

**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)

Re: **D.I. 12 & 51**

CERTIFICATION OF COUNSEL REGARDING DEBTOR'S MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (A) AUTHORIZING THE DEBTOR TO (I) CONTINUE ITS CASH MANAGEMENT SYSTEMS, (II) HONOR CERTAIN RELATED PREPETITION OBLIGATIONS, (III) MAINTAIN EXISTING BUSINESS FORMS, AND (IV) CONTINUE TO PERFORM INTERCOMPANY TRANSACTIONS, (B) AUTHORIZING AND DIRECTING THE DEBTOR'S BANKS TO HONOR ALL RELATED PAYMENT REQUESTS, (C) GRANTING INTERIM AND FINAL WAIVERS OF THE DEBTOR'S COMPLIANCE WITH SECTION 345(B) OF THE BANKRUPTCY CODE, (D) SCHEDULING A FINAL HEARING, AND (E) GRANTING RELATED RELIEF

I, Jose F. Bibiloni, of Morris, Nichols, Arsht & Tunnell LLP, proposed bankruptcy co-counsel to the above-captioned debtor and debtor-in-possession (the "Debtor"), hereby certify as follows regarding the attached revised form of order approving the *Debtor's Motion For Entry Of Interim And Final Orders (A) Authorizing The Debtor To (I) Continue Its Cash Management Systems, (II) Honor Certain Related Prepetition Obligations, (III) Maintain Existing Business Forms, And (IV) Continue To Perform Intercompany Transactions, (B) Authorizing And Directing The Debtor's Banks To Honor All Related Payment Requests, (C) Granting Interim And Final Waivers Of The Debtor's Compliance With Section 345(b) Of The Bankruptcy Code, (D) Scheduling A Final Hearing, And (E) Granting Related Relief* (D.I. 7) (the "Motion"):

1. On March 12, 2018, the Debtor filed and served the Motion.

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 3344 North Torrey Pines Court, Suite 200, La Jolla, CA 92037.



2. On March 13, 2018 the Court entered an order granting the relief sought in the Motion on an interim basis (D.I. 47).

3. The deadline to file objections to the entry of a final order was April 3, 2018 at 4:00 p.m. (ET) (the “Objection Deadline”), which was extended for the Official Committee of Unsecured Creditors (the “Committee”) until April 6, 2018 at 4:00 p.m. (ET) and Wilmington Trust as Trustee for the 2.75% Convertible Senior Notes Due 2020 until April 9, 2018 at 12:00 (noon) (ET). No party filed a formal objection to the Motion before the Objection Deadline.

4. The Committee filed a reservation of rights with respect to the Motion at D.I. 125. The Debtor also received informal comments on the Motion from the Office of the United States Trustee (the “U.S. Trustee”), and the DIP Lenders prior to the Objection Deadline.

5. The Debtor agreed to revise the proposed final order granting the Motion. Attached hereto as **Exhibit A** is a revised proposed final order granting the Motion (the “Proposed Final Order”). Attached as **Exhibit B** is a redline of the Proposed Final Order showing the changes made to the order that was originally filed with the Motion.

6. The Committee, the U.S. Trustee, and the DIP Lenders have reviewed the Proposed Final Order and have no objection to its entry.

WHEREFORE, the Debtor respectfully requests that the Court enter the Proposed Final Order attached as **Exhibit A** at its earliest convenience.

[Signature follows]

Dated: April 10, 2018
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Jose F. Bibiloni

Robert J. Dehney (No. 3578)
Andrew R. Remming (No. 5120)
Jose F. Bibiloni (No. 6261)
1201 N. Market St., 16th Floor
P.O. Box 1347
Wilmington, DE 19899-1347
Telephone: (302) 658-9200
Facsimile: (302) 658-3989
rdehney@mnat.com
aremming@mnat.com
jbibiloni@mnat.com

- and -

Christopher R. Donoho, III (admitted *pro hac vice*)
Christopher R. Bryant (admitted *pro hac vice*)
John D. Beck (admitted *pro hac vice*)
HOGAN LOVELLS US LLP
875 Third Avenue
New York, NY 10022
Telephone: (212) 918-3000
Facsimile: (212) 918-3100
chris.donoho@hoganlovells.com
christopher.bryant@hoganlovells.com
john.beck@hoganlovells.com

Proposed Counsel for Debtor and Debtor in Possession

EXHIBIT A

Proposed Order

**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)

Re: D.I. 7, 37, 125

FINAL ORDER GRANTING DEBTOR'S MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (A) AUTHORIZING THE DEBTOR TO (I) CONTINUE ITS CASH MANAGEMENT SYSTEM, (II) HONOR CERTAIN RELATED PREPETITION OBLIGATIONS, (III) MAINTAIN EXISTING BUSINESS FORMS, AND (IV) CONTINUE TO PERFORM INTERCOMPANY TRANSACTIONS, (B) AUTHORIZING AND DIRECTING THE DEBTOR'S BANKS TO HONOR ALL RELATED PAYMENT REQUESTS, (C) GRANTING INTERIM AND FINAL WAIVERS OF THE DEBTOR'S COMPLIANCE WITH SECTION 345(B) OF THE BANKRUPTCY CODE, (D) SCHEDULING A FINAL HEARING, AND (E) GRANTING RELATED RELIEF

Upon the motion (the "Motion")² of the above-captioned debtor and debtor in possession (the "Debtor") for entry of interim and final orders (this "Final Order"), (a) authorizing the Debtor to (i) continue its Cash Management System, (ii) honor certain related prepetition obligations, (iii) maintain its existing Business Forms in the ordinary course of business, and (iv) continue to perform the Intercompany Transactions in the ordinary course and with the consent of the DIP Administrative Agent, (b) authorizing and directing the Debtor's Banks to honor all related payment requests, (c) waiving the Debtor's compliance with investment guidelines set forth in section 345(b) of the Bankruptcy Code, (d) scheduling the Final Hearing and (e) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the

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² Capitalized terms not defined in this Final Order are defined in the Motion.

Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtor's estate, its creditors, and other parties in interest; and this Court having found that the Debtor's notice of the Motion was appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT:**

1. The Motion is GRANTED on a final basis as set forth herein.
2. All relief granted in the Interim Order is hereby granted on a final basis.
3. The Debtor is authorized, but not directed, to: (a) continue operating the Cash Management System, as described in the Motion; (b) honor its prepetition obligations related thereto; (c) maintain its existing Business Forms; and (d) continue to perform Intercompany Transactions in the ordinary course and with the consent of the DIP Administrative Agent, in each case subject to the limitations described in the Motion, the Interim Order, this Final Order.

4. The Debtor is further authorized, in its sole discretion, to: (a) continue to use, with the same account numbers, the Bank Accounts in existence as of the Petition Date, including those accounts identified on Exhibit C attached to the Motion, except that its investment account at U.S. Bank shall be closed; (b) use, in its present form, the Business Forms, as well as correspondence, checks and other documents related to the Bank Accounts existing immediately before the Petition Date and thereafter, without reference to the Debtor's status as debtor in possession; provided that once the Debtor's preprinted correspondence, Business Forms (including letterhead) and existing checks have been used, the Debtor shall, when reordering, require the designation "Debtor in Possession" and the corresponding bankruptcy case number on all such documents; provided further that, with respect to checks and letterhead which the Debtor or its agents print themselves, the Debtor shall begin printing the "Debtor in Possession" legend and the bankruptcy case number on such items within ten (10) days of the date of entry of this Order; (c) treat the Debtor's existing Bank Accounts for all purposes as accounts of the Debtor as debtor in possession; (d) deposit funds in and withdraw funds from the Bank Accounts by all usual means, including checks, wire transfers, and other debits; (e) pay the prepetition Bank Fees; and (f) pay any ordinary course Bank Fees incurred in connection with the Debtor's existing Bank Accounts, and to otherwise perform its obligations under the documents governing the Debtor's existing Bank Accounts. Any requirements by the United States Trustee or otherwise to open separate debtor-in-possession accounts are waived, unless otherwise specified herein.

5. Each of the Banks is authorized to debit the Debtor's accounts in the ordinary course of business without need for further order of this Court for: (a) all checks, items, and other payment orders drawn on the Debtor's accounts which are cashed at such Bank's

counters or exchanged for cashier's checks by the payees thereof prior to the Bank's receipt of notice of filing of this Chapter 11 Case; (b) all checks, automated clearing house entries, and other items deposited or credited to one of the Debtor's accounts with such Bank prior to the commencement of this Chapter 11 Case which have been dishonored, reversed, or returned unpaid for any reason, together with any fees and costs in connection therewith, to the same extent the individual Debtor was responsible for such items prior to commencement of this Chapter 11 Case; and (c) all undisputed prepetition amounts outstanding as of the date hereof, if any, owed to any Bank as service charges for the maintenance of the Cash Management System.

6. All Banks at which the Debtor's existing Bank Accounts are maintained are authorized to continue to maintain, service, and administer the Debtor's existing Bank Accounts as accounts of the Debtor as debtor in possession, without interruption and in the ordinary course, and to receive, process, honor, and pay, to the extent of available funds, any and all checks, drafts, wires, credit card payments, and ACH transfers issued and drawn on the Debtor's existing Bank Accounts after the Petition Date by the holders or makers thereof, as the case may be.

7. All Banks provided with notice of this Final Order maintaining any of the Debtor's existing Bank Accounts shall not honor or pay any bank payments drawn on the listed Bank Accounts or otherwise issued before the Petition Date for which the Debtor specifically issues stop payment orders in accordance with the documents governing such Bank Accounts.

8. In the course of providing cash management services to the Debtor, each of the Banks is authorized, without further order of this Court, to deduct the applicable fees from the appropriate accounts of the Debtor, and further, to charge back to the appropriate accounts of the Debtor any amounts resulting from returned checks or other returned items, including

returned items that result from ACH transactions, wire transfers, or other electronic transfers of any kind, regardless of whether such items were deposited or transferred prepetition or postpetition and regardless of whether the returned items relate to prepetition or postpetition items or transfers.

9. Subject to the terms set forth herein, any of the Debtor's Banks may rely on the representations of the Debtor with respect to whether any check, item, or other payment order drawn or issued by the Debtor prior to filing of the Petition should be honored pursuant to this or any other order of this Court, and such Bank shall not have any liability to any party for relying on such representations by the Debtor as provided for herein.

10. Any Banks are further authorized to (a) honor the Debtor's directions with respect to the opening and closing of any Bank Account and (b) accept and hold, or invest, the Debtor's funds in accordance with the Debtor's instructions; provided, however, that the Debtor's banks shall not have any liability to any party for relying on such representations to the extent such reliance otherwise complies with applicable law.

11. The Debtor is authorized to open any new Bank Accounts or close any existing Bank Accounts, as it may deem necessary and appropriate in its discretion and in consultation with the DIP Lenders; provided, however, that the Debtor gives notice within fifteen (15) days to the Office of the United States Trustee for the District of Delaware and the Official Committee of Unsecured Creditors (the "Committee") in this Chapter 11 Case; provided further, however, that the Debtor shall open any such new Bank Account at banks that have executed a Uniform Depository Agreement with the Office of the United States Trustee for the District of Delaware, or at such banks that are willing to immediately execute such an agreement.

12. The Debtor shall not be subject to the investment and deposit requirements of section 345(b) of the Bankruptcy Code solely with respect to the U.S. Bank account and only for such time as is necessary to close the U.S. Bank account.

13. The Debtor is authorized to continue engaging in Intercompany Transactions in connection with the Cash Management System in the ordinary course of business and with the consent of the DIP Administrative Agent and the Committee; provided, however, that there shall be no intercompany loans from the Debtor to any non-debtors, absent further order of the Court.

14. The Committee shall retain and has reserved all rights with respect to all intercompany transactions, both pre-petition and post-petition, between the Debtor and its subsidiary Orexigen Therapeutics Ireland Limited [D.I. 125].

15. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (a) an admission as to the validity of any prepetition claim against the Debtor; (b) a waiver of the Debtor's right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Final Order or the Motion; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; or (f) a waiver of the Debtor's rights under the Bankruptcy Code or any other applicable law.

16. Notwithstanding any applicability of any of the Bankruptcy Rules, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

17. The Debtor is authorized to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

18. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.

_____, 2018
Wilmington, Delaware

THE HONORABLE KEVIN GROSS
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

Redline of Proposed Final Order to
Original Order Filed on March 12, 2018

**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~~)

Re: D.I. ~~7~~, 37, 125

FINAL ORDER GRANTING DEBTOR'S MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (A) AUTHORIZING THE DEBTOR TO (I) CONTINUE ITS CASH MANAGEMENT SYSTEM, (II) HONOR CERTAIN RELATED PREPETITION OBLIGATIONS, (III) MAINTAIN EXISTING BUSINESS FORMS, AND (IV) CONTINUE TO PERFORM INTERCOMPANY TRANSACTIONS, (B) AUTHORIZING AND DIRECTING THE DEBTOR'S BANKS TO HONOR ALL RELATED PAYMENT REQUESTS, (C) GRANTING INTERIM AND FINAL WAIVERS OF THE DEBTOR'S COMPLIANCE WITH SECTION 345(B) OF THE BANKRUPTCY CODE, (D) SCHEDULING A FINAL HEARING, AND (E) GRANTING RELATED RELIEF

Upon the motion (the "Motion")² of the above-captioned debtor and debtor in possession (the "Debtor") for entry of interim and final orders (this "Final Order"), (a) authorizing the Debtor to (i) continue its Cash Management System, (ii) honor certain related prepetition obligations, (iii) maintain its existing Business Forms in the ordinary course of business, and (iv) continue to perform the Intercompany Transactions in the ordinary course and with the consent of the DIP Administrative Agent, (b) authorizing and directing the Debtor's Banks to honor all related payment requests, (c) waiving the Debtor's compliance with investment guidelines set forth in section 345(b) of the Bankruptcy Code, (d) scheduling

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the Final Hearing and (e) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtor's estate, its creditors, and other parties in interest; and this Court having found that the Debtor's notice of the Motion was appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is GRANTED on a final basis as set forth herein.
2. All relief granted in the Interim Order is hereby granted on a final basis.
3. The Debtor is authorized, but not directed, to: (a) continue operating the Cash Management System, as described in the Motion; (b) honor its prepetition obligations related thereto; (c) maintain its existing Business Forms; and (d) continue to perform Intercompany Transactions in the ordinary course and with the consent of the DIP

Administrative Agent, in each case subject to the limitations described in the Motion, the Interim Order, this Final Order.

4. The Debtor is further authorized, in its sole discretion, to: (a) continue to use, with the same account numbers, the Bank Accounts in existence as of the Petition Date, including those accounts identified on Exhibit C attached to the Motion, except that its investment account at U.S. Bank shall be closed; (b) use, in its present form, the Business Forms, as well as correspondence, checks and other documents related to the Bank Accounts existing immediately before the Petition Date and thereafter, without reference to the Debtor's status as debtor in possession; provided that once the Debtor's preprinted correspondence, Business Forms (including letterhead) and existing checks have been used, the Debtor shall, when reordering, require the designation "Debtor in Possession" and the corresponding bankruptcy case number on all such documents; provided further that, with respect to checks and letterhead which the Debtor or its agents print themselves, the Debtor shall begin printing the "Debtor in Possession" legend and the bankruptcy case number on such items within ten (10) days of the date of entry of this Order; (c) treat the Debtor's existing Bank Accounts for all purposes as accounts of the Debtor as debtor in possession; (d) deposit funds in and withdraw funds from the Bank Accounts by all usual means, including checks, wire transfers, and other debits; (e) pay the prepetition Bank Fees; and (f) pay any ordinary course Bank Fees incurred in connection with the Debtor's existing Bank Accounts, and to otherwise perform its obligations under the documents governing the Debtor's existing Bank Accounts. Any requirements by the United States Trustee or otherwise to open separate debtor-in-possession accounts are waived, unless otherwise specified herein.

5. Each of the Banks is authorized to debit the Debtor's accounts in the ordinary course of business without need for further order of this Court for: (a) all checks, items, and other payment orders drawn on the Debtor's accounts which are cashed at such Bank's counters or exchanged for cashier's checks by the payees thereof prior to the Bank's receipt of notice of filing of this Chapter 11 Case; (b) all checks, automated clearing house entries, and other items deposited or credited to one of the Debtor's accounts with such Bank prior to the commencement of this Chapter 11 Case which have been dishonored, reversed, or returned unpaid for any reason, together with any fees and costs in connection therewith, to the same extent the individual Debtor was responsible for such items prior to commencement of this Chapter 11 Case; and (c) all undisputed prepetition amounts outstanding as of the date hereof, if any, owed to any Bank as service charges for the maintenance of the Cash Management System.

6. All Banks at which the Debtor's existing Bank Accounts are maintained are authorized to continue to maintain, service, and administer the Debtor's existing Bank Accounts as accounts of the Debtor as debtor in possession, without interruption and in the ordinary course, and to receive, process, honor, and pay, to the extent of available funds, any and all checks, drafts, wires, credit card payments, and ACH transfers issued and drawn on the Debtor's existing Bank Accounts after the Petition Date by the holders or makers thereof, as the case may be.

7. All Banks provided with notice of this Final Order maintaining any of the Debtor's existing Bank Accounts shall not honor or pay any bank payments drawn on the listed Bank Accounts or otherwise issued before the Petition Date for which the Debtor specifically issues stop payment orders in accordance with the documents governing such Bank Accounts.

8. In the course of providing cash management services to the Debtor, each of the Banks is authorized, without further order of this Court, to deduct the applicable fees from the appropriate accounts of the Debtor, and further, to charge back to the appropriate accounts of the Debtor any amounts resulting from returned checks or other returned items, including returned items that result from ACH transactions, wire transfers, or other electronic transfers of any kind, regardless of whether such items were deposited or transferred prepetition or postpetition and regardless of whether the returned items relate to prepetition or postpetition items or transfers.

9. Subject to the terms set forth herein, any of the Debtor's Banks may rely on the representations of the Debtor with respect to whether any check, item, or other payment order drawn or issued by the Debtor prior to filing of the Petition should be honored pursuant to this or any other order of this Court, and such Bank shall not have any liability to any party for relying on such representations by the Debtor as provided for herein.

10. Any Banks are further authorized to (a) honor the Debtor's directions with respect to the opening and closing of any Bank Account and (b) accept and hold, or invest, the Debtor's funds in accordance with the Debtor's instructions; provided, however, that the Debtor's banks shall not have any liability to any party for relying on such representations to the extent such reliance otherwise complies with applicable law.

11. The Debtor is authorized to ~~(a)~~ open any new Bank Accounts or close any existing Bank Accounts, ~~and (b) enter into any ancillary agreements, related to the foregoing,~~ as it may deem necessary and appropriate in its discretion and in consultation with the DIP Lenders; provided, however, that ~~in the event that the Debtor opens or closes any Bank Accounts, such opening or closing shall be timely indicated on the Debtor's monthly~~

~~operating reports and notice of such opening or closing shall be provided~~ gives notice within fifteen (15) days to the Office of the United States Trustee for the District of Delaware ~~within 15 days~~ and the Official Committee of Unsecured Creditors (the "Committee") in this Chapter 11 Case; provided further, however, that the Debtor shall open any such new Bank Account at banks that have executed a Uniform Depository Agreement with the Office of the United States Trustee for the District of Delaware, or at such banks that are willing to immediately execute such an agreement.

12. The Debtor shall not be subject to the investment and deposit requirements of section 345(b) of the Bankruptcy Code solely with respect to the U.S. Bank account and only for such time as is necessary to close the U.S. Bank account.

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14. The Committee shall retain and has reserved all rights with respect to all intercompany transactions, both pre-petition and post-petition, between the Debtor and its subsidiary Orexigen Therapeutics Ireland Limited [D.I. 125].

15. ~~14.~~ Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (a) an admission as to the validity of any prepetition claim against the Debtor; (b) a waiver of the Debtor's right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified

or defined in this Final Order or the Motion; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; or (f) a waiver of the Debtor's rights under the Bankruptcy Code or any other applicable law.

16. ~~15.~~ Notwithstanding any applicability of any of the Bankruptcy Rules, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

17. ~~16.~~ The Debtor is authorized to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

18. ~~17.~~ This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.

_____, 2018
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

Summary report:	
Litéra® Change-Pro 7.5.0.135 Document comparison done on 4/10/2018 12:45:50 PM	
Style name: Default Style	
Intelligent Table Comparison: Active	
Original DMS: iw://HLEAST/NEWYORK/8676812/1	
Modified DMS: iw://HLEAST/NEWYORK/8676812/5	
Changes:	
Add	18
Delete	11
Move From	0
Move To	0
Table Insert	0
Table Delete	0
Table moves to	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	29