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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

Sorrento Therapeutics, Inc., derivatively on behalf of Immunotherapy NANTibody LLC,

Plaintiffs,

vs.

NantCell, Inc.; Patrick Soon-Shiong; and Charles Kim,

Defendants;

- and -

Immunotherapy NANTibody LLC,

Nominal Defendant

Case No.

DERIVATIVE COMPLAINT FOR:

(1) Unauthorized Acts;
(2) Breach of Contract;
(3) Breach of Fiduciary Duties;
(4) Abuse of Control;
(5) Corporate Waste;
(6) Unjust Enrichment

Plaintiff Sorrento Therapeutics, Inc. ("Sorrento"), derivatively on behalf of Immunotherapy NANTibody LLC ("NANTibody"), based upon personal knowledge as to all acts or events that it has undertaken or witnessed, and upon information and belief as to all others, brings this action against NantCell, Inc. ("NantCell") and its Directors and Officers Patrick Soon-Shiong ("Soon-Shiong") and Charles Kim ("Kim") (collectively, "Defendants"), and nominal defendant Immunotherapy NANTibody LLC. Subject to and without waiving its rights, privileges, and defenses, Sorrento hereby alleges the following:

I. INTRODUCTION

1. The "catch and kill" scheme of acquiring the rights to a damaging news story (the "catch"), and then paying the publisher to ensure it never becomes public (the "kill"), has been well-publicized recently. This case involves a far more egregious and damaging version of "catch and kill": the catching and killing of a cancer drug that—had it been brought to market as planned—would have saved patients, hospitals, and the United States government in excess of $1 billion.

2. The "catch and kill" operation at issue here was masterminded by billionaire inventor Patrick Soon-Shiong, and it involves his May 2015 acquisition from Sorrento of a drug called Cynviloq™—a bioequivalent to the blockbuster chemotherapy drug Abraxane®, which Soon-Shiong had invented and sold to Celgene Corp. ("Celgene") in 2010 for $2.9 billion. Through that acquisition, Soon-Shiong became Celgene's single largest individual shareholder, with well over $1 billion in Celgene stock and contingent value rights shares.

3. In November 2014, when Soon-Shiong approached Sorrento, Cynviloq™ had largely completed its expedited pathway to U.S. Food & Drug Administration ("FDA") approval and was positioned to enter the market as a direct competitor to Abraxane®. At the time, Abraxane® had virtually no competition: there was no bioequivalent or generic version of Abraxane® on the market that could equally treat the same types of cancers. This allowed Celgene to sell Abraxane® for an artificially high price—a single dose of Abraxane® currently retails for $1,378 in the United States—and to reap artificially high profits.

4. The entry of Cynviloq™ on to the market would have dramatically changed this situation. Indeed, in South Korea, where Cynviloq™'s overseas equivalent (known as Genexol-PM) is sold alongside Abraxane®, the price of Abraxane® has fallen to just $270 per dose, while Genexol-PM sells for $180 per dose. In other words, where Abraxane® has a competitor on the market, its price is driven down by ***over 80%***. Once approved for use in the United States, Cynviloq™ would have had a similar competitive effect on Abraxane®'s sales.

5. Cynviloq™'s approval and entry to the market by a competitor would therefore also have been financially devastating for Soon-Shiong personally, given the large amount of his wealth that was, and remains, tied up in Celgene.

6. Seeking to avoid these financial losses, Soon-Shiong approached Sorrento about arranging an acquisition of Cynviloq™. Sorrento Chief Executive Officer Dr. Henry Ji ("Ji") was receptive, and serious acquisition discussions commenced.

7. Initially, Soon-Shiong proposed to facilitate a deal whereby Celgene would acquire Cynviloq™—ensuring that it could offset any losses to sales of Abraxane® with sales of Cynviloq™. Ultimately, however, in early 2015, according to Soon-Shiong, Celgene determined that Federal Trade Commission regulations would likely prohibit its purchase of Cynviloq™, since it was to be the sole direct market competitor to Abraxane®.

8. Around this same time, Sandoz, one of the world's leading pharmaceutical companies that specializes in bringing generics and biosimilar drugs to market, also approached Sorrento about acquiring Cynviloq™. Following discussions, Sandoz made a competitive offer for Cynviloq™.

9. When Soon-Shiong heard about the potential Sandoz deal, he panicked. He realized that if Cynviloq™ were sold to Sandoz—a direct competitor to Celgene that had deep experience bringing biosimilars or generics like Cynviloq™ successfully to market—it could devastate the sales of Abraxane®, significantly damage Celgene's share price, and therefore personally cost Soon-Shiong hundreds of millions of dollars.

10. Therefore, after Celgene passed on the deal for Cynviloq™, Soon-Shiong proposed to Ji that Soon-Shiong would acquire Cynviloq™ from Sorrento through Soon-Shiong's own

NANT family of companies. Soon-Shiong told Ji that his non-competition agreement with Celgene had ended, and that given his experience successfully creating and marketing Abraxane®, Soon-Shiong would be the perfect person to help bring Cynviloq™ to market and turn it into a blockbuster drug. Ji believed Soon-Shiong's representations and believed he had found his trusted partner.

11. Ultimately, in May 2015, the parties agreed that Soon-Shiong's NantPharma, LLC ("NantPharma") would acquire Sorrento's subsidiary, IgDraSol, Inc. ("IgDraSol"), which held the Cynviloq™ assets. The deal was valued at over $1 billion, made up of over $90 million in cash up front and an additional $1.2 billion in "milestone payments," payable upon the completion of certain expected goals, including relevant FDA approvals.

12. Unfortunately, following initial excitement at the promise of bringing Cynviloq™ to market, by mid-2016, it became increasingly clear that Soon-Shiong had defrauded Sorrento. Soon-Shiong did not push forward with FDA approval, let critical patents lapse, and demonstrated zero interest in reaching the approvals the parties had agreed upon in their sale agreement.

13. As it turns out, Soon-Shiong's promises and statements about developing Cynviloq™ and bringing it to market were lies—ones intended to lure Sorrento into giving up Cynviloq™ and to ensure that Cynviloq™ would never come to market, thereby protecting Soon-Shiong's billion-dollar interest in Celgene and Abraxane®.

14. Today, Abraxane® continues to be sold without a competitor, and patients, hospitals, and the government—not to mention Sorrento and NANTibody—continue to pay a steep price.

15. But the story does not end there. Not content with having completed the "catch and kill" and having buried an efficient, effective, and affordable cancer drug at the expense of patients, the government, and Sorrento, Soon-Shiong subsequently orchestrated a secret, illegal transaction to get back the money he had paid for Cynviloq™ in the first place.

16. In May 2015, concurrent with the Cynviloq™ acquisition by Soon-Shiong's NantPharma, Soon-Shiong and Sorrento formed Immunotherapy NANTibody LLC ("NANTibody")—a joint venture dedicated to non-chemotherapeutic, immunotherapeutic antibody

cancer treatment research and development. At Soon-Shiong's request, Sorrento contributed $40 million of the $90 million it received from the Cynviloq™ sale to this joint venture.

17. Approximately two years later, on July 2, 2017, Soon-Shiong, along with his Chief Legal Officer Charles Kim, signed a secret deal to pay over $90 million to NantPharma from the NANTibody joint venture and to have NantPharma transfer the Cynviloq™ assets into NANTibody. The transaction drained the NANTibody joint venture of nearly all of its contributed capital—including, most critically, nearly all of Sorrento's $40 million contribution.

18. Defendants Soon-Shiong and Kim executed this transaction without notice to the NANTibody board, without convening any NANTibody board meeting, and without any third-party valuation. All that there was to document this over $90 million transaction was a two-page assignment agreement, signed by Soon-Shiong and Kim—both of whom had conflicts that precluded them from entering into the agreement as a matter of law. It wasn't until months later, when trying to close their year-end books, that Sorrento learned of the secret scheme and the significant loss of capital.

19. Through this litigation, Sorrento seeks, among other things, a declaration that the agreement between NantPharma and NANTibody is void, and an injunction to have NANTibody recover the more than $90 million drained from its account. This would allow NANTibody to return to the business it was devised to do: research, develop, and bring to market innovative immunotherapies to win the battle against cancer. On behalf of NANTibody, Sorrento also seeks an injunction barring Soon-Shiong and Kim from serving as NANTibody directors or officers.

II. THE PARTIES

A. Plaintiffs

20. Sorrento Therapeutics, Inc. is a San Diego, California-based clinical stage, antibody-centric biopharmaceutical company developing new therapies to turn malignant cancers into manageable and possibly curable diseases. Its mission is to develop therapeutic approaches that extend and enhance cancer patients' lives by reducing the malignancy of life-threatening tumors, improving the safety of current treatments, and by bringing novel solutions to make living with cancer more tolerable. Sorrento is and has at all relevant times been a 40% shareholder of

NANTibody. Sorrento is also a 2.8% shareholder of NantCell, Inc.; its share is worth approximately $105 million.

B. Defendants

21. NantCell, Inc. is a Culver City, California-based subsidiary of NantWorks, LLC ("NantWorks"). NantCell was formed in 2014 under the laws of Delaware for the purpose of discovering, developing, and marketing immunology-based treatments for diseases. NantCell is a 60% shareholder of NANTibody.

22. Patrick Soon-Shiong is the Chief Executive Officer and majority shareholder of NantWorks, the Chief Executive Officer and majority shareholder of NantPharma, the Chief Executive Officer and majority shareholder of NantCell, and NantCell's designated Board Member of NANTibody. All of these entities are headquartered in Culver City, California. Soon-Shiong resides in Los Angeles County, California.

23. Charles Kim is the Chief Legal Officer of NantWorks, the Chief Compliance Officer of NantWorks, the General Counsel of NantPharma, the General Counsel of NantCell, and the General Counsel of NANTibody. Kim resides in Los Angeles County, California.

C. Nominal Defendant

24. Immunotherapy NANTibody LLC is a closely-held corporation based in Culver City, California and organized under the laws of Delaware. Its sole members are Sorrento and NantCell. NANTibody was organized to research, develop, and market several antibodies for immunotherapeutic approaches to cancer treatment using both Sorrento's proprietary library of antibodies, a Phase III compound contributed by NantCell, and NantWorks' proprietary patient tumor mapping systems.

III. JURISDICTION AND VENUE

25. The Court has personal and subject matter jurisdiction over this action. This action seeks equitable relief for claims construed under Delaware common law. The amount in controversy, exclusive of interest and costs, exceeds the jurisdictional minimum of this Court. All parties to this dispute are California residents: Sorrento is based in San Diego, NANTibody and

NantCell are based in Culver City, and Soon-Shiong and Kim reside in Los Angeles County. Moreover, Defendants' principal place of business is in Los Angeles County, California.

26. Venue is proper in this Court. A substantial part of the events or omissions giving rise to Plaintiff's claims occurred in Culver City, California, which is within this Court's jurisdiction, and any relief granted by this Court will have a substantial impact on corporations located within California. Defendants' principal place of business and the locus of Defendants' witnesses and documents are in Culver City, California.

27. Pursuant to section 11.9.3 of the NANTibody Limited Liability Company Agreement, any member of NANTibody "may seek equitable relief if any provision of this Agreement is not performed in accordance with its terms." *See* Exhibit 1 (NANTibody Limited Liability Company Agreement) (hereinafter, the "NANTibody Agreement"). An action seeking such relief is exempted from the arbitration provision of section 11.9.2 of the NANTibody Agreement.

IV. FACTUAL BACKGROUND

A. The Chemotherapeutic Drug Market and Abraxane®'s Dominance

28. Since it was first approved for medical use in 1992, patients in the United States with certain advanced metastatic cancers have been treated with a chemotherapy drug called Taxol (paclitaxel). Until 2005, paclitaxel regimens were typically grueling, due in part to the substance with which generic paclitaxel is bound: a form of castor oil called Cremaphor® that can cause serious allergic reactions. As a result, it was typically necessary to combine the therapy with the administration of antihistamines and steroids. However, many patients found that combining generic paclitaxel with additional steroids and antihistamines was intolerable.

29. In 2005, a newer form of paclitaxel called by a generic name "nab-paclitaxel," which had been invented and patented by Defendant Soon-Shiong, was approved by the FDA. Nab-paclitaxel is a small molecule paclitaxel that is coated with a human circulated blood protein, albumin. It carried the promise of fewer side effects than original Taxol, as well as the promise of avoiding additional medications to counter those side effects or other adverse drug reactions. The

opportunity for profit was enormous. Nab-paclitaxel quickly began selling worldwide under the name "Abraxane®."

30. Abraxane® was a major commercial success. In 2010, just five years after FDA marketing approval, Soon-Shiong sold his company that held the Abraxane® assets, Abraxis BioScience, to Celgene. The sale was worth approximately $2.3 billion in cash and Celgene stock, plus up to an additional $600 million in milestone payments to be paid pursuant to contingent value rights shares redeemable when Abraxane® was approved by the FDA for new indications (e.g., treatment of other cancers) or when sales of Abraxane® reached certain levels. Thus, in total, the deal was worth up to $2.9 billion. It also made Soon-Shiong Celgene's largest single individual shareholder.

31. Today, Abraxane® is the most expensive paclitaxel chemotherapy purchased by hospitals and paid for by Medicare and private insurance. The cost of a course of Abraxane® (as paid for by insurance and federal and state government health programs) is nearly ***two hundred times*** more than a similar course of the generic paclitaxel formulation, known as Taxol.

32. According to data released by the Center for Medicare and Medicaid Services, the U.S. government, through Medicare Parts B and D, paid $280 million in 2016 to treat over 8,600 beneficiaries with Abraxane®. Spending on generic paclitaxel for that same year was $4.1 million, to treat 27,040 beneficiaries—more than three times as many patients.

33. In 2018, Celgene reported nearly $700 million in revenue from Abraxane® sales in the United States alone.

B. <u>Cynviloq™'s Threat to Abraxane®'s Market Dominance</u>

34. In 2013, Sorrento became the owner of IgDraSol, a small pharmaceutical company headquartered in Fontana, California dedicated to the treatment of cancer. IgDraSol had an exclusive license and distribution agreement for North American and European distribution of Cynviloq™, a micellular paclitaxel formulation chemotherapy drug sold outside the United States under the brand name "Genexol-PM." Outside of the United States, and particularly in South Korea, Cynviloq™ is approved to treat non-small cell lung cancer and metastatic breast cancer.

35. Cynviloq™ is composed of a nano-particle size paclitaxel active ingredient that is solubilized in a micellular formulation (as opposed to Abraxane® or nab-paclitaxel that is solubilized by a human serum albumin coating). Paclitaxel is particularly effective in targeting metastatic cancers. As IgDraSol scientists knew, and as Sorrento understood, Cynviloq™ and Abraxane® share the same molecule active pharmaceutical ingredient (API), paclitaxel, and thus both are effective treatments to reduce tumor size. Cynviloq™, like Abraxane®, is also far more desirable for patients than generic paclitaxel because both formulations of paclitaxel produced far fewer side effects.

36. In the original paclitaxel formulation, Taxol, paclitaxel had to be bound with Cremaphor® to make the drug water soluble for entry into the bloodstream. Cremaphor® is a form of castor oil, which is known to cause serious allergic reactions in patients. As a result, on top of a taxing taxane medication regimen, patients taking paclitaxel had to be treated beforehand with steroids and antihistamines. The Abraxane® and Cynviloq™ paclitaxel formulations do not require an emulsifier like Cremaphor®. Thus, patients taking the Abraxane® or Cynviloq™ paclitaxel formulations do not experience the allergic reactions and side effects common with generic Taxol paclitaxel formulations and do not require additional medications for its administration.

37. The Abraxane® and Cynviloq™ paclitaxel formulations also have the added benefit of avoiding other generic Taxol side effects, like post-administration neuropathy or numbness. With both the Abraxane® and Cynviloq™ formulations, patients can receive the same chemotherapeutic paclitaxel benefit without taking additional drugs to address the formulation side effects, without risking allergic-like reactions, and for some, without any numbing side effects.

38. Cynviloq™ also has several important advantages over Abraxane®. While Abraxane® uses a human protein derived from human blood called albumin that is susceptible to contamination and is "sticky" to plastic infusion bags and catheters, Cynviloq™ uses a micellar copolymer (a synthetic agent) to solubilize the API paclitaxel, avoiding Abraxane®'s problems of contamination and sticking to plastic intravenous infusion bags and catheters. Another added benefit to Cynviloq™'s formulation is that patients can tolerate higher doses. This could mean fewer rounds of chemotherapy or higher tolerated doses of paclitaxel without side effects than with

either the generic Taxol or Abraxane® paclitaxel formulations, resulting in considerable quality of life improvements. In other words, given its efficient drug active delivery, stable polymer, and patient tolerance, Cynviloq™ could be as effective at treating cancer with fewer side effects.

39. Abraxane® is also stunningly expensive. One day of treatment for metastatic breast cancer—one of Abraxane®'s most prescribed uses—costs patients over $5,374. The same one-day of treatment with Cynviloq™, were it to have been sold in the United States, would have cost approximately $700.

40. Critically, in markets where Genexol-PM—Cynviloq™'s overseas brand name—is sold, Abraxane® is far less expensive. In South Korea, for instance, Genexol-PM retails for $180 per 100 mg vial while Abraxane® retails for $270 per 100 mg vial. In the United States, that same dose of Abraxane® retails for $1,378 per 100 mg vial. In other words, where Abraxane® has a competitor in its paclitaxel formulation market segment, ***its price is driven down by over 80%***.

41. Once approved for use in the United States, Cynviloq™ would have had a similar competitive effect on Abraxane®'s sales. The savings to patients, hospitals, and the U.S. government could have been over $4 billion.[1]

C. Cynviloq™ Approaches FDA Approval and Commercialization

42. In 2014, even though Cynviloq™ was widely used outside the United States under the brand name Genexol-PM, it was not yet approved for use in the United States. Fortunately for patients, as of 2015, Cynviloq™ was on a fast track toward FDA approval through the "505(b)(2)" regulatory pathway.

1. Overview of the 505(b)(2) Process

43. The 505(b)(2) new drug application (NDA) process is an FDA drug approval pathway created by the Hatch-Waxman Act of 1984 as an alternative to the traditional 505(b)(1) NDA pathway. The 505(b)(2) pathway was created to help pharmaceutical companies avoid

[1] *See* IQVIA, "Global Oncology Trends 2018: Innovation, Expansion, and Disruption," May 24, 2018, available at https://www.iqvia.com/institute/reports/global-oncology-trends-2018#reportdeepdive.

unnecessary duplication of studies performed on previously-approved "bioequivalent" drugs (called "reference" or "listed" drugs).

44. Under the 505(b)(2) NDA process, the FDA is permitted to reference existing clinical safety and efficacy data developed for the reference drug when considering a proposed new product. The applicant for a new drug product, e.g., a new formulation of an existing active agent (such as paclitaxel) must provide data that establishes a "bridge" to the referenced drug (such as comparative bioavailability data establishing bioequivalence), rather than a full new set of clinical safety and efficacy data produced for the NDA applicant. A drug approved through the 505(b)(2) process must still meet the normal safety and effectiveness standards, but at least some of the information required for approval (such as information on the active ingredient) can come from studies that have already been conducted for the reference drug.

45. As a result, the 505(b)(2) process is generally a much less expensive and faster route to commercialization approval than the traditional 505(b)(1) process. While development and approval through the traditional 505(b)(1) process can take well more than a decade, a 505(b)(2) drug can be developed and reach FDA approval in as little as 30 months.

46. The 505(b)(2) process has been used regularly over the past 35 years, and it is becoming an increasingly common path to new drug approval. In 2017, 63 drugs were approved by the FDA under the 505(b)(2) pathway, representing a 40% increase over the prior year.

47. The 505(b)(2) process has been the pathway by which several critical cancer drugs have been brought to market. For example, Zuplenz®, which prevents post-operative, chemotherapy and radiation-induced nausea and vomiting, was approved through the 505(b)(2) process in 2010 based on clinical data for Zofran, an approved drug. Bendeka®, which treats certain patients with chronic lymphocytic leukemia and those with indolent B-cell non-Hodgkin lymphoma, was approved through the 505(b)(2) process in 2010 based on clinical data for Treanda®. Bendeka® has been an enormous success story: after it was launched in January 2016, it captured 70% of the total market in its first quarter.

48. Significantly, Abraxane® itself was approved through the 505(b)(2) process. Abraxane® is a bioequivalent of the generic paclitaxel formulation (originally sold under the brand

name "Taxol"). While Abraxane® is formulated in a different form than Taxol—with human blood protein coating the paclitaxel particles—the recommended dosages and indications are all identical. Each new indication for which Abraxane® has been approved is the result of a new 505(b)(2) application.[2]

2. Cynviloq™ Nears Final FDA Approval Under 505(b)(2)

49. By 2015, Cynviloq™ was well along the path towards FDA approval through the 505(b)(2) process. The reference formulation in the completed comparison bioequivalence study was Abraxane®.

50. In August 2013, following a meeting between IgDraSol and the FDA the prior month, the FDA approved IgDraSol's proposal to pursue the 505(b)(2) bioequivalence regulatory submission pathway for Cynviloq™, using Abraxane® and Taxol as reference drugs. The FDA's approval of the 505(b)(2) bioequivalence regulatory submission pathway for Cynviloq™ was based on the multiple Phase I, Phase II, and post-market clinical studies that IgDraSol and its Licensor in South Korea, Samyang Corporation, had at that time already conducted to study Cynviloq™.

51. The FDA's approval of the Cynviloq™ bioequivalence clinical trial laid out a clear path toward FDA marketing approval for Cynviloq™ under 505(b)(2): to receive approval, IgDraSol would need to complete a bioequivalence clinical trial of Cynviloq™ compared to Abraxane® with patients in need of a paclitaxel treatment drug, such as metastatic breast cancer and non-small cell lung cancer patients. The clinical trial would use Abraxane® as a reference drug, and it was designed to show that Cynviloq™ was "bioequivalent" to Abraxane®.

52. Showing bioequivalence involves determining, among other things, whether the formulations deliver the same or similar (bioequivalent) active paclitaxel ingredient delivered at the same rate intravenously, and whether the extent of paclitaxel distribution is not significantly different. If IgDraSol's clinical trial showed that Cynviloq™ and Abraxane® were bioequivalent, then Sorrento could rely largely on existing clinical data on Abraxane® and Taxol to secure FDA

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[2] *See, e.g.*, FDA Center for Drug Evaluation and Research, Approval Package for Abraxane®, Oct. 11, 2012, available at https://www.accessdata.fda.gov/drugsatfda_docs/nda/2012/021660Orig1s031.pdf

approval under the 505(b)(2) pathway. This would be significantly faster and less expensive than having to conduct reams of new clinical trials for Cynviloq™ specifically.

53. With the FDA having approved the use of the 505(b)(2) bioequivalence pathway for Cynviloq™, Sorrento—which had acquired IgDraSol—initiated the pivotal clinical trial of Cynviloq™ in March 2014. The trial was referred to as TRIBECA™ (TRIal designed to evaluate BioEquivalence between Cynviloq™ and Albumin-bound paclitaxel), and it enrolled 111 patients globally to test the bioequivalence of Cynviloq™ and Abraxane®. As required by the FDA, that study was conducted under an Investigational New Drug ("IND") application, sponsored by Sorrento and filed with the FDA.

54. In early May 2015, Sorrento announced positive results from recently-analyzed data from the TRIBECA™ study. The data showed that Cynviloq™ was bioequivalent to Abraxane®, the key requirement to secure FDA marketing approval under 505(b)(2). With bioequivalence data now in place for the Cynviloq™ micellular paclitaxel formulation, FDA approval was within sight.

55. All that was left to do was for Sorrento to file its final NDA submission to the FDA. Because Cynviloq™ and Abraxane® had been shown to be bioequivalent, Sorrento would have relied primarily on existing Abraxane® and Taxol data to satisfy other NDA requirements, as permitted by the 505(b)(2) process. Sorrento had decided—and would later, in discussions with Soon-Shiong, agree—to prepare the NDA for Cynviloq™ no later than late 2015. Cynviloq™ was thus expected to launch to the U.S. market in 2016.

56. Bringing Cynviloq™ to market for treatment of metastatic breast cancer and non-small cell lung cancer would only be the beginning. After Cynviloq™'s initial 505(b)(2) application was approved, Sorrento expected to submit further 505(b)(2) applications for multiple other indications for Cynviloq™. In particular, Cynviloq™ could be used effectively in combination therapies involving Stage IIIB/IV Pancreatic cancer and Stage III non-small cell lung cancer. Many of the combinations envisioned by Sorrento involved anti-PD-1 or anti-PD-L1—immunotherapies already under development by Sorrento. Cynviloq™'s future was bright.

57. With FDA marketing approval close, Cynviloq™ was poised to become the first competitor to Abraxane® in the U.S. market segment. Cynviloq™ would be more affordable than,

and at least as safe and effective as, Abraxane®. Other pharmaceutical companies, understanding the size of this market segment dominated by Abraxane® and the central role that Cynviloq™ was set to play, sensed an opportunity.

D. Soon-Shiong Attempts to Use Celgene to Acquire Cynviloq™, and Faces Competition from Sandoz

58. Soon-Shiong had an enormous financial interest in Abraxane® through the milestone payments to which he was entitled via Celgene and through his stock in Celgene. When he learned through, George Uy ("Uy"), a former colleague who was then at Sorrento, that Sorrento was interested in selling the Cynviloq™ assets, he sensed an opportunity to acquire the assets and prevent them from reaching a competitor's hands.

59. Beginning in November 2014, Soon-Shiong attempted to facilitate a deal whereby either Celgene or one of his own companies would acquire the Cynviloq™ assets.

60. Throughout December 2014, Soon-Shiong kept in close contact with Ji and Uy as he attempted to arrange for an acquisition of IgDraSol. Soon-Shiong made clear that he was excited about the possibility of either Celgene or one of his own companies acquiring the rights to Cynviloq™, telling Ji that he would be back in California in a few days to "make it happen" (referring to finalizing a deal for Cynviloq™).

61. In an effort to push a deal forward, Soon-Shiong wrote to the Sorrento team, "let's complete Abierto" (using a code name for the project to acquire Cynviloq™) and demanded the regulatory files "ASAP." He received them, including meeting minutes from the most recent meeting with the FDA regarding the IND application for Cynviloq™ and its progress towards a bioequivalence approval for the U.S. market. He also received access to Cynviloq™'s data room after signing a non-disclosure agreement.

62. In late December, while a deal with Celgene or Soon-Shiong remained uncertain, Ji received another offer for the rights to Cynviloq™ from Sandoz—a leading pharmaceutical company specializing in generic pharmaceuticals and biosimilars such as Cynviloq™. Sandoz was also one of the manufacturers of the generic paclitaxel. Sandoz offered Sorrento competitive terms

for Cynviloq™. The prospect that Sandoz, which had experience manufacturing generic paclitaxel, might gain the rights to Cynviloq™ terrified Soon-Shiong. And he responded quickly.

63. On February 10, 2015, hoping to bring a deal within sight, Soon-Shiong arranged a presentation by Sorrento representatives to Celgene. Sorrento prepared a PowerPoint slide deck that Soon-Shiong presented to Celgene's representatives. The slide deck explained why Cynviloq™ was well-positioned to take a share of what was a multi-billion-dollar market from other paclitaxel therapies, including Abraxane®. The slide deck also explained why the results of the TRIBECA™ study were likely to support an accelerated pathway to market under 505(b)(2).

64. However, after months of introductions, meetings, and negotiations, Soon-Shiong communicated to Ji that Celgene was unable to purchase Cynviloq™. Soon-Shiong explained to Ji that Celgene's in-house and outside counsel had advised it that an acquisition that consolidated control of Abraxane® and Cynviloq™ in one company would raise anti-competitive concerns that could lead the U.S. government to block the acquisition.

65. Meanwhile, Sandoz was continuing to press Sorrento to complete a deal for Cynviloq™.

E. Soon-Shiong Acquires Cynviloq™ Through His Own Company

66. Soon-Shiong was worried about Sandoz (or another competitor) purchasing Cynviloq™, bringing it to market, and cutting into his interest in Abraxane®.

67. He knew that if he could acquire Cynviloq™ while holding on to his Abraxane® interest, he would profit—either by killing off Cynviloq™ (and thus fortifying Abraxane®'s market position) or by bringing Cynviloq™ to market and profiting on both sides (from both Abraxane® and Cynviloq™).

68. Thus, Soon-Shiong offered to buy Cynviloq™ through his own network of companies. Soon-Shiong explained to Ji that Soon-Shiong's non-compete agreement with Celgene had ended, and thus he was free to make this acquisition and help make Cynviloq™ a success. Soon-Shiong said that there was no one better to accomplish this task, given that Soon-Shiong had invented Abraxane®, brought it to market, and turned it into a success.

69. From Sorrento's perspective, this seemed like a win-win deal. Even if Soon-Shiong maintained an interest in Abraxane®, Ji and others at Sorrento firmly believed that Soon-Shiong had a tremendous incentive to profit on both sides by commercializing Cynviloq™ while still reaping proceeds from Abraxane®, and they trusted Soon-Shiong and his repeated representations. The alternative was that Sorrento would sell Cynviloq™ to a Celgene competitor, which would have had significant financial downside for Soon-Shiong with zero upside.

70. Soon-Shiong directly sold Sorrento on the deal. Soon-Shiong explicitly stated that he wanted to bring Cynviloq™ to market and repeatedly told Sorrento how successful Cynviloq™ could be—particularly combined with Soon-Shiong's business acumen and experience in the market. As far as those at Sorrento understood, their products were getting an influx of both cash and intellectual capital to bring their critical chemotherapy and immunotherapy to the United States and global markets. And all signs from Soon-Shiong pointed that way.

71. Soon-Shiong and Sorrento struck a deal on May 1, 2015. Sorrento would sell IgDraSol, including all of the Cynviloq™ assets, to NantPharma, a Soon-Shiong-controlled company, for $90,050,000 up front. In addition, Sorrento would receive $120 million in contingent milestone payments related to the completion of Phase III clinical trials for gastric, ovarian, prostrate, melanoma, bladder, and pancreatic cancer. Moreover, $500 million would be paid in milestone payments for FDA approvals related to each of those cancers. Finally, under these binding terms, NantPharma would pay an additional $600 million to Sorrento when Cynviloq™ achieved milestones relative to net sales as they exceeded $500 million.[3]

72. Sorrento had struck a strong deal, under which it would have significant exposure to the upside of Cynviloq™'s development and commercialization. In all, the sale of Cynviloq™ had

[3] The "Stock Sale and Purchase Agreement" executed between Sorrento and NantPharma on May 14, 2015, which contained the terms of the sale, was made public when it was disclosed to the Securities and Exchange Commission in a Form 10-Q filing on August 7, 2015. *See* http://investors.sorrentotherapeutics.com/node/8606/html#SIGNATURES.

(Continued...)

a total contemplated value to Sorrento of nearly $1.3 billion, without including the additional value of good will and more.

73. Congratulations emails abounded, and Soon-Shiong announced a new name for Cynviloq™ ("Amarxol") as well as having "locked up" a domain name.[4]

F. Joint Ventures Are Created as Part of the Cynviloq™ Acquisition

74. As part of the Cynviloq™ acquisition, Sorrento and Soon-Shiong's companies formed two new joint ventures: Immunotherapy NANTibody LLC ("NANTibody") and NantCancerStemCell, LLC ("NantCancerStemCell").

75. NANTibody was formed as a joint venture between Sorrento and NantCell. The putative purpose of the NANTibody joint venture was the development and commercialization of immunotherapies to target a variety of diseases, both autoimmune and cancer-related.

76. Under the terms of the NANTibody Agreement—executed on June 11, 2015, shortly after the sale of IgDraSol to NantPharma—Sorrento contributed $40 million, paid directly out of its proceeds from the sale of IgDraSol, while its joint venture partner, NantCell, contributed $60 million. *See* Exhibit 1.

77. NantCancerStemCell was formed as a joint venture between Sorrento and NantBioScience, Inc. (now known as NantBio, Inc.) ("NantBio"). The putative purpose of the NantCancerStemCell joint venture was the discovery, acquisition, research, development, and commercialization of proprietary drug therapeutics.

78. Under the terms of the NantCancerStemCell LLC agreement—also executed shortly after the sale of IgDraSol—Sorrento contributed $20 million, paid directly out of its proceeds from the sale of IgDraSol, while its joint venture partner, NantBio, contributed $60 million.

G. Soon-Shiong Receives Multiple Investments from Celgene, Which Owns Abraxane®

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[4] The name Amarxol was temporary: by July 2015, Soon-Shiong had again renamed Cynviloq™ to "Nant-Paclitaxel," intentionally misleading Sorrento into believing that he was actively developing it.

(Continued...)

79. Conspicuously, just one day before the sale of IgDraSol was executed on May 14, 2015, and with the Cynviloq™ assets soon to be under Soon-Shiong's complete control, Soon-Shiong received $75 million from Celgene in the form of private investment in NantCell—a company he had formed and controlled—at a valuation of $2.9 billion.[5]

80. On July 31, 2015, NantKwest, Inc., which was also fully controlled by Soon-Shiong, announced that Celgene—already an existing stockholder in the company—had purchased an additional $17 million of NantKwest common stock in a separate private placement concurrent with NantKwest's initial public offering.[6]

81. To this day, Celgene continues to make new investments in Soon-Shiong-controlled NantCell. Even after a loss of approximately 95% of its NantKwest investment between mid-2015 and the end of 2018, Celgene nevertheless decided to invest in NantCell again in December 2018. Specifically, on December 19, 2018, Celgene completed a crossover funding round of $30 million in NantCell at a $4 billion valuation, bringing its overall investment in the company to $105 million (including the $75 million it invested in the company in 2015).[7] Celgene now owns 2.8% of the company.

82. Celgene, through NantCell's ownership in NANTibody and through NANTibody's acquisition of IgDraSol, has acquired an ownership interest in Cynviloq™, a direct competitor to Abraxane®.

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[5] *See* Business Wire, "NantCell Announces New Celgene Investment," Jan. 4, 2019, available at https://www.businesswire.com/news/home/20190104005541/en/NantCell-Announces-New-Celgene-Investment.

[6] *See* Business Wire, "NantKwest Announces Closing of Initial Public Offering and Full Exercise of Underwriters' Option to Purchase Additional Shares," July 31, 2015, available at https://www.businesswire.com/news/home/20150731005720/en/NantKwest-Announces-Closing-Initial-Public-Offering-Full.

[7] *See supra* fn.5.

H. Defendants Fail to Direct, Manage, or Otherwise Maintain the NANTibody Joint Venture

83. While Sorrento observed the terms of the NANTibody Agreement (including renewing patents on its various compounds), NantCell, its joint venture partner, failed to perform any of its obligations. NantCell named only Soon-Shiong as the sole Member of its Board of Directors. As holder of three of the five the seats on the NANTibody Board of Directors, Soon-Shiong failed to call a single Board meeting.

84. After receiving a total of $100 million in its capital account, NANTibody, controlled by NantCell and under Soon-Shiong's direction, performed no functions relevant to its purpose. Indeed, no expenditures were made to support research in the NANTibody name.

85. Sorrento, meanwhile, had fulfilled its contractual obligations under the NANTibody Agreement with respect to protecting the patents of the compounds it had contributed to the joint venture and with respect to shipping new compounds to NantCell for research. NantCell continued to operate on its own behalf, conducting immunotherapy research on Sorrento's proprietary compounds pursuant to an exclusive license agreement between the parties.

86. In February 2016, Sorrento complained to Kim, General Counsel of NANTibody, regarding NantCell's failure to fulfill its obligations to Sorrento in the face of Sorrento's good-faith fulfillment of its obligations to NantCell. Kim brushed off the obligations, telling the Sorrento employee to watch his tone and that Kim was "reserving all of [his] rights."

I. Soon-Shiong and NantPharma's Secret Plan to "Kill" Cynviloq™ Begins to Reveal Itself

87. During this same period, Soon-Shiong and the officers of NantPharma were making repeated misrepresentations regarding their continued intent to develop Cynviloq™ and to bring it to market. Specifically, among other things, Soon-Shiong falsely represented to Sorrento that NantPharma would develop and commercialize an immunotherapy treatment involving a Sorrento immunotherapy unit and Cynviloq™.

88. Unbeknownst to Ji and Sorrento, during this period, Soon-Shiong had already planned *not* to develop and commercialize such an immunotherapy treatment, and he was preparing

to let Cynviloq™'s patents lapse. That is, Soon-Shiong was secretly executing his plan to "kill" Cynviloq™.

89. Eventually, signs that Soon-Shiong's prior representations and promises had been false began to appear. For example:

a. Although Sorrento had delivered a complete dataset for NDA preparation for Cynviloq™ to NantPharma by November 2015, NantPharma failed to file the NDA to get Cynviloq™ approved for commercialization. As a result of its failure, NantPharma allowed a critical Samyang-issued patent for Cynviloq™ to expire in September 2016. U.S. Patent No. 6,322,805, which covered formulation composition for Cynviloq™, could have had its term extended beyond its September 2016 expiration date under the Hatch-Waxman Act if Cynviloq™ had been approved by the FDA prior to the expiration date. Sorrento had finalized and transferred a complete dataset for an NDA for expedited filing such that the NDA would be approved prior to patent expiration. However, NantPharma failed to file the NDA. By not filing the NDA before the Samyang-issued patent expired, NantPharma allowed this key product formulation patent to expire in September 2016.

b. NantPharma failed to pay invoices related to Cynviloq™'s NDA filing. Indeed, as of December 2015, there were over ten unpaid, outstanding invoices related to work on Cynviloq™'s NDA filing. Representatives of Sorrento raised the unpaid invoices to representatives of the Nant entities at least as early as September 2015, but the Nant representatives deflected questions from Sorrento representatives about the payment of these invoices, even though they had assumed the obligation to pay them under the agreement between Sorrento and NantPharma.

c. In early 2016, Sorrento began receiving calls from outside vendors, whom Sorrento had used to conduct the bioequivalent Phase I testing of Cynviloq™, complaining that they had not been paid by NantPharma.

d. On March 14, 2016, Sorrento alerted NantPharma of the imminent lapse of two of the patent applications for key patents protecting Cynviloq™, and Sorrento offered to provide support for the patents' renewals even though they were the legal responsibility of NantPharma.

e. On March 28, 2016, Sorrento alerted NantPharma of invoices related to cold-storage of human tissue samples supportive of the Cynviloq™-Abraxane® bioequivalence study. NantPharma had not paid these costs despite their inclusion in its agreement to purchase Cynviloq™.

f. On March 30, 2016, Kim announced that NantPharma would *not* assume payment for human tissue storage, because NantPharma had not accepted (and would not accept) sponsorship or ownership of the Cynviloq™ IND from Sorrento.

g. On April 7, 2016, Kim announced that NantPharma would allow two critical Cynviloq™ patent applications, both of which had been filed by Sorrento in October 2014, to lapse. Both patent applications were expressly abandoned and never published. While the lapsing of these patent applications could have been the death knell for Cynviloq™, Sorrento remained hopeful that other patents filed pursuant to the Cynviloq™ deal were being prosecuted under the name "Nant-paclitaxel."

90. In sum, NantPharma refused to pay outstanding costs from IgDraSol's studies, refused to adopt its FDA correspondence, refused to take steps to extend the term of a key Cynviloq™ patent, and abandoned other key Cynviloq™ patent applications. In the wake of these refusals, it began to become clear by mid-2016 that so long as Soon-Shiong and NantPharma had control, Cynviloq™ would not see the light of day.

91. In the meantime, Sorrento's investors who had, like Ji, been encouraged by the promise of Cynviloq™ and the deal with NantPharma, began making inquiries as to when Cynviloq™ would be on the market. Sorrento had no news to share.

J. Defendants Breach the NANTibody Agreement and Their Fiduciary Duties and Strip NANTibody of its Value

92. On February 1, 2018, Sorrento discovered, after repeated stonewalling by Defendants, that NANTibody's capital account had been drained by $90,050,000.

93. After seeking information as to why, Sorrento received its first notice from Kim that on July 2, 2017, NANTibody had acquired IgDraSol from NantPharma in exchange for $90,050,000.

94. The news came as a shock to Sorrento, which immediately asked questions about what happened.

95. Eventually, Kim sent Sorrento a two-page assignment agreement between NantPharma and NANTibody, signed by Kim (on behalf of NANTibody) and Soon-Shiong (on behalf of NantPharma), consummating the transaction. *See* Exhibit 2 (Assignment Agreement Between NantPharma and NANTibody) (hereinafter the "Assignment Agreement").

96. The Assignment Agreement proved that NANTibody officer Kim and Board Member Soon-Shiong had acted in bad faith by entering into a related-party transaction on behalf of NANTibody without notice or consent of the Board, and despite irreconcilable conflicts.

97. Specifically, at the time Soon-Shiong signed on behalf of NantPharma, he was also (1) the CEO and majority owner of NantCell, (2) CEO and majority owner of NantCell's parent NantWorks, which had an interest in recouping funds spent on Cynviloq™, as well as (3) holder of the majority of seats on NANTibody's Board of Directors. Given this, Soon-Shiong could not possibly negotiate for a fair price on behalf of NANTibody; he was hopelessly conflicted.

98. Kim, who signed on behalf of NANTibody as its General Counsel and sole officer, was also, at the time of the transaction, (1) General Counsel to NantPharma, (2) General Counsel to NantCell, and (3) Chief Compliance Officer and Chief Legal Officer to NantWorks. As an attorney for each side of the transaction and an officer of NANTibody, Kim also suffered an insurmountable conflict.

99. Ignoring these roadblocks and acting in violation of applicable law, Soon-Shiong and Kim executed the Assignment Agreement without any appraisal, without any Board notice, and without Board approval.

100. Although Sorrento had had a designee serving on NANTibody's Board of Directors since April 2015, and although Sorrento has held 40% of the outstanding equity of NANTibody since NANTibody's formation, neither Sorrento nor its director designee was given any advance notice of NANTibody's purchase of IgDraSol or of any Board meeting or action to approve such purchase. As a result, Sorrento's designee on NANTibody's Board of Directors was not given an opportunity to consider or vote on the transaction as a director and Sorrento was not given an opportunity to consider or vote on the transaction in its position as a significant equity holder of NANTibody.

101. As a result of the purchase of IgDraSol, NANTibody's cash and cash equivalents were reduced from $99.6 million as of June 30, 2017 to $9.5 million as of September 30, 2017, and NANTibody's contributed capital was reduced from $100.0 million as of June 30, 2017 to $10.0 million as of September 30, 2017.

102. No additional information was provided to Sorrento to explain why NANTibody's total assets as of September 30, 2017 were reduced by over $90 million. Sorrento requested, but did not receive, additional information from NANTibody for purposes of supporting the value of IgDraSol, including any information regarding clinical advancements in the entity since the sale of IgDraSol by Sorrento in May 2015.

103. These actions were in bad faith and violated both the NANTibody Agreement and Defendants' fiduciary duties.

K. By Entering Into the Assignment Agreement, Defendants Breached Contractual and Fiduciary Obligations and Caused Corporate Waste

1. Executing the Assignment Agreement Was Contrary to the Purpose of the NANTibody Agreement

104. Because Defendants executed an assignment which was wholly inconsonant with NANTibody's corporate purpose, an act incapable of authorization, the Assignment Agreement was an unauthorized act.

105. Specifically, Defendants were obligated to adhere to §§ 6.3.10 and 6.3.11 of the NANTibody Agreement, which require actions by the Board to be "appropriate to the furtherance of the business of the Company" and "not inconsistent with the purposes of the Company." Defendants were prohibited from engaging in related-party transactions without prior Board approval under § 3.6 of the NANTibody Agreement, and Defendant Members were prohibited from transacting business or binding NANTibody without prior Board delegation under § 6.1 of the NANTibody Agreement. *See* Exhibit 1.

106. Ultimately, Defendants acted without proper authorization or delegation, were in contravention of specific contractual procedures and obligations, and acted in means not appropriate to, not in furtherance of, and contrary to NANTibody's corporate purpose such that their acts were wholly unauthorized.

2. Entering into the Assignment Agreement Resulted in Bad-Faith Breach of the NANTibody Agreement

107. Defendants intentionally acted contrary to the best interests of NANTibody by placing a discordant asset under its control. As Defendants knew, the assignment of Cynviloq™ to NANTibody did not fit within the agreed-upon corporate purpose of the joint venture. Cynviloq™ is a chemotherapy, *not* an immunotherapy; it did not belong with the compounds researched under NANTibody. Defendants intentionally acted with a purpose other than that of advancing the best interests of the corporation, a bad-faith breach of §§ 6.3.10 and 6.3.11 of the NANTibody Agreement. *See* Exhibit 1.

108. Defendants were obligated to adhere to the general provisions of § 6.3 of the NANTibody Agreement, which empower the Board, not individual members, to enter into significant contracts, to pay, or to cause to be paid, all expenses. *See* Exhibit 1. While the day-to-day operations of NANTibody could be handled by an officer, a contract impairing *ninety percent* of the NANTibody capital was a significant contract that only the Board could approve. No such approval was ever sought or given.

109. Defendants were also obligated to adhere to § 6.1 of the NANTibody Agreement, which states that "the Members, other than as they may act by and through the Board, shall take no part in the management of the business and affairs of the Company, shall transact no business for

the Company and shall have no power to act for or bind the Company, in each case other than as specifically delegated by the Board." *See* Exhibit 1. No such delegation took place authorizing the Assignment Agreement. Defendants failed to hold a board meeting and failed to give notice to the minority shareholders in order to affect a secretive transaction the benefit of which inured to Defendants, not NANTibody. They took actions to bind the Company without Board delegation, an act which they knew was in violation of the NANTibody Agreement but executed nonetheless in order to pursue their own interests, not those of the Company.

110. Defendants were also obligated under § 3.6 of the NANTibody Agreement to obtain prior Board approval for all related party transactions. *See* Exhibit 1. In order to execute the assignment quickly, at the price the Defendants wanted, without the knowledge of the full Board or notice to minority shareholders, Defendants intentionally entered into a related party transaction without prior Board approval.

111. Defendants were also obligated under §§ 6.3.6 and 7.1 the NANTibody Agreement to keep the books and records of the Company, as well as to provide proper accounting with fair market valuation data, under U.S. Treasury Regulations. *See* Exhibit 1. Defendants intentionally failed to produce any valuation data to justify the over $90 million purchase. Indeed, repeated attempts by Sorrento to obtain valuation data from NantCell and Kim after the discovery of the Assignment Agreement were rebuffed. That is because no such valuation was performed. Indeed, Defendants, motivated by their own self-interest to reimburse themselves for the Cynviloq™ purchase at the same price they paid in 2015, could not obtain any valuation opinions because of the risk that an appraisal may have been for other than the over $90 million Defendants wanted back.

3. Entering into the Assignment Agreement Breached Defendants' Fiduciary Duties

112. By placing a chemotherapy asset (Cynviloq™), which had been intentionally neglected and devalued, in a joint venture to develop alternative, i.e. *non-chemotherapeutic*, immunotherapies to battle cancer, Defendants intentionally acted with a purpose other than that of advancing the best interests of the corporation.

113. By setting out a scheme to "catch and kill" what was poised to be an affordable and effective alternative to a billion-dollar-a-year drug—one in which Defendants have a significant financial interest—Defendants also acted with the intent to violate applicable law, and to destroy any potential competition to Abraxane®.

114. By failing to hold a Board meeting, by failing to give notice to the minority shareholders, and by failing to keep corporate books with properly obtained valuation data, Defendants intentionally failed to act in the face of a known duty to act, demonstrating a conscious disregard for their duties.

115. The only purpose the Assignment Agreement served was to bury Cynviloq™ once and for all, all the while reimbursing NantPharma for its 2015 purchase of Cynviloq™.

116. Defendants knew, as stated in several provisions of the NANTibody Agreement, that they were under a duty to take action on behalf of NANTibody "in accordance with and as limited by this Agreement," § 6.3.7, "appropriate to the furtherance of the business of the Company," § 6.3.10, "that is not inconsistent with the purposes of the Company," § 6.3.11. *See* Exhibit 1.

117. Defendants also intentionally acted contrary to the best interests of NANTibody by draining its capital account by ninety percent, leaving it bereft of sufficient capital to fully pursue its corporate purpose.

118. Developing new antibodies for immunotherapeutic approaches to cancer is a costly business, one which the parties initially agreed required $100 million in cash. The $10 million remaining in NANTibody's account is insufficient to conduct the business of immunotherapy research with the goal of putting into the pipeline to market break-through cancer remedies.

4. Entering into the Assignment Agreement Resulted in Corporate Waste

119. The above-described actions, each of which were the result of bad faith breach of the fiduciary duty of care and loyalty, resulted in corporate waste.

120. The exchange of the Cynviloq™ Agreement for $90 million, without regard to its alignment with NANTibody's corporate purpose, without a third-party valuation, without board

delegation or approval, reflects an exchange that is so one-sided that no business person of ordinary, sound judgment could conclude that the corporation has received adequate consideration.

V. DEMAND FUTILITY ALLEGATIONS

121. Plaintiff incorporates by reference paragraphs 1 through 120.

122. No demand is necessary and, in any event, demand would be futile.

123. NANTibody's sole board member is neither disinterested nor independent. To Sorrento's knowledge, NantCell named only Soon-Shiong as Director of the NANTibody Board, and to the extent NantCell named any other directors, they are or would be controlled by, and could not be independent of, Soon-Shiong.

124. Soon-Shiong had a direct and substantial financial interest in the transaction between NantPharma and NANTibody, such that he could not exercise independent judgment about the transaction. Specifically, Soon-Shiong could not exercise independent judgement because of his interest in Abraxane® through the milestone payments to which he was entitled via Celgene and through his stock in Celgene, as well as because of Celgene's substantial investments in Soon-Shiong's businesses. No one stood to benefit more from this transaction than Soon-Shiong. By participating in the challenged transaction, Soon-Shiong put his own interests and loyalty to other companies before the interests of NANTibody and its shareholders.

125. Soon-Shiong was personally complicit in the "catch and kill" operation that raided nominal defendant NANTibody of nearly all of its contributed capital and that is the subject of this action. The transaction challenged by this action was entered into only by interested directors and officers representing the majority shareholder; there was no minority participation or participation by independent or disinterested directors. It was not presented to the NANTibody Board of Directors but instead secretly negotiated and signed by only two parties: Soon-Shiong, serving in his triple capacity as CEO of parent company NantWorks, its subsidiary and assignor NantPharma, and its subsidiary and NANTibody joint venture partner NantCell; and Kim, serving in his capacity as Chief Legal Officer and Chief Compliance Officer of NantWorks, General Counsel to assignor NantPharma, and General Counsel and sole Officer of assignee NANTibody. This was not a valid exercise of business judgment, and there can be no doubt that the NANTibody board of directors

would have been unable to exercise independent and disinterested business judgment in responding to a demand today.

126. Under the terms of § 11.9.3 of the NANTibody Agreement, which concerns suits by Members for equitable relief, both parties have waived the "necessity of proving the inadequacy of money damages as a remedy" as well as the securing or posting "any bond" in connection to a claim for equitable relief. *See* Exhibit 1.

FIRST CAUSE OF ACTION: UNAUTHORIZED ACTS

(Against All Defendants)

127. Plaintiff incorporates by reference the allegations set forth above as though fully restated herein.

128. Defendants NantCell and Soon-Shiong, as majority shareholders, members, and majority Director of NANTibody, were prohibited by the terms of the NANTibody Agreement from transacting business for NANTibody or taking action that was inconsistent with the NANTibody corporate purpose. Defendants did not act in furtherance of the corporation but rather acted with the sole purpose of enriching themselves, destroying an asset, and draining NANTibody's capital account. Defendants' actions were taken in contravention of prescribed contractual procedures and without any Board approval or delegation. Those actions were thus wholly unauthorized. Defendants NantCell and Soon-Shiong were aided and abetted by Defendant Kim.

SECOND CAUSE OF ACTION: BAD-FAITH BREACH OF NANTIBODY AGREEMENT

(Against All Defendants)

129. Plaintiff incorporates by reference the allegations set forth above as though fully restated herein.

130. Defendants NantCell and Soon-Shiong intentionally acted with a purpose other than that of advancing the best interests of NANTibody, and which they did not reasonably believe to be in the best interests of NANTibody. This constituted a bad-faith breach of §§ 6.3.10 and 6.3.11 of the NANTibody Agreement. *See* Exhibit 1. Defendant Kim, who as officer of NANTibody knew of the obligations under the NANTibody Agreement, knew the Assignment Agreement was a

breach thereof, and he substantially and knowingly aided in the commission of the breaches by signing the Assignment Agreement on behalf of NANTibody.

131. Defendants NantCell and Soon-Shiong intentionally avoided convening a Board meeting or giving notice to minority shareholders to approve the Cynviloq™ assignment, a bad-faith breach of §§ 6.3 and 6.5 of the NANTibody Agreement. *See* Exhibit 1.

132. Defendants NantCell and Soon-Shiong intentionally entered into a related-party transaction wrought with conflicts of interest and did so without prior Board approval, a bad faith breach of § 3.6 of the NANTibody Agreement. *See* Exhibit 1. Defendant Kim, who as officer of NANTibody knew of the obligations under the NANTibody Agreement, knew the Assignment Agreement was a breach thereof, and he substantially and knowingly aided in the commission of the breaches by signing the Assignment Agreement on behalf of NANTibody.

133. Defendants NantCell and Soon-Shiong also intentionally failed to conduct or produce any valuation data to justify the over $90 million purchase price for the Assignment Agreement. Defendants intentionally breached §§ 6.3.6 and § 7.1. *See* Exhibit 1. Defendant Kim, who as officer of NANTibody knew of the obligations under the NANTibody Agreement, knew the Assignment Agreement was a breach thereof, and he substantially and knowingly aided in the commission of the breaches by refusing to conduct a valuation or provide that data to Plaintiffs.

THIRD CAUSE OF ACTION: BAD-FAITH BREACH OF FIDUCIARY DUTIES OF CARE AND LOYALTY

(Against All Defendants)

134. Plaintiff incorporates by reference the allegations set forth above as though fully restated herein.

135. Defendants, by virtue of their positions as majority shareholder, holder of majority Director seats, and sole Officer of NANTibody, were and are required to use their positions to direct the affairs of NANTibody consistent with its corporate purpose, to convene meetings of the Board, to inform the Boards and maintain the books and records of NANTibody, to negotiate in good faith, and to obtain Board approval on all major transactions.

136. Defendants utterly disregarded these duties. Instead, they intentionally engaged in a related-party transaction without Board consent, the benefit of which inured entirely to them, which they did not reasonably believe to be in the best interests of NANTibody. Such action rises to the level of complete and intentional dereliction of the fiduciary duties of care and loyalty, resulting in harm to NANTibody. Defendants knowingly aided, participated with, cooperated with, and substantially assisted the other Defendants in the breaches of their fiduciary duties, the remedy for which is set forth below.

FOURTH CAUSE OF ACTION: ABUSE OF CONTROL

(Against All Defendants)

137. Plaintiff incorporates by reference the allegations set forth above as though fully restated herein.

138. Because Defendants, by virtue of their majority position, exercised control over the operations of NANTibody, they owed duties to NANTibody and to Plaintiff not to use their positions of control to indulge their self-interest, contrary to the purpose of NANTibody. Defendants' overnight assignment of Cynviloq™ to NANTibody in exchange for nearly all of the NANTibody's capital was a knowing and bad-faith abuse of their position of control. Defendants knowingly aided, participated, cooperated, and substantially assisted the other Defendants in their abuse of control. This abuse of control has harmed NANTibody, the remedy for which is set forth below.

FIFTH CAUSE OF ACTION: CORPORATE WASTE

(Against All Defendants)

139. Plaintiff incorporates by reference the allegations set forth above as though fully restated herein.

140. Defendants' bad-faith breach of their fiduciary duties of loyalty and care resulted in a waste of NANTibody's assets. Over $90 million of NANTibody's capital was diverted as a result of the Cynviloq™ assignment. NANTibody was left with an inappropriate asset which it could not develop and little cash to develop its own compounds.

141. As a result of Defendants' conduct, NANTibody has lost access to key capital and therefore suffered and continues to suffer losses, the remedy for which is set out below.

SIXTH CAUSE OF ACTION: UNJUST ENRICHMENT

(Against Defendant Patrick Soon-Shiong)

142. Plaintiff incorporates by reference the allegations set forth above as though fully restated herein.

143. Defendant Soon-Shiong, by virtue of his position as majority owner of all Nant companies, was unjustly enriched by Defendants' wrongful conduct. Through the Cynviloq™ assignment, he unjustly reimbursed NantPharma, and, as sole owner of NantPharma, himself, for the purchase of Cynviloq™ in 2015. Defendant Soon-Shiong's unjust enrichment is causally related to the impairment of NANTibody's capital.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, derivatively on behalf of NANTibody, prays for judgment as follows:

1. For a declaration that the Assignment Agreement was an unauthorized act without Board approval and was thus null and void *ab initio*;
2. For a declaration that Defendants are in breach of the NANTibody Agreement;
3. For preliminary and permanent injunctive relief requiring all Defendants to:
   (i) immediately return $90,050,000 from NantPharma to NANTibody's capital account, plus interest as accrued since July 2, 2017; and
   (ii) immediately return the IgDraSol assets that were transferred to NANTibody back to NantPharma;
4. For preliminary and permanent injunctive relief barring Patrick Soon-Shiong and Charles Kim from serving as NANTibody directors or officers;
5. For a declaration that Defendants have breached their fiduciary duties owed to NANTibody;
6. For attorneys' fees and/or costs in the maximum amount permitted and/or provided for by law or contract; and

7. For such other and further relief as the Court may deem just and proper.

Dated: April 3, 2019

Respectfully submitted,

HUESTON HENNIGAN LLP

By: */s/ John C. Hueston*
John C. Hueston
Steven N. Feldman

Attorneys for Plaintiff
Sorrento Therapeutics, Inc.

EXHIBIT 1

EXECUTION VERSION

LIMITED LIABILITY COMPANY AGREEMENT

FOR

IMMUNOTHERAPY NANTIBODY, LLC,
A Delaware Limited Liability Company

Dated June 11, 2015

THE SECURITIES REPRESENTED BY THIS AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 NOR REGISTERED NOR QUALIFIED UNDER ANY STATE SECURITIES LAWS. SUCH SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, DELIVERED AFTER SALE, TRANSFERRED, PLEDGED, OR HYPOTHECATED UNLESS QUALIFIED AND REGISTERED UNDER APPLICABLE STATE AND FEDERAL SECURITIES LAWS OR UNLESS, IN THE OPINION OF COUNSEL SATISFACTORY TO THE COMPANY, SUCH QUALIFICATION AND REGISTRATION ARE NOT REQUIRED.

ANY TRANSFER OF THE SECURITIES REPRESENTED BY THIS AGREEMENT IS FURTHER SUBJECT TO OTHER RESTRICTIONS, TERMS AND CONDITIONS WHICH ARE SET FORTH HEREIN.

LIMITED LIABILITY COMPANY AGREEMENT OF IMMUNOTHERAPY NANTIBODY, LLC,

THIS LIMITED LIABILITY COMPANY AGREEMENT of Immunotherapy NANTibody, LLC, a Delaware limited liability company (the "Company"), is made as of June 11, 2015, but effective as of April 13, 2015 (the "Effective Date") by and among those Person listed on Schedule A attached hereto and/or who may hereafter become parties to this Agreement as members of the Company (such Persons are also sometimes collectively referred to in this Agreement as the "Members" and each individually as a "Member").

RECITALS

A. The Company has heretofore been formed as a limited liability company under the Delaware Limited Liability Company Act (6 Del. C. Section 18-101, et seq., as amended from time to time (the "Act")) pursuant to the filing of the Certificate of Formation on April 13, 2015.

B. Concurrent with the execution of this Agreement, (a) NantCell, Inc., a Delaware corporation ("NantCell"), and the Company are executing a Contribution Agreement (the "Contribution Agreement") under which NantCell has agreed to contribute to the Company a certain agreement and related intellectual property as set forth therein and (b) Sorrento Therapeutics, Inc., a Delaware corporation ("Sorrento"), and the Company are executing an Exclusive License Agreement (the "License Agreement") under which Sorrento has agreed to exclusively license to the Company certain intellectual property as set forth therein.

NOW, THEREFORE, the Members by this Limited Liability Company Agreement of Immunotherapy NANTibody, LLC (together with all exhibits, annexes and schedules hereto, this "Agreement") do hereby (a) set forth in its entirety the limited liability company agreement for the Company under the laws of the State of Delaware and (b) otherwise agree, in each case as set forth in this Agreement.

ARTICLE 1
DEFINITIONS

Capitalized terms used herein without definition shall have the meanings given to them in Appendix 1 attached hereto and made a part hereof.

ARTICLE 2
ORGANIZATIONAL MATTERS

2.1 Formation. The Company was formed as a Delaware limited liability company under the laws of the State of Delaware by the filing of the Certificate of Formation with the Delaware Secretary of State on April 13, 2015.

2.2 Name. The name of the Company shall be "Immunotherapy NANTibody, LLC." The Board may in its sole discretion change the name of the Company from time to time or conduct the affairs of the Company under another name or names.

2.3 Term. The Company shall have a perpetual existence unless dissolved and terminated in accordance with Article 10 of this Agreement.

2.4 Registered Office. The registered agent for service of process is, and the mailing address for the registered office of the Company in the State of Delaware is in care of, National Registered Agents, Inc., 160 Greentree Drive, Suite 101, Dover, Delaware 19904. The Board may in its sole discretion change such agent and such office from time to time.

2.5 Purpose of the Company. The Company has been formed for the object and purpose of, and the nature of the business to be conducted by the Company is, as follows: (i) immunotherapy and the discovery, acquisition, research, development and commercialization of proprietary drug therapeutics; (ii) engaging in any other act or activity for which limited liability companies may be formed under the Act; and (iii) engaging in all acts or activities as the Company deems necessary, advisable, appropriate, convenient or incidental to the furtherance of the foregoing.

2.6 Tax Classification. It is the intent of the Members that the Company shall be classified as a partnership for United States federal income tax purposes and, to the extent possible, applicable state and local tax purposes. Neither the Company nor any Member shall file (and each Member hereby represents that it has not filed and covenants that it will not file) any income tax election, return or report with any applicable taxing authority or take any other action that is inconsistent with the Company's position regarding its classification as a partnership for applicable federal, state and local income tax purposes.

ARTICLE 3
UNITS; MEMBERS

3.1 Units.

3.1.1 The Company initially shall have one series of Membership Interests, "Series A Units." The Members shall have the rights, preferences, privileges, restrictions and obligations set forth in this Agreement. The Units shall not be certificated unless otherwise determined by the Board.

3.1.2 Subject to Section 3.1.3 below, the Board is authorized to create, and cause to be issued, one or more additional series of Units, with each series to be comprised of the number of Units, to have such powers, preferences and rights, and be subject to such qualifications, limitations and restrictions, as shall be determined by the Board. The Board is authorized to amend this Agreement to reflect the creation of any such series of Units that comply with the foregoing without the consent of the Members.

3.1.3 Preemptive Rights. The Company hereby grants preemptive rights to each of NantCell and Sorrento (together, the "Preemptive Right Holders") as provided in this Section 3.1.3 and the Board shall not issue any Units or additional series of Units without first satisfying the provisions of this Section 3.1.3. If the Company proposes to issue additional Units or options to purchase or rights to subscribe for Units or securities by their terms convertible into or exchangeable for Units (collectively, "Convertible Securities"), or to permit any Member to, or request that any Member make, Capital Contributions (such interests, Units, Convertible

Securities or Capital Contributions, "Subsequent Equity"), then the Company shall deliver to each Preemptive Right Holder a written notice (the "Preemptive Notice") of such proposed issuance or Capital Contribution at least fifteen (15) days prior to the date of the issuance or Capital Contribution (the "Subscription Period"). Each Preemptive Right Holder shall have the option, exercisable at any time within the period of thirty (30) days after delivery of the Preemptive Notice (the "Preemptive Acceptance Period"), by delivering a written notice to the Company (a "Subscription Acceptance") and on the same terms (on a per Unit basis) as those proposed for the issuance of such Subsequent Equity, to subscribe for (x) up to its Percentage Interest of any such Subsequent Equity and (y) any such Subsequent Equity not subscribed for by the other Preemptive Right Holders, as specified in the subscribing holder's Subscription Acceptance. Notwithstanding anything herein to the contrary, the Company may close the issuance or contribution of Subsequent Equity, in whole or in part, prior to the expiration of the Preemptive Acceptance Period provided above as long as each Preemptive Right Holder is given the Preemptive Acceptance Period to elect to purchase its Percentage Interest of the applicable Subsequent Equity. Any Subsequent Equity that is not purchased by the Preemptive Rights Holders may be sold by the Company, but only on terms and conditions not more favorable to the purchaser than those set forth in the Preemptive Notice, at any time within 90 days following the termination of the Preemptive Acceptance Period, but may not be sold to any Person on terms and conditions, including price, that are more favorable to the purchaser than those set forth in the Preemptive Notice or after such 90-day period, in each case without renewed compliance with this Section 3.1.3. The preemptive rights granted pursuant to this Section 3.1.3 shall terminate immediately prior to, and shall not apply to, an IPO. The preemptive rights granted pursuant to this Section 3.1.3 shall not be applicable to:

(a) the issuance of Units as a dividend or distribution to all or substantially all holders of Units, or a subdivision or combination of Units or a reclassification of (or similar action with respect to) Units into a greater or lesser number of Units;

(b) the issuance of any Units to employees, consultants and contractors of the Company for compensatory purposes pursuant to equity purchase or option plans or other arrangements that are approved by the Board;

(c) the issuance of Units upon the exercise or exchange of Convertible Securities outstanding as of the Effective Date;

(d) the issuance of Units or other equity interests in the Company in an IPO;

(e) the issuance of Units to the selling parties in a bona fide business acquisition by the Company or any of its subsidiaries, whether by merger, consolidation, sale of assets, sale or exchange of equity or otherwise, each as approved by the Board; or

(f) any Convertible Securities that are otherwise excluded by Supermajority Member Consent.

3.2 Identity of the Members. The names and addresses of the Members and their respective Capital Contributions, number of Units and Percentage Interests as of the Effective

Date are set forth in Schedule A hereto, which shall be maintained with the records of the Company at the Company's principal office, and such Schedule A is hereby incorporated by reference and made a part of this Agreement. The Board shall amend and revise Schedule A from time to time to accurately reflect the admission or substitution of Members, the withdrawal of any Members, any transfers of Units, issuances of additional Units or additional Capital Contributions (including any changes to the number of Units held by Members and the change in Percentage Interest as a consequence thereof), in each case in accordance with, and subject to the terms and conditions of, this Agreement. However, any amendment or revision to Schedule A made to reflect an action taken in accordance with this Agreement shall not be deemed an amendment to this Agreement.

3.3 Admission of Additional Members.

3.3.1 Except as otherwise provided in this Agreement, the Board may, without Member Consent, admit from time to time one or more additional Members to the Company where such Person acquires Units in accordance with the terms and conditions of this Agreement (each an "Additional Member").

3.3.2 Upon the admission of a Person as an Additional Member, (i) each such Person shall, by executing this Agreement or such other subscription documents as the Board determines in its sole discretion, agree to become a Member and to be bound to the terms of this Agreement; (ii) each such Person shall pay to the Company as its Capital Contribution in the amount equal to the amount set forth on Schedule A attached hereto as revised, and (iii) the Board shall amend Schedule A to reflect the name, address and number of Units of the Additional Member and Percentage Interest of each Member.

3.4 Limited Liability of Members. Except as expressly set forth in this Agreement or otherwise required by law, no Member shall be personally liable for any debt, obligation, or liability of the Company, whether that liability or obligation arises in contract, tort or otherwise.

3.5 Other Activities. The Members acknowledge and agree that, subject to the terms of this Agreement and any employment or consulting agreement entered into between the Company and a Member or its Affiliates or its or their respective officers, directors, shareholders, partners, members, managers, agents or employees:

3.5.1 Each Member and its Affiliates and its and their respective officers, directors, shareholders, partners, members, managers, agents and employees may engage or invest in, independently or with others, any business activity of any type or description (including activities that might be the same as or similar to the business of the Company or any of its controlled Affiliates), and neither the Company nor any Member shall have any right in or to such other ventures or activities or to the income or proceeds derived therefrom;

3.5.2 No Member nor any of its Affiliates nor any of its or their respective officers, directors, shareholders, partners, members, managers, agents or employees shall be obligated to present any investment opportunity or prospective economic advantage to the Company, even if the opportunity is of the character that, if presented to the Company, could be taken by the Company, and the doctrine of corporate opportunity or any analogous doctrine shall

not apply to any of the Company's Members or Affiliates or their respective officers, directors, shareholders, partners, members, managers, agents or employees; and

3.5.3 Each Member and its Affiliates and its and their respective officers, directors, shareholders, partners, members, managers, agents and employees shall have the right to hold any investment opportunity or prospective economic advantage for its own account or to recommend such opportunity to Persons other than the Company.

3.6 Transactions With The Company. Subject to any limitations set forth in this Agreement, and with the prior approval of the Board, each Member and its Affiliates and its and their respective officers, directors, shareholders, partners, members, managers, agents and employees may lend money to and transact other business with the Company. Subject to other applicable law, such Member or such other Person shall have the same rights and obligations with respect thereto as a Person who is not a Member.

3.7 Remuneration To Members. Except as otherwise specifically provided in this Agreement or any other agreement entered into between the Company and a Member or its Affiliates or its or their respective officers, directors, shareholders, partners, members, managers, agents or employees, no Member is entitled to remuneration for acting in the Company business.

3.8 Powers of Members. The approval or consent of the Members shall not be required in order to authorize the taking of any action by the Company unless and then only to the extent that (i) this Agreement shall expressly provide therefor, (ii) such approval or consent shall be required by non-waiveable provisions of the Act or (iii) the Board shall have determined in its sole discretion that obtaining such approval or consent would be appropriate or desirable. No Members, as such, shall have the power to bind the Company.

3.9 Voting; Meetings. Each outstanding Series A Unit shall be entitled to one vote on each matter submitted to a vote of the Members. Except as otherwise specifically provided in this Agreement, all actions required or permitted to be taken hereunder by the Members shall be deemed approved if agreed or consented to by Member Consent. Except as otherwise provided in this Agreement, the Members entitled to vote shall vote together as a single class on all matters on which they are entitled to vote. The Company shall provide written notice to all Members of any meeting at which a vote will be held at least three (3) business days prior thereto. Meetings of the Members may only be called by the Board. Meetings may be held telephonically or through similar means so long as all Members attending such meeting are able to hear each other and speak to each other (and such attendance shall be deemed to be presence at a meeting for purposes of this Agreement). At any meeting of the Members, the presence, in person or by proxy, of Members holding a majority of the outstanding Units entitled to vote shall constitute a quorum. Any action permitted or required to be taken by the Members may be taken without a meeting, without prior notice and without a vote if a consent or consents in writing, setting forth the action so taken, shall be signed by the Members required to approve such action.

ARTICLE 4
CAPITAL CONTRIBUTIONS

4.1 Initial Contributions. In exchange for the Units set forth opposite each Member's name on Schedule A, as Total Capital Contributions to the Company (a) NantCell agrees to contribute $60 million to the Company and execute the Contribution Agreement and (b) Sorrento agrees to contribute $40 million to the Company and execute the License Agreement. With respect to the Capital Contributions to be made in cash, NantCell and Sorrento agree (i) to contribute $12 million and $8 million, respectively, upon execution of this Agreement and (ii) that the timing for the remaining amounts to be contributed shall be mutually agreed no later than June 30, 2015 and that in any event all cash Capital Contributions shall be made no later than December 31, 2016. Notwithstanding anything herein to the contrary, except as otherwise required by applicable law or, with respect to any Member as set forth in a separate agreement entered into by such Member, no Member shall be obligated to make additional Capital Contributions to the Company (*i.e.*, NantCell and Sorrento shall not be required to make Capital Contributions beyond $60 million and $40 million, respectively).

4.2 Additional Contributions. Subject to the other terms of this Agreement, the Board may permit or request, but not require, that additional Capital Contributions be made to the Company ("Additional Contributions"). Subject to the other terms of this Agreement, the Board shall amend Schedule A to reflect any Additional Contributions, the issuance of the additional Units and the change in Percentage Interests pursuant thereto.

4.3 No Liability for Repayment of Capital; Priorities. Except as expressly provided in this Agreement, (i) no specific time has been agreed upon for the repayment of the Capital Contribution of any Member, (ii) no Member shall have a right to withdraw any capital contributed to the Company, (iii) no Member shall be entitled to receive any distribution from the Company, (iv) no Member shall have the right to demand or receive property other than cash in return for its Capital Contribution, nor shall any Member have priority over any other Member either as to the return of its Capital Contribution or as to profits, losses or distributions, (v) the Directors shall not be personally liable for the return of all or any part of the Capital Contributions of the Members, (vi) no Member shall be liable for, or required to restore, any deficit in such Member's Capital Account and (vii) no Member shall be entitled to interest on its Capital Contribution.

ARTICLE 5
DISTRIBUTIONS

5.1 Distributions.

5.1.1 Except as otherwise provided in Section 10.4, Available Cash shall be distributed to the Members at such times as the Board shall determine in its sole discretion. All distributions of Available Cash shall be made to the Members with the following priority:

(a) First, to the Series A Members on a pro rata basis in proportion to each Series A Member's Unreturned Capital until each such Member's Unreturned Capital has been reduced to zero; and

(b) Thereafter, to the Members on a pro rata basis in accordance with their respective Percentage Interests as in effect at the date of distribution.

5.1.2 The Board may, in its reasonable discretion, cause the Company to distribute to each Member in cash following the close of each calendar quarter an amount (a "Tax Distribution") up to and in proportion to an amount with respect to each Member equal to the excess of: (a) the product of (i) the highest combined federal and state income tax rate (expressed as a percentage) applicable to any individual taxpayer resident in the State of California (but taking into account an assumed full deductibility of all state taxes for U.S. federal income tax purposes by such individual) and (ii) the amount of Profit of the Company allocable to such Member pursuant to Section 7.2 with respect to such quarter, minus (b) the aggregate amount of all distributions actually made to such Member provided for in Section 5.1.1 with respect to such fiscal quarter. Tax Distributions made to any Member shall reduce, dollar for dollar, the amount of any subsequent distributions to which such Member would otherwise be entitled pursuant to Section 5.1.1, so that the cumulative amounts distributed to the Members will be the same as if no Tax Distributions had been made.

5.1.3 In the event that the Board determines to make any distributions of property to the Members in kind, such property shall be valued at its fair market value (as determined in good faith by the Board by Supermajority Board Consent) and the Capital Accounts of the Members shall be adjusted as provided in Treasury Regulations Section 1.704-1(b)(2)(iv)(e). Any distributions to be made in kind shall be made in the same proportions as a like amount of Available Cash would have been distributed pursuant to Section 5.1.1.

5.2 Limitations. Notwithstanding any other provision of this Agreement, the Company shall not make a distribution to any Member to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of the Company, other than liabilities to Members on account of their Units and liabilities for which the recourse of creditors is limited to specified property of the Company, exceed the fair value of the assets of the Company, except that the fair value of property of the Company that is subject to a liability for which the recourse of creditors is limited shall be included in the assets only to the extent that the fair value of that property exceeds that liability. Members who receive a distribution in violation of this subsection, and who had actual knowledge at the time of the distribution that the distribution violated this subsection, shall be liable to return to the Company the amount of the distribution. A Member who receives a distribution in violation of this subsection, and who did not have actual knowledge at the time of the distribution that the distribution violated this subsection, shall not be liable for the amount of the distribution.

5.3 Withholding of Tax.

5.3.1 The Company shall withhold taxes from distributions of cash or property to, and allocations among, the Members and shall timely and properly remit such withheld amounts to the appropriate governmental authority to the extent required by law (as determined by the Board in its sole discretion). Except as otherwise provided in this Section 5.3, any amount so withheld and so remitted by the Company with respect to a Member shall be treated for purposes of this Agreement as an amount actually distributed to such Member pursuant to Section 5.1.1. An amount shall be considered withheld by the Company if and at the time such

amount is remitted to a governmental agency without regard to whether such remittance occurs at the same time as the distribution or allocation to which it relates; provided, that an amount actually withheld from a specific distribution or designated by the Board as withheld from a specific allocation (including any allocations made in connection with compliance with quarterly or other withholding requirements) shall be treated as if distributed at the time such distribution or allocation occurs (provided that such withheld amounts are remitted by the Company to the applicable governmental authorities pursuant to applicable law requiring such amounts to be so withheld and remitted). To the extent that the aggregate of such payments with respect to a Member for any period exceeds the distributions to which such Member is entitled for such period, the Board shall notify such Member as to the amount of such excess and such Member shall make a prompt payment to the Company of such amount. The Company shall request appropriate forms from Members as appropriate to eliminate or minimize any such withholding.

5.3.2 In the event that the Board determines that the Company lacks sufficient Available Cash to pay withholding taxes in respect of a Member, the Board shall notify such Member as to the amount of such deficiency and such Member shall make a prompt payment to the Company of such amount (which payment of cash shall not be deemed a Capital Contribution for purposes hereof). If such Member does not make such prompt payment, the Board may request that another Member make a loan to the Company to enable the Company to pay such taxes. Any such loan shall be with full recourse to the Company and shall bear interest at the rate of five percent (5%). Notwithstanding any provision of the Agreement to the contrary, any loan (including interest accrued thereon) made to the Company by a Member pursuant to this Section 5.3.2 shall be repaid as promptly as is reasonably possible.

5.3.3 Any taxes withheld by third parties from payments to the Company shall be treated as if withheld by the Company for purposes of this Section 5.3. Such withholding shall be deemed to have been made in respect of all the Members in proportion to their respective allocable shares under Article 7 of the underlying items of Profit to which such third party withholdings are attributable, except to the extent that particular Members establish to the satisfaction of the Board (and if necessary, the payor) that they are entitled to a reduced or eliminated rate of withholding tax pursuant to the provisions of an applicable income tax treaty or otherwise, in which case the Board shall use its reasonable best efforts to take into account the varying situations and status of the Members. The Board shall deem such withholding to be made on behalf of the Members taking into account with respect to each Member any reduction in or exemption from such taxes that occurs by reason of such Partner's status pursuant to an applicable tax treaty or otherwise and shall treat any amounts withheld by third parties as an amount actually distributed pursuant to Section 5.1.1 to the Members the status of which led to any such withholding. The intent of this Section 5.3.3 is to have the burden of taxes withheld at the source (and other related amounts) borne by those Members to which such withholding taxes (and other related amounts) are attributable to the maximum extent possible. In the event that the Company receives a refund of taxes previously withheld by a third party from one or more payments to the Company, the economic benefit of such refund shall be apportioned among the Members at such time as the Board may determine in a manner reasonably determined by the Board to offset the prior operation of this Section 5.3.3 in respect of such previously withheld taxes.

ARTICLE 6
MANAGEMENT AND CONTROL OF THE COMPANY

6.1 Board of Directors. Subject to the terms and conditions of this Agreement, the business, property and affairs of the Company shall be managed and all powers of the Company shall be exercised by or under the direction of the Company's board of directors (the "Board"). The Members hereby designate the Board as the managers (within the meaning of Act) of the Company, with exclusive rights and responsibilities to direct the business of the Company. The Board shall have the power to do any and all acts necessary or convenient to or for the furtherance of the purposes described herein, including all powers, statutory or otherwise, possessed by managers under the laws of the State of Delaware. Except as otherwise set forth in this Agreement, the Members, other than as they may act by and through the Board, shall take no part in the management of the business and affairs of the Company, shall transact no business for the Company and shall have no power to act for or bind the Company, in each case other than as specifically delegated by the Board.

6.2 Election of Board Members.

6.2.1 Number, Appointment, Removal and Resignation.

(a) The Board shall have five (5) directors (each, a "Director"). NantCell shall be entitled to appoint three (3) Directors (each, a "NantCell Director"), and Sorrento shall be entitled to appoint two (2) Directors (each, a "Sorrento Director"). Each Director shall be entitled to one vote for any action taken by the Board; except that if (a) NantCell has appointed fewer Directors than it is entitled to appoint, then for any action taken by the Board, then such Director(s) shall be entitled to cast an aggregate number of votes equal to the number of Directors it is entitled to appoint (*e.g.*, three) (such votes to be cast as such Director(s) mutually agree) and (b) Sorrento has appointed fewer Directors than it is entitled to appoint, then for any action taken by the Board, then such Director shall be entitled to cast an aggregate number of votes equal to the number of Directors it is entitled to appoint (*e.g.*, two). The initial Director hereby appointed by NantCell shall be Dr. Patrick Soon-Shiong, and the initial Director hereby appointed by Sorrento shall be Dr. Henry Ji.

(b) Each Member entitled to appoint a Director shall notify the Company of the name, business address and business telephone and facsimile numbers of each Director(s) designated by such Member. Each appointment by a Member of a Director shall remain in effect until the Member making such appointment notifies the Company of a change in such appointment. Each Member entitled to appoint a Director shall promptly notify the Company of any change in such Member's contact information.

(c) Each Director may be removed as such, with or without cause, and his or her successor designated by the Member entitled to designate such Director as set forth in Section 6.2.1(a).

(d) Any Director may resign at any time by giving written notice to the Members and remaining Director(s) without prejudice to the rights, if any, of the Company under any contract to which the resigning Director is a party. The resignation of any Director shall take

effect upon receipt of that notice or at such later time as shall be specified in the notice; and, unless otherwise specified in the notice, the acceptance of the resignation shall not be necessary to make it effective. If a vacancy occurs on the Board, the vacancy shall be filled by the designation of the Member entitled to designate such Director as set forth in Section 6.2.1(a).

(e) The resignation or removal of a Director shall not invalidate any act of such Director taken before the giving of such written notice of the removal or resignation of such Director.

(f) At each election of Directors in which the Members are entitled to elect Directors of the Company, Members shall vote all of their respective Units so as to elect the designees provided for in Section 6.2.1.

6.3 Powers of the Board. Without limiting the generality of Section 6.1, the Board shall have all necessary powers to manage and carry out the purposes, business, property, and affairs of the Company, including, without limitation, the power to exercise on behalf and in the name of the Company all of the powers described in Section 18-402 of the Act, including, without limitation, the power to:

6.3.1 Borrow money from any party, including any Member and its Affiliates, issue evidences of indebtedness in connection therewith, refinance, increase the amount of, modify, amend, or change the terms of, or extend the time for the payment of any indebtedness or obligation of the Company, and secure such indebtedness by mortgage, deed of trust, pledge, security interest, or other lien on Company assets;

6.3.2 Sue on, defend, or compromise any and all claims or liabilities in favor of or against the Company; submit any or all such claims or liabilities to arbitration;

6.3.3 Employ from time to time, at the expense of the Company, on such terms and for such compensation as the Board may determine, but subject to this Agreement, Persons to render services to the Company as needed throughout the world, including without limitation, accountants and attorneys (who may also act as such for the Members or any of their Affiliates);

6.3.4 Pay or cause to be paid all expenses, fees, charges, taxes, and liabilities incurred or arising in connection with the Company, or in connection with the management thereof, including, without limitation, such expenses and charges for the services throughout the world of the Company employees, accountants, attorneys, and other agents or independent contractors, and such other expenses and charges as the Board deems necessary or advisable to incur;

6.3.5 Deposit Company funds in certificates of deposit, checking accounts, bank savings accounts and money market accounts as the Board shall determine;

6.3.6 Establish and maintain the books and records of the Company in accordance with Section 9.1;

6.3.7 Perform all normal business functions, and otherwise operate and manage the business and affairs of the Company wherever located in the world, in accordance with and as limited by this Agreement;

6.3.8 Prepare and file all tax returns and other documentation required to be filed with governmental authorities, including, without limitation, those described in Sections 9.2 and 9.6;

6.3.9 Direct the Tax Matters Member to make elections for foreign, federal, state, and local tax purposes, including without limitation any election permitted by applicable law to (i) adjust the basis of Company property pursuant to Code Section 754, 734(b), and/or 743(b), and/or comparable provisions of state or local law in connection with transfers of interests in the Company or with Company distributions; and (ii) extend the statute of limitations for assessment of tax deficiencies against Members with respect to adjustments to the Company's federal, state or local tax returns;

6.3.10 Enter into, make and perform any contracts, agreements and other undertakings as may be deemed necessary or advisable for the conduct of the business of the Company throughout the world, and do any act or execute any document on behalf of the Company as the Board may deem necessary, convenient, incidental or appropriate to the furtherance of the business of the Company; and

6.3.11 Take any action not specifically limited hereby that is not inconsistent with the purposes of the Company.

6.4 Certain Approval Rights. The Company shall not, directly, or indirectly, without Supermajority Member Consent and Supermajority Board Consent:

(a) Alters any provision of this Agreement (including pursuant to a merger or otherwise) that adversely and disproportionately impacts the rights or obligations of a holder of Series A Units in a manner different than other holders of Series A Units (it being understood and agreed that no Supermajority Member Consent or Supermajority Board Consent shall be required if any such alteration impacts the rights or obligations of each Series A Unit in the same manner);

(b) Results in the declaration or payment of any dividend or distribution with respect to the Units, except in connection with a Liquidity Event;

(c) Grants or otherwise commits the Company to grant or agree to any registration rights with respect to any Convertible Securities under the Securities Act (unless NantCell and Sorrento are granted similar registration rights); or

(d) Amends this Section 6.4.

Notwithstanding anything to the contrary contained in this Section 6.4, the Members agree that the creation and issuance of a series of Units with rights, preferences or privileges senior to the Series A Units will not be deemed to require Supermajority Member Consent and Supermajority

Board Consent under this Section 6.4 solely as a result of such security having rights, preferences or privileges senior to the Series A Units.

6.5 Actions by the Board.

6.5.1 Meetings. Regular meetings of the Board shall be held at such times and places as are fixed by the Board. Special meetings of the Board may be held at any time whenever called by any Director. Notice of the time and place of special meetings shall be delivered personally to each Director or communicated to each director by telephone, telegraph, facsimile or electronic mail message at least 48 hours prior to the time of the holding of the meeting. Attendance of a Director at a meeting shall constitute a waiver of notice of such meeting, except when the Director attends the meeting for the express purpose of objecting at the beginning thereof to the transaction of any business because the meeting is not properly called or convened.

6.5.2 Actions at Meetings. At any meeting of the Board, the presence, in person or by proxy, of Persons holding a majority of the votes of all Directors shall constitute a quorum for the transaction of business. A Director entitled to vote at any meeting of the Board may authorize another Person, including another Director, to act in place of that Director by proxy. In the event that at any time there is a vacancy on the Board, the Member, if any, then entitled (acting by itself) to fill that vacancy hereunder shall be entitled to delegate to one of its designees on the Board the right to take the actions (including being present for quorum purposes and voting) that could be taken by a Director who would fill such vacancy. Directors may participate in a meeting through use of conference telephone, electronic video screen communication or other communications equipment. If a quorum shall not be present at any meeting of the Board, the Directors present may adjourn and reconvene the meeting from time to time, until a quorum shall be present. At any meeting of the Board, any action taken by the Board shall require the approval of Directors holding a majority of the votes present, in person or by proxy, at such meeting. Except as otherwise provided by Section 6.2.1(a), each Director shall be entitled to one (1) vote.

6.5.3 Actions without a Meeting. The Board may act by written consent in lieu of a meeting in accordance with Section 18-404 of the Act. Such written consent or consents shall be filed with the minutes of the proceedings of the Board. Such action by the written consent shall have the same force and effect as an action of the Directors at a duly called meeting.

6.6 Officers. The Board may appoint one or more officers to be responsible for the day-to-day operation of the business of the Company, which officers shall have such duties and responsibilities as may be delegated by the Board consistent with the powers reserved to the Board hereunder. The officers shall serve at the pleasure of the Board, subject to all rights, if any, of an officer under any contract of employment. Any individual may hold any number of offices. The officers shall exercise such powers and perform such duties and hold such titles as determined from time to time by the Board. Any officer may be removed, either with or without cause, by the Board at any time. Any officer may resign at any time by giving written notice to the Board. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the

resignation shall not be necessary to make it effective. The compensation of all officers and agents of the Company shall be fixed by the Board.

6.7 Execution of Documents. Upon appropriate resolution by the Board, any document, agreement or instrument may be executed and delivered on behalf of the Company by the person or officer provided in such resolution, including any note or other evidence of indebtedness, security agreement, financing statements, or other instrument purporting to convey or encumber, in whole or in part, any or all of the assets of the Company, at any time held in its name, or any receipt or compromise or settlement agreement with respect to the accounts receivable and claims of the Company; and no other signature shall be required for any such instrument to be valid, binding, and enforceable against the Company in accordance with its terms. All persons may rely thereon and shall be exonerated from any and all liability if they deal with such officer on the basis of documents approved and executed on behalf of the Company or such officer.

6.8 Exculpation. No Indemnifiable Person shall have any liability or obligation to the Company or any Member arising out of or relating to any act or omission of such Indemnifiable Person (or of any other Indemnifiable Person) that is taken in good faith, except as otherwise provided by applicable law. Except as set forth in the immediately preceding sentence or as otherwise expressly provided in this Agreement, no Indemnifiable Person shall have any duties or liabilities to the Company or any Member, whether or not such duties (including fiduciary duties) or liabilities otherwise arise or exist in law or in equity, and each Member hereby expressly waives any rights or remedies it may have with respect to such duties or liabilities. Notwithstanding the foregoing, any Member (or its controlling person) may take any action pursuant to the terms of this Agreement, or refrain from taking any action under this Agreement, in its sole and absolute discretion, considering such factors as it deems appropriate, including its own interest and the interest of or factors affecting the Company, in each case, if and to the extent it deems appropriate.

6.9 Indemnification.

6.9.1 For the purposes of this Section 6.9, (i) "proceeding" means any threatened, pending or completed claim, demand, action or proceeding, whether civil, criminal, administrative, legislative or investigative; and (ii) "expenses" includes without limitation attorneys' fees and any expenses of establishing a right to indemnification under this Section 6.9.

6.9.2 Except as expressly provided in this Section 6.9, the Company shall, to the fullest and broadest extent permitted by the laws of the State of Delaware, indemnify and hold harmless any Indemnifiable Person against all losses, Damages, liabilities or expenses, of any kind or nature, incurred by it while acting (or omitting to act) in good faith on behalf of the Company or otherwise relating to the Company. Any indemnity under this Section 6.9 shall be provided out of and to the extent of the Company's assets only, and no Member shall have any personal liability with respect to such indemnity. Without limiting the generality of the foregoing, but subject thereto, the Company hereby agrees to indemnify each Indemnifiable Person, and to save and hold him, her or it harmless, from and in respect of (i) all fees, costs and expenses incurred in connection with or resulting from any demand, claim, action or proceeding against such Indemnifiable Person or the Company which arises out of or in any way relates to

the Company or its properties, business or affairs, and (ii) all such demands, claims, actions and proceedings and any losses or Damages resulting therefrom, including judgments, fines and amounts paid in settlement or compromise of any such demand, claim, action or proceeding. No indemnity in this Section 6.9 shall extend to conduct by an Indemnifiable Person with respect to the Company's business which is determined by a court of competent jurisdiction to have not been taken in good faith.

6.9.3 The Company shall pay the expenses incurred by any Indemnifiable Person in connection with any proceedings in advance of the final disposition of such proceeding, upon receipt of an undertaking by such Indemnifiable Person to repay such payment if there shall be an adjudication or determination that such Indemnifiable Person is not entitled to indemnification as a result of Section 6.9.2. The Board shall be authorized, on behalf of the Company, to enter into indemnity agreements from time to time with any Person entitled to be indemnified by the Company hereunder, upon such terms and conditions as the Board deems appropriate in its business judgment. The indemnification and advancement of expenses provided by, or granted pursuant to, the provisions of this Section 6.9.3, shall not be deemed exclusive of any other rights to which any Person seeking indemnification or advancement of expenses may be entitled under any agreement (approved by the Board) or otherwise, both as to action in such Person's capacity as an agent of the Company and as to action in another capacity while serving as an agent.

6.10 Insurance of Agents. The Company shall have the power to purchase and maintain insurance on behalf of any Person who is or was a member of the Board, an officer of the Company, an employee or agent of the Company, against any liability asserted against such Person and incurred by such Person in any such capacity, or arising out of such Person's status as a member of the Board, officer of the Company, an employee or agent of the Company whether or not the Company would have the power to indemnify such Person against such liability under the provisions of Section 6.9 or under applicable law. The Company shall use its commercially reasonable efforts to obtain, within ninety (90) days of the date hereof, from financially sound and reputable insurers Directors and Officers liability insurance, in an amount and on terms and conditions satisfactory to the Board, and will use commercially reasonable efforts to cause such insurance policies to be maintained until such time as the Board determines that such insurance should be discontinued.

ARTICLE 7
CAPITAL ACCOUNTS AND ALLOCATIONS

7.1 Capital Accounts. A separate Capital Account shall be established and maintained for each Member in accordance with Treasury Regulations Sections 1.704-1(b)(2)(iv) and 1.704-2. As of the Effective Date, the Capital Account of each Member has been credited with the fair market value of such Member's Capital Contribution to the Company as set forth on Schedule A attached hereto. The Board shall have the authority to revalue the Company's assets and adjust the Members' Capital Accounts in accordance with the provisions of Treasury Regulations Section 1.704-1(b)(2)(iv)(f) and 1.704-1(b)(2)(iv)(g) and to make any other adjustments to the Members' Capital Accounts that are necessary or appropriate in order to comply with such Treasury Regulations.

7.2 Allocations of Profits and Losses.

7.2.1 Except as otherwise provided in this Article 7, the Company's Profits and Losses and, to the extent necessary, individual items of income, gain, loss or deduction, of the Company for any Fiscal Year or other portion thereof for which it is necessary to make allocations shall be allocated to the Members' Capital Accounts in a manner such that, after giving effect to the special allocations set forth in this Article 7, the Capital Account of each Member, immediately after making such allocation, is, as nearly as possible, equal (proportionately) to (i) the distributions that hypothetically would be made to such Member pursuant to Section 5.1.1 if the Company were dissolved and terminated, its affairs wound up and its assets sold for cash equal to their Carrying Value, all Company liabilities were satisfied (limited with respect to each nonrecourse liability to the Carrying Value of the assets securing such liability), and the net assets of the Company were distributed in accordance with Section 5.1.1 to the Members, minus (ii) such Member's share of Company Minimum Gain and Member Nonrecourse Debt Minimum Gain, computed immediately prior to the hypothetical sale of the Company's assets.

7.2.2 The Board shall make appropriate adjustments to allocations of Profits and Losses to (or, if necessary, allocate items of gross income, gain, loss or deduction of the Company among) the Members such that, to the extent possible, a Member's Capital Account balance shall equal, upon liquidation of the Company (within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(g)), the amount it is entitled to receive pursuant to Section 10.4.

7.3 Regulatory Allocations. The following special allocations shall be made in the following order:

7.3.1 Except as otherwise provided in Treasury Regulations Section 1.704-2(f), notwithstanding any other provision of this Article 7, if there is a net decrease in Company Minimum Gain during any Fiscal Year (or other period for which it is necessary to make allocations hereunder), each Member shall be specially allocated items of Company income and gain for such Fiscal Year (or other period) (and, if necessary, subsequent Fiscal Years or periods) in an amount equal to such Member's share of the net decrease in Company Minimum Gain, determined in accordance with Treasury Regulations Section 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. This Section 7.3.1 is intended to comply with the minimum gain chargeback requirement of Treasury Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

7.3.2 Except as otherwise provided in Treasury Regulations Section 1.704-2(i)(4), notwithstanding any other provision of this Article 7 (other than Section 7.3.1), if there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to Member Nonrecourse Debt during any Fiscal Year (or other period for which it is necessary to make allocations hereunder), each Member who has a share of such Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt shall be specially allocated items of Company income and gain for such Fiscal Year (or other period) (and, if necessary, subsequent Fiscal Years or periods) in an amount equal to such Member's share of the net

decrease in Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treasury Regulations Section 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. This Section 7.3.2 is intended to comply with the minimum gain chargeback requirement set forth in Treasury Regulations Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

7.3.3 Notwithstanding Section 7.2, Losses (and any item thereof or any other item in the nature of loss or deduction) shall not be allocated to a Member to the extent the allocation would cause such Member (hereinafter, a "Restricted Member") to have an Adjusted Capital Account Deficit as of the end of such Fiscal Year (or other period), or would cause an existing Adjusted Capital Account Deficit of such Member to become more negative. Any item that may not be allocated to a Restricted Member because of the limitation set forth in this Section 7.3.3 shall instead be allocated to the other Member (or, if there are multiple other Members, then to and among all other Members who are not Restricted Members, to the extent possible in accordance with the relative Percentage Interests of such other Members), provided that such reallocation does not cause such other Member(s) to have an Adjusted Capital Account Deficit or cause an existing Adjusted Capital Account Deficit of such other Member(s) to become more negative. The limitation imposed by this Section 7.3.3 is intended to comply with Treasury Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

7.3.4 In the event any Member unexpectedly receives any adjustments, allocations or distributions described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5), or (6), items of the Company's income and gain shall be specially allocated to each such Member in an amount and manner sufficient to eliminate, to the extent required by Treasury Regulations Section 1.704-1(b)(2)(ii)(d), the Adjusted Capital Account Deficit of such Member as quickly as possible, provided, that an allocation pursuant to this Section 7.3.4 shall be made only if and to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article 7 have been tentatively made as if this Section 7.3.4 were not a part of this Agreement. This Section 7.3.4 is intended to constitute a "qualified income offset" within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

7.3.5 Member Nonrecourse Deductions for any Fiscal Year or other applicable period shall be specially allocated to the Member that bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable (as determined under Treasury Regulations Section 1.704-2(i)(1)).

7.3.6 Member Nonrecourse Deductions for any Fiscal Year or other applicable period shall be allocated to the Members in accordance with their respective Percentage Interests, unless the Board determines that another allocation is required by law.

7.3.7 The allocations provided in this Section 7.3 (collectively, the "Regulatory Allocations") are intended to comply with certain requirements of Treasury Regulations Sections 1.704-1(b)(2)(iv) and 1.704-2. It is the intent of the Members that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss or deduction pursuant to

this Section 7.3.7. Accordingly, notwithstanding any other provision of this Agreement (other than the Regulatory Allocations), to the extent necessary to avoid any economic distortions which may result from application of the Regulatory Allocations, future items of income, gain, loss, expense and deduction shall be allocated as appropriate in the reasonable discretion of the Board in order to remedy any economic distortions that the Regulatory Allocations might otherwise cause, *i.e.*, so that, to the extent possible, each Member's Capital Account balance shall be equal to the Capital Account balance such Member would have had if the Regulatory Allocations were not a part of this Agreement and all Company items were allocated pursuant to Section 7.2.

7.4 Other Allocation Rules.

7.4.1 Profits, Losses and other items of income, gain, loss or deduction shall be allocated to the Members pursuant to this Article 7 as of the last day of each Fiscal Year; provided, that Profits, Losses and such other items shall also be allocated at such times as the Carrying Values of Company properties are adjusted pursuant to this Agreement.

7.4.2 Allocations to Members whose interests vary during a year by reason of transfer, redemption, admission, capital contributions, or otherwise, shall be made as determined by the Board in accordance with permissible methods under Code Section 706.

7.5 Tax Allocations.

7.5.1 Subject to Section 7.5.2, items of income, gain, loss, deduction and credit to be allocated for income tax purposes shall be allocated among the Members on the same basis as the corresponding "book" items are allocated as provided in Sections 7.2, 7.3 and 7.4.

7.5.2 If any Company Property is subject to Code Section 704(c) or is reflected in the Capital Accounts of the corresponding Members and on the books of the Company at a value that differs from the adjusted tax basis of such property, then the tax items with respect to such Company Property shall, in accordance with the requirements of Code Section 704(c) and Treasury Regulations Section 1.704-1(b)(4)(i), be shared among the Members in a manner that takes account of the variation between the adjusted tax basis of the applicable property and its value in the same manner as variations between the adjusted tax basis and Fair Market Value of property contributed to the Company are taken into account in determining the Members' shares of tax items under Code Section 704(c). The Board is authorized to choose any reasonable method permitted by the Treasury Regulations pursuant to Code Section 704(c), including the "remedial allocation" method, the "curative" method and the "traditional" method.

ARTICLE 8
TRANSFER OF UNITS; WITHDRAWAL OF MEMBERS

8.1 Transfers. Without the prior unanimous written consent of the other Member(s), a Member may not directly or indirectly sell, assign, transfer, pledge, hypothecate or otherwise dispose of such Member's Units in the Company, nor any part thereof, except as permitted by this Article 8. For the avoidance of doubt, the provisions of Section 8.5 shall apply whether or not the other Member consents to such transfer. The terms and conditions of Section 8.1, 8.2 and 8.3 shall terminate and be of no further force or effect immediately before consummation of an

IPO and immediately prior to a Liquidity Event. Except as set forth in this Article 8, any act in violation of this Section 8.1 shall be voidable by the Company or any Member.

8.2 Permitted Transfers. Notwithstanding the restrictions set forth in Section 8.1, a Member shall have the right to assign all or a portion of its Units (by operation of law or otherwise) without the consent of the Board or the other Members to such Member's Permitted Transferees. If a Member transfers its Units to a Permitted Transferee pursuant to this Section 8.2, such Permitted Transferee shall become a substitute Member without the consent of the non-transferring Members or the Board (but otherwise subject to Section 8.3), and with respect to a Permitted Transferee who acquires all of such Member's Units, all references herein to the transferring Member shall be deemed to be references to such Permitted Transferee.

8.3 Substitution of Members. A transferee of Units shall have the right to become a substitute Member only if:

8.3.1 Done in accordance with Section 8.1 or Section 8.2;

8.3.2 The transferee promptly notifies the Board and executes an instrument satisfactory to the Board accepting and adopting the terms and provisions of this Agreement; and

8.3.3 The transferee pays any reasonable expenses in connection with his, her or its admission as a new Member.

The admission of a substitute Member shall not result in the release of the Member who assigned the Units from any liability that such Member may have to the Company prior to such assignment.

8.4 Right of First Refusal. Each time a Member proposes to transfer, assign, convey, sell, encumber or in any way alienate all or any part of such Member's Units (or as required by operation of law or other involuntary transfer to do so) other than to a Permitted Transferee in a transaction permitted by Section 8.2, such Member (a "Restricted Selling Member") shall first offer such Units to the other Member ("ROFR Member") in accordance with the following provisions:

8.4.1 The Restricted Selling Member shall deliver a written notice to the Company and the ROFR Member stating (i) such Restricted Selling Member's bona fide intention to transfer all or a part of such Units, (ii) the name and address of the proposed transferee, (iii) the number of Units to be transferred, (iv) the purchase price in terms of payment for which the Restricted Selling Member proposes to transfer such Units and (v) any other material terms and conditions of such transfer.

8.4.2 Within thirty (30) days after receipt of the notice described in Section 8.4.1 (or if the notice provides for the payment of non-cash consideration, no later than thirty (30) days after determination of the fair market value thereof in accordance with the last sentence of Section 8.4.3), the ROFR Member shall notify the Company and the Restricted Selling Member in writing of its desire to purchase all of the Units being so transferred. The failure of the ROFR Member to submit a notice within the applicable period shall constitute an

election on the part of such ROFR Member not to purchase all of the Units which may be so transferred.

8.4.3 Within thirty (30) days after the conclusion of the applicable thirty (30) day period referred to in Section 8.4.2, if an affirmative election has been made, the ROFR Member shall purchase, and the Restricted Selling Member shall sell, such Units subject to the election upon the price and terms of payment designated in such notice. If the notice provides for the payment of non-cash consideration, the ROFR Member may elect to pay the consideration in cash equal to either (i) the fair market value as mutually determined by the Members or (ii) the determination of the present fair market value of the non-cash consideration offered, as determined by an independent third-party appraiser appointed by mutual agreement of the Restricted Selling Member and ROFR Member(s).

8.4.4 If the ROFR Member elects not to purchase all of the Units designated in such notice, then the Restricted Selling Member may transfer to the proposed transferee all of the Units described in the such notice, provided that such transfer (i) is completed within one hundred twenty (120) days after the expiration of the ROFR Member's right of first refusal on such Units (or, if applicable, within ten (10) days after receipt of the last of all required regulatory approvals), and (ii) is made on terms not less favorable to the Restricted Selling Member in the aggregate than as designated in the notice to the Company and the ROFR Member. If such Units are not so transferred in accordance with the foregoing, the Restricted Selling Member must give notice in accordance with this section prior to any other or subsequent transfer of such Units.

8.4.5 The foregoing right of first refusal shall terminate immediately prior to the earlier of an IPO and a Liquidity Event.

8.5 Transfers in Violation of this Agreement. Upon a transfer in violation of this Article 8, the transferee shall have no right to vote or participate in the management of the Company or to exercise any rights of a Member. Such transferee shall only have an economic interest in the Company. Notwithstanding the preceding sentence, if, in the determination of the remaining Members, a transfer in violation of this Article 8 would cause the termination of the Company under the Act, in the discretion of all other Members, the transfer shall be null and void.

8.6 Withdrawal of the Members. No Member shall be entitled to voluntarily withdraw from the Company unless such Member simultaneously forfeits his, her or its Membership Interest. Notwithstanding the above, a Member shall be deemed to have withdrawn from the Company upon an Event of Bankruptcy of such Member or any dissolution or liquidation of such Member. A withdrawal of a Member from the Company under any circumstances shall not release such Member from any obligation or liability under this Agreement accrued or incurred before the effective date of the withdrawal.

8.7 Limitations. No Member shall have the right or power to (a) reduce or withdraw the Member's contributions to the capital of the Company except as a result of the dissolution of the Company or as otherwise provided herein or by law; (b) cause the termination and dissolution of the Company, except as set forth in this Agreement; or (c) except as provided

elsewhere in this Agreement, demand or receive property other than cash in return for the Member's contribution to the capital of the Company. No Member shall have priority over any other Member either as to distribution of cash or property or allocation of tax items except as set forth in this Agreement.

ARTICLE 9
RECORDS

9.1 Books and Records. The books and records of the Company shall be kept, and the financial position and the results of its operations recorded, in accordance with the accounting methods followed for federal income tax purposes. The books and records of the Company shall reflect all the Company transactions and shall be appropriate and adequate for the Company's business. The Company shall maintain at its principal office all records required to be maintained under the Act.

9.2 Filings. The Board, at Company expense, shall cause the income tax returns for the Company to be prepared and timely filed with the appropriate authorities. The Board, at Company expense, shall also cause to be prepared and timely filed, with appropriate federal and state regulatory and administrative bodies, amendments to, or restatements of, the Certificate of Formation and all reports required to be filed by the Company with those entities under the Act or other then current applicable laws, rules, and regulations.

9.3 Accounting Decisions. All decisions as to accounting matters, except as otherwise specifically set forth herein, shall be made by the Tax Matters Member.

9.4 Inspection of Records. Each of NantCell and Sorrento, so long as it holds any Series A Units, has the right, at reasonable times, to inspect and copy during normal business hours any of the Company's records, including the Certificate of Formation and any amendment thereto, this Agreement, minutes of the meetings of the Board and the Members, the Company's federal, state and local income tax or information returns for each fiscal year, and all financial statements prepared with respect to the Company and its operations. Any request, inspection or copying by a Member under this Section 9.4 may be made by that Member or that Member's agent or attorney. Notwithstanding the foregoing, the Company shall not be obligated pursuant to this Section 9.4 to provide access to any information that is attorney-client privileged and should not, therefore, be disclosed; and provided further that the requesting Member and its designated representatives shall, if requested by the Company, execute a confidentiality and nondisclosure agreement in customary form prior to any such inspection.

9.5 Tax Matters.

9.5.1 Tax Matters Partner. The Members shall appoint a Series A Member as the "tax matters partner" for the Company from time to time pursuant to and to the extent permitted by Code Section 6231(a)(7) (the "Tax Matters Member"). Initially, NantCell shall be designated as the Tax Matters Member. The Tax Matters Member shall carry out the duties and responsibilities of such status in consultation with the other Members, where appropriate, and good faith and subject to the other provisions of this Agreement and applicable law. The Tax Matters Member shall inform each Member of all administrative and judicial proceedings for an

adjustment at the Company level for Company tax items, and shall forward to each Member within ten (10) days of receipt by the Tax Matters Member all notices received from the Internal Revenue Service regarding the commencement of a Company level audit or a final Company administrative adjustment. The Tax Matters Member shall have the right and power to extend the statute of limitations for assessment of tax deficiencies against Members with respect to adjustments to the Company's federal, state or local tax returns. The Tax Matters Member shall from time to time cause the Company to make such tax elections as it reasonably deems to be in the best interests of the Company and the Members. If for any reason the Tax Matters Member can no longer serve in that capacity or ceases to be a Member, NantWorks may designate another Member to be Tax Matters Member. All expenses incurred by the Tax Matters Member with respect to any tax matter that does or may affect the Company, or any Member by reason thereof, including but not limited to expenses incurred by the Tax Matters Member in connection with the preparation of the Company tax returns and Company level administrative or judicial tax proceedings, shall be paid for out of Company assets and shall be treated as the Company's expenses.

9.5.2 Schedule K-1. As promptly as practicable following the end of each Fiscal Year, but in no event later than 60 days following the end of such Fiscal Year, the Tax Matters Member shall cause to be prepared and mailed to each Member Schedule K-1 to IRS Form 1065, along with copies of all other federal, state and local income tax returns or reports filed by the Company for such Fiscal Year as may be required as a result of the operations of the Company (which, in each case, shall include the separate allocation of effectively connected income, unrelated business taxable income, and all other separately stated items), a schedule of book-tax differences for such Fiscal Year and such information as may be reasonably required by the Members to prepare their respective U.S. federal, state and local tax returns; provided that in the event the Schedule K-1 and such information are not mailed to each Member within 60 days following the end of such Fiscal Year, the Company shall provide to such members a reasonable estimate (based on information then reasonably available to the Tax Matters Partner) of such items to be included on the Schedule K-1 and all other necessary information. The Tax Matters Member shall make available to each Member a copy of the Company's Form 1065 and corresponding state tax returns promptly upon filing.

9.5.3 Cooperation of Members. The Members shall, upon reasonable request from the Board from time to time, reasonably cooperate with the Company in connection with the preparation and filing of any such tax returns, filings and/or reports, and/or any claim for refund and/or the resolution of any audit, dispute or administrative proceeding relating to the Company with respect to any taxable period ending after the date hereof. Such assistance shall include, but shall not be limited to, (i) making appropriate personnel of such Member available on a mutually convenient basis to provide such assistance as may be reasonably required and (ii) providing such information within such Member's possession or control as the Company deems reasonably necessary to properly complete and file any such return.

9.6 Confidentiality.

9.6.1 The Members hereby acknowledge that the Company will be in possession of confidential information the improper use or disclosure of which could have a material adverse effect upon the Company, or one or more Members.

9.6.2 The Members acknowledge and agree that all information provided to them by or on behalf of the Company concerning the business or assets of the Company and/or its Affiliates or partners shall not, without the prior written consent of the Board, be disclosed to any Person (other than a Member). Notwithstanding the previous sentence, each Member may disclose Company confidential information to such Member's accountants, attorneys and similar advisors bound by a duty of confidentiality and to a proposed transferee bound by a confidentiality agreement; moreover, the foregoing requirements of this Section 9.6.2 shall not apply to a Member with regard to any information that is currently or becomes: (i) required to be disclosed pursuant to applicable law or a domestic national securities exchange rule (but in each case only to the extent of such requirement); (ii) required to be disclosed in order to protect such Member's interest in the Company or in any dispute between or among the Members; (iii) publicly known or available in the absence of any improper or unlawful action on the part of such Member or (iv) known or available to such Member other than through or on behalf of the Company, it being understood that information about the services provided by a Member to the Company shall not be deemed as becoming known or available through or on behalf of the Company.

ARTICLE 10
DISSOLUTION AND WINDING UP

10.1 Dissolution. The Company shall be dissolved, its assets shall be disposed of, and its affairs wound up on the first to occur of the following:

10.1.1 The occurrence of any event of dissolution specified in the Certificate of Formation;

10.1.2 The entry of a decree of judicial dissolution pursuant to the Act;

10.1.3 An Event of Bankruptcy of the Company; or

10.1.4 The determination by Supermajority Board Consent.

10.2 Certificate of Cancellation. As soon as possible following the dissolution of the Company pursuant to Section 10.1, the Board or, if applicable, the Person appointed by the Board to wind-up the affairs of the Company (a "Liquidating Person") shall execute a certificate of cancellation in such form as shall be prescribed by the Delaware Secretary of State and file such certificate as required by the Act.

10.3 Winding Up. Upon the occurrence of any event specified in Section 10.1, the Board (or, if applicable, the Liquidating Person) shall (a) be responsible for overseeing the winding up and liquidation of Company, (b) take full account of the liabilities of Company and assets, (c) determine which assets shall be distributed in kind and which assets shall be liquidated, (d) either cause its assets to be sold or distributed, and if sold, shall cause the proceeds therefrom, to the extent sufficient therefor, to be applied and distributed as provided in Section 10.4 and (e) give written notice of the commencement of winding up by mail to all known creditors and claimants whose addresses appear on the records of the Company. During the period of winding up, the Board (or, if applicable, the Liquidating Person) may make

distributions of cash and other assets to the Members in accordance with the provisions of Article 10 hereof.

10.4 Payment Upon Dissolution. After determining that all known debts and liabilities of the Company, including, without limitation, debts and liabilities to Members who are creditors of the Company, have been paid or adequately provided for, the remaining assets, if any, shall be distributed to the Members in accordance with Section 5.1.1. Any distributions of assets in kind shall be valued at their Carrying Values as determined by the Board. The liquidating distributions shall be made by the end of the Taxable Year in which the Company is liquidated, or, if later, within ninety (90) days after the date of such liquidation.

10.5 Limitations on Payments Made in Dissolution. Except as otherwise specifically provided in this Agreement, each Member shall only be entitled to look solely at the assets of the Company for the return of its positive Capital Account balance and shall have no recourse for its Capital Contribution and/or share of any income or profits of the Company (upon dissolution or otherwise) against any other Member.

ARTICLE 11
MISCELLANEOUS

11.1 Complete Agreement. This Agreement and the Certificate of Formation constitute the complete and exclusive statement of agreement among the Members with respect to the subject matter herein and therein and replace and supersede all prior written and oral agreements or statements by and among the Members or any of them.

11.2 Binding Effect. Subject to the provisions of this Agreement relating to transferability, this Agreement will be binding upon and inure to the benefit of the Members, and their respective successors and assigns.

11.3 Parties in Interest. Except as expressly provided in the Act, nothing in this Agreement shall confer any rights or remedies under or by reason of this Agreement on any Persons other than the Members and their respective successors and assigns nor shall anything in this Agreement relieve or discharge the obligation or liability of any third person to any party to this Agreement, nor shall any provision give any third person any right of subrogation or action over or against any party to this Agreement.

11.4 Pronouns; Statutory References. All pronouns and all variations thereof shall be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the context in which they are used may require. Any reference to the Code, the Treasury Regulations or the Act, or other statutes or laws will include all amendments, modifications, or replacements of the specific sections and provisions concerned.

11.5 Headings. All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.

11.6 Interpretation. In the event any claim is made by any Member relating to any conflict, omission or ambiguity in this Agreement, no presumption or burden of proof or

persuasion shall be implied by virtue of the fact that this Agreement was prepared by or at the request of a particular Member or his or her counsel. Whenever a provision in this Agreement authorizes or permits the Board to act in "its discretion" or "sole discretion," such provision shall mean that the decision to take applicable action (or decline or refuse to take such action) shall be in the sole and absolute discretion of the Board, who may consider (or decline to consider) any factors as it determines.

11.7 References to this Agreement. Numbered or lettered articles, sections and subsections herein contained refer to articles, sections and subsections of this Agreement unless otherwise expressly stated.

11.8 Governing Law. The Members expressly agree that all the terms and provisions hereof shall be construed under the laws of the State of Delaware.

11.9 Dispute Resolution.

11.9.1 In an effort to informally and amicably resolve any claim, controversy or dispute arising out of or relating to this Agreement or the breach thereof, and regardless whether such claim sounds in contract, tort, or otherwise (a "Dispute"), each Member shall provide written notice to the other Members with which it has a Dispute that requires resolution. Such notice shall set forth the nature of the Dispute, the amount, if any, involved and the remedy sought. Each Member involved in the Dispute shall designate a representative who shall be empowered to investigate, discuss and seek to settle or otherwise resolve the Dispute. If the representatives are unable to resolve the Dispute within thirty (30) days after proper notification, the Dispute shall be submitted to the most senior executive of each Member involved in the Dispute for consideration for an additional thirty (30) days.

11.9.2 Except as provided in Section 11.9.3, as the exclusive means of dispute resolution, any Dispute shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The decision of the arbitrator(s) shall be final and binding and not subject to appeal, except as provided under applicable laws, or unless otherwise agreed to jointly by the relevant parties in writing in advance of the hearing. The place of arbitration shall be Los Angeles, California. This Agreement, the arbitration and enforcement of any award shall be governed by the laws of the State of California. The parties consent to and hereby submit to the exclusive jurisdiction of the state or federal courts located in the County of Los Angeles in the State of California for the purpose of compelling arbitration or enforcing any arbitral award, including any equitable relief arising out of any arbitral award, or for otherwise seeking equitable relief. EACH OF THE PARTIES HEREBY WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, TRIAL BY JURY IN ANY LITIGATION IN ANY COURT WITH RESPECT TO, IN CONNECTION WITH, OR ARISING OUT OF THIS AGREEMENT OR THE VALIDITY, PROTECTION, INTERPRETATION OR ENFORCEMENT THEREOF. Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content or results of any arbitration hereunder without the prior written consent of the relevant parties.

11.9.3 In addition, each Member may seek equitable relief if any provision of this Agreement is not performed in accordance with its terms and for which such Party would not have an adequate remedy for money damages. Any such remedy will be in addition to any other remedy that may be available at law. Without limiting the generality of the foregoing, the parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. Accordingly, the parties agree that, in addition to any other remedies, each party shall be entitled to enforce the terms of this Agreement by a decree of specific performance without the necessity of proving the inadequacy of money damages as a remedy and without regard to anything to the contrary contained in applicable law. Each party hereby waives any requirement for the securing or posting of any bond in connection with such remedy. Each party further agrees that the only permitted objection that it may raise in response to any action for equitable relief is that it contests the existence of a breach or threatened breach of this Agreement.

11.10 Schedules, Appendices and Exhibits. All Schedules, Appendices and Exhibits attached to this Agreement are incorporated and shall be treated as if set forth herein.

11.11 Severability. If any provision of this Agreement or the application of such provision to any person or circumstance shall be held invalid, the remainder of this Agreement or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

11.12 Additional Documents and Acts. Each Member agrees to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate, carry out and perform all of the terms, provisions, and conditions of this Agreement and the transactions contemplated hereby.

11.13 Notices. Except as may be otherwise provided herein, all notices, requests, waivers and other communications made pursuant to this Agreement shall be in writing and shall be conclusively deemed to have been duly given when sent to a Member to the address or facsimile number set forth opposite such Member's name on Schedule A hereto: (a) when hand delivered to the Member; (b) when sent by facsimile if sent between 8:00 a.m. and 5:00 p.m. recipient's local time on a business day, or on the next business day if sent other than between 8:00 a.m. and 5:00 p.m. recipient's local time on a business day; (c) three business days after deposit in the U.S. or overseas mail with first class or certified mail receipt requested postage; or (d) the next business day after deposit with a national overnight delivery service, postage prepaid, with next business day delivery guaranteed, provided that the sending party receives a confirmation of delivery from the delivery service provider. A Member may change or supplement the addresses given on Schedule A, or designate additional addresses, for purposes of this Section 11.13 by giving written notice of the new address to the Board. The Board shall maintain Schedule A in a manner consistent with the Act and this Agreement and shall cause Schedule A to be revised, without the necessity of obtaining the consent of any Member, to reflect (i) any change referenced in the prior sentence, (ii) the admission of any Additional Member or substitute Member pursuant to the term of this Agreement or (iii) changes in the Percentage Interests of the Members occurring pursuant to the terms of this Agreement.

11.14 Amendments. This Agreement may be amended only by Member Consent; provided, that no provision of this Agreement may be amended in a manner that adversely and disproportionately affects the rights or obligations of any Member under this Agreement in any respect without the prior written consent of such Member (it being understood that the creation and issuance of a series of Units with rights, preferences or privileges senior to, or pari passu with, the Series A Units shall not be deemed to require the consent of a Member under this Section 11.14 solely as a result of such security having rights, preferences or privileges senior to, or pari passu with, the Series A Units). Notwithstanding the foregoing, the Board shall amend Schedule A, without having to obtain the consent of any Member, as appropriate to reflect accurately any transfers of Units, issuances of new Units and admissions of new Members that are affected in accordance with this Agreement. Section 4.2 may not be amended in any manner adversely affecting the rights or obligations of NantCell or Sorrento without their prior written consent of NantCell and Sorrento, respectively, and in no event shall any change to this Agreement have the effect of imposing or requiring that NantCell or Sorrento or their respective Affiliates make any additional Capital Contributions. Notwithstanding the foregoing, Sections 3.1.2, 3.1.3, 4.1 and 6.4 and Article 8 in its entirety may not be amended and any right set forth therein may not be waived without the prior written consent of Sorrento.

11.15 Reliance on Authority of Person Signing Agreement. If a Member is not a natural person, neither the Company nor any Member will (i) be required to determine the authority of the individual signing this Agreement to make any commitment or undertaking on behalf of such entity or to determine any fact or circumstance bearing upon the existence of the authority of such individual or (ii) be responsible for the application or distribution of proceeds paid or credited to individuals signing this Agreement on behalf of such entity.

11.16 No Interest in Company Property; Waiver of Action for Partition. No Member or assignee has any interest in specific property of the Company. Without limiting the foregoing, each Member and Transferee irrevocably waives during the term of the Company any right that he, she or it may have to maintain any action for partition with respect to the property of the Company.

11.17 Multiple Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

11.18 Remedies Cumulative. The remedies under this Agreement are cumulative and shall not exclude any other remedies to which any person may be lawfully entitled.

IN WITNESS WHEREOF, this Agreement has been executed as of the date first above written.

NANTCELL, INC.

By:_____
Name: Charles Kim
Title: General Counsel

SORRENTO THERAPEUTICS, INC.

By:_____
Name: Henry Ji, Ph.D.
Title: President & CEO

[SIGNATURE PAGE TO IMMUNOTHERAPY NANTIBODY, LLC LIMITED LIABILITY COMPANY AGREEMENT]

SCHEDULE A

MEMBERS; CAPITAL CONTRIBUTIONS; UNITS

Name and Address	Total Capital Contributions	Initial No. of Series A Units	Percentage Interest
Series A Units			
NantCell, Inc. 9920 Jefferson Boulevard Culver City, California 90232 Attention: Chief Executive Officer	$60 million as agreed pursuant to Section 4.1 and execution of the Contribution Agreement	12,000,000 Series A Units[(1)]	60.0%
Sorrento Therapeutics, Inc. 6042 Cornerstone Court West, Suite B San Diego, California 92121 Attention: Chief Executive Officer	$40 million as agreed pursuant to Section 4.1 and execution of the License Agreement	8,000,000 Series A Units[(1)]	40.0%
Total Units Outstanding		**20,000,000**	**100.0%**

(1) The initial Capital Contributions in cash are as provided in Section 4.1(i) for the Series A Units as set forth above (the "Initial Capital Contributions"). Thereafter, NantCell and Sorrento will receive one (1) additional Series A Unit for each additional dollar ($1) they contribute to the Company in accordance with Section 4.1, up to an aggregate maximum of 60 million Series A Units for NantCell's $60 million Capital Contribution and up to an aggregate maximum of 40 million Series A Units for Sorrento's $40 million Capital Contribution. Notwithstanding the foregoing, if the rights under Section 3.1.3 (Preemptive Rights) are triggered prior to NantCell and Sorrento having made the Total Capital Contribution (*i.e.*, $60 million for NantCell and $40 million for Sorrento), then each of NantCell and Sorrento shall have the option (but not the obligation) to make any remaining Capital Contributions for Subsequent Equity (instead of for Series A Units), on the same terms as provided in the Preemptive Notice, including price per Subsequent Equity. NantCell and Sorrento must exercise their option, if at all, by delivering an irrevocable notice of exercise within thirty (30) days after the issuance of the Subsequent Equity. If NantCell or Sorrento fail to timely exercise its option in accordance with this paragraph, then the option will automatically lapse (and NantCell and Sorrento, as applicable, shall be deemed to have elected to take Series A Units in exchange for their remaining Capital Contributions). For the avoidance of doubt, NantCell's and Sorrento's options will not apply with respect to Capital Contributions made prior to the issuance of any Subsequent Equity. This Schedule A shall be updated from time to time to reflect additional Series A Units or Subsequent Equity issued to NantCell and Sorrento in exchange for their respective Capital Contributions.

By way of example, if the Company sells Series B Units (*i.e.*, Subsequent Equity) at $2 per Unit, and assuming NantCell and Sorrento have $12 million and $8 million, respectively, in remaining Total Capital Contributions, then NantCell and Sorrento may elect, upon exercise of the option as set forth above, to take 6 million Series B Units and 4 million Series B Units, respectively, of their remaining Total Capital Contributions (instead of 12 million Series A Units for NantCell and 8 million Series A Units for Sorrento).

APPENDIX 1

Definitions

As used in the foregoing Agreement, the following terms shall have the meanings set forth below:

"Adjusted Capital Account Deficit" means, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of any relevant Fiscal Year and after giving effect to the following adjustments: (i) credit to such Capital Account any amounts which such Member is obligated or treated as obligated to restore with respect to any deficit balance in such Capital Account pursuant to Section 1.704-1(b)(2)(ii)(c) of the Treasury Regulations, or is deemed to be obligated to restore with respect to any deficit balance pursuant to the penultimate sentences of Sections 1.704-2(g)(1) and 1.704-2(i)(5) of the Treasury Regulations; and (ii) debit to such Capital Account the items described in Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6) of the Treasury Regulations. The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the requirements of the alternate test for economic effect contained in Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations and shall be interpreted consistently therewith.

"Affiliate" means, with respect to any Person, any other Person, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such Person. The term "control," as used in the immediately preceding sentence means, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled Person.

"Available Cash" means, as of a date of determination, Cash that is available in the accounts of the Company and not reserved to make any payments due and owing by the Company or otherwise reserved by the Board for fees and expenses, operations or contingencies of the Company, all as determined by the Board in its discretion.

"Capital Account" means the individual capital account established by the Board on behalf of each Member. Each such Member's Capital Account shall be (a) increased by (1) the amount of cash or the fair market value of property or services contributed by it to the Company, (2) allocations to it of Profits and other items of book income and gain of the Company, and (b) decreased by (1) the amount of cash distributed to it by the Company, (2) the Carrying Value of the non-cash property distributed by the Company to the Member (net of any liabilities securing such distributed property that the Member is considered to assume or take subject to Code Section 752) and (3) allocations to it of Losses and other items of book loss and deduction of the Company, and (c) as otherwise adjusted in accordance with the additional rules set forth in Treasury Regulations Section 1.704-1(b)(2)(iv). It is the intent of the Company that the Capital Accounts of all such Members be determined and maintained in accordance with the principles of Treasury Regulations Section 1.704-1(b)(2)(iv) at all times throughout the full term of the Company. Accordingly, the Board is authorized to make any other adjustments to the Capital Accounts so that the Capital Accounts and allocations thereto comply with said section of the Treasury Regulations.

"Capital Contributions" means, with respect to any Member, the total amount of Cash or the fair market value of property or services actually contributed to the capital of the Company by such Member.

"Carrying Value" means, with respect to any asset of the Company, such asset's adjusted basis for federal income tax purposes, except as follows:

(a) The Carrying Values of all Company Properties shall be adjusted to equal their respective gross fair market values as of the following times: (i) a Capital Contribution (other than a de minimis Capital Contribution) to the Company by a new or existing Member in return for an additional interest in the Company; (ii) the distribution by the Company to a Member of more than a de minimis amount of Company Property as consideration for an interest in the Company; (iii) the grant of an interest in the Company as consideration for the provision of services to or for the benefit of the Company; and (iv) upon the liquidation of the Company within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(g); provided, that adjustments shall be made pursuant to clauses (i) and (ii) only if the Board determines that such adjustments are necessary or appropriate to reflect more accurately the Member's relative interests in the Company or to comply with Treasury Regulations Sections 1.704-1(b) and 1.704-2.

(b) The Carrying Value of any Company Property distributed to any Member shall be adjusted to equal the gross fair market value of such Company Property, determined on the date of distribution.

(c) The Carrying Values of Company Property shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Section 734(b) or 743(b) of the Code, but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Section 1.704-1(b)(2)(iv)(m) of the Treasury Regulations; provided, that Carrying Values shall not be adjusted pursuant to this paragraph to the extent that the Board determines that an adjustment pursuant to paragraph (a) of this definition above is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this paragraph (c).

(d) If the Carrying Value of any Company Property has been adjusted pursuant to paragraph (a) or (b) of this definition, such Carrying Value shall thereafter be adjusted by Depreciation taken into account with respect to such asset for purposes of computing Profits or Losses.

"Cash" when capitalized means money and cash equivalents.

"Certificate of Formation" means the certificate of formation of Immunotherapy NANTibody, LLC filed with the Office of the Secretary of State of the State of Delaware on April 13, 2015, as may be amended from time to time.

"Code" means the Internal Revenue Code of 1986, as in effect on the date of this Agreement and as amended thereafter from time to time.

"Company Minimum Gain" means "partnership minimum gain" determined in accordance with Treasury Regulations Section 1.704-2(d).

"Company Property" means any tangible and intangible personal property now owned or hereafter acquired by the Company, including, without limitation, all cash, cash equivalents, deposits, or any other property.

"Damages" means any and all losses, damages, expenses and liabilities whether joint or several, including, without limitation, those losses, damages, expenses and liabilities (including reasonable attorneys' fees) arising under or connected with the securities laws of the United States, or any other provision of statutory law, common law, or other applicable law of any jurisdiction.

"Depreciation" means, for each Fiscal Year, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable for federal income tax purposes with respect to an asset for such Fiscal Year, except that if the Carrying Value of an asset differs from its adjusted tax basis for federal income tax purposes at the beginning of such Fiscal Year, Depreciation shall be an amount which bears the same ratio to such beginning Carrying Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such Fiscal Year bears to such beginning adjusted tax basis; provided, however, that if the adjusted tax basis for federal income tax purposes of an asset at the beginning of such Fiscal Year is zero, Depreciation shall be determined with reference to such beginning Carrying Value using any reasonable method selected by the Board.

"Event of Bankruptcy" means, with respect to any Person, (i) the filing of a voluntary petition seeking liquidation, reorganization, arrangement or readjustment, in any form, of its debts under Title 11 of the United States Code or any other federal or state insolvency law, or the filing of an answer consenting to or acquiescing in any such petition; (ii) the making of any general assignment for the benefit of its creditors, or the admission in writing of its inability to pay debts as they become due; (iii) the expiration of 30 days after the filing of an involuntary petition under Title 11 of the United States Code, an application for the appointment of a receiver for the assets of such Person, or an involuntary petition seeking liquidation, reorganization, arrangement or readjustment of its debts under any other federal, state or foreign insolvency law, provided that the same shall not have been vacated, set aside or stayed within such 30-day period; (iv) the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator, or other similar agent for the Person or for any substantial part of the Person's assets or property; and (v) the ordering of the winding up or liquidation of the Person's affairs.

"Fiscal Year" means the Company's fiscal year, the first of which shall commence on the date hereof and the remainder of which shall commence on January 1 and each of which shall end on December 31 of each year (unless the Company is required to have a Taxable Year other than the calendar year, in which case the Company's Fiscal Year shall be such Taxable Year).

"Indemnifiable Person" means (i) each Director, (ii) any officer, employee, employee, attorney, agent, or representative of the Company, (iii) the Tax Matters Member and (iv) each Member.

"IPO" means the first firm commitment underwritten public offering of securities of the Company (or a corporate or other successor to the Company) pursuant to an effective registration statement under the Securities Act of 1933 (other than a registration statement relating either to the sale of securities to employees of the Company pursuant to a stock option, stock purchase or similar plan or an SEC Rule 145 transaction).

"Liquidity Event" means the consummation of (a) any reorganization, merger, consolidation or other transaction or series of related transactions in which the Members as constituted immediately prior to such transaction or series of related transactions will, immediately after such transaction or series of related transactions (by virtue of securities issued in such transaction or series of related transactions) fail to hold at least 50% of the voting power of the resulting or surviving entity or its parent company following such transaction or series of related transactions; or (b) a sale, lease, transfer, exclusive license or other disposition of all or substantially all of the assets of the Company (taken together as a whole with its subsidiaries), or a related series of transactions that, taken together, result in the sale or other disposition of all or substantially all of the assets of the Company (taken together as a whole with its subsidiaries).

"Member Consent" means the vote or written consent of Members representing a majority of the outstanding Series A Units and any other Units entitled to vote, if any, voting together as a single class.

"Member Nonrecourse Debt" means "partner nonrecourse debt" as defined in Treasury Regulations Section 1.704-2(b)(4).

"Member Nonrecourse Debt Minimum Gain" means "partner nonrecourse debt minimum gain" as determined in accordance with Treasury Regulations Section 1.704-2(i)(2).

"Member Nonrecourse Deductions" means "partner nonrecourse deductions" as defined in Section 1.704-2(i)(2) of the Treasury Regulations.

"Membership Interest" means, with respect to any Person, such Person's "limited liability company interest" (within the meaning of Section 18-701 of the Act) in the Company.

"Percentage Interest" shall mean, in relation to a Member, the proportion which the number of Units held by that Member in the Company bears to the total number of Units held by all Members.

"Permitted Transferee" shall mean, with respect to any Member, (i) an Affiliate of such Member, (ii) a bona fide third party purchaser of the Units pursuant to a Liquidity Event, (iii) any Person that directly or indirectly acquires all or substantially all of the ownership interests or assets of such Member, (iv) any liquidating trust established in connection with the liquidation, dissolution and winding up of such Member for purposes of holding the assets of such Member for the benefit of the former partners, members or equity holders thereof, (v) such Member's spouse (provided that in any community property state, each spouse agrees in writing to be bound by the terms of this Agreement), (vi) any descendants (whether natural or adopted) of such Member or of Member's spouse or (vii) any trust or other entity formed for estate planning purposes for the benefit of such Member or a Person specified in (v) or (vi) above, provided that such Permitted Transferee agrees in writing to be bound by the terms of this

Agreement. In addition, the following transfers shall be deemed permitted transfers (and the transferee of Units shall be deemed a Permitted Transferee hereunder): (a) a Member's transfer of any or all of such Member's Units to a Person who, at the time of such transfer, is an officer or director of the Company, (b) a Member's transfer of any or all of such Member's Units pursuant to and in accordance with the terms of any merger, consolidation, reclassification of shares or capital reorganization of such Member, or pursuant to a sale of all or substantially all of the stock or assets of a Member, (c) a Member's transfer of any or all of such Member's Units to any or all of its stockholders or (d) a Member's bona fide pledge or mortgage of any of such Member's Units with a commercial lending institution, provided that any subsequent transfer of said Units by said institution shall be conducted in a manner consistent with this Agreement; provided that, in each case, the Permitted Transferee agrees in writing to be bound by the terms of this Agreement.

"Person" means any natural person, corporation, membership, trust, partnership, limited liability company, association or other entity.

"Profits" or "Losses" means for each Fiscal Year or other period, an amount equal to the Company's taxable income or loss for such year or period determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments: (a) any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses shall be added to such taxable income or loss; (b) any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(i) and not otherwise taken into account in computing Profits or Losses shall be subtracted from such taxable income or loss; (c) gain or loss resulting from any disposition of a property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Carrying Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Carrying Value; (d) if the Carrying Value of an asset is adjusted pursuant to paragraph (a) or (b) of that definition, then the amount of such adjustment shall be treated as an item of gain or loss and included in the computation of Profits and Losses; (e) in lieu of depreciation, amortization or other cost recovery deduction taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Fiscal Year; and (f) to the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) or Code Section 743(b) is required pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining Capital Accounts as a result of a distribution other than in complete liquidation of a Member's interest in the Company, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for purposes of computing Profits or Losses. The amounts of the items of Company income, gain, loss or deduction available to be specially allocated pursuant to Section 7.3 shall be determined by applying rules analogous to those set forth above in this paragraph.

"Supermajority Board Consent" means a vote of at least three (3) Directors, with at least one (1) Sorrento Director and at least one (1) NantCell Director voting in support thereof.

"Supermajority Member Consent" means the vote or written consent of Members representing at least seventy-five percent (75%) of the outstanding Series A Units and any other Units entitled to vote, if any, voting together as a single class.

"Taxable Year" means the taxable year of the Company determined in accordance with the requirements of the Code.

"Treasury Regulations" means the regulations in force from time to time as final or temporary regulations promulgated by the United States Department of Treasury pursuant to the Code.

"Unit" means a Membership Interest of a Member in the Company representing a fractional part of the Membership Interests of all Members, provided that any class or series of Units shall have the relative rights, powers and duties set forth in this Agreement and the Membership Interest represented by that class or series of Units shall be determined in accordance with such relative rights, duties and powers.

"Unreturned Capital" means, with respect to any Member as of any date of determination, the excess of such Member's Capital Contributions over the aggregate amount theretofore distributed to such Member pursuant to Section 5.1.1(a).

EXHIBIT 2

ASSIGNMENT AGREEMENT

This Assignment Agreement (this "Agreement") is made as of July 2, 2017 (the "Effective Date") by and between NantPharma, LLC, a Delaware limited liability company ("Assignor"), and Immunotherapy NANTibody, LLC, a Delaware limited liability company ("Assignee").

WHEREAS, pursuant to the Stock Sale and Purchase Agreement dated as of May 14, 2015 (the "Cynviloq Agreement") by and between Assignor and Sorrento Therapeutics, Inc. ("Sorrento"), Assignor purchased from Sorrento, and Sorrento sold to Assignor, all of Sorrento's equity interests in IgDraSol, Inc., a Delaware corporation (the "Company"), consisting of 5,706,321 shares of Common Stock, par value $0.0001 per share of the Company (the "Sale Shares"); and

WHEREAS, at the closing of the transaction under the Cynviloq Agreement, Assignor made an upfront payment of $90,050,000 (the "Upfront Amount") to Sorrento;

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Conveyance of Equity Interests. Assignor hereby conveys, assigns, transfers and delivers to Assignee, and Assignee accepts, all of Assignor's right, title and interest in the Sale Shares.

2. Assignment of Contract. Assignor hereby conveys, assigns and transfers to Assignee all of its right, title and interest in, to and under the Cynviloq Agreement. Assignee hereby accepts the conveyance, assignment and transfer of the Cynviloq Agreement and hereby assumes all of Assignor's liabilities and obligations arising thereunder or related thereto

3. Consideration. In consideration of the foregoing, Assignee agrees to pay to Assignor the Upfront Amount promptly after the date thereof.

4. Successors and Assigns. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

5. Further Assurances. Each party agrees that it will execute and deliver to the other party any and all documents that may be necessary or appropriate to further implement or reflect the provisions of this Agreement.

6. Governing Law. This Agreement shall be construed, performed and enforced in accordance with, and governed by, the laws of the State of Delaware (without giving effect to the principles of conflicts of laws thereof).

7. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment Agreement to be duly executed as of the Effective Date.

ASSIGNOR

NantPharma, LLC

By: _____
Name: _____
Title: _____

ASSIGNEE

Immunotherapy NANTibody, LLC

By: _____
Name: Charles Kim
Title: General Counsel