchased Shares issued by Antibe through the Receiver, to the Purchaser, shall vest absolutely and exclusively in the Purchaser free and clear of and from any and all Claims and Encumbrances and, for greater certainty, this Court orders that all of the Claims and Encumbrances affecting or relating to the Purchased Shares, or the Antibe Property, including, without limitation, any encumbrances or charges created by the Receivership Order (as defined below), or any other Order of the Court, are hereby expunged and discharged as against the Purchased Shares, Antibe and the Antibe Property;

- (d) all of the Existing Shares (which, for greater certainty, do not include the Purchased Shares) shall be deemed terminated and cancelled for no consideration as provided for in the Implementation Steps and the Articles of Reorganization, and in accordance with the terms of the Transaction Agreement, as applicable;
- (e) Antibe will transfer the ResidualCo Shares to the Receiver; and
- (f) Antibe shall be deemed to cease being a Respondent in these Proceedings, and Antibe shall be deemed to be released from the purview of the Receivership Order and all other Orders of this Court granted in respect of these proceedings, save and except for this Order, the provisions of which (as they relate to the Purchased Shares) shall continue to apply in all respects.

7. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof in connection with the Transaction.

8. **THIS COURT ORDERS** that the Receiver may rely on written notice from the Purchaser regarding the fulfilment of conditions to closing under the Transaction Agreement and shall have no liability with respect to delivery of the Receiver's Certificate.

9. **THIS COURT ORDERS** that upon delivery of the Receiver's Certificate, and upon filing of a copy of this Order, together with any applicable registration fees, all governmental authorities and any other applicable registrar or government ministries or authorities exercising jurisdiction with respect to Antibe, the Antibe Property or the Excluded Assets (collectively, the "**Governmental Authorities**") are hereby authorized, requested and directed to accept delivery of such Receiver's Certificate and a copy of this Order as though they were originals and to register such transfers and interest authorizations as may be required to give effect to the

terms of this Order and the Transaction Agreement. Presentment of this Order and the Receiver's Certificate shall be the sole and sufficient authority for the Governmental Authorities to make and register transfers of interest against any of the Antibe Property and the Receiver and the Purchaser are hereby specifically authorized to discharge the registrations on the Antibe Property and the Excluded Assets, as applicable.

10. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, as amended, the Receiver is authorized, but not required to, at the Effective Time, disclose to the Purchaser all human resources and payroll information in Antibe's records pertaining to past and current employees of Antibe. The Purchaser shall maintain and protect the privacy of such information in accordance with applicable law and shall be entitled to use the personal information provided to it in a manner that is in all material respects identical to the prior use of such information by Antibe.

11. **THIS COURT ORDERS** that, at the Effective Time and without limiting the provisions of paragraph 25 hereof, the Purchaser, Antibe and the Receiver shall be deemed released from any and all claims, liabilities (direct, indirect, absolute or contingent), or obligations with respect to any Taxes (including penalties and interest thereon) of, collectible by, or that relate to, Antibe, including without limiting the generality of the foregoing, all Taxes that could be assessed against the Purchaser or Antibe (including its affiliates and any predecessor corporations) pursuant to section 325 of the *Excise Tax Act*, R.S.C. 1985 c. E-15, section 160 of the *Income Tax Act*, R.S.C. 1985 c. 1 (5th Supp.), or any provincial equivalent, in connection with Antibe or that relate to the transfer of any property or services by the Receiver pursuant to this Order, provided that, as it relates to Antibe, such release shall not apply to: (a) Taxes in respect of the

business and operations conducted by Antibe after the Effective Time, or (b) Taxes that are an Assumed Liability in the Transaction Agreement. For greater certainty, nothing in this paragraph shall release or discharge any Claims with respect to Taxes that are transferred to ResidualCo.

12. **THIS COURT ORDERS** that except to the extent expressly contemplated by the Transaction Agreement, all pending and executory contracts, agreements, leases and arrangements (whether oral or written) by which Antibe or any of its property or assets is bound or under which Antibe has rights (each, a “**Contract**”) will be and remain in full force and effect upon and following delivery of the Receiver’s Certificate and no individual, firm, corporation, governmental body or agency, or any other entity (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) who is a party to any such arrangement may accelerate, terminate, rescind, refuse to perform or otherwise repudiate its obligations thereunder, or enforce or exercise any right (including any right of set off, dilution or other remedy) or make any demand under or in respect of any such arrangement and no automatic termination will have any validity or effect, by reason of:

- (a) any event that occurred on or prior to the delivery of the Receiver’s Certificate and is not continuing that would have entitled such Person to enforce those rights or remedies (including defaults or events of default arising as a result of the insolvency of Antibe);
- (b) the insolvency of Antibe;
- (c) any compromises, releases, discharges, cancellations, transactions, arrangements, reorganizations or other steps taken or effected pursuant to the Transaction

Agreement, the Transaction or the provisions of this Order, or any other Order of the Court in these proceedings; or

- (d) any transfer or assignment, or any change of control of Antibe arising from the implementation of the Transaction Agreement, the Transaction or the provisions of this Order.

13. **THIS COURT ORDERS**, for greater certainty, that (a) nothing in paragraph 11 hereof shall waive, compromise or discharge any obligations of Antibe in respect of any Assumed Liabilities, and (b) the designation of any Claim as an Assumed Liability is without prejudice to Antibe's right to dispute the existence, validity or quantum of any such Assumed Liability, and (c) nothing in this Order or the Transaction Agreement shall affect or waive Antibe's rights and defences, both legal and equitable, with respect to any Assumed Liability, including, but not limited to, all rights with respect to entitlements to set offs or recoupments against such Assumed Liability.

14. **THIS COURT ORDERS** that from and after the Effective Time, all Persons shall be deemed to have waived any and all defaults of Antibe then existing or previously committed by Antibe, or caused by Antibe, directly or indirectly, or non-compliance with any covenant, warranty, representation, undertaking, positive or negative pledge, term, provision, condition, or obligation, expressed or implied in any Contract existing between such Person and Antibe arising directly or indirectly from the commencement of these Proceedings and the implementation of the Transaction, including without limitation any of the matters or events listed in paragraph 6 hereof and any and all notices of default and demands for payment or any step or proceeding taken or commenced in connection therewith under a Contract shall be deemed to have been rescinded and of no further force or effect, provided that nothing herein shall be deemed to

excuse Antibe from performing its obligations under the Transaction Agreement or be a waiver of defaults by Antibe under the Transaction Agreement and the related documents.

15. **THIS COURT ORDERS** that from and after the Effective Time, any and all Persons shall be and are hereby forever barred, estopped, stayed and enjoined from commencing, taking, applying for or issuing or continuing any and all steps or proceedings, whether directly, derivatively or otherwise, and including without limitation, administrative hearings and orders, audits, declarations and assessments, commenced, taken or proceeded with or that may be commenced, taken or proceeded with against Antibe relating in any way to or in respect of any Excluded Assets, Excluded Liabilities or Excluded Contracts and any other claims, obligations and other matters that are waived, released, expunged or discharged pursuant to this Order.

16. **THIS COURT ORDERS** that from and after the Effective Time:

- (a) the nature of the Assumed Liabilities retained by Antibe, including, without limitation, their amount and their secured or unsecured status, shall not be affected or altered as a result of the Transaction or this Order;
- (b) the nature of the Excluded Liabilities, including, without limitation, their amount and their secured or unsecured status, shall not be affected or altered as a result of their transfer to ResidualCo;
- (c) any Person that prior to the Effective Time had a valid right or claim against Antibe under or in respect of any Excluded Asset, Excluded Contract or Excluded Liability (each an “**Excluded Liability Claim**”) shall no longer have such right or claim against Antibe but will have an equivalent Excluded Liability Claim against ResidualCo in respect of the Excluded Contract or Excluded Liability from and

after the Effective Time in its place and stead, and nothing in this Order limits, lessens or extinguishes the Excluded Liability Claim of any Person as against ResidualCo; and

- (d) the Excluded Liability Claim of any Person against ResidualCo following the Effective Time shall have the same rights, priority and entitlement as such Excluded Liability Claim had against Antibe prior to the Effective Time.

17. **THIS COURT ORDERS** that, as of the Effective Time:

- (a) ResidualCo shall be a company to which these proceedings apply; and
- (b) ResidualCo shall be added as a Respondent in these Proceedings and all references in any Order of the Court in respect of these Proceedings to: (i) a “Respondent” shall refer to and include ResidualCo; and (ii) “Property” shall include the current and future assets, licenses, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof, of ResidualCo (the “**ResidualCo Property**”), and, for greater certainty, each of the Charges, as defined in the Order of Justice Osborne dated April 22, 2024 (the “**Receivership Order**”), shall constitute a charge on the ResidualCo Property.

18. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “**BIA**”), in respect of

ResidualCo and any bankruptcy order issued pursuant to any such applications;
and

(c) any assignment in bankruptcy made in respect of ResidualCo,

the Transaction Agreement, the implementation of the Transaction (including without limitation the transfer and vesting of the Excluded Assets, Excluded Contracts and Excluded Liabilities in and to ResidualCo and any payments by or to the Purchaser, ResidualCo or the Receiver authorized herein shall be binding on any trustee in bankruptcy that may be appointed in respect of ResidualCo and shall not be void or voidable by creditors of ResidualCo, as applicable, nor shall they constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under this proceeding, the BIA or any other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

RECEIVER

19. **THIS COURT ORDERS** that nothing in this Order, including the release of Antibe from the purview of these Proceedings pursuant to paragraph 6(f) hereof and the addition of ResidualCo as a Respondent in these Proceedings, shall affect, vary, derogate from, limit or amend any rights, approvals and protections afforded to the Receiver in these Proceedings, and FTI shall continue to have the benefit of, any and all rights and approvals and protections in favour of the Receiver at law, the Receivership Order, any other Orders in these Proceedings or otherwise, including all approvals, protections and stays of proceedings in favour of FTI in its capacity as Receiver, all of which are expressly continued and confirmed.

20. **THIS COURT ORDERS** that no action lies against the Receiver by reason of this Order or the performance of any act authorized by this Order, except with leave of the Court following a motion brought on not less than fifteen (15) days' notice to the Receiver and its legal counsel. The entities related or affiliated with the Receiver or belonging to the same group as the Receiver (including, without limitation, any agents, employees, legal counsel or other advisors retained or employed by the Receiver) shall benefit from the protection granted to the Receiver under this paragraph.

21. **THIS COURT ORDERS** that notwithstanding anything contained in this Order, the Receiver, its employees and representatives are not and shall not be or be deemed to be, a director, officer, or employee of ResidualCo, *de facto* or otherwise, and shall incur no liability as a result of acting in accordance with this Order, other than any liability arising as a direct result of the gross negligence or wilful misconduct of the Receiver.

22. **THIS COURT ORDERS** that nothing in this Order shall constitute or be deemed to constitute the Receiver as receiver, assignee, liquidator, administrator, receiver-manager, agent of the creditors of or legal representative of ResidualCo.

RESIDUALCO

23. **THIS COURT ORDERS** that David Blair (the "**First Director**") is hereby authorized, *nunc pro tunc*, to act as a director and officer of ResidualCo and, in such capacity, is authorized to take such steps and perform such tasks as are necessary or desirable to facilitate the terms of this Order and the Transaction.

24. **THIS COURT ORDERS** that the First Director shall not incur any liability as a result of becoming a director or officer of ResidualCo, save and except any liability or obligation incurred as a result of gross negligence or wilful misconduct on his part.

RELEASE

25. **THIS COURT ORDERS** that effective upon the filing of an order discharging the Receiver (the “**Discharge Order**”), the Receiver (in its personal capacity and in its capacity as the Receiver), its counsel, and each of their respective affiliates, officers, directors, partners, employees, agents, and financial advisors, as applicable (collectively, the “**Receiver Released Parties**”) are hereby released and forever discharged from any and all present and future liabilities, claims (including, without limitation, claims for contribution or indemnity), indebtedness, demands, actions, causes of action, counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, taxes, recoveries, and obligations of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) that may be made against the Receiver Released Parties that relate to or arise out of any act, omission, transaction, dealing or other occurrence in respect of these proceedings, including in carrying out any incidental matters or carrying out the terms of any Order granted in these proceedings (collectively, the “**Receiver Released Claims**”), and any such Receiver Released Claims are hereby irrevocably and permanently released, stayed, extinguished, and forever barred and the Receiver Released Parties shall have no liability in respect therefore, save and except for any gross negligence or wilful misconduct on the part of the Receiver Released Parties.

SEALING

26. **THIS COURT ORDERS** that Confidential **Appendix “A”** and Confidential **Appendix “B”** to the Second Report are hereby sealed, confidential, and shall not form part of the public record, and each Confidential **Appendix “A”** and Confidential **Appendix “B”** shall be placed into a separate confidential exhibit book kept separate and apart from all other contents in the Court file, in sealed envelopes attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened after the Receiver’s Certificate is filed with the Court, or further Order of the Court.

GENERAL

27. **THIS COURT ORDERS** that in the event of a conflict between the terms of this Order and those of any other Order of this Court, the provisions of this Order shall govern.

28. **THIS COURT ORDERS** that, following the Effective Time, the Purchaser shall be authorized to take all steps as may be necessary to effect the discharge of the Claims and Encumbrances as against the Purchased Shares.

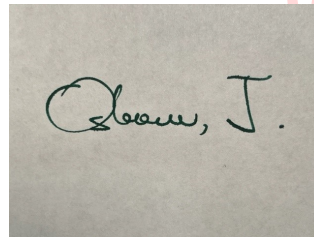
29. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

30. **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 ResidualCo, the Receiver and their respective 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 ResidualCo and to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this

Order, to grant representative status to the Receiver in any foreign proceeding, or to assist ResidualCo and the Receiver and their respective agents in carrying out the terms of this Order.

31. **THIS COURT ORDERS** that each of ResidualCo and 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.

32. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. prevailing Eastern Time on the date hereof without any need for entry and/or filing; provided that the transaction steps set out in paragraph 6 hereof shall be deemed to have occurred sequentially, one after the other, in the order set out in paragraph 6 hereof.

A rectangular box containing a handwritten signature in dark ink, which appears to read "Osborne, J.".

Digitally
signed by
Osborne J.
Date:
2025.01.30
16:52:21 -05'00'

Schedule A – Form of Receiver’s Certificate

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

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

B E T W E E N:

NUANCE PHARMA LTD.

Applicant

- and -

ANTIBE THERAPEUTICS INC.

Respondent

**IN THE MATTER OF AN APPLICATION UNDER SECTION 101 OF THE
COURTS OF JUSTICE ACT**

RECEIVER’S CERTIFICATE

RECITALS

A. Whereas on April 9, 2024, Antibe Therapeutics Inc. (“**Antibe**” or the “**Debtor**”) made an application pursuant to the *Companies’ Creditors Arrangement Act* (the “**CCAA**”) to the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) for creditor protection (the “**CCAA Proceedings**”). On the same day, the Court granted an Initial Order which, among other things: (i) granted a stay of proceedings up to and including April 18, 2024; and (ii) appointed Deloitte Restructuring Inc. as Court-appointed monitor of the business and financial affairs of Antibe (in such capacity, the “**Monitor**”).

B. Whereas on April 15, 2024, Nuance Pharma Ltd. (“**Nuance**”), responded with a cross-application objecting to the CCAA proceedings.

C. Pursuant to an endorsement of the Court dated April 22, 2024, FTI Consulting Canada Inc. was appointed as receiver and manager (the “**Receiver**”), without security, of the assets,

undertakings and properties of Antibe Therapeutics Inc. (“**Antibe**” or the “**Debtor**”). The appointment was confirmed to be effective pursuant to an order of the Court issued on April 22, 2024 (the “**Receivership Order**”).

D. Pursuant to the approval and reverse vesting order of the Court dated January 29, 2025 (the “**Order**”), the Court approved the Transaction Agreement between Antibe (“**Antibe**”) and Taro Pharmaceuticals Inc. (in such capacity, the “**Purchaser**”), dated January 15, 2025 (the “**Transaction Agreement**”), and the transaction contemplated therein (the “**Transaction**”), and ordered, *inter alia*, that: (i) all of Antibe’s right, title and interest in and to the Excluded Assets shall vest absolutely and exclusively in ResidualCo; (ii) all of the Excluded Assets, Excluded Contracts and Excluded Liabilities shall be transferred to, assumed by and vest in ResidualCo; (iii) all of the right, title and interest in and to the Purchased Shares shall vest absolutely and exclusively in the Purchaser free and clear of all Claims and Encumbrances; (iv) all Claims and Encumbrances shall be released and discharged from the Antibe Property; and (v) all Existing Shares of Antibe shall be cancelled and terminated without consideration, and the Purchased Shares issued to the Purchaser shall represent 100% of the issued and outstanding common shares of Antibe following such cancellation and issuance, all of the foregoing, in each case, to be effective upon the delivery by the Receiver to the Purchaser of a certificate of the Receiver that all conditions to closing have been satisfied or waived by the parties to the Transaction Agreement.

E. Capitalized terms not defined herein shall have the meaning given to them in the Order, including those defined by reference to the Transaction Agreement.

THE RECEIVER CERTIFIES the following:

1. That all conditions to closing have been satisfied or waived by the parties to the Transaction Agreement.

2. This Receiver's certificate was delivered by the Receiver at _____ on _____, 2025.

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

Per: _____

Name:

Title:

NUANCE PHARMA LTD.

AND

ANTIBE THERAPEUTICS INC.

Applicant

Respondent

IN THE MATTER OF AN APPLICATION UNDER SECTION 101 OF THE *COURTS OF JUSTICE ACT*

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

APPROVAL AND REVERSE VESTING ORDER

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Lawyers for the Receiver

NATIONAL BANK OF CANADA

- and -

DROP TECHNOLOGIES INC. et al.

Applicant

Respondents

Court File No. CV-25-00749775-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

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APPLICANT'S COMPENDIUM

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*Lawyers for the Applicant and
Proposed Receiver*