Docket #1102 Date Filed: 05/15/2019

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]	

DECLARATION OF THOMAS P. LYNCH IN SUPPORT OF CONFIRMATION OF THE DEBTOR'S MODIFIED AMENDED PLAN OF LIQUIDATION

I, Thomas P. Lynch, declare as follows under penalty of perjury:

1. On March 12, 2018 (the "Petition Date"), Orexigen Therapeutics, Inc. (the "Debtor") filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") thereby commencing the above captioned case (the "Chapter 11 Case") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). I have served as the Debtor's Executive Vice President, Chief Administrative Officer, General Counsel and Secretary. Following the sale of substantially all of the Debtor's assets, on July 31, 2018, the Bankruptcy Court authorized my appointment as the Debtor's Sole Continuing Officer through the Effective Date of the Plan (as defined below), in which capacity I currently serve.

2. I submit this declaration (the "Declaration") on behalf of the Debtor in support of confirmation of the Debtor's *Modified Amended Chapter 11 Plan of Liquidation*, dated May 14, 2019 [D.I. 1099] (as may be altered, modified or supplemented from time to time, including by

[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 is Orexigen Therapeutics, Inc. c/o Hogan Lovells US LLP, 390 Madison Avenue New York, NY 10017, Attn: Chris Bryant and John Beck.

entry of the Confirmation Order, the "Plan"),[2] and the *Debtor's Memorandum of Law in Support of Confirmation of the Debtor's Modified Amended Plan of Liquidation* [D.I. 1101] (the "Memorandum"), filed contemporaneously herewith.

3. I am duly authorized to submit this Declaration on behalf of the Debtor. I have supervised the Chapter 11 Case and participated in the strategic planning and the formulation of the Disclosure Statement, Plan, and settlements embodied in the Plan. Except as otherwise indicated, all facts set forth in this Declaration are based upon my personal knowledge, belief and understanding upon my review of applicable books and records and other information available to me, discussions with the Debtor's advisors and agents, and my familiarity and experience with, and knowledge of, the Debtor's business, operations, financial affairs and Chapter 11 Case. If I were called upon to testify, I could and would, testify competently to the facts set forth herein.[3]

I. FACTS IN SUPPORT OF CONFIRMATION

4. I believe, based on my personal knowledge and advice from the Debtor's advisors, that the following facts support confirmation of the Plan for the reasons detailed in the Memorandum:

A. The Plan Has Been Proposed in Good Faith

5. The Plan is the result of months of extensive, good-faith, arm's-length negotiations among the Debtor, the Prepetition Secured Noteholders, the Creditors' Committee, the Sabby Parties and other parties in interest in the Chapter 11 Case.

[2] Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Disclosure Statement, Plan or Memorandum, as applicable.

[3] If the Court requires any additional testimony in support of confirmation, I am prepared to offer such testimony at the Confirmation Hearing.

6. The Plan embodies the terms of the *Stipulation Resolving Potential Challenges under Final DIP Order*, as approved by the Bankruptcy Court [D.I. 425] (the "Plan Settlement"), by and among the Creditors' Committee, the Debtor and the Required Prepetition Secured Noteholders. Pursuant to the Plan Settlement, the Creditors' Committee agreed, subject to certain conditions, to waive any potential Challenge (as defined in the Final DIP Order) involving the liens and security interests of the Prepetition Secured Noteholders and support the Sale and the Plan in exchange for, among other things, the Required Prepetition Secured Noteholders' agreement to (i) provide $2 million for distribution to unsecured creditors, (ii) contribute certain Causes of Action to the Wind Down Entity for the benefit of unsecured creditors, and (iii) subordinate their deficiency claim on account of the Prepetition Secured Notes to the claims of general unsecured creditors.

7. The Plan also embodies the terms of the Sabby Settlement Agreement (the "Sabby Settlement"), by and among the Sabby Parties, U.S. Bank National Association (in its capacities as Prepetition Secured Notes Indenture Trustee and Prepetition Collateral Agent), and the Debtor. Approval of the Sabby Settlement pursuant to the Plan was a material inducement for the parties to enter the Sabby Settlement Agreement, and I believe such approval is in the best interest of the Debtor, its creditors, and all parties in interest. The Sabby Settlement is a necessary component of the Plan and a product of the Debtor's sound business judgment, and should thus be approved.

8. In crafting and negotiating the terms of the Sale and Plan, including the Plan Settlement and the Sabby Settlement, and at all times during this Chapter 11 Case, it is my belief, and I have no reason to dispute, that each of the Debtor, the Required Prepetition Secured Noteholders, DIP Lenders and Creditors' Committee, and their respective advisors, conducted

itself honestly, with good intentions, and with a desire to maximize recoveries for all stakeholders. In particular, it is my belief that the Debtor and the Creditors' Committee have acted in accordance with their respective fiduciary duties at all such times. Significantly, the Sale, which generated recoveries for the Debtor's creditors to be distributed under the Plan, was, and the Plan is, supported by each of the Debtor's key economic stakeholders, including the Required Prepetition Secured Noteholders and the Creditors' Committee.

9. The Debtor proposed the Plan with the legitimate and honest purpose of liquidating and maximizing the value of the Debtor's remaining assets, and making distributions of the proceeds of the Sale and other cash on hand, in a manner that is (i) timely, orderly and efficient, and (ii) in the best interests of the Debtor's Estate and Holders of Allowed Claims. Additionally, the Debtor proposed the Plan in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and the orders of this Court.

B. Multiple Factors Support the Debtor Granting Debtor Releases and Exculpation

10. Multiple factors weigh in favor of the Debtor granting the proposed releases in Section 6.2(a) of the Plan (the "Debtor Releases"). First, the releases apply only to people or entities whose cooperation and support was necessary to allow the Debtor to liquidate through the Plan (*i.e.*, the DIP Lenders, the Required Prepetition Secured Noteholders, the Prepetition Secured Notes Indenture Trustee, the Creditors' Committee and its members (in their capacity as members of the Creditors' Committee), and the Prepetition Unsecured Notes Indenture Trustees). Each of the Released Parties, as stakeholders and critical participants in the plan process, share a common goal with the Debtor in seeing the Plan succeed and having distributions made to creditors in an expeditious manner.

11. Second, each party to the Debtor Releases provided substantial contributions to the Debtor and its bankruptcy. The Debtor Releases include parties that have provided direct

benefits to the Estate, including (i) Lota Zoth, in her capacity as a director, who served as the Sole Continuing Director following the closing of the Sale on July 27, 2018, and (ii) myself, in my capacity as the Sole Continuing Officer following the closing of the Sale on July 27, 2018. Further, the DIP Lenders, Required Prepetition Secured Noteholders, Creditors' Committee, and Prepetition Unsecured Notes Indenture Trustees made significant contributions to this Chapter 11 Case by, as may be applicable, ensuring the Debtor had the proper financing and use of cash collateral necessary to fund the Sale and its orderly wind down, and through helping the Debtor navigate the Sale and Plan processes to maximize recoveries for creditors and resolve disputes. All the Released Parties have been involved with negotiations and compromises that have positioned the Debtor to provide meaningful recoveries to holders of Claims, none of which would have been possible to the same extent in a Chapter 7 liquidation. The cooperation and work of the Released Parties enabled the Debtor to resolve crucial motions (specifically, those motions relating to DIP financing, cash collateral and the Sale) and reach a global settlement reflected in a consensual Plan and the Plan Settlement, which provides for, among other things, (i) waiver by the Creditors' Committee of its reserved right to commence a Challenge (as defined in the DIP Order) against the DIP Lenders and/or the Prepetition Secured Noteholders; and (ii) the Prepetition Secured Noteholders' agreement to (a) fund the Plan Settlement Initial Funding Amount and many of the reserves required to be funded under the Plan and Wind Down Entity Documents; and (b) subordination of the Prepetition Secured Noteholder Subordinated Deficiency Claim to Allowed General Unsecured Claims, which, given the expected recoveries in this Chapter 11 Case, is equivalent to a waiver of such claims, for the benefit of unsecured creditors.

12. Third, without the Debtor Releases, I do not believe that the compromises forming the basis of the Plan, Plan Settlement and Sabby Settlement, and the related benefits arising under the Plan would be possible. The releases were required by the Creditors' Committee, the DIP Lenders, Required Prepetition Secured Noteholders, Prepetition Unsecured Notes Indenture Trustees, and Sabby (with respect to resolving the Sabby Litigation Related Claims) to be included in the Plan as a condition to their support of the Plan and the settlements embodied therein.

13. Fourth, I understand that each Class entitled to vote on the Plan voted to accept the Plan.

14. Finally, the Releasing Parties will all receive distributions under the Plan greater than they would receive in a Chapter 7 liquidation. The Debtor's liquidation analysis in Article V of the Disclosure Statement makes it clear that under a Chapter 7 liquidation, the *only* Classes to receive any distribution at all would be Classes 2 and 3 – Other Secured Claims, if any, and Prepetition Secured Noteholder Claims. As a result of arm's-length negotiations with the Prepetition Secured Noteholders, Creditors' Committee, Prepetition Unsecured Notes Indenture Trustees, and other constituencies, the Plan provides for distributions to holders in Classes of lower priority, including the holders of General Unsecured Claims. Absent these negotiations and compromises with such parties, including the Plan Settlement and Sabby Settlement, the Debtor may have been forced to engage and defend protracted and expensive litigation resolving the disputes resolved and embodied in the Plan. The Debtor avoided hardships and increased recoveries for its creditors by negotiating the Plan Settlement and Sabby Settlement and granting releases.

15. Given the foregoing, I believe the Debtor Releases are a fundamental part of the Plan and represent a valid exercise of the Debtor's business judgment.

C. Multiple Facts Support Granting Consensual Third Party Releases

16. I believe that each of the non-Debtor Released Parties has made substantial contributions to the Chapter 11 Case, and their inclusion in the third party releases in Section 6.2(b) of the Plan was also a material inducement for their participation, negotiation, and ultimate resolution of Claims and Interests through the settlements among the Debtor, the Creditors' Committee, the DIP Lenders, and Prepetition Secured Noteholders. Each creditor entitled to vote on the Plan was afforded the opportunity to "opt out" of the third party releases. I understand that similar, consensual third party releases are commonly granted in this district, and I believe that the third party releases are fair, appropriate and essential to the Plan.

D. Facts Supporting the Exculpation Provision

17. The exculpation provisions are fair and equitable, are given for valuable consideration, and are in the best interests of the Debtor and its Estate. In addition, the exculpation provisions were negotiated with the Creditors' Committee and reflect the comments from the U.S. Trustee and are, as a result, now limited to estate fiduciaries and certain entities engaged in the implementation of the Plan. First, the Exculpated Parties are limited to estate fiduciaries who played, or will play, as the case may be, critical roles in the period leading up to the filing of the Chapter 11 Case, managing and implementing the Chapter 11 Case and Sale, formulating the Disclosure Statement, formulating and implementing and Plan, Wind Down Entity Documents, and related documents, in furtherance of the transactions contemplated and the settlements embodied in the Plan. These efforts were and continue to be extensive, and the agreements resulting from the involvement of the Exculpated Parties were negotiated and implemented in good faith and with a high degree of transparency. Second, the exculpation is

necessary and appropriate to protect parties who have made substantial contributions to the Debtor's Chapter 11 Case from future collateral attacks related to actions taken in good faith in connection with the Debtor and the Debtor's Chapter 11 Case. Third, the Plan, including the exculpation, is supported by all Classes of Claims entitled to vote on the Plan.

E. Facts Support the Injunction Provision

18. I also believe that the injunction provided by Section 6.2(g) of the Plan is necessary to effectuate and implement the Debtor's Plan after the Effective Date. The injunction serves to ensure no litigation is brought against any person or entity exculpated or released by Sections 6.1 or 6.2 of the Plan (subject to the limitations set forth in the Plan and Confirmation Order related to the Securities Litigation and Takeda dispute). Any such litigation would hinder the efforts of the Debtor and the Wind Down Administrator to effectively fulfill their respective responsibilities as contemplated in the Plan and thereby would undermine efforts to maximize value for all of the Debtor's stakeholders. Additionally, I understand and am advised that the injunction is narrowly tailored to achieve such purpose.

F. Facts to Support the Contract and Lease Rejection Provisions

19. I believe that all executory contracts and unexpired leases of the Debtor were assumed and assigned to the Purchaser, or rejected, during the pendency of the Chapter 11 Case. The Plan provides, however, that 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, other than any insurance policies of the Debtor, to the extent they are executory, including, but not limited, to any directors' and officers' liability insurance policies, which shall be deemed assumed on the Effective Date. Because the Debtor is liquidating, we determined it to be in the Debtor's best interest to reject all remaining executory contracts, other than insurance policies.

G. The Debtor Provided Solicitation Packages to Its Creditors and Interest Holders and Notice of its Confirmation Hearing

20. The Debtor, with the assistance of its balloting agent, Kurtzman Carson Consultants, LLC ("KCC"), served notices, Ballots, Solicitation Packages and associated documents on all Holders of Claims and Interests in the Debtor, each and to the extent applicable, as follows: (i) for all parties in Classes 1, 2, 6 and 7, a Confirmation Hearing Notice and Notice of Non-Voting Status (each as defined in the Joint Procedures Order); and (ii) for all parties in Classes 3, 4 and 5 entitled to vote under the Plan, a Solicitation Package.

21. Additionally, the Debtor directed KCC to mail or email a copy of the Confirmation Hearing Notice, as set forth in the Joint Procedures Order, to all known creditors and parties in interest, including counterparties to the executory contracts and unexpired leases, and other parties in interest entitled to receive such notice under the Bankruptcy Code, the Bankruptcy Rules and the Joint Procedures Order. Additionally, the Debtor, working with KCC and its other advisors, caused the Confirmation Hearing Notice to be published in *USA Today*, National Edition. I believe the solicitation and notice procedures were sufficient and I have been advised by the Debtor's advisors that they are similar to other procedures approved and implemented in this district.

II. OTHER INFORMATION NECESSARY TO SUPPORT CONFIRMATION OF THE PLAN

A. The Plan Places Claims in Classes with Other Similarly-Situated Claims

22. I have reviewed the classification of the Claims and Interests consisting of seven Classes and I believe that the Claims and Interests in each class are substantially similar to one another. I have worked with our advisors to ensure that Claims are classified accordingly. I have also reviewed the Classes and believe the Classes themselves are all based on reasonable

and valid business, factual, or legal considerations. The Debtor exercised its reasonable business judgment in creating the classification scheme.

B. Province, Inc. Will Serve as Wind Down Administrator; No Other Directors and Officers Will Remain

23. At any time after the Effective Date, 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 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. The identity of the Wind Down Administrator, Province, Inc., was disclosed in the Plan Supplement and Wind Down Entity Agreement. Province is a professional restructuring advisory firm and I believe its appointment as Wind Down Administrator is in the best interests of the Debtor's creditors. Furthermore, on the Effective Date, all remaining members of the Debtor's board of directors and executive officers of the Debtor shall be deemed to have resigned. Thus, no officers or directors of the Debtor will continue after the Effective Date of the Plan, except that I will continue as a consultant in the limited role as 401(k) Administrator, with additional oversight over the Professional Fee Escrow.

C. The Plan Provides Recoveries to Creditors that Equal or Exceed Recoveries in a Chapter 7 Liquidation

24. I am generally familiar with the liquidation analysis in Article V of the Disclosure and believe that the liquidation analysis is based on fair and reasonable assumptions given that the Debtor's primary asset is cash. I believe that the estimates as to the additional administrative and financial burdens that would exist for a hypothetical Chapter 7 estate are fair and reasonable and, based on those additional costs, I believe that each Class of Claims and Interests under the Plan would receive less in a hypothetical Chapter 7 liquidation.

D. The Plan Has Reasonable Assurance of Success

25. I believe that the Plan has more than a reasonable assurance of success. First, the Debtor has already sold substantially all of its assets and is liquidating. Second, Article 2 of the Plan provides for (i) distributions to Holders of Allowed Claims by the Debtor or Wind Down Entity, as applicable, (ii) the formation of the Wind Down Entity and appointment of the Wind Down Committee and Wind Down Administrator, (iii) the Debtor's distribution of the assets to the Wind Down Entity, and (iv) the Wind Down Administrator's further distribution to Holders of Allowed Claims. I understand that the ability to make distributions described in the Plan therefore does not depend on future earnings or operations of the Debtor. I believe the Wind Down Entity will have sufficient assets to accomplish its tasks under the Plan. Third, the Debtor has already taken significant steps to wind down in an orderly fashion during the Chapter 11 Case, including selling substantially all of the Debtor's assets in a Court-approved sale. Through the Plan and the compromises embodied therein, the Debtor has been able to effectuate a fair and reasonable distribution scheme that maximizes Creditor recoveries.

E. The Plan is Not an Attempt to Avoid Tax Obligations or the Requirements of Section 5 of the Securities Act

26. The Plan was not proposed for the avoidance of taxes or the requirements of Section 5 of the Securities Act of 1933, nor has there been any filing by any governmental agency asserting such avoidance.

F. Immediate Effectiveness of the Plan Will Benefit the Debtor and Its Estate The Confirmation Order Should be Effective Immediately upon Its Entry

27. I believe that good cause exists for waiving and eliminating any stay of the entry of the Confirmation Order so that the Confirmation Order will be effective immediately upon its entry. Implementing the Plan expeditiously will reduce costs and enable the Wind Down Entity to start making distributions on Allowed Claims and pursuing further recoveries in accordance

with the terms of the Wind Down Entity Documents. The sooner the transactions contemplated by the Plan are implemented, the fewer costs that the Debtor's Estate and Wind Down Entity will be forced to incur, which I believe is in the best interests of the Debtor, its Estate and Holders of Claims, and will not prejudice any parties in interest.

G. The Debtor Has Satisfied the Requirements of Local Rule 3017-2 to Allow the Bankruptcy Court to Conduct a Combined Hearing on Final Approval of the Disclosure Statement and Confirmation of the Plan.

28. Pursuant to the Joint Procedures Order, the Debtor sought and was granted a combined hearing to consider approval of the Disclosure Statement on a final basis and confirmation of the Plan pursuant to Local Rule 3017-2. I believe based on personal knowledge and the advice of the Debtor's advisors that the Debtor has satisfied all the requirements of Local Rule 3017-2. At the time the Joint Procedures Order was entered, the Debtor had approximately $25.2 million in cash on hand. However, the Debtor has since made payments in the course of its Chapter 11 Case. Accordingly, as of the date of this Memorandum, the Debtor has assets for distribution under the Plan of about $24.3 million, which is under the $25 million limit imposed by Local Rule 3017-2.

29. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information and belief.

Date: May 14, 2019

/s/ Thomas P. Lynch

Thomas P. Lynch
Title: Chief Administrative Officer and General Counsel