

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

OREXIGEN THERAPEUTICS, INC.,

Debtor.

Chapter 11

Case No. 18-10518 (JTD)

**CERTIFICATION OF COUNSEL REGARDING STIPULATION MODIFYING THE
AUTOMATIC STAY TO PERMIT LIQUIDATION AND RESOLUTION OF PROOF OF
CLAIM NO. 140 BY KARIM KHOJA,
ON BEHALF OF HIMSELF AND OTHERS SIMILARLY SITUATED**

The undersigned counsel to Province, Inc. (the “Wind Down Administrator”), as the Wind Down Administrator for Orexigen Therapeutics, Inc. (the “Wind Down Entity”), successor in interest to the above-captioned debtor (the “Debtor”), and Karim Khoja, on behalf of himself and other similarly situated parties (“Claimant,” and together with the Wind Down Administrator and the Debtor, the “Parties”), hereby certifies as follows:

1. On March 12, 2018 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the “Court”).

2. On April 11, 2018, the Court entered its *Order (A) Establishing Bar Date for Filing Proofs of Claim, (B) Approving the Form and Manner for Filing Proofs of Claim, (C) Approving Notice Thereof, (D) Implementing Uniform Procedures Regarding 503(B)(9) Claims, and (E) Granting Related Relief* [Docket No. 170].

3. On June 14, 2018, Claimant timely filed a proof of claim, on behalf of himself and the proposed class that he represents, in the amount of \$258 million (the “Claim”) based upon a securities fraud class action litigation pending in the United States District Court for the



Southern District of California, captioned *Khoja v. Orexigen Pharmaceuticals, Inc., et al.*, No. 3:15-cv-00540 (the “Securities Litigation”).

4. On March 20, 2019, Claimant filed the *Limited Preliminary Objection of Securities Lead Plaintiff to Approval of Proposed Disclosure Statement on an Interim Basis* [Docket No. 977].

5. On May 10, 2019, Claimant filed the *Reservation of Rights of the Securities Lead Plaintiff with Respect to Confirmation of the Debtor’s Amended Plan of Liquidation* [Docket No. 1096].

6. On May 17, 2019, the Court entered the *Findings of Fact, Conclusions of Law, and Order Confirming Debtor’s Modified Amended Plan of Liquidation* [Docket No. 1113] (the “Confirmation Order” and the “Plan”), providing for the creation of the Wind Down Entity to administer the Wind Down Assets (as defined in the Plan). The Plan provides, with respect to Claimant, that “nothing in this Plan shall preclude the lead plaintiff in the Securities Litigation, on behalf of itself and the proposed class it represents in the Securities Litigation, from continuing to prosecute the Securities Litigation against the Debtor, with any recovery on account of the Section 510(b) Claims limited to the proceeds, if any, of any insurance available to the Debtor that provides coverage with respect to the Section 510(b) Claims, subject to the provisions of such insurance policies and applicable law.”

7. On May 31, 2019 the Plan went effective, and pursuant to the Plan, the Debtor and the Wind Down Administrator executed the Wind Down Entity Agreement, which established the Wind Down Entity and appointed the Wind Down Administrator to administer the Wind Down Entity.

8. The Wind Down Administrator has asserted that the automatic stay applies to the Securities Litigation to the extent Claimant seeks to liquidate the Claim against the Debtor, and Claimant disagrees with that assertion.

9. To avoid litigation with respect to the applicability of the automatic stay, the Parties have agreed to lift the automatic stay, to the extent it applies, in accordance with the terms and conditions set forth more fully and subject to the restrictions in the *Stipulation Modifying the Automatic Stay to Permit Liquidation and Resolution of Proof of Claim No. 140 Filed by Karim Khoja on Behalf of Himself and Others Similarly Situated* (the “Stipulation”) attached as **Exhibit A** to the proposed order, attached hereto.

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WHEREFORE, the Wind Down Administrator respectfully requests that the Court enter the proposed order, attached hereto as **Exhibit 1**, approving the Stipulation, at its earliest convenience.

Dated: March 13, 2020
Wilmington, Delaware

Respectfully submitted,

POTTER ANDERSON & CORROON LLP

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EXHIBIT 1

(Proposed Order)

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

OREXIGEN THERAPEUTICS, INC.,

Debtor.

Chapter 11

Case No. 18-10518 (JTD)

Re: Docket No. __

**ORDER APPROVING STIPULATION MODIFYING THE AUTOMATIC
STAY TO PERMIT LIQUIDATION AND RESOLUTION OF PROOF OF
CLAIM NO. 140 FILED BY KARIM KHOJA, ON BEHALF OF
HIMSELF AND OTHERS SIMILARLY SITUATED**

Upon consideration of the *Certification of Counsel Regarding Stipulation Modifying the Automatic Stay to Permit Liquidation and Resolution of Proof of Claim No. 140 Filed by Karim Khoja, on Behalf of Himself and Others Similarly Situated* (the “Certification”);¹ and the Court having reviewed the Stipulation attached hereto as **Exhibit 1**; and after due deliberation; and the Court having determined that the Stipulation is in the best interests of the Debtor’s creditors and other parties in interest; and it appearing that sufficient cause exists for granting the relief requested by the parties in the Stipulation, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Stipulation, attached hereto as **Exhibit A**, is APPROVED.
2. The Parties are authorized to take all action necessary to effectuate the relief granted pursuant to this Order in accordance with the terms of the Stipulation.

¹ Capitalized terms used herein shall have the meaning ascribed to them in the Certification unless otherwise noted.

3. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of the Stipulation or this Order.

EXHIBIT A

(Stipulation)

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

OREXIGEN THERAPEUTICS, INC.,

Debtor.

Chapter 11

Case No. 18-10518 (JTD)

**STIPULATION MODIFYING THE AUTOMATIC STAY TO PERMIT LIQUIDATION
AND RESOLUTION OF PROOF OF CLAIM NO. 140 FILED BY KARIM KHOJA,
ON BEHALF OF HIMSELF AND OTHERS SIMILARLY SITUATED**

Province, Inc. (the “Wind Down Administrator”), as the Wind Down Administrator for Orexigen Therapeutics, Inc. (the “Wind Down Entity”), successor in interest to the above-captioned debtor (the “Debtor”), and Karim Khoja, on behalf of himself and other similarly situated parties (“Claimant,” and together with the Wind Down Administrator and the Debtor, the “Parties”), pursuant to 11 U.S.C. § 362(d) and Federal Rule of Bankruptcy Procedure 4001(d), by undersigned counsel, stipulate and agree as follows.

Recitals

WHEREAS, on March 12, 2018 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Court”);

WHEREAS, on April 11, 2018, the Court entered its *Order (A) Establishing Bar Date for Filing Proofs of Claim, (B) Approving the Form and Manner for Filing Proofs of Claim, (C) Approving Notice Thereof, (D) Implementing Uniform Procedures Regarding 503(B)(9) Claims, and (E) Granting Related Relief* [ECF No. 170];

WHEREAS, on June 14, 2018, Claimant timely filed a proof of claim, on behalf of himself and the proposed class that he represents, in the amount of \$258 million (the “Claim”) based upon

a securities fraud class action litigation pending in the United States District Court for the Southern District of California (the “District Court”), captioned Khoja v. Orexigen Pharmaceuticals, Inc., et al., No. 3:15-cv-00540 (the “Securities Litigation”);

WHEREAS, as of the Petition Date, the Claimant, the Debtor, and the other defendants in the Securities Litigation (the “Non-Debtor Defendants”) were awaiting the ruling on an appeal of the District Court’s ruling on a motion to dismiss in the Securities Litigation by the Ninth Circuit Court of Appeals;

WHEREAS, on August 13, 2018, the Ninth Circuit Court of Appeals issued a ruling affirming in part and reversing in part the District Court’s order in the Securities Litigation and remanding the case to the District Court, solely with respect to the Non-Debtor Defendants due to the automatic stay;

WHEREAS, on March 20, 2019, Claimant filed the *Limited Preliminary Objection of Securities Lead Plaintiff to Approval of Proposed Disclosure Statement on an Interim Basis* [ECF No. 977];

WHEREAS, on May 10, 2019, Claimant filed the *Reservation of Rights of the Securities Lead Plaintiff with Respect to Confirmation of the Debtor’s Amended Plan of Liquidation* [ECF No. 1096];

WHEREAS, on May 17, 2019, the Court entered the *Findings of Fact, Conclusions of Law, and Order Confirming Debtor’s Modified Amended Plan of Liquidation* [ECF No. 1113] (the “Confirmation Order” and the “Plan”), providing for the creation of the Wind Down Entity to administer the Wind Down Assets (as defined in the Plan);

WHEREAS, based on the good faith negotiations between Claimant and the Debtor, the Plan provides, with respect to Claimant:

Treatment: The Section 510(b) Claims is subordinated pursuant to section 510(b) of the Bankruptcy Code, and the Holders of the Section 510(b) Claims shall not receive any distribution on account of the Section 510(b) Claims.

Notwithstanding anything to the contrary, nothing in this Plan shall preclude the lead plaintiff in the Securities Litigation, on behalf of itself and the proposed class it represents in the Securities Litigation, from continuing to prosecute the Securities Litigation against the Debtor, with any recovery on account of the Section 510(b) Claims limited to the proceeds, if any, of any insurance available to the Debtor that provides coverage with respect to the Section 510(b) Claims, subject to the provisions of such insurance policies and applicable law.

WHEREAS, the Plan went effective on May 31, 2019, and pursuant to the Plan, the Debtor and the Wind Down Administrator executed the Wind Down Entity Agreement, which established the Wind Down Entity and appointed the Wind Down Administrator to administer the Wind Down Entity; and

WHEREAS, the Wind Down Administrator has asserted that the automatic stay applies to the Securities Litigation to the extent Claimant seeks to liquidate the Claim against the Debtor, and Claimant disagrees with that assertion.

WHEREAS, to avoid litigation with respect to the applicability of the automatic stay, the Parties have engaged in good faith negotiations and reached an agreement to lift the automatic stay, to the extent it applies, in accordance with the terms and conditions set forth herein and in order to provide a framework for resolving the Claim in the District Court.

NOW THEREFORE, based upon the forgoing, it is hereby stipulated and agreed to by and between the Parties as follows:

1. Subject to the conditions provided in the following paragraphs, the automatic stay under section 362(a) of the Bankruptcy Code and the Plan, to the extent applicable, shall be lifted,

effective as of March 13, 2020, to permit Claimant to pursue the Securities Litigation, so as to liquidate, fix the value of, and otherwise resolve the Claim in the District Court pursuant to, and subject in all respects to, the Plan. Subject to paragraph 2 hereof, on and after March 13, 2020, neither the Debtor nor the Wind Down Administrator shall take any action to seek to revive the automatic stay with respect to the Securities Litigation or the Claim.

2. For the avoidance of doubt, pursuant to the Plan and Confirmation Order, to the extent any judgment hereafter entered in favor of Claimant or any settlement by or on behalf of Claimant relating to the Claim is not satisfied in full from insurance proceeds, Claimant and its representatives shall not be entitled to any distribution on account thereof from the Wind Down Entity, the Debtor, and property of the Debtor, or the estate.

3. Nothing in this Stipulation shall be deemed or construed to impact, impair, affect, determine, release, waive, modify, limit or expand (i) the terms and conditions of any insurance policy or related agreement; (ii) any of the rights, remedies, defenses to coverage and other defenses of any insurer under or in respect of any insurance policy or related agreement (including the right of any insurer to disclaim coverage); or (iii) any claim or payment right of any insurer against the Debtor or the Wind Down Entity including, but not limited to, any claim or payment right for, on account of, arising from or related to any premium, reimbursement or otherwise. All such rights, remedies, defenses, defenses to coverage, claims, and payment rights are expressly reserved and preserved. Further, all rights of subrogation and contribution are expressly reserved and preserved.

4. This Stipulation shall have no effect as to entities that are not a party to this Stipulation and Order, and the automatic stay, to the extent applicable, shall remain in full force and effect with respect to such entities.

5. This Stipulation is acknowledged to be a consensual resolution. Nothing contained herein shall be considered to be an admission by any of the Parties of liability, past or present wrongdoing, or the applicability of the automatic stay.

6. The terms of this Stipulation shall be binding on the Parties and all of their respective directors, officers, employees, agents, representatives, successors, and assigns from the date of its execution.

7. Each of the Parties shall bear its own attorney's fees and costs in connection with the matters resolved hereby.

8. Neither this Stipulation and Order, nor any terms contained herein shall be offered or received in evidence or in any way referred to in any legal action or administrative proceeding among or between the Parties, other than as may be necessary (i) to enforce this Stipulation; (ii) to seek damages or injunctive relief in connection therewith; or (iii) to prove that the Liquidating Trustee, on behalf of the Debtors, has agreed not to enforce the automatic stay in accordance with the terms hereof.

9. This Stipulation, and any disputes that may arise out of this Stipulation, shall be subject to the jurisdiction of the Bankruptcy Court.

10. This Stipulation may be executed in any number of counterparts and by facsimile or electronic transmission, each of which shall be an original, with the same effect as if the signatures hereto were upon the same document.

Dated: March 13, 2020

/s/ Kerri A. Lyman

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