Docket #1007 Date Filed: 03/30/2019

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
OREXIGEN THERAPEUTICS, INC.,	Case No. 18-10518 (KG)
Debtor.[1]	

DISCLOSURE STATEMENT FOR DEBTOR'S AMENDED PLAN OF LIQUIDATION

Date: March 27, 2019

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[1] The last four digits of the Debtor's federal tax identification number are 8822. The Debtor's mailing address for purposes of this Chapter 11 Case are Orexigen Therapeutics, Inc. c/o Hogan Lovells US LLP, 875 Third Avenue, New York, NY 10022, Attn: Chris Bryant and John Beck.

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PLEASE REVIEW THIS DOCUMENT FOR IMPORTANT INFORMATION REGARDING:

- **Description of the Debtor**
- **Classification and Treatment of Claims and Interests**
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- **Distribution to Holders of Other Secured Claims**
- **Distribution to Holders of Prepetition Secured Noteholder Claims**
- **Distribution to Holders of General Unsecured Claims**
- **Distribution to Holders of Prepetition Secured Noteholder Subordinated Deficiency Claims**
- **Distribution to Holders of Interests**
- **Implementation and Execution of the Plan**
- **Treatment of Contracts and Leases and Procedures to Assert and Resolve Rejection Claims**

IMPORTANT DATES:

- **Note Register Voting Response Deadline – April 8, 2019, at 4:00 p.m. (prevailing Eastern Time)**
- **Date to Determine Record Holders of Claims and Interests – April 9, 2019, at 4:00 p.m. (prevailing Eastern Time)**
- **Note Register Distribution Response Deadline – April 19, 2019, at 4:00 p.m. (prevailing Eastern Time)**
- **Deadline to Object to Disclosure Statement and/or Plan Confirmation – May 6, 2019, at 4:00 p.m. (prevailing Eastern Time)**
- **Deadline to Submit Ballots – May 13, 2019, at 4:00 p.m. (prevailing Eastern Time)**
- **Hearing on Plan Confirmation and Approval of Disclosure Statement – May 17, 2019, at 11:00 a.m. (prevailing Eastern Time)**

YOU ARE RECEIVING THIS DISCLOSURE STATEMENT, THE PLAN, AND THE BALLOT (COLLECTIVELY, THE "SOLICITATION PACKAGE") BECAUSE YOU HAVE THE RIGHT TO VOTE TO ACCEPT OR REJECT THE PLAN. PLEASE REVIEW THIS DISCLOSURE STATEMENT AND THE PLAN AND COMPLETE AND RETURN THE BALLOT IN ACCORDANCE WITH THE INSTRUCTIONS CONTAINED HEREIN AND IN THE BALLOT.

A COPY OF THIS DISCLOSURE STATEMENT AND THE PLAN CAN ALSO BE OBTAINED AT HTTP://WWW.KCCLLC.NET/OREXIGEN.

1. INTRODUCTION

1.1 Purpose of this Disclosure Statement.

Notice of this Disclosure Statement is being provided by Debtor Orexigen Therapeutics, Inc. to, among others, the Office of the United States Trustee, the Securities and Exchange Commission, and, subject to the Joint Procedures Order (defined below), all Holders of Claims in the Voting Classes (defined below) pursuant to section 1125(b) of the Bankruptcy Code for the purpose of soliciting acceptances of the Plan. Pursuant to the Joint Procedures Motion (defined below) Filed on March 6, 2019, the Debtor seeks to pursue and obtain approval of its Disclosure Statement and Plan concurrently. The Plan has been Filed with the Bankruptcy Court and the summaries of the Plan contained herein shall not be relied upon for any purpose other than to make a judgment with respect to, and determine how to vote on, the Plan. A copy of the Plan is attached hereto as **Exhibit A**. All capitalized terms used within this Disclosure Statement that are not defined herein have the meanings set forth in the Plan. **A hearing to determine, on an interim basis, if this Disclosure Statement contains "adequate information" under Bankruptcy Code section 1125, and to approve the Joint Procedures Motion was held by the Bankruptcy Court on March 27, 2019, at 2:00 p.m. (prevailing Eastern Time). The deadline to object to the Joint Procedures Motion was March 20, 2019, at 4:00 p.m. (prevailing Eastern Time). The hearing to approve the adequacy of this Disclosure Statement, on a final basis, and Plan Confirmation will be held by the Bankruptcy Court on May 17, 2019, at 11:00 a.m. (prevailing Eastern Time). The deadline to object to this Disclosure Statement, on a final basis, and/or Plan Confirmation is May 6, 2019, at 4:00 p.m. (prevailing Eastern Time).**

PLEASE NOTE THAT MUCH OF THE INFORMATION CONTAINED HEREIN HAS BEEN TAKEN, IN WHOLE OR IN PART, FROM INFORMATION CONTAINED IN THE DEBTOR'S BOOKS AND RECORDS AND PLEADINGS FILED BY THE DEBTOR WITH THE BANKRUPTCY COURT. STATEMENTS MADE IN THIS DISCLOSURE STATEMENT ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THE PLAN. ALTHOUGH THE DEBTOR HAS ATTEMPTED TO BE ACCURATE IN ALL MATERIAL RESPECTS, THE DEBTOR IS UNABLE TO REPRESENT OR WARRANT THAT ALL OF THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS WITHOUT ERROR.

THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH BANKRUPTCY CODE SECTION 1125 AND BANKRUPTCY RULE 3016 AND NOT NECESSARILY IN COMPLIANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER RULES GOVERNING DISCLOSURE OUTSIDE THE CONTEXT OF CHAPTER 11. THIS DISCLOSURE STATEMENT HAS NEITHER BEEN APPROVED NOR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION, NOR HAS THE SECURITIES AND EXCHANGE COMMISSION PASSED UPON ITS ACCURACY.

NO REPRESENTATION CONCERNING THE DEBTOR OR THE VALUE OF THE DEBTOR'S ASSETS HAS BEEN AUTHORIZED BY THE BANKRUPTCY COURT OTHER THAN, ONCE APPROVED, AS SET FORTH IN THIS DISCLOSURE STATEMENT. THE DEBTOR IS NOT RESPONSIBLE FOR ANY INFORMATION, REPRESENTATION OR

INDUCEMENT MADE TO OBTAIN YOUR ACCEPTANCE, OTHER THAN, OR WHICH IS INCONSISTENT WITH, INFORMATION CONTAINED HEREIN AND IN THE PLAN.

YOU ARE STRONGLY URGED TO CONSULT WITH YOUR FINANCIAL, LEGAL AND TAX ADVISORS TO UNDERSTAND FULLY THE PLAN AND DISCLOSURE STATEMENT. THE FINANCIAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS GIVEN AS OF THE DATE HEREOF, UNLESS OTHERWISE SPECIFIED. THE DELIVERY OF THIS DISCLOSURE STATEMENT DOES NOT, UNDER ANY CIRCUMSTANCE, IMPLY THAT THERE HAS BEEN NO CHANGE IN THE FACTS SET FORTH HEREIN SINCE SUCH DATE. THIS DISCLOSURE STATEMENT IS INTENDED, AMONG OTHER THINGS, TO SUMMARIZE THE PLAN AND MUST BE READ IN CONJUNCTION WITH THE PLAN AND ITS EXHIBITS. IF ANY CONFLICTS EXIST BETWEEN THE PLAN AND THIS DISCLOSURE STATEMENT, THE TERMS OF THE PLAN SHALL CONTROL.

IF A HOLDER OF A CLAIM WISHES TO CHALLENGE THE ALLOWANCE OR DISALLOWANCE OF A CLAIM FOR VOTING PURPOSES UNDER THE TABULATION RULES SET FORTH IN THE JOINT PROCEDURES ORDER, SUCH ENTITY MUST FILE A MOTION, PURSUANT TO BANKRUPTCY RULE 3018(A) ("**3018 MOTION**"), FOR AN ORDER TEMPORARILY ALLOWING SUCH CLAIM IN A DIFFERENT AMOUNT OR CLASSIFICATION FOR PURPOSES OF VOTING TO ACCEPT OR REJECT THE PLAN AND SERVE SUCH MOTION ON THE UNDERSIGNED COUNSEL TO THE DEBTOR, COUNSEL TO THE CREDITORS' COMMITTEE, THE REQUIRED PREPETITION SECURED NOTEHOLDERS AND THEIR COUNSEL, AND THE PREPETITION SECURED NOTES INDENTURE TRUSTEE AND ITS COUNSEL SO THAT IT IS RECEIVED NO LATER THAN **4:00 P.M., PREVAILING EASTERN TIME, ON APRIL 26, 2019 (THE** "**3018 MOTION DEADLINE**"**)**. THE DEBTOR, CREDITORS' COMMITTEE, REQUIRED PREPETITION SECURED NOTEHOLDERS, AND THE PREPETITION SECURED NOTES INDENTURE TRUSTEE SHALL HAVE UNTIL **4:00 P.M., PREVAILING EASTERN TIME, ON MAY 3, 2019,** TO FILE AND SERVE ANY RESPONSES TO SUCH MOTIONS. UNLESS THE BANKRUPTCY COURT ORDERS OTHERWISE, NO CLAIM WILL BE COUNTED FOR VOTING PURPOSES IN EXCESS OF THE AMOUNT DETERMINED IN ACCORDANCE WITH THE TABULATION RULES.

1.2 Definitions of Terms Utilized in the Plan. Unless the context otherwise requires or a term is defined within the Plan itself, the following terms shall have the respective meanings set forth below, except as expressly provided otherwise.

1.2.1 2013 Notes: Those certain 2.75% Convertible Exchange Senior Notes due 2020 issued by the Debtor in the approximate aggregate principal amount of $115 million pursuant to the 2013 Notes Indenture.

1.2.2 2013 Notes Claims: Any Claim arising under the 2013 Notes Indenture.

1.2.3 2013 Notes Indenture: That certain Indenture, dated as of December 6, 2013 (as amended, restated, supplemented, or otherwise modified), by and between,

the Debtor, as issuer, and the 2013 Notes Indenture Trustee, under which the Debtor issued the 2013 Notes, and all related agreements, documents, instruments and certificates executed by the Debtor in connection with the 2013 Notes.

1.2.4 2013 Notes Indenture Trustee: Wilmington Trust, National Association, solely in its capacity as indenture trustee under the 2013 Notes Indenture.

1.2.5 2017 Notes: Those certain 2.75% Convertible Exchange Senior Notes due 2020 issued by the Debtor in the approximate aggregate principal amount of $49.6 million pursuant to the 2017 Notes Indenture.

1.2.6 2017 Notes Claims: Any Claim arising under the 2017 Notes Indenture.

1.2.7 2017 Notes Indenture: That certain Indenture, dated as of February 23, 2017 (as amended, restated, supplemented, or otherwise modified), by and between, the Debtor, as issuer, and the 2017 Notes Indenture Trustee, under which the Debtor issued the 2017 Notes, and all related agreements, documents, instruments and certificates executed by the Debtor in connection with the 2017 Notes.

1.2.8 2017 Notes Indenture Trustee: Wilmington Savings Fund Society, FSB, as successor trustee to U.S. Bank National Association, solely in its capacity as indenture trustee under the 2017 Notes Indenture.

1.2.9 3018 Motion: "3018 Motion" shall have the meaning ascribed to such term in Section 1.1 of this Disclosure Statement.

1.2.10 3018 Motion Deadline: "3018 Motion Deadline" shall have the meaning ascribed to such term in Section 1.1 of this Disclosure Statement.

1.2.11 401(k) Administrator: Thomas P. Lynch, solely in his capacity as such and not in his individual capacity, and any successor appointed from time to time by the Required Prepetition Secured Noteholders.

1.2.12 401(k) Administrator Budget: The budget of permissible expenses that may be incurred by the 401(k) Administrator, which shall be included in the Plan Supplement, as amended or modified from time to time with the reasonable consent of the Required Prepetition Secured Noteholders, to cure any defect with the 401(k) Plan so that it is a qualified retirement account under the Internal Revenue Code and pay the reasonable compensation of the 401(k) Administrator and fees and expenses of any firm(s) or individual(s) retained by the 401(k) Administrator to provide legal or other professional services in connection with the performance of the 401(k) Administrator's duties and responsibilities under the Plan and applicable law funded out of Cash on Hand.

1.2.13 401(k) Plan: The retirement plan sponsored by the Debtor prepetition under section 401(k) of the Internal Revenue Code for the benefit of employees of the Debtor.

1.2.14 401(k) Administrator Expense Reserve: Cash in an amount to be determined by the Required Prepetition Noteholders, to be transferred to the Debtor on the Effective Date and used by the 401(k) Administrator in accordance with the 401(k) Administrator Budget. The amount of the 401(k) Administrator Expense Reserve and the basis for its determination shall be included in the Plan Supplement.

1.2.15 Administrative Expense Claim: Any cost or expense of administration of the Case allowed pursuant to Bankruptcy Code section 503(b), excluding Professional Fee Claims.

1.2.16 Administrative Expense Claim Bar Date: "Administrative Expense Claim Bar Date" shall have the meaning ascribed to such term in Section 7.5 of the Plan.

1.2.17 Allowed: A Claim or Interest will be "Allowed" if: (a) (i) such Claim or Interest is identified in the Schedules and not listed therein as disputed (whether in amount, priority or otherwise), contingent or unliquidated as to amount, and (ii) with respect to such Claim or Interest, no proof of claim or interest, as applicable, has been Filed, or (b) with respect to such Claim or Interest, a proof of claim or interest, as applicable, has been timely Filed, in the amount and of the classification asserted in such proof of claim or interest, as applicable; but in the case of either (a) or (b), only if (x) such Claim or Interest has not already been satisfied, (y) such Claim or Interest is not a Disputed Claim or (z) such Claim or Interest has otherwise been allowed by the Plan, a Final Order, or pursuant to an Allowed Claims Notice. The following types of Claims or Interests are disallowed and shall not be "Allowed": (i) untimely Filed Claims or, with respect to an Administrative Expense Claim, requests for payment made after the Administrative Expense Claim Bar Date, (ii) interest on the principal amount of an Allowed Claim from and after the Petition Date, or (iii) Claims for punitive damages. For the avoidance of doubt, any Claim that has been or is hereafter listed in the Schedules as contingent, unliquidated, or disputed, and for which no Proof of Claim is or has been timely Filed by the applicable bar date established pursuant to the Bar Date Order, will not be Allowed and shall be deemed expunged and not entitled to receive any recovery from the Debtor's Estate and/or the Wind Down Entity or Wind Down Assets (as applicable) without further action by the Debtor or Wind Down Administrator and without further notice to any party or action, approval, or order of the Bankruptcy Court.

1.2.18 Allowed Claims Notice: Any notice filed with the Bankruptcy Court by the Debtor, in consultation with the Creditors' Committee (through the Effective Date) or Wind Down Administrator (after the Effective Date), identifying one or more Claims as Allowed.

1.2.19 APA Amendment: "APA Amendment" shall have the meaning ascribed to such term in Section 2.4 of this Disclosure Statement.

1.2.20 Assets: Any and all right, title, and interest of the Debtor in and to property of whatever type or nature.

1.2.21 Asset Purchase Agreement: That certain Asset Purchase Agreement, dated as of April 23, 2018, between the Debtor and Purchaser, as amended, modified, supplemented or restated, including, without limitation, by the Letter Agreement.

1.2.22 Asset Purchase Agreement Claims: Any and all claims, causes of action, objections to claims or interests, demands, actions, suits, obligations, liabilities, cross-claims, counter-claims, offsets, or setoffs of any kind or character whatsoever, of the Debtor or the Estate, in each case whether known or unknown, liquidated or unliquidated, contingent or non-contingent, matured or unmatured, suspected or unsuspected, foreseen or unforeseen, direct or indirect, choate or inchoate, existing or hereafter arising, in contract, in tort, in law, or in equity, or pursuant to any other theory of law, whether asserted or assertable directly or derivatively in law or equity or otherwise by way of claim, counter-claim, cross-claim, third party action, action for indemnity or contribution or otherwise, against the Purchaser under the Asset Purchase Agreement, including, without limitation, to compel the Purchaser to release the Holdback Amounts.

1.2.23 Avoidance Actions: "Avoidance Actions" shall have the meaning ascribed to such term in the DIP Order.

1.2.24 Ballots: The ballots accompanying the Plan and Disclosure Statement upon which certain Holders of Claims entitled to vote shall, among other things, indicate their acceptance or rejection of the Plan.

1.2.25 Balloting Agent: KCC, or such other entity determined by the Debtor in consultation with the Consultation Parties.

1.2.26 Bankruptcy Code: Title 11 of the United States Code, as in effect on the Petition Date and as thereafter amended, if such amendments are made applicable to the Case.

1.2.27 Bankruptcy Court: The United States Bankruptcy Court for the District of Delaware, or in the event such court does not have or ceases to exercise jurisdiction over the Case, such other court or adjunct thereof that exercises jurisdiction over the Case.

1.2.28 Bankruptcy Rules: The Federal Rules of Bankruptcy Procedure pursuant to Title 28 of the United States Code, 28 U.S.C. §§ 2075, as they have been or may hereafter be amended.

1.2.29 Bar Date: Any applicable deadline for filing proofs of Claim against the Debtor for a particular type of Claim, other than an Administrative Claim or Professional Fee Claim, as established by an order of the Bankruptcy Court or the Plan.

1.2.30 Bar Date Motion: The Debtor's motion to establish bar dates and procedures for filing proofs of claim, other than Administrative Claims or Professional Fee Claims, and to approve the form and manner of notice thereof and for related relief [Docket No. 75].

1.2.31 **Bar Date Order:** The Order approving the Bar Date Motion [Docket No. 170].

1.2.32 **Bid Procedures Motion:** "Bid Procedures Motion" shall have the meaning ascribed to such term in Section 2.4 of this Disclosure Statement.

1.2.33 **Bid Procedures Order:** "Bid Procedures Order" shall have the meaning ascribed to such term in Section 2.4 of this Disclosure Statement.

1.2.34 **Business Day:** Any day except a Saturday, Sunday or any day on which commercial banks in the State of Delaware are authorized or required by applicable law to close.

1.2.35 **Case:** The Chapter 11 case initiated by the Debtor's Filing on the Petition Date of a voluntary petition for relief in the Bankruptcy Court under Chapter 11 of the Bankruptcy Code. As of the date hereof, the Case is being administered in the Bankruptcy Court as Bankruptcy Case No. 18-10518 (KG).

1.2.36 **Cash:** Legal tender of the United States of America and equivalents thereof.

1.2.37 **Cash Collateral Order:** Collectively, the Bankruptcy Court's (i) "Order Approving the Stipulation Authorizing the Debtor's Use of Cash Collateral," entered on September 5, 2018 [Docket No. 713], and (ii) the Bankruptcy Court's "Order Approving the Second Stipulation Authorizing the Debtor's Use of Cash Collateral," entered on January 17, 2019 [Docket No. 927].

1.2.38 **Cash on Hand:** All Cash in the possession or control of the Debtor or the Debtor's Estate as of the Effective Date.

1.2.39 **Causes of Action or causes of action:** Any and all claims, causes of action, objections to claims or interests, demands, actions, suits, obligations, liabilities, cross-claims, counter-claims, offsets, or setoffs of any kind or character whatsoever, of the Debtor or the Estate, in each case whether known or unknown, liquidated or unliquidated, contingent or non-contingent, matured or unmatured, suspected or unsuspected, foreseen or unforeseen, direct or indirect, choate or inchoate, existing or hereafter arising, in contract, in tort, in law, or in equity, or pursuant to any other theory of law, whether asserted or assertable directly or derivatively in law or equity or otherwise by way of claim, counter-claim, cross-claim, third party action, action for indemnity or contribution or otherwise, based in whole or in part upon any act or omission or other event occurring at any time prior to or following the Effective Date, including, without limitation, the Takeda Reconciliation Claim, other than the Excluded Causes of Action and claims and causes of action related to the Tax Refunds; *provided, however,* that any reference to a "Cause of Action" or "cause of action" of a Person other than the Debtor shall not refer to a "Cause of Action" or "cause of action" as defined in this Section 1.2.39.

1.2.40 **Chapter 7:** Chapter 7 of the Bankruptcy Code.

1.2.41 Claim or claim: A "claim" as defined in Bankruptcy Code section 101(5), against the Debtor whether or not asserted or allowed, other than the Excluded Causes of Action.

1.2.42 Claims Agent: KCC, or such other entity determined by the Debtor in consultation with the Consultation Parties.

1.2.43 Claims Register: The official register of Claims maintained by the Claims Agent.

1.2.44 Claims Objection Deadline: "Claims Objection Deadline" shall have the meaning ascribed to such term in Section 2.13 of the Plan.

1.2.45 Class: A category of Claims or Interests designated pursuant to the Plan.

1.2.46 Class 1 Claim: A Claim classified in Class 1.

1.2.47 Class 2 Claim: A Claim classified in Class 2.

1.2.48 Class 3 Claim: A Claim classified in Class 3.

1.2.49 Class 4 Claim: A Claim classified in Class 4.

1.2.50 Class 4 Disputed Claim Reserve: The reserve to be established on the Effective Date in accordance with Section 2.2(g) of the Plan.

1.2.51 Class 5 Claim: A Claim classified in Class 5.

1.2.52 Class 6 Claim: A Claim classified in Class 6.

1.2.53 Class 7 Interest: An Interest classified in Class 7.

1.2.54 Closing Date: July 27, 2018, the date on which the Debtor and the Purchaser closed the Sale.

1.2.55 COD: "COD" shall have the meaning ascribed to such term in Section 7.1.1(a) of this Disclosure Statement.

1.2.56 Confirmation: Entry by the Bankruptcy Court of the Confirmation Order.

1.2.57 Confirmation Date: The date upon which the Confirmation Order is entered by the Bankruptcy Court.

1.2.58 Confirmation Hearing: Collectively, the hearing or hearings held by the Bankruptcy Court on confirmation of the Plan, as such hearing or hearings may be continued from time to time.

1.2.59 Confirmation Order: The Order of the Bankruptcy Court confirming the Plan.

1.2.60 Consultation Parties: The Creditors' Committee (through the Effective Date), the Wind Down Administrator (after the Effective Date), and the Required Prepetition Secured Noteholders, unless otherwise specified in the applicable provision of this Disclosure Statement or the Plan.

1.2.61 Creditor: Holder of a Claim.

1.2.62 Creditors' Committee: The official committee of unsecured creditors of the Debtor appointed by the United States Trustee in the Case pursuant to Bankruptcy Code section 1102 [Docket No. 91] as its composition may be changed from time to time by addition, resignation or removal of its members.

1.2.63 Debtor: Orexigen Therapeutics, Inc.

1.2.64 Debtor Related Persons: With respect to the Debtor and its Estate, their respective current and former advisors, attorneys, financial advisors, investment bankers, and agents, all solely in their capacity as such. For the avoidance of doubt, "Debtor Related Persons" shall not include any of the Debtor's current or former officers or directors, except that "Debtor Related Persons" shall include (i) Lota Zoth, in her capacity as a director, and (ii) Thomas Lynch in his capacities as an officer and director.

1.2.65 Debtor/Secured Party Release Parties: "Debtor/Secured Party Release Parties" shall have the meaning ascribed to such term in Section 6.2(d) of the Plan.

1.2.66 DIP Collateral: "DIP Collateral" shall have the meaning ascribed to such term in the DIP Order.

1.2.67 DIP Credit Agreement: That Certain Debtor In Possession Credit and Security Agreement, dated as of March 12, 2018 (as amended from time to time), by and among the Debtor, as borrower, Wilmington Trust, National Association, as the DIP Administrative Agent, and each of the DIP Lenders from time to time party thereto.

1.2.68 DIP Facility: "DIP Facility" shall have the meaning ascribed to such term in Section 2.3 of this Disclosure Statement.

1.2.69 DIP Lenders: The lenders who were party to the DIP Credit Agreement.

1.2.70 DIP Order: The Bankruptcy Court's "Final Order (I) Approving Debtor-In-Possession Financing Pursuant to 11 U.S.C. §§ 105(a), 362, and 364 and Fed. R. Bankr. P. 2002, 4001 and 9014 and Local Bankruptcy Rule 4001-2; (II) Authorizing Use of Cash Collateral Pursuant to 11 U.S.C. §§ 105(a), 361, 362, and 363 of the Bankruptcy Code; (III) Granting Adequate Protection and Super-Priority Administrative Claims; and (IV) Granting Related Relief," entered on April 13, 2018 [Docket No. 189].

1.2.71 Disallowed: A Claim or Interest or any portion thereof that is not Allowed.

1.2.72 Disclosure Statement: This "Disclosure Statement for Debtor's Plan of Liquidation," dated as of March 6, 2019, and approved on an interim basis, pursuant to the Joint Procedures Order, as containing "adequate information" respecting the Plan, as it may be amended, modified, or supplemented from time to time.

1.2.73 Disputed Claim: Any Claim: (i) proof of which has been timely Filed and to which an objection to the allowance thereof has been Filed by the Claims Objection Deadline (as defined in the Plan), and such objection has not been either (a) determined by a Final Order in the Holder's favor, or (b) settled by the parties under a settlement approved by a Final Order of the Bankruptcy Court pursuant to Bankruptcy Rule 9019; (ii) proof of which has been timely Filed, but which Claim is contingent, unliquidated, or otherwise disputed (including by being identified on the Schedules as contingent, unliquidated and/or disputed), and which has not been (a) Allowed by the Debtor or by a Final Order of the Bankruptcy Court or (b) settled by the parties under a settlement approved by a Final Order of the Bankruptcy Court pursuant to Bankruptcy Rule 9019; or (iii) which is identified in the Schedules as contingent, unliquidated and/or disputed and which has not been (a) Allowed by the Debtor or by a Final Order of the Bankruptcy Court or (b) settled by the parties under a settlement approved by a Final Order of the Bankruptcy Court pursuant to Bankruptcy Rule 9019.

1.2.74 Disputed Funds: "Disputed Funds" shall have the meaning ascribed to such term in Section 2.6 of this Disclosure Statement.

1.2.75 Disputed Rights Motion: "Disputed Rights Motion" shall have the meaning ascribed to such term in Section 2.6 of this Disclosure Statement

1.2.76 Distributable Cash: All Cash on Hand, other than: (a) the Plan Settlement Initial Funding Amount (which, for the avoidance of doubt, includes the Class 4 Disputed Claim Reserve and the Plan Settlement Litigation Expense Reserve), (b) the 401(k) Administrator Expense Reserve; (c) the Lender Litigation Expense Reserve; (e) the Priority Claim Reserve; (f) the Wind Down Operating Expense Reserve; and (g) the Professional Fee Escrow.

1.2.77 Distribution Agreement: The "Core Distribution Agreement" between McKesson and the Debtor.

1.2.78 Effective Date: "Effective Date" shall have the meaning ascribed to such term in Section 2.1 of the Plan.

1.2.79 Equity Interest: "Equity Interest" shall have the meaning ascribed to such term in Section 2.2.3 of this Disclosure Statement.

1.2.80 Estate: The bankruptcy estate of the Debtor created by virtue of Bankruptcy Code section 541 upon the commencement of the Case.

1.2.81 Excluded Causes of Action: The Asset Purchase Agreement Claims and any and all other causes of action (a) waived, released or settled by the Debtor pursuant to the DIP Order and any other Final Order; (b) against the DIP Lenders, Prepetition Secured Noteholders, Wilmington Trust, National Association, in its capacity as Administrative Agent under the DIP Credit Agreement or Prepetition Secured Notes Indenture Trustee, and their respective Related Persons; or (c) purchased by the Purchaser under the Asset Purchase Agreement. Notwithstanding the foregoing, and for the avoidance of doubt, (i) no Cause of Action shall be an Excluded Cause of Action if it constitutes a "Trust Action" as defined in the Plan Settlement, and (ii) no Cause of Action against a director or officer of the Debtor who is not a Debtor Related Person shall be an Excluded Cause of Action.

1.2.82 Exculpated Parties: (a) The Debtor and its Estate, (b) the DIP Lenders, (c) the Required Prepetition Secured Noteholders, (d) the Prepetition Secured Notes Indenture Trustee, (e) the Creditors' Committee, (f) the members of the Creditors' Committee (in such capacity), (g) the Wind Down Administrator (in such capacity), (h) the Wind Down Committee, (i) the members of the Wind Down Committee (in such capacity), (j) the Sole Continuing Director (in such capacity), (k) the Sole Continuing Officer (in such capacity), (l) the 401(k) Administrator (in such capacity), (m) the Prepetition Unsecured Notes Indenture Trustees, and (n) KCC (in its capacity as Claims Agent, Noticing Agent and Balloting Agent), including any and all *Related Persons of each of the foregoing in such capacities.*

1.2.83 FATCA: "FATCA" shall have the meaning ascribed to such term in Section 7.1.3(g) of this Disclosure Statement.

1.2.84 FDA: The United States Food and Drug Administration.

1.2.85 File, Filed or Filing: File, filed or filing with the Bankruptcy Court or its authorized designee in the Case (including with respect to proofs of claim, the Claims Agent).

1.2.86 Final Decree: The Order to be entered pursuant to Bankruptcy Code section 350, Bankruptcy Rule 3022, and Local Rule 5009-1 closing the Case.

1.2.87 Final Order: An order or judgment of the Bankruptcy Court, or other court of competent jurisdiction, as entered on the docket in the Case or the docket of any other court of competent jurisdiction, that has not been reversed, stayed, modified or amended, and as to which the time to appeal or seek certiorari or move for a new trial, reargument or rehearing has expired, and no appeal or petition for certiorari or other proceedings for a new trial, reargument or rehearing has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been timely Filed has been withdrawn or resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought or the new trial, reargument or rehearing has been denied or resulted in no modification of such order; *provided, however,* that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules or applicable state court rules of civil procedure, may be Filed with respect to such order shall not cause such order not to be a Final Order; *provided, however,* that all references to "Final Order" in Section 2.6 of this Disclosure Statement shall mean as such term is defined in the Asset Purchase Agreement.

1.2.88 First Day Motions: "First Day Motions" shall have the meaning ascribed to such term in Section 2.3 of this Disclosure Statement.

1.2.89 General Unsecured Claim: Any Claim against the Debtor which is not a Priority Claim, Other Secured Claim, a Prepetition Secured Noteholder Claim, an Administrative Expense Claim, a Priority Tax Claim, a Professional Fee Claim, a Prepetition Secured Noteholder Subordinated Deficiency Claim, a Section 510(b) Claim, or an Interest.

1.2.90 Holdback Amounts: "Holdback Amounts" shall have the meaning ascribed to such term in Section 2.13 of the Asset Purchase Agreement.

1.2.91 Holder: The Person that is the owner of record of a Claim or Interest, as applicable.

1.2.92 IRS: The Internal Revenue Service.

1.2.93 Impaired: "Impaired" is as defined in Bankruptcy Code section 1124.

1.2.94 Interest: Either (i) the legal, equitable, contractual or other rights of any Person with respect to the preferred stock, common stock, limited liability company interests or any other equity interest in the Debtor, including any Equity Interest, capital investment, stock option (including right to exercise a stock option grant), warrant, or other interest in or right to convert into such equity interest, or (ii) the legal, equitable, contractual or other right of any Person to acquire or receive any of the foregoing.

1.2.95 Joint Procedures Hearing: The hearing held and concluded by the Bankruptcy Court on the Joint Procedures Motion on March 27, 2019.

1.2.96 Joint Procedures Motion: The Debtor's motion seeking, among other things: (i) Court approval of, on an interim basis, the adequacy of the disclosures set forth in the Disclosure Statement, (ii) to establish procedures for solicitation and tabulation of votes to accept or reject the Plan, (iii) Court approval of the forms of ballot and solicitation materials, and (iv) to schedule a joint hearing to consider final approval of the adequacy of the Disclosure Statement and confirmation of the Plan and setting the deadline for objections thereto. The Joint Procedures Motion was filed on March 6, 2019 [Docket No. 969].

1.2.97 Joint Procedures Order: The Bankruptcy Court's Order granting the Joint Procedures Motion, entered on [March 27], 2019 [Docket No. 999].

1.2.98 KCC: Kurtzman Carson Consultants LLC.

1.2.99 KEIP: "KEIP" shall have the meaning ascribed to such term in Section 2.4 of this Disclosure Statement.

1.2.100 KERP: "KERP" shall have the meaning ascribed to such term in Section 2.4 of this Disclosure Statement.

1.2.101 Lender Litigation Expenses: The expenses of the Wind Down Entity incurred in accordance with the Wind Down Entity Documents in connection with the McKesson Dispute, the Asset Purchase Agreement Claims, and the Tax Refunds, including, but not limited to (i) reasonable compensation for the Wind Down Administrator in accordance with the Wind Down Entity Documents; and (ii) fees and expenses of the Wind Down Advisors.

1.2.102 Lender Litigation Expense Reserve: Cash in an amount to be determined by the Required Prepetition Noteholders, to be transferred to the Wind Down Entity on the Effective Date and used by the Wind Down Administrator solely for the payment of Lender Litigation Expenses. For the avoidance of doubt, Plan Settlement Litigation Expenses shall be paid from the Plan Settlement Initial Funding Amount, the Plan Settlement Litigation Reserve, and any Plan Settlement Proceeds received after the Effective Date, and not from the Lender Litigation Expense Reserve. The amount of the Lender Litigation Expense Reserve and the basis for its determination shall be included in the Plan Supplement.

1.2.103 Letter Agreement: That certain Letter Agreement among the Debtor, Purchaser and the Creditors' Committee dated as of June 26, 2018 [Docket No. 438-2], entered in connection with the Asset Purchase Agreement (available at http://www.kccllc.net/orexigen).

1.2.104 Local Rules: The Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, as amended from time to time.

1.2.105 McKesson: McKesson Corporation.

1.2.106 McKesson Appeal. McKesson and MPRS's appeal from the McKesson Order, pending before the United States District Court for the District of Delaware, Case No. 18-1873 (CFC).

1.2.107 McKesson Dispute: The dispute between MPRS and McKesson, on the one hand, and the Debtor and the Prepetition Secured Noteholders, on the other hand, over the assertion by MPRS of a right to set off its claim against the Debtor against the amount of approximately $6.9 million McKesson owed to the Debtor as of the Petition Date, as described in that certain Stipulation Between Debtor, Certain Secured Creditors and McKesson Corporation Regarding Resolution of Certain Disputed Claims, approved by order of the Bankruptcy Court on July 20, 2018 (the "**McKesson Stipulation**") [Docket No. 592].

1.2.108 McKesson Order: The Order resolving the McKesson Dispute, entered on November 13, 2018 [Docket No. 818].

1.2.109 MPRS: McKesson Patient Relationship Solutions.

1.2.110 NOLs: "NOLs" shall have the meaning ascribed to such term in Section 7.1.1 of this Disclosure Statement.

1.2.111 Noticing Agent: KCC, or such other entity determined by the Debtor in consultation with the Creditors' Committee (through the Effective Date), or after the Effective Date, such other entity determined by the Wind Down Administrator.

1.2.112 Noticing Agent Website: http://www.kccllc.net/orexigen.

1.2.113 OID: "OID" shall have the meaning ascribed to such term in Section 7.1.2(b) of this Disclosure Statement.

1.2.114 Order: An order or judgment of the Bankruptcy Court, or other court of competent jurisdiction, as entered on the docket in the Case or the docket of any other court of competent jurisdiction.

1.2.115 Other Secured Claim: Either (i) a Claim, other than a Prepetition Secured Noteholder Claim, that is secured by a lien on property in which the Debtor has an interest, which lien is valid, perfected and enforceable under applicable law or pursuant to a Final Order, or that is subject to setoff under applicable non-bankruptcy law or Bankruptcy Code section 553, to the extent of the value of the Creditor's interest in such property or to the extent of the amount subject to setoff, as applicable, all as determined pursuant to Bankruptcy Code section 506(a); or (ii) a Claim, other than a Prepetition Secured Noteholder Claim, which is Allowed under the Plan as a secured claim.

1.2.116 Person: An individual, limited liability company, corporation, partnership, association, estate, trust or unincorporated organization, joint venture or other person or a government or any unit, agency or political subdivision thereof.

1.2.117 Petition Date: March 12, 2018.

1.2.118 Plan: The Debtor's Plan of Liquidation, dated March 6, 2019, as the same may hereafter be amended, modified or supplemented.

1.2.119 Plan Settlement: The "Stipulation Resolving Potential Challenges under Final DIP Order" [Docket No. 425-1], including Exhibit A (Treatment of General Unsecured Claims) thereto (available at http://www.kccllc.net/orexigen).

1.2.120 Plan Settlement Initial Funding Amount: (i) $2,000,000 in Cash; plus (ii) any and all net Cash received by the Debtor in settlement of (x) Avoidance Actions and commercial tort claims designated as Excluded Assets in the Letter Agreement and (y) all other Causes of Action of the Estate approved by an order of the Bankruptcy Court entered on or after June 20, 2018, to and including the Effective Date, or under the Plan, and as it relates to such settlement that are not DIP Collateral or Prepetition Secured Notes Collateral.

1.2.121 Plan Settlement Litigation Expenses: Any and all litigation expenses incurred in connection with the litigation or settlement of the Causes of Action.

1.2.122 Plan Settlement Litigation Reserve: Cash in an amount to be determined by the Wind Down Administrator, to be transferred to the Wind Down Entity on the Effective Date (or reserved thereafter from time to time from Plan Settlement Net Proceeds) and

used by the Wind Down Administrator solely for the payment of Plan Settlement Litigation Expenses, in accordance with the Wind Down Entity Documents.

1.2.123 Plan Settlement Proceeds: Any and all proceeds received by the Wind Down Entity at any time after the Effective Date from the litigation or settlement of the Causes of Action, exclusive of the Takeda Reconciliation Lender Share.

1.2.124 Plan Settlement Net Proceeds: The Plan Settlement Proceeds, less the Plan Settlement Litigation Expenses.

1.2.125 Plan Supplement: The supplement to the Plan which shall include, among other things: (a) the Wind Down Entity Documents; (b) the amount and basis for the determination of the 401(k) Administrator Expense Reserve; (c) the amount and basis for determination of the Lender Litigation Expense Reserve; (d) the amount and basis for determination of the Priority Claim Reserve; (e) the amount and basis for determination of the Wind Down Operating Expense Reserve; (f) the amount and basis for determination of the Professional Fee Escrow; (g) the amount and basis for determination of the Professional Fee Claims Estimate; (h) the identity of the Wind Down Administrator; and (i) the identities of the members of the Wind Down Committee.

1.2.126 Post Effective Date Notice List: After the Effective Date, the list of Persons who, prior to the Effective Date, had requested from the Debtor or the Claims Agent to receive notice in the Case pursuant to Bankruptcy Rule 2002 and who renewed such request for notice in writing to the Claims Agent so that such notice would continue following the Effective Date or submit a new request.

1.2.127 Prepetition Collateral Agent: "Prepetition Collateral Agent" shall have the meaning ascribed to such term in Section 2.2.1 of this Disclosure Statement.

1.2.128 Prepetition Indentures: Collectively (a) the Prepetition Secured Notes Indenture and (b) the Prepetition Unsecured Notes Indentures.

1.2.129 Prepetition Indenture Trustee Charging Liens: Any lien or other priority in payment that secured repayment of Prepetition Secured Notes Indenture Trustee Fees and Expenses and Prepetition Unsecured Notes Indenture Trustee Fees and Expenses, pursuant to the applicable Prepetition Indentures.

1.2.130 Prepetition Indenture Trustees: Collectively, (a) the Prepetition Secured Notes Indenture Trustee and (b) the Prepetition Unsecured Notes Indenture Trustees.

1.2.131 Prepetition Secured Noteholder Claim: Any Claim arising under the Prepetition Secured Note Documents.

1.2.132 Prepetition Secured Noteholders: With respect to the Prepetition Secured Notes, any Person in whose name at the time a particular Prepetition Secured Note is registered in accordance with the Prepetition Secured Notes Indenture.

1.2.133 Prepetition Secured Noteholder Subordinated Deficiency Claim: Any deficiency between the amount of Cash distributed on account of the Prepetition Secured Noteholder Claims and the full amount of the Allowed Prepetition Secured Noteholder Claims.

1.2.134 Prepetition Secured Notes: Those certain 0% Convertible Senior Secured Notes due 2020 issued by the Debtor in the aggregate principal amount of up to $165 million pursuant to the Prepetition Secured Notes Indenture.

1.2.135 Prepetition Secured Notes Collateral: "Collateral" as defined in the Prepetition Secured Notes Indenture.

1.2.136 Prepetition Secured Notes Indenture: That certain Indenture, dated as of March 21, 2016 (as amended, restated, supplemented, or otherwise modified), by and between, the Debtor, as issuer, and U.S. Bank National Association, as Trustee and Prepetition Collateral Agent, under which the Debtor issued the Prepetition Secured Notes to the Prepetition Secured Noteholders.

1.2.137 Prepetition Secured Notes Indenture Trustee: U.S. Bank National Association, as Trustee and Prepetition Collateral Agent, under the Prepetition Secured Notes Indenture, or any successor thereto.

1.2.138 Prepetition Secured Notes Indenture Trustee Charging Lien: Any lien or other priority in payment arising prior to the Effective Date to which the Prepetition Secured Notes Indenture Trustee is entitled, pursuant to the Prepetition Secured Notes Indenture, against distributions to be made to Holders of Prepetition Secured Noteholder Claims for payment of (i) the Prepetition Secured Notes Indenture Trustee Sabby Indemnity Claim, and (ii) the Prepetition Secured Notes Indenture Trustee Fees and Expenses.

1.2.139 Prepetition Secured Note Documents: The Prepetition Secured Notes Indenture, Prepetition Security Agreement, and the various documents related thereto.

1.2.140 Prepetition Secured Notes Indenture Trustee Fees and Expenses: The reasonable and documented compensation, fees, expenses, disbursements and indemnity claims (other than the Prepetition Secured Notes Indenture Trustee Sabby Indemnity Claim) of the Prepetition Secured Notes Indenture Trustee, including without limitation, any fees, expenses and disbursements of attorneys, advisors or agents retained or utilized by the Prepetition Secured Notes Indenture Trustee, whether prior to or after the Petition Date and whether prior to or after the Effective Date.

1.2.141 Prepetition Secured Notes Indenture Trustee Sabby Indemnity Claim: Any right of the Prepetition Secured Notes Indenture Trustee to indemnification under the Prepetition Secured Notes Indenture arising from or in connection with the Sabby Litigation.

1.2.142 Prepetition Security Agreement: That certain Security Agreement, dated as of March 21, 2016, by and between the Debtor and U.S. Bank National Association, as Prepetition Collateral Agent.

1.2.143 Prepetition Unsecured Notes: Collectively, the (a) 2013 Notes and (b) the 2017 Notes.

1.2.144 Prepetition Unsecured Notes Claims: Collectively, the (a) 2013 Notes Claims and (b) 2017 Notes Claims.

1.2.145 Prepetition Unsecured Notes Indentures: Collectively, the (a) 2013 Notes Indenture and (b) 2017 Notes Indenture.

1.2.146 Prepetition Unsecured Notes Indenture Trustees: Collectively, the (a) 2013 Notes Indenture Trustee and (b) the 2017 Notes Indenture Trustee.

1.2.147 Prepetition Unsecured Notes Indenture Trustee Charging Liens: Any lien or other priority in payment that secures repayment of the Prepetition Unsecured Notes Indenture Trustee Fees and Expenses, pursuant to the applicable Prepetition Unsecured Notes Indentures.

1.2.148 Prepetition Unsecured Notes Indenture Trustee Fees and Expenses: Any reasonable and documented fees, compensation, out-of-pocket costs and expenses, disbursements, advancements and indemnity claims of the Prepetition Unsecured Notes Indenture Trustees, including without limitation, any fees, expenses and disbursements of attorneys, advisors or agents retained or utilized by the Prepetition Unsecured Notes Indenture Trustees, whether incurred prior to or after the Petition Date and prior to or after the Effective Date, that are required to be paid under the Prepetition Unsecured Notes Indentures.

1.2.149 Priority Claim: A Claim that is entitled to priority under Bankruptcy Code section 507(a), other than an Administrative Expense Claim, Professional Fee Claim, or a Priority Tax Claim.

1.2.150 Priority Claim Reserve: Cash to be transferred to the Wind Down Entity on the Effective Date, in an amount determined by the Debtor with the consent of the Required Prepetition Secured Noteholders, for the purpose of making distributions on account of Allowed Administrative Claims, Allowed Professional Fee Claims, Allowed Priority Tax Claims, and Allowed Claims in Classes 1 and 2. The amount of the Priority Claim Reserve and the basis for its determination shall be included in the Plan Supplement.

1.2.151 Priority Tax Claim: A Claim that is entitled to priority under Bankruptcy Code section 507(a)(8).

1.2.152 Professional: Any professional employed by the Debtor or Creditors' Committee in the Case pursuant to Bankruptcy Code sections 327, 328 or 1103, or any professional or other Person seeking compensation or reimbursement of expenses in connection with the Case pursuant to Bankruptcy Code section 503(b)(4).

1.2.153 Professional Fee Claim: A Claim of a Professional for compensation or reimbursement of unpaid costs and expenses relating to services incurred during the period from the Petition Date through the Effective Date.

1.2.154 Professional Fee Claim Bar Date: The date that is sixty (60) days after the Effective Date.

1.2.155 Professional Fee Claims Estimate: The estimated amount of unpaid Professional Fee Claims as of the Effective Date, as determined by the Debtor with the consent of the Required Prepetition Secured Noteholders. The amount of the Professional Fee Claims Estimate and the basis for its determination shall be included in the Plan Supplement.

1.2.156 Professional Fee Escrow: An amount equal to the Professional Fee Claim Estimate to be funded by the Wind Down Administrator from Distributable Cash on the Effective Date and held, maintained, and distributed by the Debtor pursuant to Section 7.2 of the Plan.

1.2.157 Pro Rata: For purposes of distributions under the Plan and Wind Down Entity Agreement, the proportion that (a) the Allowed principal amount of a Claim or Interest in a particular Class bears to (b) the aggregate amount of all Allowed Claims or Interests in such Class. Absent an Order of the Bankruptcy Court to the contrary, until all Disputed Claims in a Class are resolved, Disputed Claims shall be treated as Allowed Claims in their face amount for purposes of calculating Pro Rata distribution of property to Holders of Allowed Claims in such Class. Absent an order of the Bankruptcy Court to the contrary, disputed Interests also shall be treated as Allowed Interests for purposes of calculating Pro Rata Distribution of property to Holders of Allowed Interests in such Class.

1.2.158 Purchaser: Nalpropion Pharmaceuticals, Inc., as "Purchaser" under the Asset Purchase Agreement.

1.2.159 Record Date: April 9, 2019, at 4:00 p.m. (prevailing Eastern Time).

1.2.160 Record Holder: The Holder of an Interest or Claim as of the Record Date.

1.2.161 Records: "Records" shall have the meaning ascribed to such term in Section 3.7.6 of this Disclosure Statement.

1.2.162 Rejection Claim: "Rejection Claim" shall have the meaning ascribed to such term in Section 3.2 of the Plan.

1.2.163 Related Persons: With respect to any Person, such Person's current and former officers, directors, principals, employees, members, managers, advisors, attorneys, financial advisors, investment bankers, or agents, all solely in their capacity as such.

1.2.164 Released Party: (a) the Debtor and its Estate and all of their respective Debtor Related Persons; (b) the DIP Lenders and all of their respective Related Persons; (c) Baupost Group Securities, EcoR1 Capital Fund, L.P., EcoR1 Capital Fund Qualified, L.P., Biotechnology Value Trading Fund OS, LP, Biotechnology Value Fund II, LP, and Biotechnology Value Fund II, LP (each, solely in their capacity as a Prepetition Secured Noteholder) and all Related Persons of each of the foregoing (each, solely in their capacity as a

Related Person of a Prepetition Secured Noteholder); (d) the Creditors' Committee and its members (each, solely in their capacity as a Creditors' Committee member) and all of their respective Related Persons (each, solely in their capacity as a Related Person of the Creditors' Committee or a member); (e) the Prepetition Secured Notes Indenture Trustee and its Related Persons and (f) the Prepetition Unsecured Notes Indenture Trustees.

1.2.165 Releasing Party: (a) the Debtor and its Estate and all of their respective Debtor Related Persons; (b) the DIP Lenders and all of their respective Related Persons; (c) the Prepetition Secured Noteholders and all of their respective Related Persons; (d) the Creditors' Committee, its members (each, solely in their capacity as a Creditors' Committee member) and all of their respective Related Persons (each, solely in their capacity as a Related Person of the Creditors' Committee or a member); and (e) the Prepetition Secured Notes Indenture Trustee and all of its Related Persons.

1.2.166 Required Prepetition Secured Noteholders: Baupost Group Securities, EcoR1 Capital Fund, L.P., and EcoR1 Capital Fund Qualified, L.P., or, if any of the foregoing Persons is no longer a Prepetition Secured Noteholder, or if the aggregate holdings of Prepetition Secured Notes by such Persons is not a majority in principal amount of the Prepetition Secured Notes as of the time an action is to be taken under the Plan or the Wind Down Entity Documents requiring the consent of the Required Prepetition Secured Noteholders, such other Prepetition Secured Noteholder(s) holding in the aggregate a majority in principal amount of the Prepetition Secured Notes as of such time.

1.2.167 Resigning Officers: "Resigning Officers" shall have the meaning ascribed to such term in Section 2.8 of this Disclosure Statement.

1.2.168 Roll-Up: "Roll-Up" shall have the meaning ascribed to such term in Section 3.7.5 of this Disclosure Statement.

1.2.169 Sabby Litigation: The litigation pending in the Southern District of New York styled Sabby Volatility Warrant Master Fund, Ltd and Sabby Healthcare Master Fund, Ltd. v. U.S. Bank National Association, Case No.: 18-cv-05224 (GBD).

1.2.170 Sabby Litigation Related Claims: "Sabby Litigation Related Claims" shall have the meaning ascribed to such term in Section 6.2(d) of the Plan.

1.2.171 Sabby Parties: "Sabby Parties" shall have the meaning ascribed to such term in Section 3.7.5 of this Disclosure Statement**.**

1.2.172 Sabby Release Parties: "Sabby Release Parties" shall have the meaning ascribed to such term in Section 6.2(d) of the Plan.

1.2.173 Sabby Settlement Agreement: "Sabby Settlement Agreement" shall have the meaning ascribed to such term in Section 3.7.5 of this Disclosure Statement.

1.2.174 Sabby Settlement Amount: "Sabby Settlement Amount" shall have the meaning ascribed to such term in Section 3.7.5 of this Disclosure Statement.

1.2.175 **Sale:** Pursuant to the Asset Purchase Agreement and the Sale Order, the sale by the Debtor to the Purchaser of the Purchased Assets (as defined in the Asset Purchase Agreement), consisting of substantially all of the Debtor's Assets (as defined in the Asset Purchase Agreement), and the assumption of certain Assumed Liabilities (as defined in the Asset Purchase Agreement).

1.2.176 **Sale Order:** The Bankruptcy Court's "Order (A) Authorizing the Sale of Substantially All of the Debtor's Assets Free and Clear of Liens, Claims and Encumbrances, and Other Interests; and (B) Granting Related Relief," entered on June 28, 2018 [Docket No. 438].

1.2.177 **Scheduled Claim:** Any Claim set forth on the Schedules.

1.2.178 **Schedules:** The Schedules of Assets and Liabilities Filed by the Debtor, as such Schedules have or may be amended from time to in accordance with Bankruptcy Rule 1009.

1.2.179 **Section 510(b) Claim:** Any Claim against the Debtor asserted in the Securities Litigation.

1.2.180 **Securities Litigation:** The securities class action litigation captioned as *Karim Khoja v. Orexigen Therapeutics, Inc., et al.*, Case No. 3:15-cv-00540 (JLS), pending in the United States District Court for the Southern District of California.

1.2.181 **Services Agreement:** The "Master Services Agreement" between MPRS and the Debtor.

1.2.182 **Sole Continuing Director:** "Sole Continuing Director" shall have the meaning ascribed to such term in Section 2.8 of this Disclosure Statement.

1.2.183 **Sole Continuing Officer:** "Sole Continuing Officer" shall have the meaning ascribed to such term in Section 2.8 of this Disclosure Statement.

1.2.184 **Tax Refund Costs:** "Tax Refund Costs" Shall have the meaning ascribed to such term in Section 2.19(e) of the Plan.

1.2.185 **Tax Refunds:** Any and all amounts to which the Debtor or its Estate may be entitled under the Internal Revenue Code or applicable state or local tax law, including, but not limited to, tax refunds and tax credits.

1.2.186 **Takeda Reconciliation:** The determination of the contractual payment obligations owed to the Debtor, if any, in connection with the business operations or termination of its former business relationship with Takeda Pharmaceuticals U.S.A., Inc.

1.2.187 **Takeda Reconciliation Claim:** Any Cause of Action arising from the Takeda Reconciliation.

1.2.188 Takeda Reconciliation Lender Share: Twenty-five percent (25%) of any net recovery by agreement, settlement, litigation or alternative resolution of the Takeda Reconciliation Claim.

1.2.189 Unclaimed Distribution: A distribution that is not claimed by a Holder of an Allowed Claim on or prior to the Unclaimed Distribution Deadline.

1.2.190 Unclaimed Distribution Deadline: Ninety (90) days from the date the Debtor or Wind Down Administrator, as the case may be, makes a distribution.

1.2.191 Unclassified Claims: Claims which, pursuant to Bankruptcy Code section 1123(a)(1), shall not be placed into a Class. Unclassified Claims include Administrative Expense Claims, Professional Fee Claims and Priority Tax Claims.

1.2.192 Unimpaired: With respect to a Class of Claims or Interests, any Class that is unimpaired within the meaning of Bankruptcy Code section 1124.

1.2.193 United States Trustee: The Office of the United States Trustee for the District of Delaware.

1.2.194 Voluntary Correction Plan: "Voluntary Correction Plan" shall have the meaning ascribed to such term in Section 3.7.4 of this Disclosure Statement.

1.2.195 Voting Class: A Class that is Impaired and entitled to vote on the Plan.

1.2.196 Wind Down Administrator: A Person to be appointed on the Effective Date by the Committee, in such capacity and not in their individual capacity, and any successor appointed and from time to time with the consent of the Wind Down Committee and the Required Prepetition Secured Noteholders, pursuant to the terms of the Plan and Wind Down Entity Documents. The identity of the Wind Down Administrator shall be included in the Plan Supplement.

1.2.197 Wind Down Advisor(s): Any firm(s) or individual(s) retained by the Wind Down Administrator to serve as the Wind Down Administrator's legal counsel or provide other professional services in connection with the performance of the Wind Down Administrator's duties and responsibilities under the Plan and the Wind Down Entity Documents. For the avoidance of doubt, the Wind Down Advisors may include firm(s) or individual(s) retained by the Debtor, the DIP Lenders, the Prepetition Secured Noteholders, or the Creditors' Committee during the Case.

1.2.198 Wind Down Assets: (i) The Causes of Action; (ii) any and all other claims and causes of action of the Debtor and the Estate other than Excluded Causes of Action; and (ii) any and all other interests in property of the Debtor or the Estate existing as of the Effective Date, including, but not limited to, any unpaid portion of the Holdback Amount and the Tax Refunds, other than (a) the Distributable Cash and (b) any and all other property of the Debtor or the Estate distributed pursuant to the Plan. For the avoidance of doubt, Wind Down

Assets shall not include any Excluded Causes of Action, interests in property abandoned under the Plan or the Purchased Assets (as defined in the Asset Purchase Agreement).

1.2.199 Wind Down Committee: The committee selected by the Creditors' Committee and established on the Effective Date in accordance with the Wind Down Entity Documents.

1.2.200 Wind Down Entity: The entity to be established pursuant to the Plan and Wind Down Entity Agreement.

1.2.201 Wind Down Entity Documents: The Wind Down Entity Agreement, substantially in the form to be attached to the Plan Supplement, by and between the Debtor and Wind Down Administrator, dated as of the Effective Date, for the benefit of the Holders of (i) Allowed General Unsecured Claims; (ii) Allowed Prepetition Secured Noteholder Claims; (iii) Allowed Prepetition Secured Noteholder Subordinated Deficiency Claims; and (iv) Allowed Administrative Expense Claims, whether or not Allowed as of the Effective Date, and any documents or instruments entered into or delivered in connection therewith.

1.2.202 Wind Down Operating Expenses: The expenses of the Wind Down Entity incurred in accordance with the Wind Down Entity Documents, other than the Lender Litigation Expenses and the Plan Settlement Litigation Expenses, including, but not limited to, (i) reasonable compensation for the Wind Down Administrator incurred in accordance with the Wind Down Entity Documents, (ii) costs and expenses incurred by the Wind Down Administrator in administering the Wind Down Entity, (iii) statutory fees that may become payable after the Effective Date to the U.S. Trustee, and (iv) fees and expenses of the Wind Down Advisors incurred in accordance with the Wind Down Entity Documents, other than the Lender Litigation Expenses and the Plan Settlement Litigation Expenses.

1.2.203 Wind Down Operating Expense Reserve: Cash in an amount to be determined reasonably by the Required Prepetition Noteholders, to be transferred to the Wind Down Entity on the Effective Date and used by the Wind Down Administrator solely for the payment of Wind Down Operating Expenses, in accordance with the Wind Down Entity Documents. The amount of the Wind Down Operating Expense Reserve and the basis for its determination shall be included in the Plan Supplement.

1.2.204 Wind Down Reserves: Collectively, the (i) 401(k) Administrator Expense Reserve, (ii) Lender Litigation Expense Reserve, (iii) Priority Claim Reserve, and (iv) Wind Down Operating Expense Reserve.

2. THE DEBTOR.

2.1 Description of Debtor and Its Business.

The Debtor was a biopharmaceutical company focused on the treatment of obesity. Its sole commercial product, Contrave® (naltrexone HCL/bupropion HCL), was approved in the United States by the FDA, as an adjunct to a reduced-calorie diet and increased physical activity for chronic weight management in adults with an initial body mass index of 30 kg/m 2 or greater (obese), or 27 kg/m 2 or greater (overweight) in the presence of at least one weight-related co-

morbid condition. The American Medical Association designated obesity as a disease in 2013. In 2016, the CDC reported that 36.5% of U.S. adults (approximately 91 million) suffered from obesity. Obesity is a chronic, relapsing and complex condition requiring ongoing management in order to maintain weight-loss. Contrave® is a unique and proprietary combination of two generic drug components, each of which has already received regulatory approval for other indications and has been commercialized in the United States and in a majority of the member countries of the European Union. The drug was approved by the FDA in 2014 and is the only approved medicine for chronic weight management that is believed to work on two areas of the brain—the hypothalamus to reduce hunger and the mesolimbic reward system to help control cravings. The drug is the number one prescribed weight-loss brand in the United States with over 2.6 million prescriptions written to date, which equates to approximately 880,000 patients. In Europe, the drug is approved under the brand name Mysimba™ (naltrexone HCl/ bupropion HCl prolonged release). The drug is also approved in South Korea, Canada, Lebanon and the United Arab Emirates.

The Debtor's primary activities since incorporation and prior to the Sale included recruiting personnel, conducting research and development, including four Phase 3 clinical studies prior to FDA approval and ongoing post-marketing required studies, raising capital, overseeing the manufacturing, marketing and commercialization of its drug product in the United States, and establishing and supporting partnerships to commercialize the drug outside of the United States. The drug was originally launched in the United States by the Debtor's former partner, Takeda Pharmaceutical Company Limited, in 2014. In March 2016, the Debtor repurchased the commercial rights to the drug in the United States and, in August 2016, became solely responsible for commercializing Contrave® within the United States. Outside of the United States, the Debtor commercialized the drug through a network of distribution partners from 2015 to July 27, 2018, when it closed on the Sale to the Purchaser.

The Debtor experienced losses since its inception, and as of December 31, 2017, had an accumulated deficit of $790.6 million, primarily due to the cost of product clinical development. The Debtor continued to incur losses, and its ability to successfully transition to profitability was dependent upon achieving a level of revenue adequate to support the Debtor's cost structure and/or reducing the Debtor's cost structure. Prior to the Effective Date, the Debtor had projected it could be profitable by 2019 based on its then-existing operating model and revenue forecasts. A successful patent litigation involving a challenge by a generic manufacturer confirmed exclusivity for Contrave® in the United States until 2030.

A detailed description of the Debtor's business, capital structure, and the events leading to the Case is fully set forth in the Declaration of Michael A. Narachi in Support of First Day Relief [Docket No. 3].

2.2 Debtor's Capital Structure.

2.2.1. Prepetition Secured Notes. On March 21, 2016, the Debtor issued the Prepetition Secured Notes in the principal amount of up to $165 million, due July 1, 2020. In connection with the issuance of the Prepetition Secured Notes, the Debtor granted U.S. Bank National Association (in such capacity, the "**Prepetition Collateral Agent**"), for the benefit of the Prepetition Secured Noteholders, a security interest in substantially all of the assets of the

Debtor as security for the Debtor's obligations under and as defined in the Prepetition Secured Notes Documents. As of the Petition Date, the Debtor was indebted to the Prepetition Secured Noteholders in the outstanding principal amount of $165 million plus interest, costs and fees and other amounts owed under the Prepetition Secured Notes Documents.

2.2.2. Unsecured Debt. In December 2013, the Debtor issued $115 million in aggregate principal amount of 2.75% Convertible Senior Notes due 2020, which, as of the Petition Date, had an outstanding principal balance of $25.343 million. In February 2017, the Debtor issued new 2.75% Convertible Exchange Senior Notes due 2020, which, as of the Petition Date, had an outstanding principal balance of $38.942 million. The Debtor also had unsecured obligations, as of the Petition Date, in the amount of approximately $38 million consisting of accounts payable to various trade creditors.

2.2.3. Equity Interests. As of the Petition Date, the Debtor was a publicly traded company with its shares listed on The NASDAQ Global Select Market with 18,887,033 shares of Orexigen Common Stock issued and outstanding. In addition, in connection with the 2016 Secured Notes, Orexigen issued 219,994 shares of Series Z Preferred Stock, which were issued and outstanding as of the Petition Date. The foregoing Common Stock and Series Z Preferred Stock are referred to herein, collectively, as "**Equity Interests**".

2.3 Debtor's First Day Motions. On the Petition Date, the Debtor Filed various motions (collectively, the "**First Day Motions**") requesting first day relief, including authority to: (i) retain and appoint KCC as the Claims and Noticing Agent [Docket No. 5]; (ii) continue using its existing cash management system, including maintenance of bank accounts and existing business forms and checks [Docket No. 7]; (iii) honor certain prepetition obligations to customers and to continue Customer Programs [Docket No. 8]; (iv) pay prepetition employee obligations [Docket No. 9]; (v) pay certain prepetition taxes and fees [Docket No. 10]; (vi) prohibit utility providers from altering, refusing or discontinuing service to the Debtor [Docket No. 13]; and (vii) use cash collateral of the Prepetition Secured Noteholders and obtain a super-priority postpetition financing consisting of a term loan in a principal amount of up to $70,350,000 pursuant to the DIP Credit Agreement (the "**DIP Facility**") [Docket No. 4].

2.4 Sale of Substantially All of the Debtor's Assets. On March 16, 2018, the Debtor Filed a motion (the "**Bid Procedures Motion**") [Docket No. 70] seeking entry of an order (a) approving bidding procedures and bid protections for the sale of substantially all assets of the Debtor; (b) approving procedures for the assumption and assignment or rejection of designated executory contracts and unexpired leases; (c) scheduling an auction and sale hearing; (d) approving forms and manner of notice of respective dates, times, and places in connection therewith; and (e) granting related relief.

In connection with the Sale, the Debtor also filed a motion for approval of a Key Employee Incentive Plan ("**KEIP**") for certain insider officers of the Debtor and a Key Employee Retention Plan ("**KERP**") for certain non-insider employees.

On April 23, 2018, the Bankruptcy Court entered its Order granting the Bid Procedures Motion and setting certain bidding procedures and auction guidelines for the proposed sale of substantially all of the Debtor's Assets (the "**Bid Procedures Order**") [Docket No. 231]. The

Bankruptcy Court also entered an order authorizing the Debtor to implement its KEIP and KERP [Docket No. 230]. Payments under both the KEIP and KERP were paid upon the close of the Sale.

The Debtor did not receive any qualified bids and on June 22, 2018, filed a "Notice of Cancellation of Auction" [Docket No. 409]. On June 28, 2018, the Bankruptcy Court entered the Sale Order authorizing and approving the Sale to the Purchaser and the Asset Purchase Agreement. The Asset Purchase Agreement provided for a purchase price of $75 million in cash and assumption of certain liabilities. A true and correct copy of the Asset Purchase Agreement may be viewed at docket entry number 228.

On July 26, 2018, the Bankruptcy Court entered the "Order Approving an Amendment to Asset Purchase Agreement Entered Into By and Between the Debtor and Nalpropion Pharmaceuticals, Inc." [Docket No. 633] (the "**APA Amendment**") that addressed the agreed upon economic allocation of a potential limited recall of certain of the Debtor's product, including, but not limited to, a reduction in the purchase price under the Asset Purchase Agreement to $73.5 million and the establishment of a holdback from the purchase price of $5 million to be released to the Debtor, if released on or prior to the Effective Date, or to the Wind Down Administrator, if released after the Effective Date, or retained by Nalpropion, under certain conditions detailed in the APA Amendment.

On July 27, 2018 the Closing of the Sale occurred.

Upon the close of the Sale, the Debtor paid in full (i) all obligations under the DIP Facility as required by the DIP Credit Agreement and DIP Order and (ii) all amounts owed to employees under the Debtor's KEIP and KERP. As of the filing of this Disclosure Statement, the Debtor's remaining Assets principally consist of Cash on hand, Causes of Action, and various tangible and intangible assets constituting Excluded Assets under the Asset Purchase Agreement. As of February 8, 2019, the Debtor's Cash consisted of approximately $26.5 million. Pursuant to the Prepetition Secured Notes Documents and the DIP Order, subject to the terms of the Plan Settlement, all of the Debtor's Cash constitutes "cash collateral" (as defined in section 363(a) of the Bankruptcy Code) securing the Prepetition Secured Notes.

2.5 Holdback Dispute with Nalpropion.

Following the closing of the Sale, Purchaser gave notice that it intended to retain a material portion of the Holdback Amounts for reasons contested by the Debtor. On February 8, 2019, the Debtor made a written demand that the Purchaser provide documentation supporting its retention of certain of the Holdback Amounts aggregating approximately $2.6 million, or otherwise release such Holdback Amounts to the Debtor no later than February 22, 2019. On February 26, 2019, the Debtor received a response from the Purchaser pursuant to which the Purchaser stated it intended to release approximately $214,000 in Holdback Amounts to the Debtor in early March, and otherwise disputed the Debtor's claim that it is entitled to the release of any additional Holdback Amounts, which currently total approximately $4.25 million pursuant to the Purchaser's response. As of the date hereof, the Debtor has not received any additional Holdback Amounts from the Purchaser. The Debtor continues to maintain that is

entitled to a release of Holdback Amounts of at least $2.6 million and is continuing its discussions with the Purchaser.

Under the Plan, the Purchase Agreement, and the Wind Down Entity Documents, any Holdback Amounts released by the Purchaser shall be (i) paid to the Debtor and included in Distributable Cash, to the extent received by the Debtor on or prior to the Effective Date, and (ii) paid to the Wind Down Administrator and distributed Pro Rata to holders of Class 3 Prepetition Secured Noteholder Claims, to the extent released after the Effective Date.

2.6 The McKesson Dispute.

McKesson and the Debtor had entered into the Distribution Agreement in June 2016, pursuant to which McKesson purchased and distributed Contrave®. MPRS and the Debtor had separately entered into the Services Agreement in July 2016, pursuant to which MPRS managed certain retail discount programs for Debtor. As of the Petition Date, McKesson owed the Debtor approximately $6.9 million under the Distribution Agreement, and the Debtor owed MPRS approximately $8.5 million under the Services Agreement. Pursuant to a series of stipulations, McKesson paid what it owed under the Distribution Agreement to the Debtor, MPRS reserved any rights to set off its claims against Debtor against the amounts McKesson paid, and the parties stipulated and agreed the Debtor would segregate $6,932,816.40 (the "**Disputed Funds**") from the Sale proceeds pending the entry of a Final Order resolving the McKesson Dispute.

On July 30, 2018, McKesson and MPRS filed a motion for an order that MPRS is entitled to setoff (the "**Disputed Rights Motion**"). On November 13, 2018, the Bankruptcy Court issued an opinion denying the Disputed Rights Motion and entered the McKesson Order, thereby resolving the McKesson Dispute against McKesson and in favor of the estate and the Prepetition Secured Noteholders. McKesson and MPRS appealed the McKesson Order to the United States District Court for the District of Delaware. As of April 1, 2019, the McKesson Appeal will be fully briefed and the parties are awaiting a ruling by the District Court. The Debtor is highly confident that the District Court will affirm the Bankruptcy Court. If after all further appeal rights have been exhausted, and an order resolving the McKesson Dispute then becomes a Final Order, then the Disputed Funds shall be distributed in accordance with stipulations entered and approved by Court Order.

The Debtor will continue to segregate the Disputed Funds until such a Final Order resolving the McKesson Dispute has been entered, whether before or after the confirmation and effectiveness of the Plan. To the extent a Final Order grants the Disputed Rights Motion, in whole or in part, the Disputed Funds will be paid to McKesson to such extent, free and clear of any lien, charge, claim or interest. To the extent a Final Order denies the Disputed Rights Motion, in whole or in part, the Disputed Funds shall be paid to the Debtor to such extent as "cash collateral" of the Prepetition Secured Noteholders, or, if the effective date the Plan shall have occurred, the Disputed Funds will be distributed to such extent Pro Rata to the holders of Class 3 Prepetition Secured Noteholder Claims.

2.7 Securities Litigation

The Debtor, together with former officers of the Debtor, Michael A. Narachi, Joseph P. Hagan, and Preston Klassen, are defendants in the Securities Litigation pending in the United States District Court for the Southern District of California. The lead plaintiff for a proposed class of plaintiffs in the case is Karim Khoja. The plaintiffs have asserted certain claims against the Debtor and other defendants for violations of the Securities Exchange Act of 1934, and certain rules promulgated thereunder. On June 27, 2016, the District Court entered an order and judgment granting the defendants' motion to dismiss the plaintiffs' complaint and thereby dismissed two causes of action with prejudice and the remainder without prejudice. The lead plaintiff appealed. On August 13, 2018, the Ninth Circuit Court of Appeals affirmed in part and reversed in part the District Court's order and remanded the case to the District Court. The action is stayed with respect to the Debtor. Recently, the non-Debtor defendants filed a motion to dismiss with respect to certain remanded causes of action, which is scheduled to be heard by the District Court on April 18, 2019, and filed a petition for writ of certiorari with the United States Supreme Court appealing one part of the Ninth Circuit's decision. The Section 510(b) Claims are subordinated pursuant to section 510(b) of the Bankruptcy Code and the Holders of such Claim will not receive any distribution under the Plan.

2.8 Corporate Governance During and Prior to Effective Date of the Plan

In anticipation of the closing of the Sale, on July 11, 2018, the full Board of Directors (as then constituted) adopted, approved and authorized resolutions by unanimous written consent (the "**Board Consent**"), which, among other things:

i. accepted the resignations of Board members Patrick J. Mahaffy, Michael A. Narachi, Louis C. Bock, Brian H. Dovey, David J. Endicott, Peter K. Honig and Deborah A. Jorn, effective as of July 13, 2018;

ii. reduced the size of the Board by seven (7) seats to one (1) seat, to be held by current Board member Lota Zoth (or any successor, the "**Sole Continuing Director**");

iii. accepted the resignations of Michael A. Narachi as President and Chief Executive Officer, Thomas Cannell as Chief Operating Officer, Monica Forbes as Chief Financial Officer and Stephen Moglia as Chief Accounting Officer (collectively, the "**Resigning Officers**") effective as of July 13, 2018;

iv. appointed Thomas Lynch to serve as the sole officer of the Debtor effective as of July 13, 2018 (or any successor, the "**Sole Continuing Officer**");

v. approved the compensation of the Sole Continuing Officer at his then-current salary through July 31, 2018, and thereafter as a consultant to the Debtor until completion of the wind-down and liquidation of the Debtor at

a rate of $6,000 per week, with a $25,000 retention payment to be paid upon completion;

vi. authorized the Sole Continuing Officer in the name and on behalf of the Debtor, to do all things, to take all such actions and to negotiate, prepare, execute, deliver and file all such agreements, instruments, reports, documents and regulatory and other notices, as the Sole Continuing Officer shall determine to be necessary or appropriate in connection with or with respect to effecting the intent and purposes of all or any of the resolutions in the Board Consent; and

vii. provided that all actions already taken or to be taken, and all agreements, instruments, reports, documents and regulatory and other notices already executed, delivered or filed, or to be executed, delivered or filed, by the Debtor, any of the Resigning Officers or the Sole Continuing Officer in connection with or with respect to effecting the intent and purposes of all or any of the resolutions in the Board Consent, are authorized, approved, ratified and confirmed in all respects.

3. SUMMARY OF THE PLAN.

3.1 Purpose of the Plan. The Debtor proposed the Plan, over the alternative of converting the Case to one under Chapter 7, because the Debtor believes that: (i) the Plan ensures a timely resolution of the Case, including the administration of the Debtor's remaining Assets, and (ii) the Plan avoids unnecessary delay and costs which would result if the Case were converted to one under Chapter 7.

Additionally, the Plan implements a Plan Settlement between and among the Debtor, Creditors' Committee, the DIP Lenders, and the Required Prepetition Secured Noteholders. Details regarding the Plan Settlement are described in Section 2.15 of the Plan and implemented throughout the Plan. Distributions to be made to Holders of Allowed (i) Prepetition Secured Noteholder Claims, (ii) General Unsecured Claims, and (iii) Prepetition Secured Noteholder Subordinated Deficiency Claims pursuant to the Plan shall be made on account of and in consideration of, among other things, the Plan Settlement. In addition, on the Effective Date of the Plan, the Creditors' Committee shall automatically be deemed to waive and release the Creditors' Committee's ability to commence a Challenge (as defined in the DIP Order). Under the Plan Settlement, among other things, the Prepetition Secured Noteholder Subordinated Deficiency Claim shall be subordinated in full to Allowed General Unsecured Claims.

Without the Plan Settlement, numerous complex issues would have been litigated at material expense between and among the Debtor, Creditors' Committee, DIP Lenders, and Prepetition Secured Noteholders, including regarding the nature and extent of the Claims of the Prepetition Secured Noteholders. Entry of the Confirmation Order shall constitute: (a) the Bankruptcy Court's approval, as of the Effective Date, of the Plan and all components of the Plan Settlement, and (b) the Bankruptcy Court's finding that the Plan Settlement is (x) in the best interest of the Debtor, its Estate and the Holders of Claims, (y) the product of the exercise of the

Debtor's sound business judgment, and (z) is fair, equitable and reasonable under the circumstances.

On the Effective Date, the Debtor will transfer the Wind Down Assets to the Wind Down Entity and create and fund the reserves contemplated by the Plan and Wind Down Entity Documents, other than the Class 4 Disputed Claims Reserve and the Plan Settlement Litigation Reserve, which are not required to be funded until after the Effective Date, and the Professional Fee Escrow. Pursuant to the Wind Down Entity Documents, the Wind Down Entity will hold the Plan Settlement Initial Funding Amount and the Class 4 Disputed Claim Reserve, and any and all Plan Settlement Proceeds, in trust for the benefit of Holders of Allowed General Unsecured Claims and, if and only if Allowed General Unsecured Claims are paid in full, for the benefit of Holders of Prepetition Secured Noteholder Subordinated Deficiency Claims.

The Wind Down Administrator shall implement the Plan Settlement in accordance with the Plan and the Wind Down Entity Documents. The Wind Down Administrator will liquidate all Wind Down Assets, other than the Causes of Action, Plan Settlement Initial Funding Amount and Plan Settlement Proceeds, as expeditiously as is reasonable under the circumstances and distribute the proceeds thereof to Holders of Allowed Prepetition Secured Noteholder Claims in Class 3, including, but not limited to: (i) obtaining release of the Holdback Amounts from the Purchaser and otherwise pursuing the Asset Purchase Agreement Claims as necessary, including, without limitation, by seeking appropriate relief in the Bankruptcy Court or other court of competent jurisdiction; and (ii) liquidating and, if necessary, obtaining turnover from third parties of Prepetition Secured Notes Collateral, including by seeking appropriate relief in the Bankruptcy Court or other court of competent jurisdiction.

The Wind Down Administrator, on behalf of the Wind Down Entity, shall pursue the Causes of Action and Asset Purchase Agreement Claims in their discretion, provided that the Wind Down Administrator shall first consult with the Wind Down Committee with respect to pursuing the Causes of Action, and with the Required Prepetition Secured Noteholders with respect to the Asset Purchase Agreement Claims. The Plan Settlement Net Proceeds, net of any Plan Settlement Litigation Reserve established under Section 2.2 of the Plan shall be distributed to Holders of Allowed General Unsecured Claims in Class 4 from time to time, except to the extent the Wind Down Administrator determines, after consultation with the Wind Down Committee, to contribute all or a portion of such proceeds to the Plan Settlement Litigation Reserve.

Upon payment in full of all Allowed Class 4 Claims, Plan Settlement Net Proceeds shall be distributed from time to time to Holders of Allowed Prepetition Subordinated Secured Noteholder Deficiency Claims in Class 5, except to the extent the Wind Down Administrator determines, with the consent of the Required Prepetition Secured Noteholders, to contribute all or a portion of such proceeds the Plan Settlement Litigation Reserve.

In the event of any inconsistency between the Plan and the Plan Settlement, the Plan will govern.

The following chart sets forth the Classes of Claims and Interest under the Plan, the proposed treatment offered to each Class and their estimated recoveries:

Class	Type	Treatment	Estimated Recovery of Class (%)[2]
1.	Priority Claims	Except to the extent that a Holder of an Allowed Priority Claim agrees to a less favorable treatment of its Allowed Priority Claim, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Priority Claim, each such Holder thereof shall receive payment in full in cash of such Holder's Allowed Priority Claim.	100%
2.	Other Secured Claims	Except to the extent that a Holder of an Allowed Other Secured Claim agrees to a less favorable treatment of its Allowed Other Secured Claim, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Other Secured Claim, each such Holder thereof shall receive, at the option of the Wind Down Administrator: o payment in full in Cash of such Holder's Allowed Other Secured Claim no later than 30 days after the later of the Effective Date and the date on which the Other Secured Claim is Allowed; o the Debtor's interest in the collateral securing such Allowed Other Secured Claim; o setoff of such Allowed Other Secured Claim against any other obligation of such Holder owed to the Debtor on a dollar for dollar basis; or o such other treatment rendering such Holder's Allowed Other Secured Claim Unimpaired.	100%
3.	Prepetition Secured Noteholder Claims	Except to the extent that a Holder of an Allowed Prepetition Secured Noteholder Claim agrees to a less favorable treatment of its Allowed	13-18%[3]

[2] The estimated recovery percentages reflect the amount of Claims that the Debtor believes will be Allowed Claims. Final numbers may differ materially depending on the actual amount of Allowed Claims.

[3] In the event that McKesson prevails on the Disputed Rights Motion and the Debtor must pay the Disputed Funds to McKesson, the estimated recovery could be reduced by approximately 5%. However, the Debtor is highly confident that the Bankruptcy Court's November 13, 2018 opinion and order denying the Disputed Rights Motion will be upheld on appeal.

		Prepetition Secured Noteholder Claim, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Prepetition Secured Noteholder Claim, and subject to Section 2.3 of the Plan, each such Holder thereof shall receive, Pro Rata: (a) the Distributable Cash (less the Sabby Settlement Amount which shall be distributed directly to the Sabby Parties on the Effective Date pursuant to the Sabby Settlement Agreement), to be distributed by the Debtor on the Effective Date or as soon as practicable after receipt; (b) any and all Cash proceeds from Tax Refunds, release of the Holdback Amounts, the Asset Purchase Agreement Claims and the Takeda Reconciliation Lender Share, net of the Lender Litigation Expenses and the Wind Down Operating Expenses, and (c) any unused amounts of the Wind Down Reserves; to be distributed by the Wind Down Entity in accordance with the Plan and the Wind Down Entity Documents. The principal amount of the Prepetition Secured Notes held by Prepetition Secured Noteholders who participated in the Roll-Up and the Prepetition Secured Notes held by the Sabby Parties shall be reduced proportionately for purposes of receiving distributions under the Plan to reflect payment of the Roll-Up and the Sabby Settlement Payment, respectively. The Prepetition Secured Noteholder Subordinated Deficiency Claim shall be classified and treated as a Class 5 Prepetition Secured Noteholder Subordinated Deficiency Claim and will not receive any distribution unless holders of Allowed Class 4 General Unsecured Claims are paid in full in Cash.	
4.	General Unsecured Claims	Except to the extent that a Holder of a General Unsecured Claim agrees to a less favorable treatment of its Allowed General Unsecured Claim or with respect to a General Unsecured Claim which the Debtor or Wind Down Administrator, as applicable, determines in its reasonable discretion is covered by sufficient	2%

		insurance or is subject to subordination under the Bankruptcy Code, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed General Unsecured Claim, each Allowed General Unsecured Claim will be treated as follows: o Each Holder of an Allowed General Unsecured Claim will receive Pro Rata: (a) the Plan Settlement Net Proceeds; (b) the Plan Settlement Initial Funding Amount remaining for distribution; and (c) any unused amounts of the Class 4 Disputed Claim Reserve and the Plan Settlement Litigation Reserve, to be distributed by the Wind Down Entity from time to time in accordance with the Plan and the Wind Down Entity Documents. o All distributions by the Wind Down Entity to Holders of Allowed General Unsecured Claims in this Class 4 will be paid from the Plan Settlement Net Proceeds, the Plan Settlement Initial Funding Amount remaining for distribution, and unused amounts of the Class 4 Disputed Claim Reserve and Plan Settlement Litigation Reserve. o On or as soon as practicable after the Effective Date, the Wind Down Administrator shall distribute $1,625,000 on account of Class 4 Claims. The Wind Down Administrator shall establish reserves on account of Class 4 Disputed Claims as provided in this Plan. In the event that such reserves are less than $1 million, the Wind Down Administrator may retain the difference between $1 million and the actual reserves on account of Disputed Class 4 Claims, up to an additional $125,000, for use by the Wind Down Administrator at such Wind Down Administrator's discretion, and any such greater sum only upon the unanimous consent of the Wind Down	

		Committee. o For the avoidance of doubt, none of the Plan Settlement Proceeds, Plan Settlement Net Proceeds or the Plan Settlement Initial Funding Amount shall be used to make distributions on account of any other Claim. o For the avoidance of doubt, and notwithstanding anything to the contrary herein or any Filed Proof(s) of Claim to the contrary, (a) pursuant to the Plan Settlement, the Prepetition Secured Noteholders will not have a Class 4 General Unsecured Claim; entry of the Confirmation Order shall constitute a full and irrevocable waiver by the Prepetition Secured Noteholders of any such General Unsecured Claim and the right of any distribution on account thereof; and (b) any Allowed Class 4 General Unsecured Claim which the Debtor or Wind Down Administrator, as applicable, determines in its reasonable discretion is covered by sufficient insurance shall not receive any distribution on account thereof other than from such applicable insurance policies. The Prepetition Secured Noteholder Subordinated Deficiency Claim shall be classified and treated as a Class 5 Prepetition Secured Noteholder Subordinated Deficiency Claim and will not receive any distribution unless and until all holders of Allowed Class 4 General Unsecured Claims are paid in full in Cash.	
5.	Prepetition Secured Noteholder Subordinated Deficiency Claim	The Prepetition Secured Noteholder Subordinated Deficiency Claim shall be subordinated in its entirety to Allowed Class 4 General Unsecured Claims, and the Prepetition Secured Noteholders shall not receive any distribution on account of the Prepetition Secured Noteholder Subordinated Deficiency Claim unless and until all Allowed General	0.00%

		Unsecured Claims have been paid in full. In full and final satisfaction, settlement, release, and discharge of the Prepetition Secured Noteholder Subordinated Deficiency Claim, and subject to Section 2.5 of the Plan, each Prepetition Secured Noteholder shall receive Pro Rata any amounts remaining after payment in full of all Allowed General Unsecured Claims, to be distributed by the Wind Down Entity in accordance with the Plan and the Wind Down Entity Documents.	
6.	Section 510(b) Claims	The Section 510(b) Claims are 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.	0.00%
7.	Interests	Holders of Interests in the Debtor will retain no ownership interests in the Debtor under the Plan, receive no distribution on account thereof, and such Interests shall be cancelled effective as of the Effective Date.	0.00%

3.2 Classification and Treatment of Claims and Interests under the Plan. All Allowed Claims and Interests, except Allowed Unclassified Claims, are placed in the Classes, and shall receive the treatment, set forth in Article I of the Plan. In accordance with Bankruptcy Code section 1123(a)(1), Administrative Expense Claims, Professional Fee Claims and Priority Tax Claims have not been classified. A Claim or Interest is classified in a particular Class only to the extent that such Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent that any remainder of the Claim or Interest qualifies within the description of such other Classes.

3.3 Joint Procedures Motion. The Joint Procedures Motion was Filed concurrently with the proposed Disclosure Statement. By the Joint Procedures Motion, the Debtor requested relief in the form of (a) interim approval of this Disclosure Statement; (b) the scheduling of a hearing to consider final approval of this Disclosure Statement and confirmation of the Plan; and (c) the establishment of procedures regarding the solicitation and tabulation of votes to approve or reject the plan. The procedures include those used to determine Holders of Allowed Claims, for the distribution Solicitation Packages, and for the submission and tabulation, and important deadlines. The Bankruptcy Court entered the Joint Procedures Order on March 27, 2019, granting the Joint Procedures Motion following the Joint Procedures Hearing.

3.4 Final Approval of the Disclosure Statement and Confirmation of the Plan.

3.4.1. Requirements. The requirements for Confirmation of the Plan are set forth in Bankruptcy Code section 1129. The requirements for the Disclosure Statement are set forth in Bankruptcy Code section 1125.

3.4.2. Disclosure Statement Hearing. To solicit acceptance of the Plan, the Debtor must provide each Holder of a Claim in an Impaired Class with a disclosure statement approved by the Bankruptcy Court as having "adequate information" under section 1125 of the Bankruptcy Code. On March 27, 2019, the Bankruptcy Court approved the Disclosure Statement as containing adequate information on an interim basis. The Bankruptcy Court will consider final approval of the Disclosure Statement at the Confirmation Hearing.

3.4.3. Confirmation Hearing. To confirm the Plan, the Bankruptcy Court must hold the Confirmation Hearing to determine whether the Plan meets the requirements of Bankruptcy Code section 1129. Pursuant to the Joint Procedures Order, the Bankruptcy Court set **May 17, 2019, at 11:00 am (prevailing Eastern Time),** for the Confirmation Hearing.

3.4.4. Deadline to Object to Confirmation of the Plan. Any party in interest may object to the Confirmation of the Plan and appear at the Confirmation Hearing to pursue such objection. Pursuant to the Joint Procedures Order, the Bankruptcy Court set **May 6, 2019, at 4:00 p.m. (prevailing Eastern Time)**, as the deadline for filing and serving objections to the Confirmation of the Plan. Objections to Confirmation must be electronically Filed with the Bankruptcy Court and served on counsel to the Debtor, the U.S. Trustee, counsel to the Creditors' Committee, counsel to the Required Prepetition Secured Noteholders, and counsel to the Prepetition Secured Notes Indenture Trustee.

3.4.5. Effect of Confirmation. Confirmation serves to make the Plan binding upon the Debtor, all Creditors, Interest Holders and other parties-in-interest, regardless of whether they cast a Ballot to accept or reject the Plan.

3.5 Voting on the Plan.

3.5.1. Impaired Claims or Interests. Pursuant to Bankruptcy Code section 1126, only the Holders of Claims in Classes "Impaired" by the Plan and receiving a payment or distribution under the Plan may vote on the Plan. Pursuant to Bankruptcy Code section 1124, a Class of Claims may be "Impaired" if the Plan alters the legal, equitable or contractual rights of the Holders of such Claims or Interests in such Class. The Holders of Claims not Impaired by

the Plan (Class 1 – Priority Claims and Class 2 – Other Secured Claims) are deemed to accept the Plan and do not have the right to vote on the Plan. The Holders of Claims or Interests in any Class which will not receive any payment or distribution or retain any property pursuant to the Plan (Class 6 – Section 510(b) Claims and Class 7 – Interests) are deemed to reject the Plan and do not have the right to vote.

3.5.2. Eligibility to Vote on the Plan. Unless otherwise ordered by the Bankruptcy Court, only Record Holders of Allowed Class 3 Claims, Class 4 Claims and Class 5 Claims may vote on the Plan, or Holders of Claims that have been temporarily Allowed for voting purposes under Bankruptcy Rule 3018(a). If you are entitled to vote to accept or reject the Plan, a Ballot has been enclosed for the purpose of voting. The Court has set **April 9, 2019, at 4:00 p.m. (prevailing Eastern Time)** for the determination of the Holders of Claims entitled to vote to accept or reject the Plan and the amount of such Claims.

3.5.3. Voting Procedure and Ballot Deadline. To ensure that your vote is counted you must (i) complete the Ballot, (ii) indicate your decision either to accept or reject the Plan in the Ballot, and (iii) sign and return the Ballot to the address set forth on the Ballot (please note that envelopes and prepaid postage have not been included with the Ballot) prior to the deadline set forth below. **BALLOTS SENT BY FACSIMILE TRANSMISSION OR ELECTRONIC MAIL ARE NOT ALLOWED AND WILL NOT BE COUNTED.**

Pursuant to the Joint Procedures Order and Bankruptcy Rule 3017, the Bankruptcy Court has ordered that original Ballots for the acceptance or rejection of the Plan must be received by the Balloting Agent on or before **May 13, 2019, at 4:00 p.m. (prevailing Eastern Time**). In addition to the description of the solicitation procedures set forth herein, please refer to the Joint Procedures Order posted on the Noticing Agent Website for further voting procedures and rules.

Holders of Claims and Interests that receive a Ballot and are entitled to vote on the Plan shall have the ability to opt out of releases for certain third parties in accordance with Section 6.2(b) of the Plan. The Ballot and its instructions explain the process for Holders to opt-out of the releases for such parties. Accordingly, when completing the Ballot, you should carefully review the Ballot, its instructions and Section 6.2(b) of the Plan before deciding to consent to such releases.

Any Ballot that is timely received, executed, that contains sufficient information to permit the identification of the claimant and that is cast as an acceptance or rejection of the Plan will be counted and cast as an acceptance or rejection, as the case may be, of the Plan.

The following Ballots will not be counted or considered for any purpose in determining whether the Plan has been accepted or rejected by the class in which such Holder holds a Claim or Interest:

(a) any Ballot that is illegible or contains insufficient information to permit the identification of the claimant will not be counted;

(b) any Ballot cast by a Person or Entity that does not hold a Claim in a Class that is entitled to vote to accept or reject the Plan will not be counted;

(c) any Ballot cast for a Claim designated or determined as unliquidated, contingent, or disputed or as zero or unknown in amount and for which no 3018(a) Motion has been Filed by the 3018(a) Motion Deadline will not be counted;

(d) any Ballot timely received that is cast in a manner that indicates neither acceptance nor rejection of the Plan or that indicates both acceptance and rejection of the Plan will not be counted;

(e) any Ballot received by the Balloting Agent after the Voting Deadline will not be counted, unless the Debtor agrees in writing to an extension of such deadline;

(f) any Ballot not bearing an original signature will not be counted; and

(g) any Ballot received by the Balloting Agent by facsimile, e-mail or other electronic communication will not be counted.

3.6 Acceptance of the Plan. As a Creditor, your acceptance of the Plan is important. In order for the Plan to be confirmed, each Impaired Class of Claims must vote to accept the Plan (by a majority in number and two-thirds in dollar amount of the Claims voting in a particular Class), or the Plan must qualify for cramdown of any non-accepting Class of Claims pursuant to Bankruptcy Code section 1129(b). In any case, at least one impaired Class of Claims, excluding the votes of insiders, must actually vote to accept the Plan pursuant to Bankruptcy Code section 1126(c). **YOU ARE URGED TO COMPLETE, DATE, SIGN AND PROMPTLY MAIL THE BALLOT ATTACHED TO THE NOTICE OF THIS DISCLOSURE STATEMENT. PLEASE BE SURE TO COMPLETE THE BALLOT PROPERLY AND LEGIBLY IDENTIFY THE EXACT AMOUNT OF YOUR CLAIM AND THE NAME OF THE CREDITOR.**

3.7 Implementation and Execution of the Plan.

3.7.1. Effective Date. As set forth in Article II of the Plan, the Plan shall become effective on the date which is the first Business Day on which each condition set forth in Article IV of the Plan has been satisfied or waived as set forth therein. Upon the occurrence of the Effective Date, the Debtor will File and post on the Noticing Agent Website a notice of confirmation and occurrence of the Effective Date. You will not receive further notice of the occurrence of the Effective Date and should monitor the Noticing Agent Website for such notice.

3.7.2. Summary of Means of Implementation and Execution of the Plan. Article II of the Plan sets forth the means by which the Plan shall be implemented and executed,

the dissolution of the Debtor, the resignation of the Debtor's directors and officers, and objections to and allowance of Claims.

3.7.3. Wind Down Entity. The Wind Down Entity will be formed on or before the Effective Date. The functions of the Wind Down Entity will include, but are not limited to, (a) making distributions to Holders of Allowed Claims on and after the Effective Date in accordance with the Plan, the Plan Settlement, and the Wind Down Entity Documents; (b) pursuing the Causes of Action for the benefit of the Holders of Class 4 General Unsecured Claims; (c) liquidating the Wind Down Assets other than the Causes of Action, including, but not limited to: (i) obtaining release of the Holdback Amounts by the Purchaser and otherwise pursuing the Asset Purchase Agreement Claims, including, without limitation, by seeking appropriate relief in the Bankruptcy Court or other court of competent jurisdiction, (ii) completing the Takeda Reconciliation and obtaining any payment(s) due as a result thereof, including, without limitation, by seeking appropriate relief in the Bankruptcy Court or other court of competent jurisdiction, and (iii) liquidating and, if necessary, obtaining turnover from third parties of Prepetition Secured Notes Collateral, including, without limitation, by seeking appropriate relief in the Bankruptcy Court or other court of competent jurisdiction; (d) resolving Disputed Claims; (e) selecting and retaining the Wind Down Advisors; and (f) otherwise administering the Wind Down Assets. The Wind Down Entity will receive and be vested in the Wind Down Assets in accordance with Section 2.2 of the Plan. The duties and powers of the Wind Down Administrator shall be set forth in the Plan and Wind Down Entity Documents, and shall include, but not be limited to: (i) exercising all power and authority that may be necessary to implement the Plan and enforce all provisions thereof; (ii) commencing and prosecuting all proceedings that may be commenced and take all actions that may be taken by any officer, director or shareholder of the Debtor with like effect as if authorized, exercised and taken by unanimous action of such officers, directors and shareholders, including consummating the Plan; (iii) maintaining any books and records of the Wind Down Entity, including any books and records of the Debtor transferred to the Wind Down Entity; (iv) incurring and paying reasonable and necessary expenses in connection with the implementation of the Plan; (v) exercising all powers necessary or appropriate to liquidate the Wind Down Assets, other than the Causes of Action; and (vi) taking such other actions as may be necessary or appropriate to facilitate the wind down of the Debtor's affairs, other than such duties as are ascribed to the 401(k) Administrator under the Plan.

3.7.4. 401(k) Plan. The Debtor maintains the 401(k) Plan for the benefit of its employees. In July 2018, an external audit commissioned by the Debtor identified that the Debtor had deviated from the 401(k) Plan documents by not making deferrals (i.e., the additional amount that an employee could have contributed to their account based on statutory limits) from individual employee account bonus payments into the applicable employee's 401(k) account. The deviation affects contributions since the inception of the 401(k) Plan through 2018. The Debtor engaged the Retirement Law Group who reviewed the matter and prepared a voluntary correction plan (the "**Voluntary Correction Plan**") using the average actual annual 401(k) Plan performance for each applicable year as the method for calculating the amount necessary to correct the deviation. Based on this methodology, which the Debtor and Retirement Law Group believe is reasonable under the circumstances, on March 23, 2019, the Debtor contributed an aggregate amount of $626,489.19 to the 401(k) Plan, which will be deposited by the 401(k) Plan administrator into impacted employee's individual accounts in the amounts set forth in the Voluntary Correction Plan. Once this process has been completed, the 401(k) Plan

Administrator will close the 401(k) Plan. The Voluntary Correction Plan has been submitted to the IRS for review, which is required. The IRS, however, may not respond for up to eighteen months. In the event that the IRS does not accept the methodology used in the Voluntary Correction Plan, the 401(k) Administrator may be required to choose an alternative methodology and fund additional amounts to the 401(k) Plan, which the 401(k) Administrator estimates may be as much as $813,862.97, which amounts would be paid from the 401(k) Administrator Expense Reserve.

3.7.5. Sabby Litigation Settlement. On June 11, 2018, two Prepetition Secured Noteholders, Sabby Volatility Warrant Master Fund, Ltd. and Sabby Healthcare Master Fund, Ltd. (collectively, the "**Sabby Parties**"), commenced the Sabby Litigation against U.S. Bank National Association, in its capacities as Prepetition Secured Notes Indenture Trustee and Prepetition Collateral Agent, alleging that (i) the Sabby Parties did not receive notice of the Debtor's "roll-up" effectuated by the DIP Order pursuant to which $35 million in face amount of Prepetition Secured Notes were rolled up into the DIP Facility (the "**Roll-Up**"), (ii) the Prepetition Secured Notes Indenture Trustee sent the Roll-Up notice intended to the Sabby Parties to an improper address; (iii) the Prepetition Secured Noteholders were in any event not entitled under the Prepetition Secured Notes Indenture to participate in the Roll-Up absent the Sabby Parties' express consent; and (iv) U.S. Bank had breached certain obligations to the Sabby Parties in connection with the Roll-Up. The Prepetition Secured Notes Indenture disputed the Sabby Parties' allegations and filed motions with the District Court in which it denied the Sabby Parties' allegations and specifically alleged that the Sabby Parties received the Roll-Up notice. U.S. Bank also sought to dismiss the Sabby Litigation and to transfer the case to the Bankruptcy Court.

In order to resolve the Sabby Litigation and avoid the Sabby Parties contesting the confirmation of the Plan, the Sabby Parties and U.S. Bank entered into that certain Settlement Agreement dated as of January 18, 2019, which has been acknowledged by the Debtor (the "**Sabby Settlement Agreement**"). The Sabby Settlement Agreement, a copy of which is attached hereto as **Exhibit B**, is subject to Bankruptcy Court approval pursuant to the Confirmation Order. Upon payment of the Sabby Settlement Amount (as defined below), the Sabby Litigation will be dismissed.

The Sabby Parties agreed to settle the Sabby Litigation in exchange for a Cash payment of $265,000 (the "**Sabby Settlement Amount**"), which will be paid from the Distributable Cash. The Sabby Parties and U.S. Bank further agreed that upon payment of the Sabby Settlement Amount, the Prepetition Secured Notes held by the Sabby Parties shall be *pari passu* with the remaining Prepetition Secured Notes on all distributions to be made to Prepetition Secured Noteholders under the Plan, except that the principal amount of the Prepetition Secured Notes held by Prepetition Secured Noteholders who participated in the Roll-Up and the Prepetition Secured Notes held by the Sabby Parties shall be reduced proportionately for purposes of receiving distributions under the Plan to reflect payment of the Roll-Up and the Sabby Settlement Payment, respectively. The Sabby Settlement Agreement also contains releases, to be effectuated pursuant to the Plan, whereby the Sabby Parties, on the one hand, U.S. Bank, the Prepetition Secured Noteholders and the Debtor, on the other hand, together with their related parties, have agreed to release each other from any and all claims arising out of the Sabby Litigation.

The Debtor believes that without the Sabby Settlement Agreement, numerous disputes would have remained outstanding between and among the Sabby Parties, the Prepetition Secured Notes Indenture Trustee, the Prepetition Secured Noteholders and the Debtor, which may have resulted in protracted and costly litigation among the parties with the potential to destroy value of the Estate and/or significantly delay confirmation of the Plan and/or distributions to Holders of Allowed Prepetition Secured Noteholder Claims. Entry of the Confirmation order shall confirm (a) the Bankruptcy Court's approval, as of the Effective Date, of the Sabby Settlement Agreement and the payment of the Sabby Settlement Amount, and (b) the Bankruptcy Court's finding that the Sabby Settlement Agreement is (i) in the best interest of the Debtor, its Estate and the Holders of Claims, (ii) the product of the exercise of the Debtor's sound business judgment, and (iii) is fair, equitable and reasonable under the circumstances. The foregoing summary of the Sabby Settlement Agreement is qualified in its entirety by the actual terms of the Sabby Settlement Agreement as reflected therein and in the Plan.

3.7.6. **Abandonment, Disposal and/or Destruction of Records**. As set forth in Section 2.11 of the Plan, with the closing of the Sale and the full wind-down of the Debtor's operations, the Debtor has identified, or expects to identify, certain documents, books and records that are outdated, burdensome, and/or of inconsequential value to the Debtor's Estate that are not necessary nor relevant to: (i) the performance of the respective duties and obligations of the Debtor (through the Effective Date) or Wind Down Administrator (after the Effective Date); (ii) any pending or anticipated litigation, including, without limitation, the Securities Litigation; (iii) the filing of any tax returns; (iv) the resolution of Claims Filed against the Debtor; (v) the Causes of Action; (vi) the Purchase Agreement Claims; (vii) the Tax Refunds; (viii) the Takeda Reconciliation; and/or (ix) any other claims or causes of action included among the Wind Down Assets (collectively, the "**Records**"). To complete the Debtor's wind-down, avoid the incurrence of unnecessary storage costs and facilitate the consolidation and preservation of any pertinent documents, books and records, each of the Debtor, in consultation with the Creditors' Committee (through the Effective Date) or Wind Down Administrator (after the Effective Date), as applicable, shall be authorized to abandon, destroy and/or dispose of all originals and/or copies of Records pursuant to Bankruptcy Code section 554 without further order of the Bankruptcy Court.

Bankruptcy Code section 554 provides that, *inter alia*, "[a]fter notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." 11 U.S.C. § 554(a). Courts have held that a debtor-in-possession's decision to abandon property of the estate rests on the debtor's business judgment. *See, e.g., In re Cult Awareness Network Inc.*, 205 B.R. 575, 579 (Bankr. N.D. Ill. 1997). The Debtor has concluded (in consultation with the Creditors' Committee) in its business judgment that it will no longer need to retain certain Records and the Plan should therefore authorize, but not direct, the Debtor, in consultation with the Creditors' Committee (through the Effective Date) or Wind Down Administrator (after the Effective Date), as applicable, to abandon, dispose of, or destroy the Records (or transfer them to the Wind Down Entity). The Debtor and/or Wind Down Administrator, as applicable, shall not be required to comply with applicable local, state and federal statutes, rules and ordinances except to the extent that compliance is necessary to ensure the government's interest in public health and safety. *See generally Midlantic Nat'l Bank v. New Jersey Dept of Envtl. Protection*, 474 U.S. 494 (1986). Additionally, any action by any local, state or federal agency, department or governmental

authority or any other entity to prevent, interfere with, or otherwise hinder the Debtor's or Wind Down Administrator's abandonment, disposal and/or destruction of the Records shall be enjoined pursuant to the Plan.

3.8 Executory Contracts and Unexpired Leases. Article III of the Plan (i) provides that all executory contracts and unexpired leases of the Debtor which are not assumed and assigned, or rejected, prior to the Confirmation Date, if any, shall be deemed rejected, and (ii) sets forth procedures for asserting and resolving Rejection Claims, if any.

3.9 Conditions Precedent to Confirmation and Consummation of the Plan. Article IV of the Plan sets forth the conditions that must occur prior to both Confirmation of the Plan and the occurrence of the Effective Date. Article IV also describes the Debtor's ability to waive such conditions, as well as the effect of non-occurrence of the conditions to the Effective Date, including the vacatur of the Confirmation Order. If the Debtor revokes or withdraws the Plan, or the Confirmation Order is vacated, pursuant to Section 5.8 of the Plan, (i) the Plan shall be null and void in all respects, and (ii) nothing contained in the Plan shall (a) constitute a waiver or release of any Claims by or against, or any Interest in, the Debtor or (b) prejudice in any manner the rights of the Debtor or any other party in interest.

3.10 Miscellaneous Provisions. Article V of the Plan contains several miscellaneous provisions, including: (i) the right to pursue Causes of Action, if any; (ii) the retention of jurisdiction by the Bankruptcy Court over certain matters following the Confirmation Date; (iii) the Debtor's payment of statutory fees pursuant to 28 U.S.C. § 1930; (iv) the dissolution of the Creditors' Committee; (v) the termination of KCC in its capacity as claims, noticing and balloting agent; and (vi) the limiting of the Post-Effective Date Notice List to those entities that request to be included on that list.

ADDITIONALLY, PLEASE NOTE THAT SECTIONS 6.1 THROUGH 6.3 OF THE PLAN GOVERN THE EXCULPATION, LIMITATION OF LIABILITY AND RELEASE OF CERTAIN PARTIES. PLEASE REVIEW THESE PROVISIONS CAREFULLY.

3.11 Final Fee Hearing and Final Decree.

3.11.1. The Professional Fee Claim Bar Date and the Final Fee Hearing. Article VII of the Plan describes the Professional Fee Claim Bar Date and the Final Fee Hearing. The Debtor will File and post on the Noticing Agent Website a notice of the Professional Fee Claim Bar Date and the Final Fee Hearing. The Debtor will not provide further notice of the Professional Fee Claim Bar Date, the Professional Fee Claims or the Final Fee Hearing and should monitor the Noticing Agent Website for such notice. The Professional Fee Claim Bar Date and the Final Fee Hearing time can also be obtained by contacting counsel for the Debtor.

3.11.2. Entry of the Final Decree and Closing of the Cases. As set forth in Article VII of the Plan, subsequent to the Effective Date, the Final Fee Hearing and the fulfillment of the standards for the closing of the Case, the Debtor's or Wind Down Administrator's counsel shall File a proposed form of order under certification of counsel requesting the entry of a Final Decree pursuant to Bankruptcy Code section 350(a). Such Final

Decree shall close the Case. At that time, the Debtor and/or Wind Down Administrator believes that its Estate will be fully administered as (i) the Confirmation Order will be a Final Order, (ii) the distribution by the Estate will be completed, (iii) all motions, contested matters and adversary proceedings will be resolved, and (iv) all U.S. Trustee fees will have been paid.

Bankruptcy Code section 350(a) provides that a case shall be closed "[a]fter an estate is fully administered and the court has discharged the trustee." 11 U.S.C. § 350(a). Likewise, Bankruptcy Rule 3022 provides that, "[a]fter an estate is fully administered in a Chapter 11 reorganization case, the court ... shall enter a final decree closing the case." Fed. R. Bankr. P. 3022. Further, Local Rule 5009-1 provides that, "[u]pon written motion, a party in interest may seek the entry of a final decree at any time after the confirmed plan has been substantially consummated provided that all required fees due under 28 U.S.C. § 1930 have been paid." Del. Bankr. L.R. 5009-1(a). Based upon the foregoing, the Bankruptcy Court's entry of the Final Decree is appropriate and necessary subsequent to the Effective Date upon submission of the Final Decree certification.

4. FEASIBILITY.

4.1 Financial Feasibility Analysis.

4.1.1. Bankruptcy Code Standard. The Bankruptcy Code requires that, in order to confirm a plan, the Bankruptcy Court must find that confirmation of such plan is not likely to be followed by the liquidation or the need for further financial reorganization of the debtor(s) unless contemplated by the plan. 11 U.S.C. § 1129(a)(11).

4.1.2. No Need for Further Reorganization of Debtor. Because the Debtor has sold substantially all of its assets and ceased business operations, and because the Plan provides for the distribution of the Debtor's remaining Assets, the funding of the Wind Down Entity, and the ultimate liquidation and dissolution of the Debtor, confirmation of the Plan will not be followed by further reorganization of the Debtor.

5. BEST INTERESTS OF CREDITORS AND ALTERNATIVES TO PLAN.

5.1 Chapter 7 Liquidation; Liquidation Analysis.

5.1.1. Bankruptcy Code Standard. Notwithstanding acceptance of a plan by a voting impaired class, if an impaired class does not vote unanimously to accept the plan, the bankruptcy court must determine that the plan provides to each member of such impaired class a recovery, on account of each member's claim or interest, that has a value, as of the effective date, at least equal to the recovery that such class member would receive if the debtor was liquidated under Chapter 7. 11 U.S.C. § 1129(a)(7). This inquiry is often referred to as the "best interests of creditors test."

In a typical Chapter 7 case, a trustee is elected or appointed to liquidate a debtor's assets for distribution to creditors in accordance with the priorities set forth in the Bankruptcy Code. Generally, secured creditors are paid first from the proceeds of sales of the properties securing their liens. If any assets are remaining in the bankruptcy estate after satisfaction of the secured creditors' claims, administrative expenses are next to receive payment. Unsecured creditors are

paid from any remaining sales proceeds, according to their respective priorities. Unsecured creditors with the same priority share Pro Rata. Finally, equity interest holders receive the balance that remains, if any, after all creditors are paid.

5.1.2. Plan is in the Best Interests of Creditors.

The Plan satisfies the best interests test because the recoveries expected to be available to Holders of Allowed Claims under the Plan will be greater than the recoveries expected to be available in Chapter 7 liquidation. For example, if a Chapter 7 trustee were to be appointed in this Case, he or she likely would require considerable time and incur substantial fees and expenses, including a fee for the trustee in an amount of up to 3% of the value of all property distributed in the Chapter 7 case and the fees of the trustee's professionals in analyzing the Debtor's Case and Assets. However, in this Case, substantially all of the Debtor's Assets already have been liquidated through the Sale and pursuant to the Sale Order, and the Debtor's only significant remaining asset is approximately $26.5 million of cash, which was generated primarily from the proceeds of the Sale. And, under the Plan, the Asset Purchase Agreement Claims, the Takeda Reconciliation Claim, the Holdback Amounts, and the Causes of Action, will be pursued and liquidated by the Wind Down Administrator for the benefit of Holders of Allowed Prepetition Secured Noteholder Claims and/or Holders of Allowed General Unsecured Claims, as applicable. The Debtor has few, if any, other assets that could be liquidated for value by a Chapter 7 trustee, and the pursuit by any Chapter 7 trustee of the foregoing claims and actions for the benefit of Creditors would likely lead to significantly reduced recoveries given the time and expense the Chapter 7 trustee's new professionals would need to expend familiarizing themselves with the Debtor and the applicable claims and actions. Therefore, the conversion of this Case to Chapter 7 would bring no benefit to the Creditors, while imposing significant additional and unnecessary expenses and delays on the Debtor's Estate—thereby negatively affecting the Creditors' recoveries.

Further, the Plan effects the Plan Settlement, which is highly beneficial to General Unsecured Creditors, and the Sabby Settlement Agreement. Absent the Plan and Plan Settlement, Creditor recoveries would be speculative, and subject to significant delays and the material uncertainties of complex litigation. In addition, in the event of a conversion of this Case to a case under Chapter 7 of the Bankruptcy Code, neither the Plan Settlement nor the Sabby Settlement would occur. And, as discussed, appointment of a Chapter 7 trustee and the hiring of new professionals would add additional costs and delays, and further reduce distributions to Creditors. Therefore, liquidation of the Debtor's Assets pursuant to the Plan thus will provide a greater and more rapid recovery to the Debtor's Creditors and is therefore in their best interests.

5.2 Continuation of the Bankruptcy Case. The Debtor has sold substantially all of its assets and is not a going concern and thus there is no benefit to remaining in Chapter 11.

5.3 Alternative Plan(s). The Debtor does not believe that there are any viable alternative plans, and all of its business assets have been sold. The Debtor believes that the Plan, as described herein, enables Holders of Claims to realize the greatest possible value under the circumstances, and that, compared to any alternative plan, the Plan has the greatest chance to be confirmed and consummated.

5.4 Benefits of the Plan Settlement.

Pursuant to section 1123(b) of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration of the distributions and other benefits provided under the Plan, the Plan constitutes a request for the Bankruptcy Court to authorize and approve, among other things, the implementation of the Plan Settlement among the Debtor, Creditors' Committee, the Required DIP Lenders (as defined in the DIP Order), and the Required Prepetition Secured Noteholders. Distributions to be made to Holders of Allowed (i) Prepetition Secured Noteholder Claims (ii) General Unsecured Claims, and (iii) the Prepetition Secured Noteholder Subordinated Deficiency Claim pursuant to the Plan shall be made on account of, in consideration of, and in accordance with, among other things, the Plan Settlement. In addition, on the Effective Date of the Plan, the Creditors' Committee shall waive and release the Creditors' Committee's reserved right to commence a Challenge (as defined in the DIP Order) against the DIP Lenders and/or the Prepetition Secured Noteholders.

Without the Plan Settlement numerous disputes would have existed and remained outstanding between and among the Debtor, Creditors' Committee and Prepetition Secured Noteholders, including regarding the nature and extent of the Claims of the Prepetition Secured Noteholders, which may have resulted in significant litigation among the parties with the potential to destroy value of the Estate and/or significantly delay distributions to Creditors on account of Allowed Claims. Under the Plan Settlement, among other things, the Prepetition Secured Noteholders agreed to (i) fund the Wind Down Entity with the Plan Settlement Initial Funding Amount; and (ii) subordinate in full the Prepetition Secured Noteholder Subordinated Deficiency Claim to Allowed General Unsecured Claims. Without the Plan Settlement providing for the Plan Settlement Initial Funding Amount and the Plan Settlement Net Proceeds being paid to Holders of Allowed General Unsecured Claims, it is unlikely that such Holders would have realized any return on their Claims. Entry of the Confirmation order shall confirm (a) the Bankruptcy Court's approval, as of the Effective Date, of the Plan and all components of the Plan Settlement, and (b) the Bankruptcy Court's finding that the Plan Settlement is (x) in the best interest of the Debtor, its Estate and the Holders of Claims, (y) the product of the exercise of the Debtor's sound business judgment, and (iii) is fair, equitable and reasonable under the circumstances. The foregoing summary of the Plan Settlement is qualified in its entirety by the actual terms of the Plan Settlement as reflected in the Plan.

6. RISK FACTORS.

Holders of Claims who are entitled to vote on the Plan should read and carefully consider the following factors, as well as the other information set forth in this Disclosure Statement and the Plan, before deciding whether to vote to accept or reject the Plan.

6.1 General Considerations.

The Plan sets forth the means for satisfying the Claims against and Interests in the Debtor. Certain Claims may receive partial distributions pursuant to the Plan, and in some instances, no distributions at all. Please see Article I (Treatment of Classes) of the Plan.

6.2 Certain Bankruptcy Considerations.

Even if an Impaired Class entitled to vote votes to accept the Plan, and the requirements for "cramdown" are met for any Impaired Class that fails to vote to accept or is deemed to reject the Plan, the Bankruptcy Court may exercise substantial discretion and may choose not to confirm the Plan. Bankruptcy Code section 1129 requires, among other things, that the value of distributions to dissenting holders of Claims or Interests may not be less than the value such Holders would receive if the Debtor were liquidated under Chapter 7. Although the Debtor believes that the Plan will meet such requirement, there can be no assurance that the Bankruptcy Court will reach the same conclusion.

6.3 Claims Estimation.

There can be no assurance that the estimated amount of Claims set forth in the Plan is correct, and the actual Allowed amounts of Claims may differ from the estimates. Any value given as to the Claims against and the Assets of the Debtor reflects an estimation of such value.

6.4 Monetization of Wind Down Assets.

The Wind Down Entity is responsible for monetizing the Wind Down Assets and the value ultimately available for distributions to Holders, if any, is uncertain at this time.

6.5 Risk of Litigation.

The Debtor's Schedules list all pending and threatened litigation of which the Debtor is aware. It is the position of the Debtor that there is no material risk of any adverse ruling in any pending or threatened litigation that would affect the Debtor's ability to consummate the Plan because the Plan establishes the Wind Down Assets to be distributed to Creditors in accordance with the priorities established by the Bankruptcy Code. Although an adverse ruling in any litigation may dilute the Wind Down Assets, it would not eliminate such Wind Down Assets from being distributed to Creditors.

Additionally, because the Wind Down Entity has been granted the Causes of Action, there is potential for recovery of Plan Settlement Net Proceeds in excess of the Plan Settlement Initial Funding Amount, all of which will be available for distribution to Holders of Allowed General Unsecured Claims. Because of the inherent risk of litigation, however, the success and timing of any such recoveries are uncertain and the Wind Down Administrator, in their discretion, may elect to settle a Cause of Action for a reduced amount, or not pursue a Cause of Action, which shall affect the Plan Settlement Net Proceeds available for distributions to Holders of Allowed General Unsecured Claims.

6.6 Certain Tax Considerations.

There are a number of material income tax considerations, risks and uncertainties associated with consummation of the Plan. Holders and other interested parties should read carefully Section 7 of this Disclosure Statement (Tax Consequences of the Plan) for a discussion of certain federal income tax consequences of the transactions contemplated under the Plan. In

addition, as discussed in Section 6.3 above, the recovery estimates for Creditors under the Plan are based on certain assumptions about tax withholding that, if they were to change, could materially affect recoveries for Creditors of the Debtor.

6.7 Potential Tax Refund.

The Debtor believes that it is entitled to one or more Tax Refunds. The amount and timing of any such refund cannot be stated with certainty.

7. TAX CONSEQUENCES OF THE PLAN.

The following discussion summarizes certain U.S. federal income tax consequences of implementation of the Plan to certain Holders of Claims. This discussion is intended for general information purposes only, and is not a complete analysis of all potential U.S. federal income tax consequences that may be relevant to any particular Holder.

This discussion is based on the Internal Revenue Code of 1986, as amended (the "**IRC**") and the Treasury Regulations promulgated thereunder, judicial decisions and published administrative rulings, and pronouncements of the IRS, each as in effect on the date hereof. Legislative, judicial, or administrative changes or interpretations enacted or promulgated after the date hereof could alter or modify the discussion set forth below with respect to the U.S. federal income tax consequences of the Plan. Any such changes or interpretations may be retroactive and could significantly affect the U.S. federal income tax consequences escribed herein.

Except as otherwise set forth herein, this discussion does not address the U.S. federal income tax consequences to Holders of Claims that (a) are Unimpaired or otherwise entitled to payment in full in Cash on the Effective Date, or (b) are otherwise not entitled to vote on the Plan. The discussion assumes that each Holder of a Claim holds only Claims in a single Class. The U.S. federal income tax consequences of the Plan are complex and are subject to substantial uncertainties. The discussion set forth below of certain U.S. federal income tax consequences of the Plan is not binding upon the IRS. Thus, no assurance can be given that the IRS would not assert, or that a court would not sustain, a position different from any discussed herein, resulting in U.S. federal income tax consequences to the Debtor and/or Holders of Claims that are substantially different from those discussed herein. The Debtor has not requested an opinion of counsel with respect to any of the tax aspects of the Plan, and no opinion is given or deemed given by this Disclosure Statement.

This discussion does not apply to a Holder of a Claim that is not a "United States Person," as such term is defined in the IRC. Moreover, this discussion does not address U.S. federal taxes other than income taxes, nor any state, local, U.S. possession, or non-U.S. tax consequences of the Plan, nor does it purport to address all aspects of U.S. federal income taxation that may be relevant to United States Persons in light of their individual circumstances or to United States Persons that may be subject to special tax rules, such as Persons who are related to the Debtor within the meaning of the IRC, governments or governmental entities, broker-dealers, banks, mutual funds, insurance companies, financial institutions, small business investment companies, regulated investment companies, real estate mortgage investment conduits, tax-exempt

organizations, pass-through entities, beneficial owners of pass-through entities, Subchapter S corporations, employees of the Debtor, Persons who received their Claims as compensation, Persons that hold Claims as part of a straddle, hedge, conversion transaction, or other integrated investment, Persons using a mark to market method of accounting, and Holders of Claims that are themselves in bankruptcy. If a partnership or entity treated as a partnership for U.S. federal income tax purposes holds Claims, the tax treatment of a partner generally will depend on the status of the partner and the activities of the partnership.

THE FOLLOWING SUMMARY OF CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE BASED UPON THE INDIVIDUAL CIRCUMSTANCES PERTAINING TO A HOLDER OF A CLAIM. THIS SUMMARY IS LIMITED TO THE U.S. FEDERAL INCOME TAX ISSUES ADDRESSED IN THIS DISCLOSURE STATEMENT. ADDITIONAL ISSUES MAY EXIST THAT ARE NOT ADDRESSED IN THIS SUMMARY AND THAT COULD AFFECT THE U.S. FEDERAL TAX TREATMENT OF CONSUMMATION OF THE PLAN. ALL HOLDERS OF CLAIMS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS AS TO THE FEDERAL, STATE, LOCAL, U.S. POSSESSION INCOME, NON-U.S. INCOME, ESTATE, GIFT, AND OTHER TAX CONSEQUENCES OF THE PLAN.

7.1 Certain United States Federal Income Tax Consequences to the Debtor Under the Tax Code.

7.1.1. Sale of the Debtor's Assets

The Sale was a taxable transaction. Thus, the Debtor must recognize any gain or loss realized on the Sale. To determine the amount of gain or loss realized on the Sale, the total consideration (net of selling expenses) received in the Sale must be allocated among the assets sold in accordance with the IRC. The gain or loss realized with respect to each asset is then determined separately by subtracting the Debtor's tax basis in such asset from the amount of consideration received for such asset. To the extent that the Debtor recognized a net gain for the Sale, such gain may be partially or fully offset by (i) net operating losses ("**NOLs**") that accrue during the taxable year of the Sale, (ii) the Debtor's existing NOLs for prior taxable years, or (iii) capital loss carryforwards from prior years.

(a) **Cancellation of Indebtedness**.

A U.S. taxpayer generally must include in gross income the amount of any cancellation of indebtedness ("**COD**") income recognized during the taxable year. COD income generally equals the excess of the adjusted issue price of the indebtedness discharged over the sum of (i) the amount of cash, (ii) the issue price of any new debt, and (iii) the fair market value of any other property transferred by the debtor in satisfaction of such discharged indebtedness (including stock). COD income also includes any interest that has been previously accrued and deducted but remains unpaid at the time the indebtedness is discharged. The IRC permits a debtor in bankruptcy to exclude its COD income from gross income if the discharge occurs in a title 11 case. Thus, although the Debtor will realize COD income as a result of the satisfaction of Claims, the Debtor will not be required to recognize any of that COD income.

7.1.2. Certain United States Federal Income Tax Consequences to Holders of Allowed Claims.

(a) **General**.

The U.S. federal income tax consequences to a Holder receiving, or entitled to receive, a payment in partial or total satisfaction of a Claim will depend on a number of factors, including the nature of the Claim, the Holder's method of tax accounting, and its own particular tax situation.

Because the Holders' Claims and tax situations differ, Holders should consult their own tax advisors to determine how the Plan affects them for U.S. federal, state, local, and non-U.S. tax purposes, based on their particular tax situations. Among other things, the U.S. federal income tax consequences of a payment to a Holder may depend initially on the nature of the original transaction pursuant to which the Claim arose. The U.S. federal income tax consequences of a transfer to a Holder may also depend on whether the item to which the payment relates has previously been included in the Holder's gross income or has previously been subject to a loss or a worthless security or bad debt deduction.

A Holder receiving a payment pursuant to the Plan in satisfaction of its Claim generally may recognize taxable income or loss measured by the difference between (a) the amount of Cash and the fair market value (if any) of any property received by the Holder, and (b) its adjusted tax basis in the Claim. For this purpose, the adjusted tax basis may include amounts previously included in income (less any bad debt or loss deduction) with respect to that item. The character of any income or loss that is recognized will depend upon a number of factors, including the status of the Holder, the nature of the Claim in the Holder's hands, whether the Claim was purchased at a discount, whether and to what extent the Holder has previously claimed a bad debt deduction with respect to the Claim, and the Holder's holding period of the Claim. Each Holder of the Claim should consult its own tax advisor to determine the character of any gain or loss recognized by such Holder. It is possible that any loss, or a portion of any gain, realized by a Holder of a Claim may have to be deferred until all of the distributions to such holder are received.

(b) **Allocation of Plan Distributions between Principal and Interest**.

The Plan provides that, to the extent that any Claim entitled to a distribution under the Plan is composed of indebtedness and accrued but unpaid interest on such indebtedness, such distribution will be allocated for U.S. federal income tax purposes first to the principal amount of the Claim and second, to the extent the distribution exceeds the principal amount of the Claim, to the portion of the Claim representing accrued but unpaid interest. A Holder generally recognizes a deductible loss to the extent that any accrued interest claimed or amortized original issue discount ("**OID**") was previously included in income and is not paid in full. Current U.S. federal income tax law is unclear on this point, and no assurance can be given that the IRS will not challenge the Debtor's position. Holders of Claims are urged to consult their own tax advisors regarding the particular U.S. federal income tax consequences to them of the treatment of

accrued but unpaid interest, as well as the character of any loss claimed with respect to accrued but unpaid interest previously included in gross income.

If, contrary to the intended position, such a distribution were treated as allocated first to accrued but unpaid interest, a Holder would realize ordinary income with respect to such distribution in an amount equal to the accrued but unpaid interest not already taken into income under the Holder's method of accounting, regardless of whether the Holder would otherwise realize a loss as a result of the Plan. A Holder should also recognize ordinary income on the exchange (but not in excess of the amount of gain recognized, as described above) to the extent a distribution is received in exchange for market discount not previously taken into account under the Holder's method of accounting.

(c) **Information Reporting and Withholding**.

In general, information reporting requirements may apply to distributions or payments under the Plan. Additionally, under the backup withholding rules, a Holder of an Allowed Claim may be subject to backup withholding (currently at a rate of 24%) with respect to distributions or payments made pursuant to the Plan unless that Holder: (a) comes within certain exempt categories (which generally include corporations) and, when required, demonstrates that fact; or (b) timely provides a correct taxpayer identification number and certifies under penalty of perjury that the taxpayer identification number is correct and that the Holder is not subject to backup withholding. Backup withholding is not an additional tax but is, instead, an advance payment that may be refunded or credited against the holder's U.S. federal income tax liability to the extent it results in an overpayment of tax, provided that the required information is timely provided to the IRS. Further, with respect to any distributions or payments under the Plan made to a Holder of an Allowed Claim that is not considered a U.S. Person for U.S. federal income tax purposes, U.S. federal withholding tax may apply at a 30% rate, subject to potential reduction or exemption under an applicable double taxation treaty between the U.S. and such Holder's country of residence or under the "portfolio interest exemption". The Debtor or the applicable withholding agent shall use reasonable best efforts to promptly notify Holders who may be subject to such withholding. A Non-U.S. Holder wishing to claim a reduction or exemption from withholding may furnish documents and certifications (such as a duly completed applicable Form W-8) to establish its claim. The Debtor or the applicable withholding agent shall review all such claims in a timely manner and retain such documents and/or certifications as may be provided by the Non-U.S. Holder for a period of 6 years after the distributions are made.

The Debtor or the applicable withholding agent will withhold all amounts required by law to be withheld. The Debtor will comply with all applicable reporting requirements of the IRS.

7.1.3. Certain Wind Down Entity Tax Matters.

(a) The Wind Down Entity is intended to qualify as a "liquidating trust" for U.S. federal income tax purposes (other than in respect of any portion of the Wind Down Assets allocable to, or retained on account of, Disputed Claims, as discussed below). In general, a liquidating trust is not a separate taxable entity but rather is treated for U.S. federal income tax purposes as a "grantor trust" (i.e., a pass-through entity). The IRS, in Revenue Procedure 94-45, 1994-2 C.B. 684, sets forth the general criteria for obtaining an IRS ruling as to

the grantor trust status of a liquidating trust under a chapter 11 plan. The liquidating trust will be structured with the intention of complying with such general criteria. Pursuant to the Plan, and in conformity with Revenue Procedure 94-45, all parties (including, without limitation, the Debtors, the Wind Down Administrator and Holders of Allowed Claims) shall treat the transfer of Wind Down Assets to the Wind Down Entity as (1) a transfer of Wind Down Assets (subject to any obligations relating to those assets) directly to Holders (other than to the extent Wind Down Assets are allocable to Disputed Claims), followed by (2) the transfer by such beneficiaries to the Wind Down Entity of Wind Down Assets in exchange for interests. Accordingly, except in the event of contrary definitive guidance, Holders shall be treated for U.S. federal income tax purposes as the grantors and owners of their respective share of Wind Down Assets (other than any Wind Down Assets allocable to Disputed Claims). While the following discussion assumes that the Wind Down Entity will be so treated for U.S. federal income tax purposes, no ruling is being requested from the IRS concerning the tax status of the Wind Down entity as a grantor trust in connection with the confirmation of the Plan. Accordingly, there can be no assurance that the IRS or the courts would not take a contrary position to the classification of the Wind Down Entity as a grantor trust. If the IRS were to challenge successfully such classification, the U.S. federal income tax consequences to the Wind Down Entity and the Holders could vary from those discussed herein.

(b) For all U.S. federal income tax purposes, all parties must treat the Wind Down Entity as a grantor trust of which the holders of Wind Down Assets are the owners and grantors, and treat the Holders as the direct owners of an undivided interest in the Wind Down Assets (other than any assets allocable to Disputed Claims), consistent with their economic interests therein. The Wind Down Administrator will file tax returns for the Wind Down Entity treating it as a grantor trust pursuant to section 1.671-4(a) of the Treasury Regulations. The Wind Down Administrator also shall annually send to each Holder a separate statement regarding the receipts and expenditures of the Wind Down Entity as relevant for U.S. federal income tax purposes.

(c) Allocations of taxable income of the Wind Down Entity (other than taxable income allocable to any assets allocable to, or retained on account of, Disputed Claims, if such income is otherwise taxable to the Wind Down Entity) among the Holders shall be determined by reference to the manner in which an amount of cash equal to such taxable income would be distributed (were such cash permitted to be distributed at such time) if, immediately prior to such deemed distribution, the Wind Down Entity had distributed all its assets (valued at their tax book value, and, if applicable, other than assets allocable to Disputed Claims) to the Holders, adjusted for prior taxable income and loss and taking into account all prior and concurrent distributions from the Wind Down Entity. Similarly, taxable loss of the Wind Down Entity shall be allocated by reference to the manner in which an economic loss would be borne immediately after a liquidating distribution of the remaining Wind Down Assets. The tax book value of the Wind Down Assets for purposes of allocating taxable income and loss shall equal their fair market value on the date of the transfer of the Wind Down Assets to the Wind Down Entity, adjusted in accordance with tax accounting principles prescribed by the Tax Code, applicable Treasury Regulations, and other applicable administrative and judicial authorities and pronouncements.

(d) As soon as reasonably practicable after the transfer of Wind Down Assets to the Wind Down Entity, the Wind Down Administrator shall make a good faith valuation of the Wind Down Assets. All parties to the Wind Down Entity (including, without limitation, the Debtors and the Holders) must consistently use such valuation for all U.S. federal income tax purposes. The valuation will be made available, from time to time, as relevant for tax reporting purposes.

(e) Taxable income or loss allocated to a Holder will be treated as income or loss with respect to such Holder's undivided interest in the Wind Down Assets, and not as income or loss with respect to its prior Claim. The character of any income and the character and ability to use any loss will depend on the particular situation of the Holder. It is currently unknown whether and to what extent the Holders' interests in the Wind Down Entity will be transferable.

(f) The U.S. federal income tax obligations of a U.S. Holder with respect to its interest in the Wind Down Entity are not dependent on the Wind Down Entity distributing any cash or other proceeds. Thus, a U.S. Holder may incur a U.S. federal income tax liability with respect to its allocable share of income from the Wind Down Entity even if no concurrent distribution is made. In general, other than in respect of cash retained on account of Disputed Claims, a distribution of cash by the Wind Down Entity will not be separately taxable to a Holder since the Holder is already regarded for U.S. federal income tax purposes as owning the underlying assets (and was taxed at the time the cash was earned or received by the Wind Down Entity). Holders are urged to consult their tax advisors regarding the appropriate U.S. federal income tax treatment of any subsequent distributions of cash originally retained by the Wind Down Entity on account of Disputed Claims.

(g) The Wind Down Administrator will comply with all applicable governmental withholding requirements (see Section 2.19(e) of the Plan). Thus, in the case of any Holders that are not U.S. persons, the Wind Down Administrator may be required to withhold up to 30% of the income or proceeds allocable to such persons, depending on the circumstances (including whether the type of income is subject to a lower treaty rate). In addition, under the Foreign Account Tax Compliance Act ("**FATCA**"), certain payments may be subject to withholding even if the applicable payment would not otherwise be subject to U.S. federal nonresident withholding tax. As indicated above, the foregoing discussion of the U.S. federal income tax consequences of the Plan does not generally address the consequences to non-U.S. Holders; accordingly, such Holders should consult their tax advisors with respect to the U.S. federal income tax consequences of the Plan, including owning an interest in the Distribution Trust.

THE UNITED STATES FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN ARE COMPLEX. THE FOREGOING SUMMARY DOES NOT DISCUSS ALL ASPECTS OF UNITED STATES FEDERAL INCOME TAXATION THAT MAY BE RELEVANT TO A PARTICULAR HOLDER OF A CLAIM IN LIGHT OF SUCH HOLDER'S CIRCUMSTANCES AND INCOME TAX SITUATION. ALL HOLDERS OF CLAIMS AGAINST THE DEBTOR SHOULD CONSULT WITH THEIR TAX ADVISORS AS TO THE PARTICULAR TAX CONSEQUENCES TO THEM OF THE PLAN, INCLUDING THE

APPLICABILITY AND EFFECT OF ANY STATE, LOCAL, U.S. POSSESSION, OR NON-U.S. TAX LAWS, AND OF ANY CHANGE IN APPLICABLE TAX LAWS.

8. CONCLUSION.

It is important that you exercise your right to vote on the Plan. It is the Debtor's belief that the Plan fairly and equitably provides for the treatment of all Claims against and Interests in the Debtor. In addition, the Creditors' Committee believes that confirmation of the Plan is preferable to all other alternatives. Consequently, the Debtor and the Creditors' Committee recommend that Creditors entitled to vote on the Plan vote to **ACCEPT** the Plan, and to complete and return their Ballots so they will be **RECEIVED** by the Balloting Agent on or before **4:00 P.M. (prevailing Eastern Time) on May 13, 2019**.

IN WITNESS WHEREOF, the Debtor has executed this Disclosure Statement this 27th day of March 2019.

OREXIGEN THERAPEUTICS, INC.

By: /s/ *Thomas P. Lynch*
Name: Thomas P. Lynch
Title: Chief Administrative Officer and General Counsel

EXHIBIT A

PLAN

[ATTACHED]

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: OREXIGEN THERAPEUTICS, INC., Debtor.[1]	Chapter 11 Case No. 18-10518 (KG)

DEBTOR'S AMENDED PLAN OF LIQUIDATION

Date: March 27, 2019

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Counsel for the Debtor and Debtor in Possession

THIS PROPOSED PLAN HAS NOT BEEN APPROVED
BY THE BANKRUPTCY COURT

[1] The last four digits of the Debtor's federal tax identification number are 8822. The Debtor's mailing address for purposes of this Chapter 11 Case are Orexigen Therapeutics, Inc. c/o Hogan Lovells US LLP, 875 Third Avenue, New York, NY 10022, Attn: Chris Bryant and John Beck.

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ARTICLE I

TREATMENT AND CLASSIFICATION OF CLAIMS AND INTERESTS; IMPAIRMENT

The categories of Claims and Interests listed below classify Claims and Interests for all purposes, including voting, Confirmation and distribution, pursuant to this *Plan of Liquidation* (the "**Plan**") and pursuant to Bankruptcy Code sections 1122 and 1123. Capitalized terms used, but not otherwise defined, herein shall have the meanings set forth in section 1.2 of the *Disclosure Statement for Debtor's Plan of Liquidation*, dated March 6, 2019 (as amended, modified or supplanted, the "**Disclosure Statement**").

Summary of Classification and Treatment of Classified Claims and Interests			
Class	**Claim**	**Status**	**Voting Rights**
1	Priority Claims	Unimpaired	Deemed to Accept
2	Other Secured Claims	Unimpaired	Deemed to Accept
3	Prepetition Secured Noteholder Claims	Impaired	Entitled to Vote
4	General Unsecured Claims	Impaired	Entitled to Vote
5	Prepetition Secured Noteholder Subordinated Deficiency Claims	Impaired	Entitled to Vote
6	Section 510(b) Claims	Impaired	Deemed to Reject
7	Interests	Impaired	Deemed to Reject

1.1 Treatment of Classes

A) Class 1 – Priority Claims

- ***Classification*: Class 1 consists of the Allowed Priority Claims.**

- *Treatment*: Except to the extent that a Holder of an Allowed Priority Claim agrees to a less favorable treatment of its Allowed Priority Claim, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Priority Claim, each such Holder thereof shall receive payment on the Effective Date in full in cash of such Holder's Allowed Priority Claim from the Priority Claim Reserve or funds earmarked for the Priority Claim Reserve.

- *Voting*: Class 1 is Unimpaired under this Plan. Holders of Allowed Priority Claims are conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, such Holders in Class 1 are not entitled to vote to accept or reject this Plan.

B) Class 2 – Other Secured Claims

- *Classification*: Class 2 consists of all Allowed Other Secured Claims.

- *Treatment*: Except to the extent that a Holder of an Allowed Other Secured Claim agrees to a less favorable treatment of its Allowed Other Secured Claim, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Other Secured Claim, each such Holder thereof shall receive, at the option of the Wind Down Administrator:

    - payment in full in Cash of such Holder's Allowed Other Secured Claim no later than 30 days after the later of the Effective Date and the date on which the Other Secured Claim is Allowed;

    - the Debtor's interest in the collateral securing such Allowed Other Secured Claim;

    - setoff of such Allowed Other Secured Claim against any other obligation of such Holder owed to the Debtor on a dollar for dollar basis; or

    - such other treatment rendering such Holder's Allowed Other Secured Claim Unimpaired.

- *Voting:* Class 2 is Unimpaired under this Plan. Holders of Allowed Other Secured Claims are conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, such Holders in Class 2 are not entitled to vote to accept or reject this Plan.

C) Class 3 – Prepetition Secured Noteholder Claims

- *Classification*: Class 3 consists of the Allowed Prepetition Secured Noteholder Claims.

- *Treatment*: Except to the extent that a Holder of an Allowed Prepetition Secured Noteholder Claim agrees to a less favorable treatment of its Allowed Prepetition Secured Noteholder Claim, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Prepetition Secured Noteholder Claim, and subject to Section 2.3 of this Plan, each such Holder thereof shall receive Pro Rata: (a) the Distributable Cash (less the Sabby Settlement Amount which shall be distributed directly to the Sabby Parties on the Effective Date pursuant to the Sabby Settlement Agreement), to be distributed by the Debtor on the Effective Date or as soon as practicable after receipt; (b) any and all Cash proceeds from Tax Refunds, the release of the Holdback Amounts, the Asset Purchase Agreement Claims and the Takeda Reconciliation Lender Share, net of the Lender Litigation Expenses and the Wind Down Operating Expenses; and (c) any unused amounts of the Wind Down Reserves; to be distributed by the Wind Down Entity in accordance with this Plan and the Wind Down Entity Documents.

- The principal amount of the Prepetition Secured Notes held by Prepetition Secured Noteholders who participated in the Roll-Up and the Prepetition Secured Notes held by the Sabby Parties shall be reduced proportionately for purposes of receiving distributions under this Plan to reflect payment of the Roll-Up and the Sabby Settlement Payment, respectively.

- Notwithstanding anything to the contrary herein, nothing in this Plan shall affect the Debtor's obligations under the McKesson Stipulation (or the obligations of the other parties thereto). Accordingly, the Debtor shall continue to segregate the Disputed Funds from the Sale proceeds in accordance with the provisions of the McKesson Stipulation.

- The Wind Down Administrator shall deliver all distributions to be made to the Holders of Prepetition Secured Noteholder Claims to the Prepetition Secured Notes Indenture Trustee for further distribution to Holders of Prepetition Secured Noteholder Claims in accordance with the Prepetition Secured Notes Indenture and this Plan.

- The $2 million Cash portion of the Plan Settlement Initial Funding Amount will be carved out of the collateral of the Prepetition Secured Noteholders as necessary to provide the Wind Down Entity with $2 million in Cash as of the Effective Date solely for the benefit of Holders of General Unsecured Claims in Class 4.

- The Prepetition Secured Noteholder Subordinated Deficiency Claim (i.e., the deficiency between the amount of Cash distributed on account of the Prepetition Secured Noteholder Claims and the full amount of the Allowed Prepetition Secured Noteholder Claims shall be classified and treated as a Class 5 Prepetition Secured Noteholder Subordinated Deficiency Claim and will not receive any distribution unless holders of Allowed Class 4 General Unsecured Claims are paid in full.

- *Voting*: Class 3 is Impaired under this Plan. Holders of Allowed Prepetition Secured Noteholder Claims are entitled to vote to accept or reject this Plan.

D) <u>Class 4 – General Unsecured Claims</u>

- *Classification*: Class 4 consists of the Allowed General Unsecured Claims.

- *Treatment*: Except to the extent that a Holder of a General Unsecured Claim agrees to a less favorable treatment of its Allowed General Unsecured Claim or with respect to a General Unsecured Claim which the Debtor or Wind Down Administrator, as applicable, determines in its reasonable discretion is covered by sufficient insurance or is subject to subordination under the Bankruptcy Code, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed General Unsecured Claim, each Allowed General Unsecured Claim will be treated as follows:

    - Each Holder of an Allowed General Unsecured Claim will receive Pro Rata: (a) the Plan Settlement Net Proceeds; (b) the Plan Settlement Initial Funding

Amount remaining for distribution; and (c) any unused amounts of the Class 4 Disputed Claim Reserve and the Plan Settlement Litigation Reserve, to be distributed by the Wind Down Entity from time to time in accordance with this Plan and the Wind Down Entity Documents.

- All distributions by the Wind Down Entity to Holders of Allowed General Unsecured Claims in this Class 4 will be paid from the Plan Settlement Net Proceeds, the Plan Settlement Initial Funding Amount remaining for distribution, and unused amounts of the Class 4 Disputed Claim Reserve and Plan Settlement Litigation Reserve.

- On or as soon as practicable after the Effective Date, the Wind Down Administrator shall distribute $1,625,000 on account of Class 4 Claims. The Wind Down Administrator shall establish reserves on account of Class 4 Disputed Claims as provided in this Plan. In the event that such reserves are less than $1 million, the Wind Down Administrator may retain the difference between $1 million and the actual reserves on account of Disputed Class 4 Claims, up to an additional $125,000, for use by the Wind Down Administrator at such Wind Down Administrator's discretion, and any such greater sum only upon the unanimous consent of the Wind Down Committee.

- For the avoidance of doubt, none of the Plan Settlement Proceeds, Plan Settlement Net Proceeds or the Plan Settlement Initial Funding Amount shall be used to make distributions on account of any other Claim.

- For the avoidance of doubt, and notwithstanding anything to the contrary herein or any Filed Proof(s) of Claim to the contrary, (a) pursuant to the Plan Settlement, the Prepetition Secured Noteholders will not have a Class 4 General Unsecured Claim; entry of the Confirmation Order shall constitute a full and irrevocable waiver by the Prepetition Secured Noteholders of any such General Unsecured Claim and the right of any distribution on account thereof; and (b) any Allowed Class 4 General Unsecured Claim which the Debtor or Wind Down Administrator, as applicable, determines in its reasonable discretion is covered by sufficient insurance shall not receive any distribution on account thereof other than from such applicable insurance policies.

- *Voting*: Class 4 is Impaired under this Plan. Holders of Allowed General Unsecured Claims are entitled to vote to accept or reject this Plan.

E) <u>Class 5 –Prepetition Secured Noteholder Subordinated Deficiency Claim</u>

- *Classification:* Class 5 consists of the Allowed Prepetition Secured Noteholder Subordinated Deficiency Claim.

- *Treatment:* The Prepetition Secured Noteholder Subordinated Deficiency Claim shall be subordinated in its entirety to Allowed Class 4 General Unsecured Claims, and the

Prepetition Secured Noteholders shall not receive any distribution on account of Prepetition Secured Noteholder Subordinated Deficiency Claim unless and until all Allowed General Unsecured Claims have been paid in full.

- In full and final satisfaction, settlement, release, and discharge of the Prepetition Secured Noteholder Subordinated Deficiency Claim, and subject to Section 2.5 of this Plan, each Prepetition Secured Noteholder shall receive, Pro Rata, any amounts remaining after payment in full of all Allowed General Unsecured Claims, to be distributed by the Wind Down Entity in accordance with this Plan and the Wind Down Entity Documents.

- *Voting:* Class 5 is Impaired under this Plan. Holders of Prepetition Secured Noteholder Subordinated Deficiency Claims are entitled to vote to accept or reject this Plan.

F) Class 6 – Section 510(b) Claims

- *Classification:* Class 6 consists of the Section 510(b) Claims against the Debtor.

- *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.

- *Voting:* Class 6 is Impaired under this Plan. Holders of the Section 510(b) Claims are conclusively presumed to have rejected this Plan pursuant to section 1126(g) of the Bankruptcy Code and, therefore, the Holders of the Section 510(b) Claims are not entitled to vote to accept or reject this Plan.

G) Class 7 – Interests

- *Classification:* Class 7 consists of all Interests in the Debtor.

- *Treatment:* On the Effective Date, all Interests shall be cancelled, and Holders of Interests shall retain no ownership interests in the Debtor and shall not receive any distribution on account of any such Interests.

- *Voting:* Class 7 is Impaired under this Plan. Holders of Interests are conclusively presumed to have rejected this Plan pursuant to section 1126(g) of the Bankruptcy

Code and, therefore, the Holders of Interests are not entitled to vote to accept or reject this Plan.

1.2 Allowed Unclassified Claims. The Debtor asserts that no amount is due on account of the Unclassified Claims (except for Professional Fee Claims and approximately $700,000.00 in unpaid Administrative Expense Claims) because the Unclassified Claims have been previously satisfied. Each Holder of an Allowed Unclassified Claim (except for Professional Fee Claims, which are governed by Article VII of this Plan) that has not been satisfied shall receive the full amount of such Allowed Unclassified Claim, in Cash, (a) on or before the Effective Date or (b) on the date on which such Allowed Unclassified Claim becomes due and payable pursuant to (i) its terms, (ii) the agreement upon which such Allowed Unclassified Claim is based, or (iii)) any applicable Order of the Bankruptcy Court.

1.3 Special Provision Governing Claims. Nothing under this Plan shall affect the Debtor's (through the Effective Date) or the Wind Down Administrator's (after the Effective Date) rights and defenses in respect of any Claim that is not otherwise settled or compromised under this Plan, including all legal and equitable rights and defenses, including setoff or recoupment against such Claims.

1.4 Confirmation Pursuant to Bankruptcy Code Section 1129(b). In the event that one of the Classes that is entitled to vote on this Plan votes to reject this Plan, the Debtor shall request that the Bankruptcy Court confirm this Plan under Bankruptcy Code section 1129(b).

1.5 Cancellation of Instruments. On the Effective Date, all instruments evidencing the Claims or rights of any Creditor against the Debtor, including the Prepetition Indentures, the Prepetition Secured Notes, the Prepetition Unsecured Notes, and all other all indentures, notes, guarantees, mortgages, and all Interests shall be cancelled and each record holder of notes shall be deemed to have surrendered its notes or other documentation underlying such Claim; *provided, however*, that, in accordance with Section 2.3 of this Plan, each Prepetition Secured Noteholder shall surrender its Prepetition Secured Note certificate to the Prepetition Secured Notes Indenture Trustee for cancellation in accordance with the Prepetition Secured Notes Indenture; and *provided further, however*, that notwithstanding Confirmation or the occurrence of the Effective Date any such indenture, agreement, note, or other instrument or document that governs the rights of the holder of a Claim or Interest shall continue in effect solely for purposes of (i) enabling the Holder of such Claim or Interest to seek allowance, and receive distributions on account of such Claim or Interest under this Plan as provided herein; (ii) allowing the Prepetition Indenture Trustees to make distributions on account of the Unsecured Notes Claims or the Prepetition Secured Noteholder Claims in accordance with this Plan and the applicable Prepetition Indenture; (iii) preserving each of the Prepetition Indenture Trustees' right to compensation, exculpation and indemnification under the applicable Prepetition Indentures as against the Debtor and any money or property distributable to holders of Prepetition Unsecured Notes Claims or the Prepetition Secured Noteholder Claims, as applicable, including without limitation, (A) permitting each of the Prepetition Unsecured Notes Indenture Trustees to maintain, enforce and exercise its respective Prepetition Unsecured Notes Indenture Trustee Charging Liens against such distributions, and (B) permitting the Prepetition Secured Notes Indenture Trustee to maintain, enforce and exercise its Prepetition Secured Notes Indenture Trustee Charging Lien against such distributions; (iv) permitting each of the Prepetition

Indenture Trustees to enforce any obligations owed to it under this Plan and applicable Prepetition Indentures; (v) allowing the Prepetition Indenture Trustees to enforce their respective rights, claims, and interests vis-à-vis any parties other than the Debtor; (vi) allowing the Prepetition Indenture Trustees to appear in the Case or in any proceeding in the Bankruptcy Court or any other court; and (vii) permitting the Prepetition Indenture Trustees to perform any functions that are necessary to effectuate the foregoing.

Subsequent to the performance by each of the Prepetition Indenture Trustees of its obligations pursuant to this Plan and applicable Prepetition Indenture, such Prepetition Indenture Trustee and its agents shall be relieved of all duties and responsibilities related to the applicable Prepetition Indenture, except with respect to such other rights of the Prepetition Indenture Trustees that, pursuant to the applicable Prepetition Indenture, survive the termination of such Prepetition Indenture.

ARTICLE II

IMPLEMENTATION AND EXECUTION OF THIS PLAN

2.1 Effective Date. This Plan shall become effective on the date that is the first Business Day on which each condition set forth in Article IV of this Plan has been satisfied or waived as set forth therein (the "Effective Date").

2.2 Implementation of this Plan Through the Wind Down Entity.

(a) The Wind Down Entity will be formed on or before the Effective Date and will receive and be vested in the Wind Down Assets on the Effective Date. Pursuant to the Wind Down Entity Documents, the Wind Down Entity will hold the Class 4 Disputed Claim Reserve, the Plan Settlement Initial Funding Amount, and any and all Plan Settlement Proceeds, in trust for the benefit of Holders of Allowed General Unsecured Claims and, if and only if Allowed General Unsecured Claims are paid in full, for the benefit of Holders of the Prepetition Secured Noteholder Subordinated Deficiency Claim.

(b) After the Effective Date, the Wind Down Entity will liquidate the Wind Down Assets, other than the Causes of Action, the Plan Settlement Initial Funding Amount and the Plan Settlement Proceeds, as expeditiously as is reasonable under the circumstances and distribute the proceeds thereof to Holders of Allowed Prepetition Secured Noteholder Claims in Class 3, including, but not limited to: (i) obtaining release of the Holdback Amounts by the Purchaser and otherwise pursuing the Asset Purchase Agreement Claims as necessary, including, without limitation, by seeking appropriate relief in the Bankruptcy Court or other court of competent jurisdiction; and (ii) liquidating and, if necessary, obtaining turnover from third parties of Prepetition Secured Notes Collateral, including by seeking appropriate relief in the Bankruptcy Court or other court of competent jurisdiction.

(c) The Wind Down Administrator, on behalf of the Wind Down Entity, shall pursue the Causes of Action and Asset Purchase Agreement Claims and all other claims and causes of action included among the Wind Down Assets in their discretion, provided that the Wind Down Administrator shall first consult with the Wind Down Committee and with the

Required Prepetition Secured Noteholders as provided in Section 2.19(d) of this Plan. The Plan Settlement Net Proceeds, net of any Plan Settlement Litigation Reserve established under this Section 2.2, shall be distributed to Holders of Allowed General Unsecured Claims in Class 4 from time to time, except to the extent the Wind Down Administrator determines, after consultation with the Wind Down Committee, to contribute all or a portion of such proceeds to the Plan Settlement Litigation Reserve.

(d) Upon payment in full of all Allowed Class 4 Claims, Plan Settlement Net Proceeds shall be distributed from time to time to Holders of Allowed Prepetition Subordinated Secured Noteholder Deficiency Claims in Class 5, except to the extent the Wind Down Administrator determines, with the consent of the Required Prepetition Secured Noteholders, to contribute all or a portion of such proceeds to the Plan Settlement Litigation Reserve.

(e) The duties and powers of the Wind Down Administrator set forth herein and in the Wind Down Entity Documents shall include, but not be limited to: (i) exercising all power and authority that may be necessary to implement this Plan and enforce all provisions hereof and thereof; (ii) commencing and prosecuting all proceedings that may be commenced and take all actions that may be taken by any officer, director or shareholder of the Debtor with like effect as if authorized, exercised and taken by unanimous action of such officers, directors and shareholders, including consummating this Plan; (iii) maintaining any books and records of the Wind Down Entity, including any books and records of the Debtor transferred to the Wind Down Entity; (iv) incurring and paying reasonable and necessary expenses in connection with the implementation of this Plan; (v) exercising all powers necessary or appropriate to liquidate the Wind Down Assets; and (vi) taking such other actions as may be necessary or appropriate to facilitate the wind down of the Debtor's affairs.

(f) Prior to making distributions required to be made on the Effective Date under this Plan, the Debtor or Wind Down Administrator, as applicable, with the reasonable consent of the Required Prepetition Secured Noteholders, shall establish, fund and maintain the Wind Down Reserves. The Wind Down Reserves shall be funded out of Cash on Hand. The Wind Down Reserves shall be administered by the Wind Down Administrator on and after the Effective Date in accordance with a budget approved by the Required Prepetition Secured Noteholders from time to time in the manner set forth in the Wind Down Entity Documents. Any funds remaining in the Wind Down Reserves shall be distributed to Holders of Prepetition Secured Noteholder Claims. The amount of each Wind Down Reserve and the basis for its determination shall be included in the Plan Supplement.

(g) Prior to making any distribution to Holders of Allowed Class 4 Claims, the Wind Down Administrator shall establish the Class 4 Disputed Claim Reserve. The Class 4 Disputed Claim Reserve shall be funded out of the Plan Settlement Initial Funding Amount. With respect to each Disputed Claim, the Class 4 Disputed Claim Reserve shall include an amount of Cash, equal to the *pro rata* distributions that would have been made on such Disputed Claim if it were an Allowed Claim, other than Disputed Claims that the Debtor or Wind Down Administrator, as applicable, determines in its reasonable discretion are covered by sufficient insurance and/or are subject to subordination under the Bankruptcy Code, in an amount equal to the lesser of (i) the amount of the Disputed Claim, (ii) the amount in which the Disputed Claim shall be estimated by the Bankruptcy Court pursuant to section 502 of the Bankruptcy Code for

purposes of allowance, which amount, unless otherwise ordered by the Bankruptcy Court, shall constitute and represent the maximum amount in which such Claim ultimately may become an Allowed Claim, or (iii) such other amount as may be agreed upon by the holder of such Disputed Claim and the Debtor or Wind Down Administrator, as the case may be. Notwithstanding anything to the contrary, and for the avoidance of doubt, the Wind Down Administrator shall not be required to, and shall not, reserve any funds on account of the Section 510(b) Claims. Any funds remaining in the Class 4 Disputed Claim Reserve shall be distributed to Holders of General Unsecured Claims.

(h) After the Effective Date, the Wind Down Administrator, in consultation with the Wind Down Committee, may establish and fund the Plan Settlement Litigation Reserve. Any funds remaining in the Plan Settlement Litigation Reserve shall be distributed to the Holders of Allowed General Unsecured Claims.

(i) On the Effective Date, the Wind Down Administrator shall segregate and maintain separate accounts or sub-accounts for the Priority Claim Reserve, Class 4 Disputed Claim Reserve, and the Debtor shall create, fund from Cash on Hand and maintain the Professional Fee Escrow in accordance with Section 7.2 of this Plan. Reserves (other than those required to be maintained in separate accounts or sub-accounts) may be merely bookkeeping entries or accounting methodologies which may be revised from time to time, to enable the Wind Down Administrator to determine the amount of the reserve and the amounts distributed or to be distributed therefrom in accordance with this Plan. The amount of the Professional Fee Escrow and the basis for its determination shall be included in the Plan Supplement.

(j) None of the Wind Down Assets shall be subject to garnishment, execution, seizure, or other process. The Wind Down Assets shall be deemed to be held in *custodia legis* until distributed by the Wind Down Administrator to Holders of Allowed Claims or to pay expenses of the Wind Down Entity in accordance with this Plan and the Wind Down Entity Documents.

2.3 Distributions to Holders of Prepetition Secured Noteholder Claims. Each Prepetition Secured Noteholder Claim of the Prepetition Secured Noteholders shall be treated as set forth in Article I(C). Distributions on account of Prepetition Secured Noteholder Claims shall be (a) made in accordance with the terms and provisions of this Plan and the Wind Down Entity Documents, and (b) delivered to the Prepetition Secured Notes Indenture Trustee for further distribution to each Prepetition Secured Noteholder in accordance with the Prepetition Secured Notes Indenture; *provided, however,* that the Sabby Settlement Amount shall be distributed directly to the Sabby Parties on the Effective Date pursuant to the Sabby Settlement Agreement.

Distributions made by the Prepetition Secured Notes Indenture Trustee to the Prepetition Secured Noteholders shall only be made after the surrender by each such Prepetition Secured Noteholder of the Prepetition Secured Note certificates representing such Prepetition Secured Noteholder Claim. Upon surrender of such Prepetition Secured Note certificates, the Prepetition Secured Notes Indenture Trustee shall cancel such Prepetition Secured Notes. As soon as practicable after surrender of Prepetition Secured Note certificates evidencing Prepetition Secured Noteholders Claims, the Prepetition Secured Notes Indenture Trustee shall distribute to

such Prepetition Secured Noteholder such holder's Pro Rata share of the distribution on account of Prepetition Secured Noteholder Claims as set forth in Article I, subject in all respects to the right of the Prepetition Secured Notes Indenture Trustee to assert the Prepetition Secured Notes Indenture Trustee Charging Lien against such distributions, including, without limitation, the right of the Prepetition Secured Notes Indenture Trustee to hold back a portion of such distributions on account of the Prepetition Secured Notes Indenture Trustee Sabby Indemnity Claim.

For the avoidance of doubt, the Prepetition Secured Notes Indenture Trustees shall not bear any responsibility or liability for any distributions made hereunder (other than in accordance with the Prepetition Secured Notes Indenture). In accordance with Section 5.13 of this Plan, the Wind Down Administrator shall promptly reimburse the Prepetition Secured Notes Indenture Trustees from the Wind Down Operating Expense Reserve for all Prepetition Secured Notes Indenture Trustee Fees and Expenses incurred after the Effective Date in connection with the implementation of this Plan and the Wind Down Entity Documents, including but not limited to, making distributions to Prepetition Secured Noteholders in accordance with this Plan and the Wind Down Entity Documents.

2.4 Distributions to Holders of Allowed General Unsecured Claims. Each Record Holder of an Allowed General Unsecured Claim shall be treated as set forth in Article I. Distributions to the Record Holders of Allowed General Unsecured Claims shall be (a) made in accordance with the terms and provisions of this Plan and the Wind Down Entity Documents, and (b) delivered (i) at the address set forth on the proof of claim timely Filed by such Holder, (ii) at the address set forth in any written notices of address change Filed by such Holder, (iii) at the addresses reflected in the Schedules if a proof of claim has been Filed without any written notice of address or address change, (iv) if the Holder's address is not listed in the Schedules, at the last known address of such Holder according to the Debtor's books and records or (v) with respect to holders of Prepetition Unsecured Notes Claims, to or at the direction of the applicable Prepetition Unsecured Notes Indenture Trustee for further distribution to the Holders of the Prepetition Unsecured Notes in accordance with the applicable Prepetition Unsecured Notes Indenture and this Plan; *provided, however*, that no distributions shall be made to the Record Holders of Allowed General Unsecured Claims until the earlier to occur of the Effective Date or a Final Order authorizing such distributions. The Prepetition Unsecured Notes Indenture Trustees may transfer or direct the transfer of such distributions directly through the facilities of The Depository Trust Company (whether by means of book-entry exchange, free delivery or otherwise) and will be entitled to recognize and deal for all purposes under this Plan with Holders of Unsecured notes to the extent consistent with the customary practices of The Depository Trust Company. For the avoidance of doubt, each of the Prepetition Unsecured Notes Indenture Trustees shall not bear any responsibility or liability for any distributions made hereunder (other than in accordance with the applicable Prepetition Unsecured Notes Indenture), and the Wind Down Entity shall reimburse the Prepetition Unsecured Notes Indenture Trustees from the Plan Settlement Initial Funding Amount or Plan Settlement Net Proceeds for any reasonable and documented fees and expenses (including the reasonable and documented fees and expenses of its counsel and agents) incurred after the Effective Date in connection with the implementation of this Plan and the Wind Down Entity Documents, including but not limited to, making distributions pursuant to and in accordance with this Plan and the Wind Down Entity Documents.

2.5 Distributions to Holders of Allowed Prepetition Secured Noteholder Subordinated Deficiency Claims. Each Holder of an Allowed Prepetition Secured Noteholder Subordinated Deficiency Claim shall be treated as set forth in Article I. The Prepetition Secured Noteholder Subordinated Deficiency Claim shall be subordinated in its entirety to the payment in full of Class 4 General Unsecured Claims and the Prepetition Secured Noteholders shall not receive any distribution on account of the Prepetition Secured Noteholder Subordinated Deficiency Claim unless and until the General Unsecured Claims have been paid in full in Cash. Any distributions made on account of a Prepetition Secured Noteholder Subordinated Deficiency Claim shall be made in accordance with, and subject in all respects to, Section 2.3 of this Plan.

2.6 No Distribution Pending Allowance. Notwithstanding any other provision of this Plan and Disclosure Statement or the Wind Down Entity Documents, no distribution of Cash or other property shall be made with respect to any portion of a Disputed Claim unless and until all objections to such Claim are resolved by Final Order or as otherwise permitted by this Plan and Disclosure Statement or the Wind Down Entity Documents.

2.7 Fractional Dollars; De Minimis Distributions; Unclaimed Distributions. Notwithstanding any other provision of this Plan to the contrary, for distributions to Holders (a) the Debtor and/or Wind Down Administrator shall not be required to make distributions or payments of fractions of dollars, and whenever any distribution of a fraction of a dollar under this Plan would otherwise be required, the actual distribution made shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down; and (b) the Debtor and/or Wind Down Administrator shall have no duty to make a distribution on account of any Allowed Claim (i) if the aggregate amount of all distributions on account of Allowed Claims authorized to be made on such date is less than $30,000, in which case such distributions shall be deferred at the discretion of the Wind Down Administrator, (ii) if the amount to be distributed to a Holder on the particular distribution date is less than $50.00, unless such distribution constitutes the final distribution to such Holder, or (iii) if the amount of the final distribution to such Holder is $30.00 or less, in which case no distribution will be made to that Holder and such distribution shall revert to the Wind Down Entity for distribution on account of other Allowed Claims.

Any Cash or other property to be distributed under this Plan that is an Unclaimed Distribution shall revert to the Wind Down Administrator if it is not claimed by the Unclaimed Distribution Deadline. If such Cash or other property is not claimed on or before the Unclaimed Distribution Deadline, then, at the election of the Liquidating Trustee, the distribution made to such Holder shall be deemed to be reduced to zero and such returned, undeliverable, or unclaimed distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code and shall revert to the Wind Down Entity for distribution on account of other Allowed Claims.

2.8 No Post-Petition Interest. Interest shall not accrue on any Claims, and no Holder of a Claim shall be entitled to interest accruing on or after the Petition Date. No prepetition Claim shall be Allowed to the extent it is for post-petition interest or other similar charges, except to the extent permitted for Holders of Secured Claims under section 506(b) of the Bankruptcy Code.

2.9 Dissolution of the Debtor. The affairs of the Debtor may be wound up and, with the express consent of the 401(k) Administrator, the Debtor may be dissolved at any time after the Effective Date without the need for any further action or approval or filings with the secretary of state of other governmental official or authorities in the Debtor's state of incorporation. For the avoidance of doubt, the entry of the Final Decree in this Case shall not effect a dissolution of the Debtor without the express consent of the 401(k) Administrator. After the Effective Date, the Debtor, along with its attorneys, accountants and other agents as applicable, shall have the right to (i) prosecute applications for payment of fees and reimbursement of expenses of Professionals, or attending to any other issues related to applications for payment of fees and reimbursement of expenses of Professionals, including in connection with the Final Fee Hearing, and (ii) participate in any appeals of the Confirmation Order and/or motions seeking reconsideration thereof through the date such appeals and/or motions are finally decided, settled, withdrawn or otherwise resolved.

2.10 Officers and Directors. As of the filing of this Plan, Lota S. Zoth is the Sole Continuing Director and Thomas P. Lynch is the Sole Continuing Officer. On the Effective Date, the Sole Continuing Director and the Sole Continuing Officer shall be deemed to have resigned and replaced by the Wind Down Administrator.

2.11 Records. With the closing of the Sale and the full wind-down of the Debtor's operations, the Debtor has identified, or anticipates identifying, Records, which are certain documents, books and records that are outdated, burdensome, and/or of inconsequential value to the Debtor's Estate and which are not necessary nor relevant to: (i) the performance of the respective duties and obligations of the Debtor (through the Effective Date) or Wind Down Administrator (after the Effective Date); (ii) any pending or anticipated litigation, including, without limitation, the Securities Litigation; (iii) the filing of any tax returns; (iv) the resolution of Claims Filed against the Debtor; (v) the Causes of Action; (vi) the Purchase Agreement Claims; (vii) the Tax Refunds; (viii) the Takeda Reconciliation; and/or (ix) any other claims or causes of action included among the Wind Down Assets (for purposes of this Section 2.11, items in the foregoing categories (i)-(ix) do not constitute Records). To complete the Debtor's wind-down, avoid the incurrence of unnecessary storage costs and facilitate the consolidation and preservation of any pertinent documents, books and records, each of the Debtor, in consultation with the Creditors' Committee (through the Effective Date) or Wind Down Administrator (after the Effective Date), as applicable, shall be authorized to abandon, destroy and/or dispose of all originals and/or copies of Records pursuant to Bankruptcy Code section 554 without further order of the Bankruptcy Court.

Bankruptcy Code section 554 provides that, *inter alia*, "[a]fter notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." 11 U.S.C. § 554(a). Courts have held that a debtor-in-possession's decision to abandon property of the estate rests on the debtor's business judgment. *See, e.g., In re Cult Awareness Network Inc.*, 205 B.R. 575, 579 (Bankr. N.D. Ill. 1997). The Debtor has concluded (in consultation with the Creditors' Committee) in its business judgment that it will no longer need to retain certain Records and therefore the Debtor is hereby authorized, but not directed, in consultation with the Creditors' Committee (through the Effective Date) or Wind Down Administrator (after the Effective Date), as applicable, to abandon, dispose of, or destroy the Records (or transfer them to the Wind Down Entity). The Debtor and/or Wind

Down Administrator, as applicable, shall not be required to comply with applicable local, state and federal statutes, rules and ordinances except to the extent that compliance is necessary to ensure the government's interest in public health and safety. *See generally Midlantic Nat'l Bank v. New Jersey Dept of Envtl. Protection*, 474 U.S. 494 (1986). Additionally, any action by any local, state or federal agency, department or governmental authority or any other entity to prevent, interfere with, or otherwise hinder the Debtor's or Wind Down Administrator's abandonment, disposal and/or destruction of the Records shall be enjoined pursuant to this Plan.

The Wind Down Administrator shall succeed to all rights of the Debtor under Section 10.15 of the Asset Purchase Agreement.

2.12 Effectuating Documents. The Sole Continuing Director and the Sole Continuing Officer of the Debtor shall be authorized to execute, deliver, file or record such contracts, instruments, releases and other agreements or documents and take such other actions as may be necessary or appropriate to effectuate and implement the provisions of this Plan and Confirmation Order.

2.13 Objections to Claims. Except as provided herein and in Section 3.3 of this Plan, the deadline to File objections to Claims shall be 120 days after the Effective Date or such later date that may be set by the Bankruptcy Court upon a motion (whether filed before or after the expiration of the deadline) of the Wind Down Administrator (which motion may be approved without a hearing and without notice to any party) (the "**Claims Objection Deadline**"), and any Claim that is not the subject of a timely Filed objection as of the Claims Objection Deadline (as may be extended) shall be an Allowed Claim in the amount set forth on the proof of claim Filed by the Holder of such Claim or as listed on the Schedules if no such proof of claim has been Filed. If a Disputed Claim becomes Allowed, in full or in part, such Claim shall be treated, to the extent Allowed, in accordance with the treatment of its Class.

2.14 Objections and Settlements of Claims and Claims Allowance. Each of the Debtor (in consultation with the Creditors' Committee) through the Effective Date, or Wind Down Administrator (after the Effective Date), as applicable, shall have the authority to: (i) File objections to Claims, settle, compromise, withdraw, or litigate to judgment objections to any and all Claims, regardless of whether such Claims are in a Class or otherwise; (ii) settle, liquidate, allow, or compromise any Disputed Claim without any further notice to or action, order, or approval by the Bankruptcy Court; (iii) administer and adjust the Claims Register and/or direct the Claims Agent to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Bankruptcy Court; and (iv) file one or more Allowed Claims Notices with respect to non-contingent, liquidated Proofs of Claim that are not Allowed either prior to or following the Effective Date and as to which the Debtor (in consultation with the Creditors' Committee) or Wind Down Administrator, as applicable, have determined not to file any objection.

2.15 Plan Settlement and Sabby Settlement in Connection With this Plan.

(a) Pursuant to section 1123(b) of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration of the distributions and other benefits provided under this Plan, this Plan constitutes a request for the Bankruptcy Court to authorize and approve, among other things,

the implementation of the Plan Settlement between and among the Debtor, Creditors' Committee, the Required DIP Lenders (as defined in the DIP Order), and the Required Prepetition Secured Noteholders. Distributions to be made to Holders of Allowed (i) Prepetition Secured Noteholder Claims (ii) General Unsecured Claims, and (iii) the Prepetition Secured Noteholder Subordinated Deficiency Claim pursuant to this Plan shall be made on account of, in consideration of, and in accordance with, among other things, the Plan Settlement as embodied in this Plan and the Confirmation Order. In addition, on the Effective Date of this Plan, the Creditors' Committee shall automatically be deemed to waive and release the Creditors' Committee's reserved right to commence a Challenge (as defined in the DIP Order) against the DIP Lenders and/or the Prepetition Secured Noteholders. Under the Plan Settlement, among other things, the Prepetition Secured Noteholders agreed to (i) fund the Wind Down Entity with the Plan Settlement Initial Funding Amount; and (ii) subordinate in full the Prepetition Secured Noteholder Subordinated Deficiency Claim to Allowed General Unsecured Claims. Entry of the Confirmation order shall constitute: (a) the Bankruptcy Court's approval, as of the Effective Date, of this Plan and all components of the Plan Settlement as embodied in this Plan and the Confirmation Order, and (b) the Bankruptcy Court's finding that the Plan Settlement is (i) in the best interest of the Debtor, its Estate and the Holders of Claims, (ii) the product of the exercise of the Debtor's sound business judgment, and (iii) is fair, equitable and reasonable under the circumstances.

(b) Pursuant to section 1123(b) of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration of the distributions and other benefits provided under this Plan, this Plan constitutes a request for the Bankruptcy Court to authorize and approve, among other things, the implementation of the Sabby Settlement Agreement between and among the Sabby Parties, U.S. National Bank, in its capacities as Prepetition Secured Notes Indenture Trustee and Prepetition Collateral Agent, and the Debtor. Distributions to be made to the Sabby Parties pursuant to this Plan shall be made on account of, in consideration of, and in accordance with, among other things, the Sabby Settlement Agreement as embodied in this Plan and the Confirmation Order. Under the Sabby Settlement Agreement, among other things, the Sabby Parties agreed to settle the Sabby Litigation in exchange for the Sabby Settlement Amount (i.e., a Cash payment of $265,000, which will be paid from the Distributable Cash). Entry of the Confirmation order shall constitute: (a) the Bankruptcy Court's approval, as of the Effective Date, of all components of the Sabby Settlement Agreement as embodied in this Plan and the Confirmation Order, and (b) the Bankruptcy Court's finding that the Sabby Settlement Agreement is (x) in the best interest of the Debtor, its Estate and the Holders of Claims, (y) the product of the exercise of the Debtor's sound business judgment, and (z) is fair, equitable and reasonable under the circumstances.

2.16 Release of Liens. Except as otherwise provided in this Plan and Confirmation Order, or in any contract, instrument, release, or other agreement or document created pursuant to this Plan and Confirmation Order, on the Effective Date, all mortgages, deeds of trust, liens, pledges, or other security interests against any property of the Estate shall be deemed fully released and discharged without any further action of any party, including, but not limited to, further order of the Bankruptcy Court or filing updated schedules or statements typically filed pursuant to the Uniform Commercial Code or other applicable law.

2.17 Exemption from Certain Taxes and Fees. Pursuant to section 1146(a) of the Bankruptcy Code, the making or delivery of any instrument or transfer from the Debtor to the

Wind Down Entity, or to any other Person pursuant to this Plan and Disclosure Statement, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp tax, real estate transfer tax, mortgage recording tax or other similar tax or governmental assessment, and the Confirmation Order shall direct the appropriate state or local governmental officials or agents to forego the collection of any such tax or governmental assessment and to accept for filing and recordation any of the forgoing instruments or other documents without the payment of any such tax or governmental assessment.

2.18 Debtor's Privileges. Effective after the Effective Date, all privileges of the Debtor relating to the Wind Down Assets (which include privileges of the Debtor relating to, without limitation, the Causes of Action, the Asset Purchase Agreement Claims, the McKesson Appeal, and/or any other claims or causes of action included among the Wind Down Assets) shall be deemed transferred, assigned, and delivered to the Wind Down Entity, without waiver or release, and shall vest with the Wind Down Entity. The Wind Down Administrator shall hold and be the beneficiary of all such privileges and entitled to assert or waive such privileges. No such privilege shall be waived by disclosures to the Wind Down Administrator of the Debtor's documents, information, or communications subject to attorney-client privileges, work product protections or other immunities (including those related to common interest or joint defense with third parties), or protections from disclosure held by the Debtor. The Debtor's privileges relating to the Wind Down Assets will remain subject to the rights of third parties under applicable law, including any rights arising from the common interest doctrine, the joint defense doctrine, joint attorney-client representation, or any agreement. Nothing contained herein or in the Confirmation Order, nor any professional's compliance herewith and therewith, shall constitute a breach or waiver of any privileges of the Debtor.

2.19 Additional Provisions Regarding the Wind Down Entity, Wind Down Administrator, Wind Down Committee and 401k Administrator.[2]

(a) Appointment of Wind Down Administrator. Pursuant to the Plan Settlement, the Creditors' Committee shall select the Wind Down Administrator. The identity of the Wind Down Administrator shall be included in the Plan Supplement. The entry of the Confirmation Order shall ratify the selection of the Wind Down Administrator.

(b) Creation of the Wind Down Entity; Term. On or before the Effective Date, the Wind Down Entity shall be established pursuant to the Wind Down Entity Documents for the purposes set forth in this Plan the Wind Down Entity Documents. The Wind Down Entity shall continue in existence until all distributions under this Plan have been made.

(c) Vesting and Transfer of Assets to the Wind Down Entity. Pursuant to section 1141(b) of the Bankruptcy Code, the Wind Down Assets shall vest in the Wind Down Entity free and clear of all Claims, Liens charges or other encumbrances; provided, however, the Wind Down Administrator may abandon or otherwise not accept any Wind Down Assets that the Wind Down Administrator believes, in good faith, to have no value to, or will be unduly burdensome to, the Wind Down Entity. Any Wind Down Assets that the Wind Down

[2] Capitalized terms not otherwise defined in this Section 2.19 shall be given the meanings ascribed to them in the Wind Down Entity Documents.

Administrator so abandons or otherwise does not accept shall not be Wind Down Assets and shall be deemed abandoned by the Debtor pursuant to Bankruptcy Code section 554 without further order of the Bankruptcy Court. The Debtor and/or Wind Down Administrator, as applicable, shall not be required to comply with applicable local, state and federal statutes, rules and ordinances in connection with this Section 2.19(c) except to the extent that compliance is necessary to ensure the government's interest in public health and safety. Additionally, any action by any local, state or federal agency, department or governmental authority or any other entity to prevent, interfere with, or otherwise hinder the Debtor's or Wind Down Administrator's abandonment, disposal and/or destruction of any Wind Down Assets shall be enjoined effective as of the Effective Date.

(d) General Powers of the Wind Down Administrator. The rights, powers and obligations of the Wind Down Administrator are specified in this Plan, the Confirmation Order and the Wind Down Entity Documents. Except as expressly set forth in this Plan or the Confirmation Order, and in the Wind Down Entity Documents, the Wind Down Administrator, on behalf of the Wind Down Entity, shall have sole power to pursue the Causes of Action, the Asset Purchase Agreement Claims and any and all other claims and causes of action included among the Wind Down Assets transferred to the Wind Down Entity in accordance with this Plan and any claims or causes of action arising after the Effective Date in favor of the Wind Down Entity, including, without limitation, taking any action with respect to Disputed Claims, appeals, counterclaims, and defenses of, or with respect to, such Disputed Claims, Causes of Action and Asset Purchase Agreement Claims, and any and all other claims and causes of action included among the Wind Down Assets and/or any claims or causes of Action arising after the Effective Date in favor of the Wind Down Entity.

After the Effective Date, prosecution and potential settlement of the Causes of Action, the Asset Purchase Agreement Claims, and the McKesson Appeal, and any and all other claims and causes of action included among the Wind Down Assets, shall be the sole responsibility of the Wind Down Administrator pursuant to this Plan and the Confirmation Order. The Wind Down Administrator may prosecute the Causes of Action, the Asset Purchase Agreement Claims, the McKesson Appeal, and/or any other claims or causes of action included among the Wind Down Assets as appropriate, in accordance herewith and with the Wind Down Entity Documents. After the Effective Date, the Wind Down Entity and the Wind Down Administrator shall have all rights, powers, and interests of the Estate to pursue, settle, or abandon the Causes of Action, the Asset Purchase Agreement Claims, the McKesson Appeal and/or any other claims or causes of action included among the Wind Down Assets as the sole representative of the Estate pursuant to section 1123(b)(3) of the Bankruptcy Code; *provided, however,* that any settlement or abandonment of any Purchase Agreement Claim, the McKesson Appeal, the Tax Refunds, and/or any claim or cause of action other than the (Causes of Action) included among the Wind Down Assets shall require the consent of the Required Prepetition Secured Noteholders. No Person or entity may rely on the absence of a specific reference in this Plan and/or Confirmation Order, or any other supplemental documents, to any of the Causes of Action, the Asset Purchase Agreement Claims, or other claims or causes of action included among the Wind Down Assets against it as any indication that the Debtor and/or Wind Down Administrator will not pursue any and all available rights and remedies related thereto against any such Person or entity, or that the Wind Down Administrator does not have the right to pursue any such claim or cause of action. The Wind Down Administrator expressly reserves all Causes of Action, Asset Purchase

Agreement Claims, and other claims and causes of action included among the Wind Down Assets and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action, Asset Purchase Agreement Claims, and/or other claims and casus of action included among the Wind Down Assets upon, after, or as a consequence of confirmation or consummation of this Plan. Unless any Causes of Action, Asset Purchase Agreement Claims or other claim or causes of action included among the Wind Down Assets against any Person or entity is expressly waived, relinquished, exculpated, released, compromised, or settled in this Plan or a Final Order of the Bankruptcy Court or other court of competent jurisdiction, the Debtor or the Wind Down Administrator, as applicable, expressly reserves all Causes of Action, Asset Purchase Agreement Claims, and other claims and causes of action included among the Wind Down Assets for later adjudication.

(e) Certain Wind Down Entity Tax Matters.

i. The Wind Down Entity shall be responsible for filing all required federal, state, and local tax returns and/or informational returns for the Debtor and/or Wind Down Entity. The Wind Down Entity shall comply with all withholding and reporting requirements imposed by any federal, state, or local taxing authority, and all distributions made by the Wind Down Entity shall be subject to any such withholding and reporting requirements. The Wind Down Administrator shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements including, without limitation, requiring that, as a condition to the receipt of a distribution, the Holder of an Allowed Claim complete the appropriate IRS Form W-8 or IRS Form W-9, as applicable to each Holder.

ii. The Wind Down Entity shall also be responsible for preparing tax returns and collecting all resulting Tax Refunds due to the Debtor in respect of tax years ending after the Effective Date and prior to January 1, 2021, or such later date as determined by the Wind Down Administrator in consultation with the Required Prepetition Noteholders. For the avoidance of doubt, after the Effective Date, the Debtor, with the assistance of the Wind Down Entity, shall preserve its corporate existence under Delaware law and the Internal Revenue Code until such time as the Wind Down Entity, on the Debtor's behalf, has collected all material Tax Refunds due to the Debtor. Promptly upon receipt, the Wind Down Administrator shall pay any Tax Refunds, less any previously unreimbursed actual and necessary expenses of collection, to the Prepetition Secured Notes Indenture Trustee for distribution Pro Rata to the Holders of Allowed Prepetition Secured Notes Claims. Unless otherwise instructed by the Required Prepetition Secured Noteholders, or authorized by order of the Bankruptcy Court, the Wind Down Entity shall satisfy, on the Debtor's behalf, all reasonable requirements necessary under the Internal Revenue Code in order for the Debtor to remain eligible to receive any such Tax Refunds. The Wind Down Entity shall be deemed the Debtor's agent for purposes of correspondence with the Internal Revenue Service, including, but not limited to, the collection of any Tax Refunds. To the extent not previously reimbursed, the Wind Down Administrator may use funds in the Lender Litigation Expense Reserve to reimburse the Wind Down Entity for all actual, reasonable and documented costs and expenses of the Wind Down Entity related to collection of the Tax Refunds and preservation of the minimum corporate existence of

the Debtor under Delaware law as necessary to preserve the Tax Refunds (the "Tax Refund Costs"). Notwithstanding anything to the contrary in this Plan, the Wind Down Administrator shall be authorized to abandon the Tax Refunds if the funds in the Lender Litigation Expense Reserve are insufficient to pay (or reimburse the Wind Down Entity) the Tax Refund Costs actually or projected in good faith to be incurred by the Wind Down Administrator, unless sufficient funds are advanced by one or more of the Prepetition Secured Noteholders within 30 days of written request to the Required Prepetition Secured Noteholders by the Wind Down Administrator. The Wind Down Administrator shall allocate any taxable income of the Wind Down Entity (other than taxable income allocable to any assets allocable to, or retained on account of, Disputed Claims, if such income is otherwise taxable to the Wind Down Entity) or loss among the Holders. The tax book value of the Wind Down Assets for purposes of allocating taxable income and loss shall equal their fair market value on the date of the transfer of the Wind Down Assets to the Wind Down Entity, adjusted in accordance with tax accounting principles prescribed by the Tax Code, applicable Treasury Regulations, and other applicable administrative and judicial authorities and pronouncements. As soon as reasonably practicable after the transfer of Wind Down Assets to the Wind Down Entity, the Wind Down Administrator shall make a good faith valuation of the Wind Down Assets. All parties to the Wind Down Entity (including, without limitation, the Debtor and the Holders) must consistently use such valuation for all U.S. federal income tax purposes. The valuation will be made available, from time to time, as relevant for tax reporting purposes.

iii. Notwithstanding any other provision of this Plan, (a) each Holder of an Allowed Claim that is to receive a distribution from the Wind Down Entity shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed on such Holder by any Governmental Unit, including income and other tax obligations, on account of such distribution, and (b) no distribution shall be made to or on behalf of such Holder pursuant to this Plan and Disclosure Statement unless and until such Holder has made arrangements satisfactory to the Wind Down Administrator to allow it to comply with its tax withholding and reporting requirements. Any property to be distributed by the Wind Down Entity shall, pending the implementation of such arrangements, be treated as an Unclaimed Distribution to be held by the Wind Down Administrator, as the case may be, until such time as the Wind Down Administrator is satisfied with the Holder's arrangements for any withholding tax obligations.

(f) Wind Down Committee. On or before the Effective Date, the Creditors' Committee shall be deemed to have appointed the Wind Down Committee to oversee the implementation of this Plan. The Wind Down Administrator shall consult with the Wind Down Committee with respect to (i) the pursuit of Causes of Action; (ii) the Takeda Reconciliation; (iii) the retention of Wind Down Advisors in connection with the Causes of Action and the Takeda Reconciliation; (iii) the expenditure of Plan Settlement Litigation Expenses; and (iv) the amount and timing of distributions on account of Allowed General Unsecured Claims, including the contribution of Plan Settlement Net Proceeds available for distribution to the Plan Settlement Litigation Reserve.

(g) Direction of the Required Prepetition Secured Noteholders. The Wind Down Administrator shall act at the direction of the Required Prepetition Secured Noteholders as to all material decisions respecting: (i) the Asset Purchase Agreement Claims; (ii) the McKesson Appeal; (iii) the Tax Refunds; (iv) the retention of Wind Down Advisors other than in connection with the Causes of Action and the Takeda Reconciliation; (v) the incurrence of Lender Litigation Expenses; and (vi) the amount and timing of distributions on account of Allowed Prepetition Secured Noteholder Claims, including the contribution of the proceeds of liquidation of Wind Down Assets (other than the Causes of Action and the Takeda Reconciliation) to the Lender Litigation Expense Reserve and the Wind Down Operating Expense Reserves.

(h) Substitution of Wind Down Entity for the Debtor. After the Effective Date, the Wind Down Entity or the Wind Down Administrator, in its discretion, shall be deemed to be substituted as the party in lieu of the Debtor in all pending matters including but not limited to (i) motions, contested matters and adversary proceeding pending in the Bankruptcy Court, and (ii) all matters pending in any courts, tribunals, forums or administrative proceedings outside of the Bankruptcy Court, in each case without the need or requirement for the Wind Down Administrator to file motions or substitutions of parties and counsel.

(i) The 401(k) Administrator. After the Effective Date, the 401(k) Administrator shall have sole authority for taking any and all actions necessary to cure any defect affecting the qualified status of the 401(k) Plan under the Internal Revenue Code in consultation with the Required Prepetition Secured Noteholders and in accordance with the 401(k) Administrator Budget.

(j) Insurance. Notwithstanding anything to the contrary, nothing in this Plan shall affect any rights the Debtor, the Debtor's Estate, the Wind Down Entity, or the Wind Down Administrator may have to make a claim against any Person not released pursuant to this Plan, or to receive the proceeds of, any insurance available to the Debtor and/or the other defendants in the Securities Litigation or otherwise.

ARTICLE III

EXECUTORY CONTRACTS AND UNEXPIRED LEASES

3.1 Background. The Debtor believes that all executory contracts and unexpired leases of the Debtor were assumed and assigned to the Purchaser, or rejected, during the pendency of the Case. Article III of this Plan is included out of an abundance of caution.

3.2 Executory Contracts and Unexpired Leases. All executory contracts and unexpired leases of the Debtor which have not been assumed and assigned, or rejected, prior to the Confirmation Date shall be deemed rejected as of the Confirmation Date; *provided, however*, that to the extent any insurance policies of the Debtor, including but not limited to any directors' and officers' liability insurance policies, are considered to be executory contracts, no such insurance policies shall be rejected or otherwise impacted pursuant to this Plan and all such insurance policies shall be deemed assumed on the Effective Date. Any Creditor asserting a Claim for monetary damages as a result of the rejection of an executory contract or unexpired

lease deemed rejected pursuant to this Plan (and not on or before the Confirmation Date) shall file a proof of claim substantially in the form of Official Form 410 with the Claims Agent ("**Rejection Claim**"), and serve it upon Debtor's counsel and the Wind Down Administrator by overnight mail so as to be received by no later than 20 days after the Confirmation Date.

3.3 Rejection Claims. Any Rejection Claim not filed pursuant to Section 3.2 of this Plan shall be forever disallowed and barred. If one or more Rejection Claims are filed pursuant to Section 3.2 of this Plan, notwithstanding Section 2.13 of this Plan, the Wind Down Administrator may File one or more objections to any such Rejection Claims, and shall serve any objection upon the claimant and the claimant's counsel, if any, by overnight mail no later than 120 days after the Confirmation Date. Any response by the claimant to any such objection shall be Filed and served by overnight mail upon the Wind Down Administrator no later than 15 days after service of such objection has been completed. If any such objection is timely Filed and cannot be resolved consensually by the parties, a hearing shall be held by the Bankruptcy Court as soon as is reasonably practicable, but it no event later than 45 days after service of such objection has been completed, to determine whether any such Rejection Claim is Allowed or Disallowed, in full or in part. The foregoing deadlines may be extended for cause or with the consent of the parties. If a Rejection Claim is determined to be Allowed, the date of such determination shall be deemed to be the Record Date and the Holder of the Claim on the date of such determination shall be deemed to be the Record Holder of such Claim. If a Rejection Claim becomes Allowed, in full or in part, such Claim shall be an Allowed General Unsecured Claim to the extent that such Claim becomes Allowed and the Record Holder of such Claim shall receive the treatment set forth in Section 2.4 of this Plan.

ARTICLE IV

CONDITIONS PRECEDENT TO CONFIRMATION AND CONSUMMATION OF THIS PLAN

4.1 Condition to Confirmation. Unless waived pursuant to Section 4.3 of this Plan, the Bankruptcy Court's entry of the Confirmation Order, in form and substance reasonably satisfactory to the Debtor, in consultation with the Consultation Parties, shall be the condition precedent to the Confirmation of this Plan.

4.2 Conditions to the Effective Date. The Effective Date shall not occur and this Plan shall not be consummated unless and until each of the following conditions has been satisfied or waived pursuant to Section 4.3 of this Plan: (i) the Confirmation Order, in form and substance reasonably satisfactory to the Debtor, in consultation with the Consultation Parties, shall have been entered by the Bankruptcy Court, (ii) the Confirmation Order shall have become a Final Order, and (iii) the Wind Down Entity shall have been created.

4.3 Waiver of Conditions to Confirmation or the Effective Date. The condition set forth in section 4.2(ii) of this Plan may be waived in whole or part in writing by the Debtor, with the consent of the Creditors' Committee, at any time without further Order.

ARTICLE V

MISCELLANEOUS PROVISIONS

5.1 Binding Effect of This Plan. The provisions of this Plan shall be binding upon all parties to this Plan and inure to the benefit of the Debtor, the Debtor's Estate, and its predecessors, successors, assigns, advisors, attorneys, agents, officers and directors of either. The terms of this Plan shall be enforceable against the Debtor, its Creditors, Interest Holders and all parties-in-interest.

5.2 Authority of the Wind Down Entity and Wind Down Administrator. Upon the Effective Date, the Wind Down Entity and the Wind Down Administrator shall have the sole and exclusive right, standing and authority to prosecute, compromise, settle and/or otherwise deal with the Causes of Action, and the Takeda Reconciliation, the Asset Purchase Agreement Claims, and any and all causes of action included among the Wind Down Assets, and to appear and take all required action before the Bankruptcy Court and any courts, tribunals, forums or administrative proceedings with respect to the Wind Down Assets, with or without Bankruptcy Court approval . In the event that the Wind Down Administrator elects to prosecute any Causes of Action, the Asset Purchase Agreement Claims, or any other claim or cause of action, any recovery (net of reasonable legal fees costs and expenses incurred in connection with the investigation, prosecution, or settlement of such Causes of Action, Asset Purchase Agreement Claim or other claim or cause of action, from litigation, compromise or settlement and the proceeds thereof shall constitute part of the Wind Down Assets and shall be distributed by the Wind Down Administrator in accordance with this Plan.

5.3 Retention of Jurisdiction. Following the Effective Date, the Bankruptcy Court shall retain jurisdiction to the fullest extent permitted by law over the provisions of this Plan, including Disputed Claims, Rejection Claims, and Professional Fee Claims, over all disputes and litigation (including litigation concerning the Causes of Action, the Asset Purchase Agreement Claims and all other claim or causes of action) which may be pending on the Confirmation Date or brought by the Wind Down Entity or the Wind Down Administrator, or any other party-in-interest after the Effective Date, and over any controversies that may arise hereafter which would affect the Debtor's and/or Wind Down Administrator's ability to carry out this Plan, until all such disputes and litigation shall be concluded and this Plan shall be fully consummated.

5.4 Governing Law. Except as to matters governed by the Bankruptcy Code or Bankruptcy Rules, as applicable, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with the laws of the State of Delaware without regard to conflicts of law.

5.5 Headings. The headings of articles, paragraphs, and subparagraphs of this Plan are inserted for convenience only and shall not affect the interpretation of any provision of this Plan.

5.6 Time. Whenever the time for the occurrence or happening of an event as set forth in this Plan falls on a day that is not a Business Day, then the time for the next occurrence or happening of said event shall be extended to the next day which is a Business Day.

5.7 Severability. Should any provision of this Plan be determined to be unenforceable after the Effective Date such determination shall in no way limit or affect the enforceability and operative effect of any and all of the other provisions of this Plan provided that the intent of this Plan can still be effectuated.

5.8 Revocation. The Debtor reserves the right to revoke and withdraw this Plan prior to the entry of a Confirmation Order. If the Debtor revokes or withdraws this Plan, or if the Confirmation Order is vacated, this Plan shall be deemed null and void and nothing contained herein shall be deemed to constitute a waiver or release of any claims by or against the Debtor, any other Person, or to prejudice in any manner the rights of such parties in any further proceedings involving the Debtor.

5.9 Precedence. In the event and to the extent that any provision of this Plan is inconsistent with the provisions of the Disclosure Statement, the Wind Down Entity Documents (solely with respect to the creation of the Wind Down Entity) or any other agreement to be executed by any Person pursuant to this Plan, the provisions of this Plan shall control and take precedence; *provided, however*, in the event and to the extent that any provision of this Plan is inconsistent with the provisions of the Wind Down Entity Documents with respect to administration of the Wind Down Entity or the Wind Down Assets, the Wind Down Entity Documents shall control and take precedence. In the event of any inconsistency between any provision of any of the foregoing documents, and any provision of the Confirmation Order, the Confirmation Order shall control and take precedence. Nothing in the Confirmation Order, this Plan, the Disclosure Statement or the Wind Down Entity Documents shall modify or be deemed to modify in any regard any term or provision of the DIP Order or the Stipulation Authorizing the Debtor's Use of Cash Collateral, as approved by the Bankruptcy Court [Docket No. 713], including, without limitation, any and all provisions respecting the reimbursement of fees and expenses of the Required Prepetition Secured Noteholders. In the event of any inconsistency between the Plan Settlement and this Plan or the Confirmation Order, the Plan Settlement shall control and take precedence

5.10 Statutory Fees. Prior to the Effective Date, the Debtor shall pay all fees payable pursuant to 28 U.S.C. § 1930. From and after the Effective Date, the Wind Down Entity shall pay all such fees from the Wind Down Operating Expense Reserve.

5.11 Dissolution of the Creditors' Committee. On the Effective Date, the Creditors' Committee shall be dissolved automatically and its members, professionals, and agents shall be deemed released of any continuing duties, responsibilities and obligations in connection with the Case, this Plan and its implementation, except with respect to (i) prosecuting (or objecting to) applications for payment of fees and reimbursement of expenses of Professionals, or Creditors' Committee members, or attending to any other issues related to applications for payment of fees and reimbursement of expenses of Professionals, including in connection with the Final Fee Hearing, or (ii) any appeals of the Confirmation Order and/or motions seeking reconsideration thereof through the date such appeals and/or motions are finally decided, settled, withdrawn or otherwise resolved. On the Effective Date, the retention and employment of the Creditors' Committee's attorneys, accountants and other agents shall terminate, except with respect to: (i) prosecuting applications (or objections thereto) for payment of fees and reimbursement of expenses of Professionals, or Creditors' Committee members, or attending to any other issues

related to applications for payment of fees and reimbursement of expenses of Professionals, including in connection with the Final Fee Hearing, or (ii) any appeals of the Confirmation Order and/or motions seeking reconsideration thereof through the date such appeals and/or motions are finally decided, settled, withdrawn or otherwise resolved.

5.12 Claims Agent. KCC, in its capacity as claims, noticing and balloting agent, shall be relieved of such duties on the date of the entry of the Final Decree or upon such earlier date as set forth in a written notice provided to it by the Wind Down Administrator.

5.13 Payment of Prepetition Secured Notes Indenture Trustee Fees and Expenses. On or prior to the Effective Date, the Debtor shall pay in Cash from the Distributable Cash all unpaid Prepetition Secured Notes Indenture Trustee Fees and Expenses that are payable under the DIP Order and/or the Cash Collateral Order. From and after the Effective Date, the Wind Down Administrator shall promptly pay in Cash all Prepetition Secured Notes Indenture Trustee Fees and Expenses from the Wind Down Operating Expense Reserve. Nothing in this Section 5.13 shall in any way affect or diminish the right of the Prepetition Secured Notes Indenture Trustee to assert the Prepetition Secured Notes Indenture Trustee Charging Lien against distributions to Holders of Prepetition Secured Noteholder Claims with respect to any unpaid Prepetition Secured Notes Indenture Trustee Fees and Expenses and/or the Prepetition Secured Notes Indenture Trustee Sabby Indemnity Claim.

5.14 No Duty to Update Disclosures. The Debtor has no duty to update the information contained in this Plan or in the Disclosure Statement as of the date hereof, or unless required to do so pursuant to an Order of the Bankruptcy Court. Delivery of this Plan and the Disclosure Statement after the date hereof does not imply that the information contained herein has remained unchanged.

5.15 Prepetition Unsecured Notes Indenture Trustee Fees and Expenses. Nothing in this Plan shall in any way affect or diminish the rights of the Prepetition Unsecured Notes Indenture Trustees to assert their Prepetition Unsecured Notes Trustee Charging Liens against any distributions to holders of 2013 Notes Claims or 2017 Notes Claims, as applicable, with respect to any unpaid Prepetition Unsecured Notes Indenture Trustee Fees and Expenses or other amounts payable to the Prepetition Unsecured Notes Indenture Trustees under the Prepetition Unsecured Notes Indentures.

5.16 Post-Effective Date Rule 2002 Notice List. After the Effective Date, any Person that, prior to the Effective Date, had requested from the Debtor or the Claims Agent to receive notice in the Case pursuant to Bankruptcy Rule 2002 must renew such request in writing to the Claims Agent in order to be included on the Post-Effective Date Notice List. On and after the Effective Date, the Wind Down Entity is authorized to limit the list of entities receiving documents pursuant to Bankruptcy Rule 2002 to those Persons that request to be included on the Post Effective Date Notice List.

ARTICLE VI

RELEASES, DISCHARGE, INJUNCTION AND EXCULPATION

6.1 Exculpation and Limitation of Liability. EFFECTIVE AS OF THE EFFECTIVE DATE, THE EXCULPATED PARTIES SHALL NEITHER HAVE, NOR INCUR ANY LIABILITY TO ANY HOLDER OF A CLAIM OR AN INTEREST, THE DEBTOR, OR ANY OTHER PARTY-IN-INTEREST, OR ANY OF THEIR RESPECTIVE RELATED PERSONS, FOR ANY PREPETITION OR POSTPETITION ACT OR OMISSION IN CONNECTION WITH, RELATING TO, OR ARISING OUT OF, THE CASE, THE DECISION TO FILE THE CASE, THE ACTIONS TAKEN IN PREPARATION TO FILE THE CASE, THE FORMULATION, NEGOTIATION, OR IMPLEMENTATION OF THE DISCLOSURE STATEMENT OR THIS PLAN, THE SOLICITATION OF ACCEPTANCES OF THIS PLAN, THE PURSUIT OF CONFIRMATION OF THIS PLAN, THE CONFIRMATION OF THIS PLAN, THE CONSUMMATION OF THIS PLAN, THE PURSUIT OF THE SALE OR THE SALE, OR THE ADMINISTRATION OF THIS PLAN OR THE PROPERTY TO BE DISTRIBUTED UNDER THIS PLAN, EXCEPT FOR ACTS OR OMISSIONS THAT ARE THE RESULT OF WILLFUL MISCONDUCT, GROSS NEGLIGENCE, FRAUD OR CRIMINAL ACTS; *PROVIDED, HOWEVER,* THAT (I) THE FOREGOING IS NOT INTENDED TO LIMIT OR OTHERWISE IMPACT ANY DEFENSE OF QUALIFIED IMMUNITY THAT MAY BE AVAILABLE UNDER APPLICABLE LAW; (II) EACH EXCULPATED PARTY SHALL BE ENTITLED TO RELY UPON THE ADVICE OF COUNSEL CONCERNING HIS, HER OR ITS DUTIES PURSUANT TO, OR IN CONNECTION WITH THE CASE, THE DECISION TO FILE THE CASE, THE ACTIONS TAKEN IN PREPARATION TO FILE THE CASE, THE FORMULATION, NEGOTIATION, OR IMPLEMENTATION OF THE DISCLOSURE STATEMENT OR THIS PLAN, THE SOLICITATION OF ACCEPTANCES OF THIS PLAN, THE PURSUIT OF CONFIRMATION OF THIS PLAN, THE CONFIRMATION OF THIS PLAN, THE CONSUMMATION OF THIS PLAN, THE PURSUIT OF THE SALE OR THE SALE, OR THE ADMINISTRATION OF THIS PLAN OR THE PROPERTY TO BE DISTRIBUTED UNDER THIS PLAN; AND (III) THE FOREGOING EXCULPATION SHALL NOT BE DEEMED TO, RELEASE, AFFECT, OR LIMIT ANY OF THE RIGHTS AND OBLIGATIONS OF THE EXCULPATED PARTIES FROM, OR EXCULPATE THE EXCULPATED PARTIES WITH RESPECT TO, ANY OF THE EXCULPATED PARTIES' OBLIGATIONS OR COVENANTS ARISING PURSUANT TO THIS PLAN, THE CONFIRMATION ORDER, OR THE WIND DOWN ENTITY AGREEMENT.

6.2 Releases and Related Matters.

(a) **Releases by the Debtor**. NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, AS OF THE EFFECTIVE DATE, FOR GOOD AND VALUABLE CONSIDERATION, THE ADEQUACY OF WHICH IS HEREBY CONFIRMED, INCLUDING: (1) THE SETTLEMENT, RELEASE AND COMPROMISE OF DEBT AND ALL OTHER GOOD AND VALUABLE CONSIDERATION PAID PURSUANT HERETO; AND (2) THE SERVICES OF THE DEBTOR'S PRESENT AND FORMER OFFICERS, DIRECTORS, MANAGERS AND ADVISORS IN FACILITATING THE EXPEDIENT IMPLEMENTATION OF THE TRANSACTIONS, DISTRIBUTIONS AND

LIQUIDATION CONTEMPLATED HEREBY, THE DEBTOR, AND ANY PERSON OR ENTITY SEEKING TO EXERCISE THE RIGHTS OF THE DEBTOR'S ESTATE, INCLUDING, WITHOUT LIMITATION, ANY SUCCESSOR TO THE DEBTOR OR ANY ESTATE REPRESENTATIVE APPOINTED OR SELECTED PURSUANT TO SECTION 1123(B)(3) OF THE BANKRUPTCY CODE (INCLUDING THE WIND DOWN ENTITY AND WIND DOWN ADMINISTRATOR), SHALL BE DEEMED TO FOREVER RELEASE, WAIVE, AND DISCHARGE EACH OF THE RELEASED PARTIES FROM ANY AND ALL CLAIMS, OBLIGATIONS, SUITS, JUDGMENTS, DAMAGES, DEMANDS, DEBTS, REMEDIES, RIGHTS, CAUSES OF ACTION, RIGHTS OF SETOFF AND LIABILITIES WHATSOEVER (INCLUDING ANY DERIVATIVE CLAIMS ASSERTED ON BEHALF OF THE DEBTOR) IN CONNECTION WITH OR IN ANY WAY RELATING TO THE DEBTOR, THE CONDUCT OF THE DEBTOR'S BUSINESSES, THE CASE, THE DISCLOSURE STATEMENT OR THIS PLAN (OTHER THAN THE RIGHTS OF THE DEBTOR, THE WIND DOWN ADMINISTRATOR OR A CREDITOR HOLDING AN ALLOWED CLAIM TO ENFORCE THE OBLIGATIONS UNDER THE CONFIRMATION ORDER AND THIS PLAN AND THE CONTRACTS, INSTRUMENTS, RELEASES, AND OTHER AGREEMENTS OR DOCUMENTS DELIVERED THEREUNDER) WHETHER LIQUIDATED OR UNLIQUIDATED, FIXED OR CONTINGENT, MATURED OR UNMATURED, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, THEN EXISTING OR THEREAFTER ARISING, IN LAW, EQUITY, OR OTHERWISE, THAT ARE BASED IN WHOLE OR PART ON ANY ACT, OMISSION, TRANSACTION, EVENT, OR OTHER OCCURRENCE TAKING PLACE PRIOR TO THE EFFECTIVE DATE; *PROVIDED, HOWEVER,* THAT NOTHING IN THIS SECTION 6.2(a):

(i) SHALL BE DEEMED TO PROHIBIT THE WIND DOWN ADMINISTRATOR FROM OBJECTING TO OR SEEKING DISALLOWANCE OF ANY DISPUTED CLAIMS FILED BY ANY RELEASED PARTIES OR RELATED PERSONS; OR

(ii) SHALL OPERATE AS A RELEASE, WAIVER OR DISCHARGE OF ANY CAUSES OF ACTION OR LIABILITIES UNKNOWN TO THE DEBTOR AS OF THE PETITION DATE ARISING OUT OF GROSS NEGLIGENCE, WILLFUL MISCONDUCT, FRAUD OR CRIMINAL ACTS OF ANY SUCH RELEASED PARTY OR RELATED PERSON.

(b) **Releases by Holders of Claims**. NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, ON THE EFFECTIVE DATE AND AS OF THE EFFECTIVE DATE, FOR GOOD AND VALUABLE CONSIDERATION, THE ADEQUACY OF WHICH IS HEREBY CONFIRMED, THE HOLDERS OF CLAIMS AGAINST IN THE DEBTOR WHO: (I) VOTES TO ACCEPT THIS PLAN, (II) IS DEEMED TO HAVE ACCEPTED THIS PLAN, (III) ABSTAINS FROM VOTING ON THIS PLAN, OR (IV) VOTES TO REJECT THIS PLAN AND DOES NOT OPT OUT OF THE RELEASES CONTAINED IN THIS PLAN SHALL BE DEEMED TO FOREVER RELEASE, WAIVE, AND DISCHARGE EACH OF THE RELEASED PARTIES FROM ANY AND ALL CLAIMS, OBLIGATIONS, SUITS, JUDGMENTS, DAMAGES, DEMANDS, DEBTS, RIGHTS, CAUSES OF ACTION, AND LIABILITIES WHATSOEVER IN CONNECTION WITH OR IN ANY WAY RELATING TO THE DEBTOR, THE CONDUCT OF THE DEBTOR'S

BUSINESSES, THE CASE, THE DISCLOSURE STATEMENT OR THIS PLAN (OTHER THAN THE RIGHTS OF THE DEBTOR, OR A CREDITOR HOLDING AN ALLOWED CLAIM TO ENFORCE THE OBLIGATIONS UNDER THE CONFIRMATION ORDER AND THIS PLAN AND THE CONTRACTS, INSTRUMENTS, RELEASES, AND OTHER AGREEMENTS OR DOCUMENTS DELIVERED THEREUNDER), WHETHER LIQUIDATED OR UNLIQUIDATED, FIXED OR CONTINGENT, MATURED OR UNMATURED, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, THEN EXISTING OR THEREAFTER ARISING, IN LAW, EQUITY, OR OTHERWISE, WHETHER FOR TORT, CONTRACT, VIOLATION OF FEDERAL OR STATE SECURITIES LAW OR OTHERWISE, THAT ARE BASED IN WHOLE OR PART ON ANY ACT, OMISSION, TRANSACTION, EVENT, OR OTHER OCCURRENCE TAKING PLACE ON OR PRIOR TO THE EFFECTIVE DATE; *PROVIDED, HOWEVER,* THAT NOTHING IN THIS SECTION 6.2(b) SHALL OPERATE AS A RELEASE, WAIVER OR DISCHARGE OF ANY CAUSES OF ACTION OR LIABILITIES UNKNOWN TO SUCH PERSON AS OF THE PETITION DATE ARISING OUT OF GROSS NEGLIGENCE, WILLFUL MISCONDUCT, FRAUD OR CRIMINAL ACTS OF ANY SUCH RELEASED PARTY; *PROVIDED, FURTHER, HOWEVER,* THAT, FOR THE AVOIDANCE OF DOUBT, NOTHING IN THIS SECTION 6.2(b) SHALL OPERATE AS A RELEASE, WAIVER OR DISCHARGE OF ANY CLAIMS OR CAUSES OF ACTION (I) AGAINST THE DEBTOR OR ANY NON-DEBTOR, ARISING UNDER OR IN CONNECTION WITH THE SECURITIES LITIGATION OR (II) OF THE DEBTOR, TO THE EXTENT NOT OTHERWISE RELEASED UNDER SECTION 6.2(a), TO BE TRANSFERRED TO THE WIND DOWN ENTITY ON THE EFFECTIVE DATE.

(c) **Plan Settlement**. AS NOTED ABOVE, ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL, PURSUANT TO SECTION 1123(B) OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 9019, OF THE PLAN SETTLEMENT, INCLUDING THE FOREGOING RELEASE BY THE DEBTOR, WHICH INCLUDES BY REFERENCE EACH OF THE RELATED PROVISIONS AND DEFINITIONS CONTAINED HEREIN, AND FURTHER, SHALL CONSTITUTE THE BANKRUPTCY COURT'S FINDING THAT THE FOREGOING RELEASE BY THE DEBTOR IS: (1) IN EXCHANGE FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY THE RELEASED PARTIES; (2) A GOOD FAITH SETTLEMENT AND COMPROMISE OF THE CLAIMS AND INTERESTS RELEASED BY THE FOREGOING RELEASE BY THE DEBTOR; (3) IN THE BEST INTERESTS OF THE DEBTOR AND ALL HOLDERS OF CLAIMS AND INTERESTS; (4) FAIR, EQUITABLE AND REASONABLE; (5) GIVEN AND MADE AFTER DUE NOTICE AND OPPORTUNITY FOR HEARING; AND (6) A BAR TO THE DEBTOR OR THE WIND DOWN ADMINISTRATOR ASSERTING ANY CLAIM OR CAUSE OF ACTION RELEASED PURSUANT TO THE FOREGOING RELEASE BY THE DEBTOR.

(d) **Releases by Sabby Parties in Connection with Sabby Settlement**. NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, ON THE EFFECTIVE DATE AND AS OF THE EFFECTIVE DATE, FOR GOOD AND VALUABLE CONSIDERATION, THE ADEQUACY OF WHICH IS HEREBY CONFIRMED, THE SABBY PARTIES, EACH OF THEIR RESPECTIVE SUBSIDIARIES AND AFFILIATES, AND THE RESPECTIVE PAST AND PRESENT AGENTS, ATTORNEYS, EMPLOYEES, OFFICERS, DIRECTORS, SHAREHOLDERS, SUCCESSORS, ASSIGNS, MEMBERS,

REPRESENTATIVES (IN THEIR CAPACITY AS SUCH) OF EACH OF THE FOREGOING (COLLECTIVELY, THE "**SABBY RELEASE PARTIES**"), FOREVER, IRREVOCABLY AND UNCONDITIONALLY RELEASE AND DISCHARGE U.S. BANK NATIONAL ASSOCIATION, IN ITS CAPACITIES AS PREPETITION SECURED NOTES INDENTURE TRUSTEE AND PREPETITION COLLATERAL AGENT, THE PREPETITION SECURED NOTEHOLDERS (OTHER THAN THE SABBY PARTIES), THE COMMITTEE AND ITS MEMBERS (SOLELY IN THEIR CAPACITIES AS SUCH), THE WIND DOWN ENTITY, THE WIND DOWN ADMINISTRATOR, AND THE DEBTOR, THE RESPECTIVE SUBSIDIARIES AND AFFILIATES OF EACH OF THE FOREGOING, AND THE RESPECTIVE PAST AND PRESENT AGENTS, ATTORNEYS, EMPLOYEES, OFFICERS, DIRECTORS, SHAREHOLDERS, SUCCESSORS, ASSIGNS, MEMBERS, REPRESENTATIVES (IN THEIR CAPACITY AS SUCH) OF EACH OF THE FOREGOING (COLLECTIVELY, THE "**DEBTOR/SECURED PARTY RELEASE PARTIES**"), FROM ANY AND ALL ACTIONS, ATTORNEYS' FEES, CHARGES, CLAIMS, COSTS, DEMANDS, EXPENSES, JUDGMENTS, LIABILITIES AND CAUSES OF ACTION OF ANY KIND, NATURE OR DESCRIPTION, WHETHER MATURED OR UNMATURED, CONTINGENT OR ABSOLUTE, LIQUIDATED OR UNLIQUIDATED, KNOWN OR UNKNOWN (COLLECTIVELY, "**SABBY LITIGATION RELATED CLAIMS**") WHICH THE SABBY RELEASE PARTIES MAY NOW HAVE, HAVE EVER HAD, OR MAY IN THE FUTURE HAVE AGAINST THE DEBTOR/SECURED PARTY RELEASE PARTIES, ARISING OUT OF OR IN CONNECTION WITH THE CLAIMS AND DISPUTES ASSERTED IN THE SABBY LITIGATION. THE RELEASES PROVIDED HEREIN BY THE SABBY RELEASE PARTIES IN FAVOR OF THE DEBTOR/SECURED PARTY RELEASE PARTIES DO NOT IN ANY MANNER WHATSOEVER EXTEND TO PAYMENT OF THE SABBY SETTLEMENT AMOUNT OR ANY OBLIGATION OF U.S. BANK NATIONAL ASSOCIATION, IN ITS CAPACITIES AS PREPETITION SECURED NOTES INDENTURE TRUSTEE AND PREPETITION COLLATERAL AGENT, UNDER THE SABBY SETTLEMENT AGREEMENT OR TO DISTRIBUTIONS UNDER THIS PLAN OR ANY OTHER CHAPTER 11 PLAN IN THE CASE.

(e) **Releases by Debtor, U.S. Bank National Association, Prepetition Secured Noteholders and Committee in Connection with Sabby Settlement**. NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, ON THE EFFECTIVE DATE AND AS OF THE EFFECTIVE DATE, FOR GOOD AND VALUABLE CONSIDERATION, THE ADEQUACY OF WHICH IS HEREBY CONFIRMED, THE DEBTOR/SECURED PARTY RELEASE PARTIES FOREVER, IRREVOCABLY AND UNCONDITIONALLY RELEASE AND DISCHARGE THE SABBY RELEASE PARTIES FROM ANY AND ALL SABBY LITIGATION RELATED CLAIMS WHICH THE DEBTOR/SECURED PARTY RELEASE PARTIES MAY NOW HAVE, HAVE EVER HAD, OR MAY IN THE FUTURE HAVE AGAINST THE SABBY RELEASE PARTIES, ARISING OUT OF OR IN CONNECTION WITH THE CLAIMS AND DISPUTES ASSERTED IN THE SABBY LITIGATION. THE RELEASES PROVIDED HEREIN BY THE DEBTOR/SECURED PARTY RELEASE PARTIES IN FAVOR OF THE SABBY RELEASE PARTIES DO NOT IN ANY MANNER WHATSOEVER EXTEND TO THE OBLIGATION OF THE SABBY PARTIES UNDER THE SABBY SETTLEMENT AGREEMENT.

(f) **Sabby Litigation Settlement**. ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL, PURSUANT TO SECTION 1123(B) OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 9019, OF THE SABBY SETTLEMENT AGREEMENT, INCLUDING THE FOREGOING RELEASE BY THE DEBTOR OF THE SABBY RELATED PARTIES, WHICH INCLUDES BY REFERENCE EACH OF THE RELATED PROVISIONS AND DEFINITIONS CONTAINED HEREIN, AND FURTHER, SHALL CONSTITUTE THE BANKRUPTCY COURT'S FINDING THAT THE FOREGOING RELEASE BY THE DEBTOR IS: (1) IN EXCHANGE FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY THE SABBY RELATED PARTIES; (2) A GOOD FAITH SETTLEMENT AND COMPROMISE OF THE SABBY LITIGATION RELATED CLAIMS RELEASED BY THE FOREGOING RELEASE BY THE DEBTOR; (3) IN THE BEST INTERESTS OF THE DEBTOR AND ALL HOLDERS OF CLAIMS AND INTERESTS; (4) FAIR, EQUITABLE AND REASONABLE; (5) GIVEN AND MADE AFTER DUE NOTICE AND OPPORTUNITY FOR HEARING; AND (6) A BAR TO THE DEBTOR OR THE WIND DOWN ADMINISTRATOR ASSERTING ANY CLAIM OR CAUSE OF ACTION RELEASED PURSUANT TO THE FOREGOING RELEASE BY THE DEBTOR.

(g) **Injunction Related to Releases and Exculpations**. Except as provided in this Plan or the Confirmation Order, as of the Effective Date, (i) all Persons that hold, have held, or may hold a Claim or Interest or any other cause of action, obligation, suit, judgment, damages, debt, right, remedy or liability of any nature whatsoever, relating to the Debtor or any of its respective assets, property and Estate, the Released Parties or the Exculpated Parties that is released or exculpated pursuant to Sections 6.1 or 6.2 of this Plan, (ii) all other parties in interest, and (iii) each of the Related Persons of each of the foregoing entities, are, and shall be, permanently, forever and completely stayed, restrained, prohibited, barred and enjoined from taking any of the following actions (whether directly or indirectly, derivatively or otherwise, on account of or based on the subject matter of such released Claims or Interests or other causes of action, obligations, suits, judgments, damages, debts, rights, remedies or liabilities, and of all Interests or other rights of a Holder of an equity security or other ownership interest): (a) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding (including, without limitation, any judicial, arbitral, administrative or other proceeding) in any forum; (b) enforcing, attaching (including, without limitation, any prejudgment attachment), collecting, or in any way seeking to recover any judgment, award, decree, or other order; (c) creating, perfecting or in any way enforcing in any matter, directly or indirectly, any Lien; (d) setting off (to the extent a request for setoff is pending as of the Effective Date), seeking reimbursement or contributions from, or subrogation against, in any manner, directly or indirectly, any amount against any liability or obligation owed to any Person discharged, released, or exculpated under Sections 6.1 or 6.2 of this Plan; and (e) commencing or continuing in any manner, in any place of any judicial, arbitration or administrative proceeding in any forum, that does not comply with or is inconsistent with the provisions of this Plan or the Confirmation Order; *provided, however*, that, for the avoidance of doubt, nothing in the Plan, including this Section 6.2(g), or the Confirmation Order, shall enjoin or otherwise impact (x) the continued prosecution of the Securities Litigation, against all defendants named or to be named therein, (y) the rights of the Wind Down Entity with respect to the Wind Down Assets or (z) any rights the lead plaintiff in the Securities Litigation (on behalf of itself and the proposed class it represents in the Securities Litigation), the Debtor, the Debtor's Estate, or the Wind Down Entity

may have to make a claim under, or receive the proceeds of, any insurance available in connection with the claims and causes of action asserted in the Securities Litigation or otherwise

(h) **Securities and Exchange Commission**. **Notwithstanding any language to the contrary contained in the Disclosure Statement, this Plan or the Confirmation Order, no provision of this Plan or Confirmation Order shall (i) preclude the United States Securities and Exchange Commission from enforcing its police of regulatory powers; or, (ii) enjoin, limit, impair or delay the United States Securities and Exchange Commission from commencing or continuing any claims, causes of action, proceedings or investigations against any non-debtor person or non-debtor entity in any forum.**

ARTICLE VII

FINAL FEE HEARING AND FINAL DECREE

7.1 The Professional Fee Claim Bar Date. Any and all applications for the final allowance of Professional Fee Claims shall be Filed and served upon counsel to the Debtor, counsel to the Creditors' Committee, the United States Trustee, and all Persons on the Debtor's Bankruptcy Rule 2002 service list on or before the Professional Fee Claim Bar Date.

7.2 Professional Fee Escrow. If the Professional Fee Claims Estimate is greater than zero, on the Effective Date, the Debtor shall establish and fund the Professional Fee Escrow from Cash on Hand. The Debtor shall fund the Professional Fee Escrow in an amount equal to the Professional Fee Claims Estimate. Funds held in the Professional Fee Escrow shall not be considered property of the Debtor's Estate or property of the Wind Down Entity or its beneficiaries, but shall be held in trust for Professionals retained by the Creditors' Committee and the Debtor and for no other Persons, until all Professional Fee Claims Allowed by the Bankruptcy Court have been paid in full. After all Professional Fee Claims Allowed by the Bankruptcy Court have been irrevocably paid, all remaining amounts in the Professional Fee Escrow shall be distributed by the Debtor to the Holders of Prepetition Secured Noteholder Claims in accordance with this Plan. Professional Fees owing to the applicable Professionals shall be paid in Cash to such Professionals from funds held in the Professional Fee Escrow when such Claims are Allowed by an order of the Bankruptcy Court; *provided*, *however*, that obligations with respect to Allowed Professional Fee Claims shall not be limited nor deemed limited to the balance of funds held in the Professional Fee Escrow. No liens, claims, or interests shall encumber the Professional Fee Escrow in any way.

7.3 Final Fee Hearing. A hearing on the final allowance of Professional Fee Claims (the "Final Fee Hearing") shall be held as soon as practicable after the Professional Fee Claim Bar Date. The Debtor's counsel shall File a notice of the Final Fee Hearing. Such notice shall be posted on the Noticing Agent Website, and served upon counsel for the Creditors' Committee, all Professionals, the United States Trustee and all parties on the Debtor's Bankruptcy Rule 2002 service list.

7.4 Final Decree. Subsequent to the Effective Date, the Final Fee Hearing, and the distribution of the proceeds of the Wind Down Assets (or, at the Liquidating Trustee's election, earlier, if appropriate) the Wind Down Administrator, with the prior written consent of the

401(k) Administrator, shall seek entry of the Final Decree including through the Wind Down Administrator's counsel Filing a certification of counsel requesting the entry of the Final Decree.

7.5 Administrative Expense Claim Bar Date. The bar date or last date for the filing by any Person of any motion or application for allowance of an Administrative Expense Claim *exclusive of* Professional Fee Claims (which are addressed separately above), that has accrued between the Petition Date and the Effective Date of this Plan and that remains unpaid shall be 4:00 p.m. (prevailing eastern time) on the date that is twenty-one (21) days after the Effective Date (the "Administrative Expense Claim Bar Date"). Such Administrative Expense Claims must be filed with the Bankruptcy Court and also served on the Liquidating Trustee and the Claims Agent, by regular mail, overnight courier or hand delivery to Claims Agent so as to be received by the Administrative Expense Claim Bar Date. The address for the Claims Agent is as follows: Orexigen Claims Processing Center, c/o KCC, 2335 Alaska Ave., El Segundo, CA 90245, so as to be received by the Administrative Expense Claims Bar Date. The failure to timely file and serve an Administrative Expense Claim shall bar the Administrative Expense Claim from being paid.

ARTICLE VIII

REQUEST FOR CONFIRMATION

8.1 Request for Confirmation. The Debtor requests confirmation of this Plan in accordance with section 1129(a) or section 1129(b) of the Bankruptcy Code.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the Debtor has executed this Plan this 27th day of March 2019.

OREXIGEN THERAPEUTICS, INC.

By: /s/ *Thomas P. Lynch*
Name: Thomas P. Lynch
Title: Chief Administrative Officer and General Counsel

EXHIBIT B

SABBY SETTLEMENT AGREEMENT

[ATTACHED]

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is dated as of January 18, 2019 and entered into by and among (i) Sabby Volatility Warrant Master Fund, Ltd. and Sabby Healthcare Master Fund, Ltd. (together the "Sabby Parties") on one hand and (ii) U.S. Bank, National Association ("U.S. Bank") on the other hand. Each of the Sabby Parties and U.S. Bank is referred to herein as a "Party," and together as the "Parties."

RECITALS

WHEREAS, U.S. Bank is the Indenture Trustee and Collateral Agent (the "Indenture Trustee") for the holders of the 0% Convertible Senior Secured Notes due 2020 (the "Notes") issued under the Indenture, dated as of March 21, 2016 (as thereafter from time to time amended and supplemented, the "Indenture"), by and among Orexigen Therapeutics, Inc. ("Orexigen"), as Issuer, and U.S. Bank;

WHEREAS the Sabby Parties are holders ("Noteholders") of Notes with an aggregate principal face amount of $2.75 million;

WHEREAS, on March 12, 2018, Orexigen filed for voluntary 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 "Bankruptcy Court"), which case is currently pending as case number 18-10518 (KG) (the "Bankruptcy Case");

WHEREAS, in connection with the Bankruptcy Case, on our about March 15, 2018, U.S. Bank issued a notice (the "Roll-Up Notice") notifying Noteholders of (i) Orexigen's intent to obtain debtor in possession financing ("DIP Financing") from certain Noteholders that would prime the Noteholders' Notes;, (ii) advising that $35 million in face amount of Notes would be elevated in priority under the financing and be payable out of the proceeds of the DIP Financing

(the "Roll-Up"), and (iii) offering Noteholders an opportunity to participate in the Roll-Up on a pro rata basis on account of their Notes;

WHEREAS, on April 13, 2018, the Bankruptcy Court entered its Final Order (I) Approving Debtor-In-Possession Financing Pursuant to 11 U.S.C. §§ 105(A), 362, and 364 and Fed. R. Bankr. P. 2002, 4001 and 9014 and Local Bankruptcy Rule 4001-2; (II) Authorizing Use of Cash Collateral Pursuant To 11 U.S.C. §§ 105, 361, 362 and 363 of the Bankruptcy Code;(III) Granting Adequate Protection And Super-Priority Administrative Claims; and (IV) Granting Related Relief (the "Final DIP Order");

WHEREAS, on or about June 5, 2018, U.S. Bank filed Claim Number 76 (the "Noteholder Claim") in the Bankruptcy Case against Orexigen on behalf of all Noteholders on account of their Notes in the principal amount of $165 million;

WHEREAS, Noteholders who participated in the Roll-Up pursuant to the Final DIP Order (the "Participating Noteholders") thereafter received $35 million in cash, pro rata, on account of the portion of their respective holdings of the Notes included in the Roll-Up;

WHEREAS, the Sabby Parties are not Participating Noteholders and allege without limitation that (i) they did not receive the Roll-Up Notice; (ii) U.S. Bank sent the Notice intended to the Sabby Parties to an improper address; (iii) Noteholders were in any event not entitled under the Indenture to participate in the Roll-Up absent the Sabby Parties' express consent; and (iv) U.S. Bank had breached certain obligations to the Sabby Parties in connection therewith;

WHEREAS, on June 11, 2018, the Sabby Parties brought a lawsuit (the "District Court Case") against U.S. Bank on account of the Roll-Up in the United States District Court for the Southern District of New York (the "District Court") as case number 18-cv-05224 (GBD) alleging, without limitation, that (i) they did not receive the Roll-Up Notice; (ii) that U.S. Bank

sent the Notice intended to the Sabby Parties to an improper address; (iii) Noteholders were in any event not entitled under the Indenture to participate in the Roll-Up absent the Sabby Parties' express consent; (iv) that U.S. Bank had breached certain obligations to the Sabby Parties in connection therewith; and (v) that they were damaged on account of the allegations set forth above;

WHEREAS, U.S. Bank disagrees with the Sabby Parties' allegations described above and in the District Court Case, U.S. Bank filed motions in which it denied the Sabby Parties' allegations and specifically alleged that the Sabby Parties received the Roll-Up Notice, and in which U.S. Bank sought to dismiss the Sabby Parties' First Amended Complaint and to transfer the District Court Case to the Bankruptcy Court, which motions were contested by the Sabby Parties and were pending at the time of this Agreement;

WHEREAS the Parties have determined to resolve the matter in its entirety on the terms agreed to below; and

NOW, THEREFORE, in consideration of the recitals, covenants, and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each of the Parties' promises, undertakes and agrees as follows:

1. The District Court Case shall be resolved for a cash payment of $265,000 (the "Settlement Amount") to the Sabby Parties, which Settlement Amount shall be payable in accordance herewith.

2. The chapter 11 plan to be filed by Orexigen in the Bankruptcy Case (the "Orexigen Plan") shall provide for the Settlement Amount to be paid in full on the effective date of such Orexigen Plan in accordance with the terms of distributions to Noteholders thereunder.

In its capacity as Paying Agent under the Indenture, U.S. Bank shall pay, or shall cause to be paid, the Settlement Amount to the Sabby Parties from the proceeds of such distribution.

3. Following payment in full of the Settlement Amount, the Sabby Parties' Notes shall be pari passu with the remaining Notes on all distributions to be made to Noteholders under the Orexigen Plan, except that the principal amount of the Participating Noteholders' Notes and the Sabby Parties' Notes shall be deemed reduced proportionately for purposes of receiving distributions under the Orexigen Plan to reflect payment of the Roll-Up in the case of the Participating Noteholders' Notes and the Settlement Amount in the case of the Sabby Parties' Notes, respectively.

4. Orexigen acknowledges the terms of the settlement between the Sabby Parties and U.S. Bank set forth herein and agrees that the Orexigen Plan or any other chapter 11 plan for which it is a proponent in the Bankruptcy Case or otherwise supports, shall, subject to the approval of the Bankruptcy Court, effectuate the terms and conditions set forth herein and include the mutual releases by and between the Sabby Parties and their respective related parties, on the one hand, and Orexigen, U.S. Bank and the Noteholders (other than the Sabby Parties) and their respective related parties, on the other hand, that are substantially identical to the mutual releases set forth herein.

5. The Parties agree that prior to February 3, 2019, they shall jointly request by letter that the District Court Case remain open pending the effective date of the Orexigen Plan. Such letter shall exhibit a copy of this Agreement. The Parties further agree that within seven days after payment of the Settlement Amount, the Parties shall file a stipulation of dismissal pursuant to Rule 41 of the Federal Rules of Civil Procedure dismissing the District Court Case with prejudice. The Parties further agree that if in any event, the District Court dismisses the

District Court Case prior to the payment of the Settlement Amount, such dismissal shall be without prejudice until payment of the Settlement Amount, and shall thereafter be deemed to be with prejudice.

6. The Parties agree that the Orexigen Plan will include mutual releases substantially identical to the following, which releases shall have effect from and after the effective date of the Orexigen Plan:

(a) In consideration of the promises and covenants contained herein and in the Orexigen Plan, the Sabby Parties, each of their respective subsidiaries and affiliates, and the respective past and present agents, attorneys, employees, officers, directors, shareholders, successors, assigns, members, representatives (in their capacity as such) of each of the foregoing (collectively, the "Party 1 Release Parties"), forever, irrevocably and unconditionally release and discharge U.S. Bank, the Noteholders (other than the Sabby Parties), and Orexigen, the respective subsidiaries and affiliates of each of the foregoing, and the respective past and present agents, attorneys, employees, officers, directors, shareholders, successors, assigns, members, representatives (in their capacity as such) of each of the foregoing (collectively, the "Party 2 Release Parties"), from any and all actions, attorneys' fees, charges, claims, costs, demands, expenses, judgments, liabilities and causes of action of any kind, nature or description, whether matured or unmatured, contingent or absolute, liquidated or unliquidated, known or unknown, (collectively, "Claims") which the Party 1 Release Parties may now have, has ever had, or may in the future have against the Party 2 Release Parties, arising out of or in connection with the claims and disputes asserted in the District Court Case. The releases provided herein by the Party 1 Release Parties in favor of the Party 2 Release Parties do not in any manner whatsoever extend

to payment of the Settlement Amount or any obligation of U.S. Bank under this Agreement or to distributions under the Orexigen Plan or any other chapter 11 plan in the Bankruptcy Case.

(b) In consideration of the promises and covenants contained herein and in the Orexigen Plan, the Party 2 Release Parties forever, irrevocably and unconditionally release and discharge the Party 1 Release Parties from any and all Claims which the Party 2 Release Parties may now have, has ever had, or may in the future have against the Party 1 Release Parties, arising out of or in connection with the claims and disputes asserted in the District Court Case. The releases provided herein by the Party 2 Release Parties in favor of the Party 1 Release Parties do not in any manner whatsoever extend to the obligation of the Sabby Parties under this Agreement.

7. If, prior to the effective date of the Orexigen Plan, the Bankruptcy Court enters a final order: (i) dismissing Orexigen's bankruptcy case; (ii) converting Orexigen's bankruptcy case to a case under chapter 7 of the Bankruptcy Code; or (iii) confirming any chapter 11 plan that does not effectuate in full the transactions and releases set forth in Paragraphs 2, 3 and 6 hereto, upon the entry of such final order, this Agreement shall automatically terminate, all parties' rights shall be restored to the status quo, and the Sabby Parties shall be entitled to resume or refile the District Court Case as applicable.

8. Each of the Parties shall be solely responsible for its own attorneys' fees and costs incurred in connection with this Agreement and the negotiations leading to the execution of this Agreement.

9. The Parties acknowledge that no fact pertaining to the making or consummation of this Agreement, nor the Agreement itself, shall be admissible in any proceeding or cause of

action (except an action to enforce this Agreement) as an admission of any liability or responsibility by any of the Parties. Indeed, all such liability or wrongdoing is expressly denied.

10. This Agreement constitutes the final agreement between the Parties, contains all of the final covenants, terms and conditions agreed upon by the Parties, and terminates, supersedes, and replaces any and all prior arrangements, understandings, representations, promises, inducements, or other communications, whether written or oral, between the Parties. No other agreements, oral or otherwise, shall be deemed to exist or to bind either of the Parties hereto with respect to the subject matter hereof. Each Party declares and represents that no understandings, statements, promises, or inducements contrary to the terms of this Agreement exist. This Agreement can only be amended in a writing signed by the Parties hereto unequivocally indicating their intention to modify the Agreement. Notwithstanding the foregoing, the Parties acknowledge that the Orexigen Plan and confirmation order will implement the terms of this Agreement and upon the effective date of the Orexigen Plan, such plan and confirmation order will supersede and replace this Agreement.

11. If any provision of this Agreement or its application to any person or circumstance is held invalid, the invalidity will not affect other provisions or applications of this Agreement that can be given effect without the invalid provision or application. This Agreement, any disputes which may arise in connection with the interpretation or enforcement of the Agreement, and the rights and obligations of the Parties generally shall be governed by the laws of the State of New York without regard or reference to choice or conflict of law rules.

12. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, and a signature sent by facsimile to counsel for the other Parties shall have the same force and effect as an original signature.

13. A fully executed copy of this Agreement shall be treated as an original for all purposes.

14. Each of the Parties acknowledges and represents that:

(a) it has the right, power, legal capacity and authority to enter into and to perform each of the obligations undertaken in this Agreement;

(b) each of the covenants and agreements contained in this Agreement shall inure to the benefit of and bind the Parties hereto, their respective agents, successors, representatives, heirs and/or assigns; and

(c) influence or duress it has executed this Agreement freely, with knowledge, and without

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15. The Parties shall execute, acknowledge and deliver and record such further instruments and do such further acts as may be reasonably necessary, desirable or proper to carry out more effectively the intent and purposes of this Agreement.

IN WITNESS WHEREOF, the Parties execute this Agreement by their duly authorized representatives.

By: SABBY VOLATILITY WARRANT MASTER FUND, LTD.

Name: Robert Grundstein
Title: COO of Investment Manager
Dated: January 18, 2019

By: SABBY HEALTHCARE MASTER FUND, LTD.

Name: Robert Grundstein
Title: COO of Investment Manager
Dated: January 18, 2019

By: U.S. BANK NATIONAL ASSOCIATION

Name:
Title:
Dated: January__, 2019

15. The Parties shall execute, acknowledge and deliver and record such further instruments and do such further acts as may be reasonably necessary, desirable or proper to carry out more effectively the intent and purposes of this Agreement.

IN WITNESS WHEREOF, the Parties execute this Agreement by their duly authorized representatives.

By: SABBY VOLATILITY WARRANT MASTER FUND, LTD.

_____

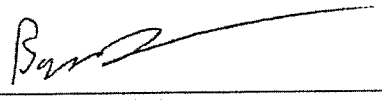
Name:
Title:
Dated: January__, 2019

By: SABBY HEALTHCARE MASTER FUND, LTD.

_____

Name:
Title:
Dated: January __, 2019

By: U.S. BANK NATIONAL ASSOCIATION



Name: Barry Ihrke
Title: Vice President
Dated: January 18, 2019

Acknowledged:

By: OREXIGEN THERAPUETICS, INC.

Name Thomas P. Lynch
:
Title: Chief Administrative Officer & General Counsel
Dated January__, 2019
: