



No. B-130695  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE PROPOSAL OF ALLON THERAPEUTICS, INC.

NOTICE OF APPLICATION

**Names of applicant: Allon Therapeutics, Inc. ("Allon" or the "Company")**

To: The creditors of Allon

TAKE NOTICE that an application will be made by the applicants to the presiding judge at the courthouse at 800 Smith Street, Vancouver, British Columbia on Friday, July 5, 2013 at **2:00 p.m.** for the orders set out in Part 1 below.

**Part 1: ORDERS SOUGHT**

1. Order substantially in the draft form attached as **Schedule "A"** hereto.

**Part 2: FACTUAL BASIS**

**Background**

1. Allon is incorporated under the *Canada Business Corporations Act* (the "CBCA") and is a clinical-stage biotechnology company developing treatments for major neuro-degenerative conditions based on two proprietary technology platforms.
2. Allon has a wholly-owned subsidiary located in the United States, Allon Therapeutics, Inc. ("Allon US"), which is governed pursuant to the laws of Delaware.

**Allon's Clinical Studies**

3. Over the last two years, Allon has been primarily focused on the development of its lead candidate drug, Davunetide, designed for the treatment of a condition known as progressive supranuclear palsy ("PSP"). Davunetide is Allon's most clinically-advanced product but has not yet received regulatory approval for marketing and sale. Allon's other products are

in much earlier stages of the drug development process and require a number of further trials (and regulatory approvals) prior to being eligible for marketing and sale.

4. Prior to 2010, Allon had performed a number of clinical trials of Davunetide in the United States and Canada to determine the safety and efficacy of the compound in compliance with regulatory requirements. In order to facilitate Allon's application for regulatory approval to sell and market Davunetide, Allon was required to conduct a clinical trial to establish the efficacy and safety of the drug in patients suffering from PSP (the "PSP Trial"). Commencing in the fourth quarter of 2010, the Company began coordinating the PSP Trial and by October 2011 Allon had enrolled over 300 patients to participate in the PSP Trial.

5. The PSP Trial was also designed to examine a series of secondary and other exploratory endpoints to determine if Davunetide had any positive impact on those endpoints, which might impact future development.

#### **Potential Partnership Opportunities**

6. Both during and prior to the start of the PSP Trial, Allon sought out partnerships and joint venture opportunities with global pharmaceutical companies, regional neurology specialty companies, and companies focused on the orphan drug space. The orphan designation can be granted to drugs that target rare diseases. Allon engaged in detailed discussions with approximately twelve companies and invited them to conduct due diligence. Ultimately however, no credible offers resulted from these discussions.

7. Allon was advised that certain of the companies were prepared to re-examine potential deal structures if the results of the PSP Trial were positive.

8. During the PSP Trial, Allon raised approximately CDN \$15 million through considerable effort and meetings with investors in Europe, the U.S., and Canada. It was clear from these interactions, as well as discussions with various investment banks, that in the face of negative results from the PSP Trial, Allon would be essentially un-financeable.

#### **Results of the PSP Trial**

9. On December 18, 2012 the Company announced that the PSP Trial failed to demonstrate efficacy in the study group, based on the co-primary endpoints. Upon learning about these results, the Company conducted additional data analysis in the subsequent weeks. However, this analysis did not show any further efficacy or provide any greater clarity as to why the PSP Trial failed.

10. In addition, the results of the PSP Trial did not demonstrate any evidence of drug effect on the secondary or exploratory endpoints examined in that trial. The secondary and exploratory endpoints were included in the study to provide supporting data for the primary endpoints and information that could guide future development.

#### **Allon's Strategic Review of its Clinical Operations**

11. Following the failure of the PSP Trial, the Company commenced an evaluation of its strategic options and ceased funding any further research and development activities for Davunetide. Beginning in January 2013, the Company examined all reasonable options, including potential merger or acquisition transactions, selling Allon's assets and securing additional financing.

12. Based on its circumstances at that time, Allon undertook a broad assessment of these options and focused its efforts on locating parties interested in pursuing further work on the data and samples generated during the PSP Trial, or interested in acquiring Allon's pipeline products and/or its intellectual property portfolio generally.

13. Over the course of the next four months, Allon had discussions with approximately 20 interested parties. During this time, the Company continued to incur operating costs and faced declining liquidity as a result. As a result, the Company took immediate action to reduce its on-going operating expenses, including laying off a number of employees. Currently, the Company has six employees and as of June 15, 2013, will have four employees.

14. Although a number of those interested parties discussed potential opportunities with Allon, some of which conducted due diligence, none of them were interested in pursuing a transaction with Allon for a number of reasons, including:

- (a) the negative results of the PSP Trial and commercialization risks associated with Davunetide;
- (b) the requirement for additional capital raising to support further development of Davunetide and other pipeline products; and
- (c) the timeline required to effect a transaction given the Company's declining financial position.

15. In addition, Allon held discussions with several advisors and investment banks which had been previously contacted to seek assistance in locating potential buyers for some or all of the assets of the Company. Allon was advised by certain of the investment banks that had been previously contacted that Allon's options were limited as a result of the PSP Trial results. A number of the investment banks offered to assist with the search for potential partners, but stated openly that such a transaction was unlikely.

16. Following these discussions, it became clear that in light of the PSP Trial results and Allon's deteriorating financial circumstances that Allon was facing the prospect of bankruptcy. At that time, Allon's liabilities were far greater than its assets and Allon had little prospect of earning any revenue from its products in a timely manner.

17. In the spring of 2013, Allon progressed to an advanced stage of negotiations with two of the companies it had initially approached in early 2013. In respect of one company (the "**Potential Bidder**"), despite advanced negotiations and due diligence being undertaken, the Company had concerns over the ability of the Potential Bidder to effect a transaction within the timelines required. In addition, after further attempts to progress discussions, the Potential Bidder was ultimately not able or willing to proceed with a transaction.

18. On May 28, 2013 the Company entered into an agreement with Paladin Labs Inc. ("**Paladin**") to sell the Company for \$900,000 provided that, among other things, Allon filed a proposal under the *Bankruptcy and Insolvency Act* ("**BIA**") (the "**Paladin Transaction**").

19. In considering Allon's circumstances at that time, including the lack of alternative transactions available and Allon's liabilities and diminishing cash resources, Allon considered that it was in the best interests of the Company to enter into the Paladin Transaction.

### **The Paladin Transaction**

20. The Paladin Transaction will, in summary and generally speaking, effect a reorganization of the share capital of Allon which, if all of the conditions precedent are satisfied, will result in the cancellation of all existing Allon shares for \$1 and the issuance of new shares to Paladin or its designee in exchange for payment of \$900,000 to Allon. If the Paladin Transaction completes, Paladin will own all of the new issued and outstanding shares of Allon.

21. A number of conditions precedent are outlined in the Paladin Transaction, including the following:

- (a) Reorganization of Allon's share capital pursuant to section 191 of the CBCA, including the redemption and purchase for cancellation by Allon of all current issued and outstanding shares in its share capital;
- (b) Filing of a proposal under the BIA and obtaining all statutory approvals, including creditor approval and any necessary court order(s);
- (c) Termination of all existing employment agreements; and
- (d) Completion of due diligence.

22. Subject to the completion of the conditions precedent, Paladin may close the Paladin Transaction provided it pays \$900,000 to Allon, which is to be used by Allon in its proposal under the BIA for payment to Allon's unsecured creditors on a pro-rata basis.

23. The Paladin Transaction must close by August 1, 2013.

24. The Paladin Transaction contains an exclusivity provision which prohibits Allon from directly or indirectly soliciting or discussing any potential transaction with a third party for the purchase of Allon until July 31, 2013.

### **The Bankruptcy Proposal**

25. As noted above, Allon concluded that it was in its best interests of the Company to enter into the Paladin Transaction and seek creditor protection under the BIA given Allon's deteriorating financial circumstances and inability to locate any alternative transactions.

26. On May 29, 2012, Allon filed a proposal with the Office of the Superintendent of Bankruptcy (the "**Proposal**") in connection with the Paladin Transaction.

27. In connection with the filing of the Proposal, the trading of Allon's shares was halted for failure to meet the continued listing requirements of the TSX, including as a result of the BIA proceedings commenced by the Company. It is expected that the common shares will be delisted from the TSX.

28. As outlined in the most recent audited financial statements for the 2012 fiscal year, the Company incurred a net loss of \$14.92 million, compared to a net loss of \$12.77 million in 2011.

29. As noted above, the Company continues to incur operating costs and reported a comprehensive loss of \$1.07 million in the three months ended March 31, 2013.

30. Allon had \$3.39 million in unsecured liabilities outstanding and approximately \$172,000 in cash or cash equivalents at the time of the filing of the Proposal.

31. As reflected in the cash flow projection prepared by Allon's management for the period of May 27, 2013 to July 26, 2013, Allon's cash flow is expected to reduce to approximately \$2,400 by the end of this period. The projected expenses incurred during this period include operating costs, rent, payroll and funding for the costs of administering the Proposal process.

32. Attached hereto and marked as **Exhibit "E"** is a copy of the statement of affairs, dated May 29, 2013, filed with the Office of the Superintendent of Bankruptcy in conjunction with the Proposal (the "**Statement of Affairs**").

33. The Statement of Affairs confirms that the Company has no secured creditors and has few assets.

### **Developments Prior to the Creditors' Meeting**

34. On June 6, 2013, the Potential Bidder sent a letter to the Trustee indicating a potential willingness to make an offer in excess of the Paladin Transaction. However, prior to the meeting of creditors on June 12, 2013 that potential offer from the Potential Bidder was withdrawn.

### **Creditors' Meeting**

35. A meeting of the Company's creditors to vote on the Proposal was held on June 12, 2013 at the office of the Trustee. 100% of creditors that either voted by voting letter or attended and voted at the meeting voted in favour of the Proposal.

### **Part 3: LEGAL BASIS**

1. *Canada Business Corporations Act*, S.C. 1985, c. C-44, s. 191;
2. *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, ss. 54, 58-59; and
3. Supreme Court Civil Rules, Rule 8-1, 13-1;
4. The inherent and equitable jurisdiction of the Court.

### **Part 4: MATERIAL TO BE RELIED ON**

1. Affidavit #1 of Matthew Carlyle, June 13, 2013; and
2. Such further and other materials as counsel may advise and the Court may permit.

The applicants estimate that the application will take 20 minutes.

[*Check the correct box*]

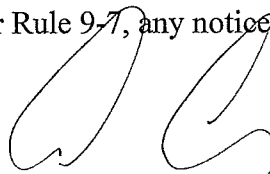
[ ] This matter is within the jurisdiction of a master.

This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
  - (i) you intend to refer to at the hearing of this application, and
  - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
  - (i) a copy of the filed application response;
  - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
  - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: June 19, 2013



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Signature of  
 applicant  lawyer for Allon  
Peter Rubin/Andrew Crabtree



To be completed by the court only:

Order made

in the terms requested in paragraphs ..... of Part 1 of this notice of application

with the following variations and additional terms:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of  Judge  Master

## APPENDIX

*[The following information is provided for data collection purposes only and is of no legal effect.]*

### **THIS APPLICATION INVOLVES THE FOLLOWING:**

*[Check the box(es) below for the application type(s) included in this application.]*

- discovery: comply with demand for documents
- discovery: production of additional documents
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE PROPOSAL OF ALLON THERAPEUTICS, INC.

ORDER MADE AFTER APPLICATION

BEFORE	)	THE HONOURABLE MR.	)	Friday, the 5 <sup>th</sup> day of July,
	)	JUSTICE SEWELL	)	2013
	)		)	
	)		)	

ON THE APPLICATION of Allon Therapeutics, Inc. ("**Allon**") coming on for hearing at 800 Smithe Street, Vancouver, British Columbia on the 3<sup>rd</sup> day of July, 2013, AND ON HEARING Peter Rubin and Andrew Crabtree on behalf of Allon, and those counsel listed on Schedule "A";

THIS COURT ORDERS that:

1. The time for service of the Notice of Application and Affidavit #1 of Matthew Carlyle, dated June 13, 2013 ("**Carlyle Affidavit**"), herein be and is abridged and that the Notice of Application is properly returnable today and service thereof upon any person other than those appearing on this application be and is hereby dispensed with.
2. Unless otherwise defined herein, any capitalized terms used in this Order shall have the same meaning as assigned to them under the proposal filed by Allon with the Superintendent of Bankruptcy on May 29, 2013 and attached as Exhibit C, to the Carlyle Affidavit (the "**Proposal**").
3. The dissemination of the Proposal and the "Trustee's Preliminary Report to Creditors", dated May 30, 2013, was duly effected in accordance with the provisions of the Bankruptcy and Insolvency Act ("**BIA**").

4. Proper notice of the Creditors' Meeting was given to the Creditors in accordance with the BIA.
5. The Creditors' Meeting was convened and held pursuant to the provisions of the BIA.
6. The Proposal has been approved by the Creditors representing a majority in number and two-thirds in value present and voting either in person or by voting letter at the Creditors' Meeting.
7. The terms of the Proposal are reasonable and calculated to benefit the general body of Creditors.
8. The Proposal is hereby approved and as at the Proposal Implementation Date, the Proposal is and shall be binding on all Creditors as affected by the Proposal.
9. The Articles of Reorganization, attached as Schedule A to the Proposal, are hereby approved and Allon is hereby authorized to file the Articles of Reorganization with the Director pursuant to Section 191 of the Canada Business Corporations Act. Upon receipt of the Certificate of Amendment, Allon is at liberty to proceed with the Reorganization as outlined in Article 5 of the Proposal.
10. Allon and any other interested parties are hereby granted leave to apply to this Court for such further advice, directions, or assistance, as may be necessary to give effect to the terms of the Proposal.

11. Endorsement of this Order by counsel appearing on this application, other than counsel for the Company, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

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Signature of  
 party  lawyer for Allon  
Peter Rubin/Andrew Crabtree

BY THE COURT.

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Registrar

**Schedule "A"**

**List of Counsel**

<b>Name of Counsel</b>	<b>Party</b>

