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28 April 2023

Our Ref: RFWS\386660.00015

**By post and by email to James.Newton@pallasllp.com**

Pallas Partners LLP  
1 King William Street  
London  
EC4N 7AF

FAO: James Newton

Dear Sir/Madam,

**Re: Nanoco/Group Plc ("Nanoco")  
Response to Pallas Letter 10 March 2023**

1. We refer to your letter dated 10 March 2023 and our letter of 17 March 2023.
2. We address the allegations made in your letter to the extent they are made against Nanoco and its directors. No admission is to be inferred from an absence of response to any particular fact or matter alleged (express or implied) against Nanoco and its directors. No waiver of legal professional privilege nor without prejudice privilege is made or intended by the content of this letter.
3. For the avoidance of doubt we do not represent either Richard Griffiths, ORA Capital Limited, Serendipity Capital Limited or Lombard Odier Asset Management (Europe) Limited ("LOAM"). Accordingly, we do not respond to any allegations you have made against Richard Griffiths, LOAM or any other associated entities except to the extent we consider relevant and appropriate to do so in addressing the allegations made against Nanoco and its directors.
4. Our clients have undertaken a detailed historical examination of the events in question, which we have carefully reviewed. The following account is drawn from that review.

#### **LOAM Equity and Debt Finance**

5. The financing transactions entered into with LOAM and others were in the best interests of Nanoco and agreed in the normal course of business on an arms-length basis.
6. In November 2017, a Nanoco shareholders' general meeting approved the equity fund raise of £8.6M (gross) underwritten by LOAM<sup>1</sup> and further, also explicitly approved the right of LOAM to appoint a non-executive director at any time thereafter if LOAM's shareholding exceeded 20%<sup>2</sup>.

<sup>1</sup> £8.6m gross was raised (equivalent to 16.7% of the then issued share capital). 50% of the issue was taken up by LOAM.

<sup>2</sup> This right was exercised in August 2021 when its shareholding was approximately 27% with the appointment becoming effective on 1 September 2021

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7. In July 2020, LOAM underwrote an equity fund raise (up to £2.2M)<sup>3</sup>.
8. In July 2020, litigation funding was secured for the Samsung Litigation (which was expected to cost the Company many millions of dollars) after a competitive tender process for which 5 specialist litigation funding firms were invited to participate.<sup>4</sup>
9. In June 2021, it was determined by Nanoco, which continued to be loss making, that it required additional funds to ensure it remained a going concern for the next year having regard to its publicly disclosed projected annual rate of expenditure and cash at bank as at 31 January 2021.
10. At that time, uncertainty had been heightened about the outcome of the Samsung Litigation. This is because in May 2021 (as publicly announced by Nanoco) the Patent Trial and Appeal Board ('PTAB') had decided to institute a review of all five *inter partes* reviews ("IPRs") in the Samsung Litigation in which the validity of the patents in the litigation was in issue.
11. No underwriter was forthcoming at that time and Nanoco's advisers considered that there was a real risk that unless discounted (with a highly dilutive effect) an equity issue which was not underwritten would not be successful. In the circumstances, a non-dilutive issue of non-amortising unsecured loan notes in the amount of £3.15 M (gross) was agreed with LOAM and Ora Capital with an interest rate of 12% plus a 105% bonus if the Samsung Litigation proved to be successful. The terms were considered good given the fact that the debt was unsecured, Nanoco was loss-making, the heightened litigation risks around the IPR's, and the outcome of the Samsung Litigation, which was by no means assured to be in the Company's favour, would not be known until an uncertain date in the future. Nanoco and its sponsor and broker, Peel Hunt, after proper consideration, were comfortable that the unsecured loan notes were issued on normal commercial terms and that they therefore fell within the related party exemption contained in LR11, Annex 1, para 4(3).
12. It is not the case that in June 2021 a more competitive offer of funding was made by the Baupost Group LLC ("Baupost") as alleged. In June 2021, Baupost enquired whether a loan for a revised minimum amount of £10-15 M minimum might be of interest if secured against an appropriate Nanoco IP portfolio. The minimum loan amount was considered too high for Nanoco's operational requirements and, in any event, Nanoco's IP portfolio was not available as security as it had previously been charged to secure the Samsung Litigation funding agreed a year earlier.
13. Indeed, we note that your client, Tariq Hamoodi, stated in an email dated 13 October 2021 of the Baupost expression of interest, *"While I understand why the potential Baupost transaction did not appeal to [sic], I congratulate you on the financing you obtained from your key shareholders earlier this year. From a shareholder's perspective, I think the transaction was much more attractive than what Baupost could have offered."*
14. The approach of Nanoco to this fund raise was entirely consistent with Nanoco's financial position at the time and in its best interests.

#### **Alleged Misstatements Regarding Samsung Litigation**

15. There is no legitimate basis for your client's assertion that there were repeated misleading statements as to the merits and settlement prospects for Nanoco.

<sup>3</sup> £3.4 M (gross) was raised of which 53.99% was sourced from shares allotted to LOAM

<sup>4</sup> 5 established litigation funders were invited to submit funding terms of which 4 submitted terms and the most competitive was selected

16. Regular and multiple disclosures of relevant information about the Samsung Litigation were made by Nanoco on the RNS and in its interim and annual reports<sup>5</sup>. Those disclosures consistently referred to the wide range of significant risks that could impact any outcome of the litigation process. They also consistently referred to a broad range of potential damages models that could be applied in the litigation. The disclosures did not extend to an assessment of merits or an opinion on prospects with respect to damages that may be awarded, beyond referencing the potential transformative impact to shareholder value if the patent litigation were to be successful. The Samsung Litigation pleadings and motions of Nanoco and of Samsung together with the court's interim orders were publicly available and provided the optimal source of information from which an assessment of the merits of the case could and should have been made in the conduct of any due diligence by an investor.
17. During the Samsung Litigation, Nanoco consistently stated in its interim and annual reports that the outcome of any trial was uncertain as was the possible damages to be awarded by a jury if Nanoco did win at trial. In July 2022, a high level overview of Nanoco's three experts' damages models was published on the court record showing:
  - Nanoco expert's low damages model value as \$43.9m (the Dow approach)
  - Nanoco expert's mid damages model value as \$136.2m (the Allenby approach)
  - Nanoco expert's high damages model value as \$412m (the Credelle approach)These damages models were disclosed on the public court record and were subsequently discussed in UK investor share chat forums.
18. In addition, shortly after the court published the information above, the Court also published commentary on Samsung's views of the appropriate level of damages if infringement was found to have occurred. Samsung planned to present their expert's opinion to the jury that damages should be lower than the \$28m Samsung had paid in a license fee to one of Nanoco's competitors for access to a portfolio twice the size of Nanoco's.
19. Further, Nanoco has neither sourced nor endorsed the opinions of third party analysts and commentators (including Edison Group Limited) as to the merits and prospects of its case for damages<sup>6</sup>. In full compliance with its disclosure obligations, Nanoco has only provided third-party analysts and commentators with information that Nanoco has publicly disclosed.
20. The settlement achieved by Nanoco generated a transformational amount of value for Nanoco's shareholders. The gross settlement value is more than three times Nanoco's low case damages model and avoided the risks associated with continued litigation and the adverse impact from the time value of money in an appeals process that could have extended for years (as has been the case in other patent litigation)<sup>7</sup>.
21. Your alleged concerns that Nanoco failed to disclose (confidential, legally privileged) merits and prospects assessments as to "the true position as regards damages estimates and, therefore, settlement prospects in the Samsung Litigation" are impossible to fathom. Nothing could be more damaging to the commercial interests of Nanoco in the conduct of the Samsung Litigation than to publicly disclose information that could have seriously compromised the outcome of any court hearing and the negotiating position of Nanoco. As noted above Nanoco did not issue statements on the

<sup>5</sup> Annual Report and Accounts for FY20, FY21 and FY22. Interim Accounts for FY20, FY21, FY22. Shareholder presentations twice per annum in FY20, FY21 and FY22, and a multitude of other RNS announcements regarding financial results, AGM's, fundraising activities and the litigation itself.

<sup>6</sup> It is neither appropriate nor reasonably possible for Nanoco to assess, without possession of all the information held by any third-party analyst or commentator, whether in fact they may have had reasonable grounds for any particular expression of opinion on merits or prospects as to damages or outcome in the Samsung Litigation.

<sup>7</sup> For example, VirnetX Inc., et al v. Apple Inc.

prospects regarding damages amounts (for obvious reasons) and it had consistently and regularly explained there were multiple ways to calculate damages and that the damages model adopted would ultimately be determined by a jury if the matter did not settle earlier.

22. The RNS announcement on 3 February 2023 set out all material facts of the two agreements that made up the 'settlement' including the relevance of the patents sold (all non-core) and the total costs of the litigation and the litigation funding (~\$60 M).
23. Your hyperbolic assertions that Nanoco issued misleading information and pursued a "campaign of obfuscation" are entirely unsupported by the facts and any sensible or balanced review of Nanoco's announcements about the Samsung Litigation and are emphatically rejected.

**Nanoco Share Sales by LOAM et al**

24. No inappropriate disclosure of unpublished price sensitive information in connection with the Samsung Litigation has been made by Nanoco to Richard Griffiths, ORA Capital Limited, Serendipity Capital Limited or LOAM.
25. To the extent you make allegations against Richard Griffiths and ORA Capital Limited and Serendipity Capital Limited and/or other associated entities or Lombard Odier Asset Management (Europe) Limited ("LOAM") these are not matters for our clients to address.

**Conclusion**

26. Your clients' highly speculative allegations against Nanoco and its directors are utterly without foundation for the reasons outlined above. In the circumstances, Nanoco does not intend to take the further actions requested by your clients.

Yours faithfully



**Reed Smith LLP**