

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

OREXIGEN THERAPEUTICS, INC.,

Debtor.<sup>1</sup>

Chapter 11

Case No. 18-10518 (KG)

**Hearing Date: March 27, 2019, at  
2:00 p.m. (Prevailing Eastern Time)**

**Objection Deadline: March 20, 2019,  
at 4:00 p.m. (Prevailing Eastern  
Time)**

**DEBTOR’S MOTION FOR ENTRY OF AN ORDER (A) APPROVING  
THE DISCLOSURE STATEMENT ON AN INTERIM BASIS, (B) ESTABLISHING  
PROCEDURES FOR SOLICITATION AND TABULATION OF VOTES  
TO ACCEPT OR REJECT THE PLAN, (C) APPROVING THE FORMS  
OF BALLOTS AND SOLICITATION MATERIALS, (D) ESTABLISHING  
THE VOTING RECORD DATE, (E) SCHEDULING THE CONFIRMATION HEARING  
AND DEADLINE FOR FILING OBJECTIONS TO FINAL  
APPROVAL OF THE DISCLOSURE STATEMENT AND CONFIRMATION  
OF THE PLAN, AND (F) APPROVING THE RELATED FORM OF NOTICE**

Orexigen Therapeutics, Inc., the debtor and debtor in possession in the above-captioned chapter 11 case (the “Case”), hereby submits this motion (this “Motion”), pursuant to sections 105(a), 1125, 1126, and 1128 of title 11 of the United States Code, Rules 2002(b), 3017, 3018, and 3020 of the Federal Rules of Bankruptcy Procedure, and Rules 2002-1 and 3017-2 of the Local Rules of Bankruptcy Practice and Procedures of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Joint Interim Approval and Procedures Order”), (a) approving on an interim basis the adequacy of the disclosures set forth in *Disclosure Statement for Debtor’s Plan of Liquidation* (as may be amended from time to time, the “Disclosure Statement”), which,

<sup>1</sup> 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, 875 Third Avenue, New York, NY 10022, Attn: Chris Bryant and John Beck.



along with *Debtor's Plan of Liquidation* (as may be amended from time to time, the "Plan"), is being filed contemporaneously herewith, (b) establishing procedures for solicitation and tabulation of votes to accept or reject the Plan, (c) approving the forms of ballots and solicitation materials, (d) establishing the Voting Record Date (as defined below), (e) establishing procedures to ensure the accuracy of the Debtor's note register with respect to its Prepetition Secured Notes; (f) scheduling the joint hearing to consider final approval of the adequacy of the Disclosure Statement and confirmation of the Plan (the "Confirmation Hearing") and setting the deadline for objections thereto (the "Confirmation Objection Deadline"), and (g) approving the related form of notice. In support hereof, the Debtor respectfully states as follows:

**JURISDICTION; VENUE; STATUTORY BASES**

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are sections 105(a) and (d), 1125, 1126, and 1128 of the Bankruptcy Code, Bankruptcy Rules 2002(b), 3017, 3018, and 3020, and Local Rules 2002-1 and 3017-2.

**BACKGROUND**

**I. GENERAL BACKGROUND**

3. On March 12, 2018, the Debtor commenced the Case<sup>2</sup> by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

4. The Debtor is administering the Case as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed

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<sup>2</sup> Capitalized terms not otherwise defined herein shall be given the meanings ascribed to them in the Plan and Disclosure Statement, as applicable, filed contemporaneously herewith.

in the Case. On March 27, 2018, the Office of the United States Trustee appointed the Official Committee of Unsecured Creditors (the “Creditors’ Committee”) in the Case.

5. The Debtor was a biopharmaceutical company focused on the treatment of obesity. A detailed description of the Debtor’s business, capital structure, and the events leading to the Case are fully set forth in the *Declaration of Michael A. Narachi in Support of First Day Relief* (D.I. 3) (the “First Day Declaration”).

## **II. THE PLAN AND DISCLOSURE STATEMENT**

6. The Disclosure Statement provides a detailed description of, among other things, the Debtor’s prepetition capital structure, the events leading to the filing of the Case and summaries of certain material events that have occurred during the Case.

7. The Plan creates the framework for the payment of Administrative Expense Claims, Professional Fee Claims and Priority Tax Claims, and establishes the Wind Down Entity that will administer the Wind Down Assets for the benefit of Holders of General Unsecured Claims and Holders of Prepetition Secured Noteholder Claims.

8. Additionally, the Plan implements the Plan Settlement between and among the Debtor, Creditors’ Committee, DIP Lenders, and Required Prepetition Secured Noteholders. 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. Under the Plan Settlement, among other things, the Prepetition Secured Noteholders agreed to carve out \$2 million from their recoveries and to contribute the Causes of Action to, and for the benefit of, General Unsecured Creditors. In addition, the Prepetition Secured Noteholders agreed to subordinate their Prepetition Secured Noteholder Subordinated Deficiency Claim in full to Allowed General Unsecured Claims. The

Plan also embodies the Sabby Settlement which resolves litigation commenced by certain holders of Prepetition Secured Notes against the Prepetition Secured Notes Indenture Trustee related to challenging the roll-up under the Debtor's debtor-in-possession financing facility and the holders' expected objections to confirmation of the Plan.

9. Through this Motion, the Debtor seeks approval of the Disclosure Statement, in two stages, and confirmation of the Plan. In the first stage, the Debtor seeks, among other things, entry of an order, substantially in the form attached hereto as **Exhibit A**, (a) approving the adequacy of the Disclosure Statement on an interim basis, (b) establishing procedures for solicitation and tabulation of votes to accept or reject the Plan, (c) approving the forms of ballots and solicitation materials, (d) establishing the Voting Record Date, (e) establishing procedures to ensure the accuracy of the Debtor's note register with respect to its Prepetition Secured Notes, (f) scheduling the Confirmation Hearing and setting the deadline for objections to approval of the adequacy of the Disclosure Statement on a final basis and to confirmation of the Plan, and (g) approving the related form of notice. In the second stage, at the Confirmation Hearing, the Debtor will seek approval of the Disclosure Statement on a final basis and confirmation of the Plan.

10. By proceeding in this manner, the Debtor seeks to save meaningful estate resources by streamlining the Chapter 11 plan process. The Debtor believes that the Plan provides the most efficient means to maximize value of the Debtor's remaining assets, distribute proceeds thereof to Holders of Allowed Claims, and otherwise wind-down the Debtor and conclude the Case.

11. The Plan is a liquidating plan within the purview of Local Rule 3017-2. The Plan provides for, among other things, the establishment of a Wind Down Entity for the purpose of

administering the Debtor's remaining assets, which will (i) reconcile Claims, liquidate the Wind Down Assets, implement the Takeda Reconciliation, and make distributions to Holders of Allowed Claims; (ii) pursue Causes of Action for the benefit of Holders of General Unsecured Claims; and (iii) collect the Holdback Amounts due under the APA, enforce the Asset Purchase Agreement Claims, and liquidate and/or obtain turnover from third parties of Prepetition Secured Notes Collateral, for the benefit of Holders of Allowed Prepetition Secured Noteholder Claims.

12. A summary of the key dates that the Debtor seeks to establish by the Joint Interim Approval and Procedures Order are as follows:

<b>Proposed Timetable</b>	
Note Register Notices to be Sent	Friday, March 29, 2019
Note Register Response Deadline	Monday, April 8, 2019, at 4:00 p.m. (prevailing Eastern time)
Voting Record Date	Tuesday, April 9, 2019, at 4:00 p.m. (prevailing Eastern time)
Solicitation Commencement Date	Friday, April 12, 2019
Proof of Claim Objection Deadline (Voting Purposes Only)	Wednesday, April 17, 2019
Rule 3018 Motion Deadline	Friday, April 26, 2019, at 4:00 p.m. (prevailing Eastern time)
Plan Supplement Filing Deadline	Monday, April 29, 2019
Rule 3018 Objection Deadline	Friday, May 3, 2019, at 4:00 p.m. (prevailing Eastern time)
Confirmation Objection Deadline	Monday, May 6, 2019, at 4:00 p.m. (prevailing Eastern time)

Voting Deadline	Monday, May 13, 2019, at 4:00 p.m. (prevailing Eastern time)
Reply Deadline	Wednesday, May 15, 2019
Confirmation Hearing	Friday, May 17, 2019, at 11:00 a.m. (prevailing Eastern time)

13. The Plan contemplates classifying all Claims against and Interests in the Debtor, other than Administrative Expense Claims, Professional Fee Claims and Priority Tax Claims, as follows:

Class	Type	Status Under Plan	Voting Status	Recovery Estimate
1	Priority Claims	Unimpaired	Deemed to Accept	100%
2	Other Secured Claims	Unimpaired	Deemed to Accept	100%
3	Prepetition Secured Noteholder Claims	Impaired	Entitled to Vote	13-18%
4	General Unsecured Claims	Impaired	Entitled to Vote	2%
5	Prepetition Secured Noteholder Subordinated Deficiency Claims	Impaired	Entitled to Vote	0.00%
6	Interests	Impaired	Deemed to Reject	0.00%

14. The Debtor respectfully submits that the Disclosure Statement complies with all aspects of section 1125 of the Bankruptcy Code. However, by this Motion, the Debtor seeks only interim approval of the adequacy of the Disclosure Statement at the Joint Procedures Hearing. Then, pursuant to this Motion, at the Confirmation Hearing, the Debtor will seek final approval of the adequacy of the Disclosure Statement and confirmation of the Plan.

15. The Debtor submits that Local Rule 3017-2 applies here because (a) the Debtor completed a sale of substantially all of its assets;<sup>3</sup> (b) the Debtor's remaining assets will be liquidated under the Plan, (c) the Plan complies with section 1129(a)(9) of the Bankruptcy Code, (d) the Plan does not seek non-consensual releases/injunctions with respect to claims creditors may hold against non-debtor parties, and (e) the Debtor's combined assets to be distributed under the Plan are estimated, in good faith, to be worth less than \$25 million. *See* Local Rule 3017-2(a).

**HIGHLIGHTED PROVISIONS UNDER LOCAL RULE 3017-2(C)(II)**

16. Local Rule 3017-2(c)(ii) requires a debtor to highlight and identify the location of certain provisions that may be included in its plan and/or proposed form of confirmation order:

- (a) *Local Rule 3017-2(c)(ii)(A) requires the disclosure of provisions that seek consensual releases/injunctions with respect to claims creditors may hold against non-debtor parties.* Section 6.2(b) of the Plan provides that Holders of Claims against and Interests in the Debtor who (i) vote to accept the Plan, (ii) are deemed to have accepted the Plan, (iii) abstain from voting on the Plan, or (iv) vote to reject the Plan and do not opt out of the releases contained in the Plan will grant releases to (a) the DIP Lenders and all of their respective Related Persons; (b) the Required Prepetition Secured Noteholders, who are comprised of 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); (c) 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); and (d) the Prepetition Secured

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<sup>3</sup> On June 28, 2018, the Court entered an order (D.I. 438) authorizing the sale of substantially all of the Debtor's assets.

Notes Indenture Trustee and each of their respective Related Persons.

i. *Local Rule 3017-2(c)(ii)(B) requires the disclosure of provisions that seek to release any claims the debtor may have against non-debtor parties who are insiders of a debtor.* Section 6.2(a) of the Plan provides that Debtor will release all Debtor Related Persons of the Debtor and its Estate, including their respective current and former advisors, attorneys, financial advisors, investment bankers, and agents, all solely in their capacity as such, Lota Zoth in her capacity as a director, and Thomas Lynch in his capacities as an officer and director.

(b) *Local Rule 3017-2(c)(ii)(C) requires the disclosure of any provision that seeks an exemption under section 1146 of the Bankruptcy Code.* The Plan does not provide for such exemptions.

### **BASIS FOR RELIEF REQUESTED**

#### **I. INTERIM APPROVAL OF THE DISCLOSURE STATEMENT**

17. Pursuant to section 1125(b) of the Bankruptcy Code, a plan proponent must provide holders of impaired claims and interests entitled to vote with “adequate information” regarding its proposed chapter 11 plan. The Debtor respectfully submits that the Disclosure Statement contains “adequate information” within the meaning of section 1125(a)(1) of the Bankruptcy Code and should be approved by this Court on an interim basis and, at the Confirmation Hearing, on a final basis.

18. Section 1125(a)(1) of the Bankruptcy Code provides:

“[A]dequate information” means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor’s books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such hypothetical investor of the relevant class to make an informed judgment about the plan ....



11 U.S.C. § 1125(a)(1). A debtor's disclosure statement must, as a whole, provide information that is sufficiently detailed, so far as "reasonably practicable," to permit an "informed judgment" by impaired creditors entitled to vote on the plan. *In re Ryan Operations G.P. v. Santiam-Midwest Lumber Co.*, 81 F.3d 355, 362 (3d Cir. 1996); *see also In re Autobacs Strauss, Inc.*, 473 B.R. 525, 584 (Bankr. D. Del. 2012). A disclosure statement "must clearly and succinctly inform the average unsecured creditor what it is going to get, when it is going to get it, and what contingencies there are to getting its distribution." *In re Ferretti*, 128 B.R. 16, 19 (Bankr. D.N.H. 1991).

19. The Disclosure Statement contains adequate information for Holders of Claims entitled to vote to make an informed decision about whether to vote to accept or reject the Plan.

In particular, the Disclosure Statement includes, among other things:

- (a) an overview of certain events preceding and leading to the commencement of the Case;
- (b) an overview of the major events that occurred during the course of the Case, including the sale of substantially all of the Debtor's assets pursuant to section 363 of the Bankruptcy Code;
- (c) a summary of the classification and treatment of all Classes of Claims and Interests;
- (d) a summary of the Plan Settlement and the Sabby Settlement, and the basis for seeking their approval under Bankruptcy Rule 9019;
- (e) the provisions governing distributions under the Plan;
- (f) the means for implementation of the Plan, including a description of the Wind Down Entity and the powers and duties of the Wind Down Administrator;
- (g) risk factors affecting the Plan; and
- (h) a summary of the relevant Bankruptcy Code provisions and other requirements for confirmation of the Plan.

20. The Debtor respectfully submits that the Disclosure Statement satisfies the requirements of section 1125 of the Bankruptcy Code. At the Confirmation Hearing, the Debtor will seek final approval of the adequacy of the Disclosure Statement and confirmation of the Plan.

## II. THE SOLICITATION PROCEDURES

### A. Establishment of Voting Record Date

21. Bankruptcy Rule 3017(d) provides that, for the purposes of soliciting votes in connection with the confirmation of a plan, “creditors and equity security holders shall include holders of stock, bonds, debentures, notes, and other securities of record on the date the order approving the disclosure statement is entered or another date fixed by the court, for cause, after notice and a hearing.” Bankruptcy Rule 3018(a) contains a similar provision regarding determination of the record date for voting purposes. The Debtor proposes that the Court establish the voting record date as April 9, 2019 (the “Voting Record Date”), for purposes of determining which Holders of Claims are entitled to vote on the Plan.

### B. Note Register Procedures

22. In addition, to ensure that the note register maintained with respect to the Debtor’s Prepetition Secured Notes (the “Note Register”) is accurate for, among other things, soliciting votes on the Plan and making distributions to Prepetition Secured Noteholders, the Debtor is seeking approval of the following procedures pursuant to the Joint Interim Approval and Procedures Order (collectively, the “Note Register Procedures”):

- (a) On or prior to March 29, 2019, the Debtor shall transmit, or cause to be transmitted, a notice (the “Note Register Notice”) *via* overnight delivery to (x) each Prepetition Secured Noteholder appearing in the Note Register on such date (the “Existing Note Register”) at (i) the address shown in the Existing Note Register, and (ii) any other address which such Prepetition Secured Noteholder has included in a pleading filed in the Case or

provided to the Debtor, and (y) as to each Prepetition Secured Noteholder who executed that certain Master Assignment and Acceptance, dated April 9, 2018 (the “MAA”), at the address set forth in the MAA. With respect to a Note Register Notice delivered to a Prepetition Secured Noteholder under sub-clause (y) above, such Note Register Notice shall also specify any inconsistencies between the Existing Note Register and the MAA with respect to such Prepetition Secured Noteholder or that there is no such inconsistency. The Note Register Notice shall include a form of Note Register Voting Response and Note Register Distribution Response and, in blank, the forms described in sub-clause (c)(i) – (iii) below.

- (b) Subject to clauses (d) and (f) below, and for the purposes of voting to accept or reject the Plan, (i) in the event a Prepetition Secured Noteholder determines that any information set forth in the Existing Note Register and/or the MAA as provided to the Prepetition Secured Noteholder in the Note Register Notice is incorrect or incomplete, or (ii) if a Prepetition Secured Noteholder desires to update any information contained in the Existing Note Register and/or the MAA as set forth in the Note Register Notice, such Prepetition Secured Noteholder shall respond in writing to the Debtor to correct or update the information in the Existing Note Register and/or the MAA, as applicable, so that such response (a “Note Register Voting Response”) is actually received by the Debtor at the physical or email addresses set forth in the Note Register Notice, not later than **April 8, 2019, at 4:00 p.m. (prevailing Eastern Time)** (the “Note Register Voting Response Deadline”). Such Note Register Voting Response may provide updated or corrected information respecting the following :

- i. such Prepetition Secured Noteholder’s legal name;
- ii. the dollar amount (in U.S. dollars) held by such Prepetition Secured Noteholder;
- iii. such Prepetition Secured Noteholder’s mailing address; and
- iv. such Prepetition Secured Noteholder's bank account and wire instructions where Plan distributions should be sent.

If such Prepetition Secured Noteholder has transferred any or all of the Prepetition Secured Notes listed in the Note Register Notice and/or the MAA; as applicable, such Prepetition Secured Noteholder shall provide the information described in clauses (b)(i) through (b)(iv) above with respect to the transferee, to the extent such information is available to such Prepetition Secured Noteholder.

- (c) In addition, for purposes of making distributions under the Plan, a Prepetition Secured Noteholder who has submitted a Note Register Voting Response and who has transferred any or all of the Prepetition Secured Notes listed in the Note Register Notice shall provide the following documents and information (except to the extent such Prepetition Secured Noteholder may have previously provided such information to the Debtor) so that such documents and information (the “Note Register Distribution Response”) are actually received by the Debtor at the physical or email addresses set forth in the Note Register Notice, not later than **April 19, 2019, at 4:00 p.m. (prevailing Eastern Time)** (the “Note Register Distribution Response Deadline”):
- i. such transferee’s tax identification number provided on a form W-8 or W-9, as applicable, to the extent such information is available to such Prepetition Secured Noteholder;
  - ii. an executed letter of instruction; and
  - iii. completed bond power, together with original note certificate.
- (d) If the Debtor does not agree with any information contained in a Note Register Voting Response and/or Note Register Distribution Response, or the information is incomplete, the Debtor may, in the exercise of its reasonable discretion, request additional information from the applicable Prepetition Secured Noteholder; *provided, however*, unless the Court orders otherwise, if the dollar amount of Prepetition Secured Notes asserted to be held by such Prepetition Secured Noteholder in its Note Register Voting Response and/or Note Register Distribution Response is not consistent with the amount set forth in the MAA with respect to such Prepetition Secured Noteholder, and the parties are unable to reconcile the discrepancy(ies) prior to (i) the Voting Record Date, in the case of a Note Register Voting Response; or (ii) the Effective Date, in the case of a Note Register Distribution Response, the amount set forth in the MAA shall control for purposes of voting and distribution, as applicable, and the Debtor shall give prompt written notice to such Prepetition Secured Noteholder of such determination.
- (e) In the case of any transferee of Prepetition Secured Notes or other Prepetition Secured Noteholder which is not named in the Existing Note Register (even if such transferee or other Prepetition Secured Noteholder

is affiliated with a Prepetition Secured Noteholder which is named in the Existing Note Register and even if such transferee or other Prepetition Secured Noteholder is a party to the MAA), such transferee or other Prepetition Secured Noteholder shall promptly provide to the Debtor, the Wind Down Administrator or the Prepetition Secured Notes Indenture Trustee, in addition to the information required under clauses (b) and (c) above to the extent not previously provided by the applicable Prepetition Secured Noteholder, such information and/or documentation as any of them may request, in the exercise of their respective reasonable discretion, prior to any such transferee or Prepetition Secured Noteholder receiving any distribution under the Plan.

- (f) **If a Prepetition Secured Noteholder to whom a Note Register Notice is transmitted does not submit a Note Register Voting Response and/or Note Register Distribution Response by the Note Register Voting Response Deadline and/or Note Register Distribution Response Deadline, as applicable, the Debtor, the Wind Down Administrator, the Wind Down Entity, and the Prepetition Secured Notes Indenture Trustee shall be authorized, for the purposes of determining who is entitled to vote to accept or reject the Plan, and/or for the purpose of making distributions under the Plan, as applicable, to continue to use the information set forth in the (i) Existing Note Register, to the extent there is no inconsistency between the Existing Note Register and MAA, and (ii) MAA, to the extent there is an inconsistency between the Existing Note Register and MAA, with respect to such Prepetition Secured Noteholder. The Note Register Notice shall include such a statement substantially similar to this clause (f).**
- (g) Prior to the Voting Record Date, for voting purposes, and the Effective Date, for purposes of distribution, the Debtor shall amend the Existing Note Register in accordance with the information obtained in Note Register Voting Responses and/or Note Register Distribution Responses, if any, and the MAA, subject to the other provisions above and, in the exercise of its reasonable discretion, any other information the Debtor may receive from a Prepetition Secured Noteholder. The amended register shall constitute the “Note Register” under, and as defined in, the Prepetition Secured Notes Indenture (the “New Note Register”). Upon completion, the Debtor shall deliver the New Note Register to the Prepetition Secured Notes Indenture Trustee and the Balloting Agent.
- (h) **The Debtor, the Wind Down Administrator, the Wind Down Entity, and the Prepetition Secured Notes Indenture Trustee, as the case may be, shall be authorized to use and rely on the New Note Register for,**

**among other things, (i) all purposes set forth in the Prepetition Secured Notes Indenture, (ii) determining which Prepetition Secured Noteholders are entitled to vote on the Plan, and (iii) making distributions to Prepetition Secured Noteholders under the Plan.**

**C. Approving Solicitation Package**

23. Bankruptcy Rule 3017(d) sets forth the materials that must be provided to Holders of Claims and Interests entitled to vote for the purpose of soliciting their votes and providing adequate notice of the Confirmation Hearing.

24. Except as provided below, upon entry of the Joint Interim Approval and Procedures Order, the Debtor proposes that the following materials (collectively, the "Solicitation Package") be distributed by or on behalf of the Debtor to each record and beneficial Holder of a Claim entitled to vote on the Plan:

- (a) Notice of the hearing on, among other things, approval of the Disclosure Statement on a final basis and confirmation of the Plan, and the deadline for objections (the "Confirmation Hearing Notice");
- (b) an appropriate Ballot (defined below), including voting instructions;
- (c) a return envelope; and
- (d) such other materials as Debtor may determine necessary or appropriate or as the Court may direct.

25. The Confirmation Hearing Notice will contain instructions on how to access a copy of the Plan and Disclosure Statement and the Joint Interim Approval and Procedures Order online. The Confirmation Hearing Notice will further contain an e-mail address and telephone number for KCC (the "Balloting Agent") in the event any party wants to receive a hard copy of the Plan and Disclosure Statement and/or the Joint Interim Approval and Procedures Order.

26. The Debtor expects that it will be able to commence distribution of the Solicitation Packages within five (5) Business Days after the date the Joint Interim Approval and

Procedures Order is entered (the “Solicitation Commencement Date”). In addition, (i) all Holders of Claims or Interests not entitled to vote on the Plan, and all parties requesting notice pursuant to Bankruptcy Rule 2002, will receive a copy of the Confirmation Hearing Notice, and (ii) the Debtor will publish the Confirmation Hearing Notice in *USA Today*, National Edition no later than April 12, 2019.

27. Although the Debtor has made, and will make, every effort to ensure that the Solicitation Packages described are in final form prior to solicitation, the Debtor nonetheless requests authority to make non-substantive changes to the Plan and Disclosure Statement and related documents without further order of the Court, including ministerial changes to correct typographical and grammatical errors, and to make conforming changes among the Plan and Disclosure Statement and any other materials in the Solicitation Packages following entry of the Joint Interim Approval and Procedures Order and prior to mailing. The Debtor reserves the right to further amend or modify the Plan and Disclosure Statement following approval of this Motion.

28. To reduce costs, the Debtor requests relief from Bankruptcy Rule 3017 that would otherwise require the Plan and Disclosure Statement to be mailed to Holders of Claims and Interests. Because of the significant cost of printing and mailing the Plan and Disclosure Statement, the Debtor proposes to make the Plan and Disclosure Statement available in electronic format online at <https://www.kccllc.net/orexigen>. The Debtor requests authority to rely on the Confirmation Hearing Notice it provides, which will contain the address to the Debtor’s case website with a link directly to the Plan and Disclosure Statement, to notify parties of the location of such documents. The website will contain copies of the Plan and Disclosure Statement, which can be reviewed online or downloaded and printed free of charge. If a party desires paper copies of the Plan and Disclosure Statement, such party can request that paper

copies be mailed to them if such request is made at least five (5) Business Days before the Voting Deadline. Such request can be made to the Balloting Agent *via* email at [OrexigenInfo@kcellc.com](mailto:OrexigenInfo@kcellc.com) or *via* telephone at 1-888-830-4646. The Debtor requests that the Court determine that the Debtor is not required to distribute paper copies of the Plan and Disclosure Statement to Holders of Claims and Interests, unless a party makes a specific written request for copies of such documents as set forth herein.

29. Other bankruptcy courts have granted such relief in order to reduce the significant costs of soliciting votes to accept or reject a plan, and authorized the provision of electronic copies of the plan and disclosure statement on a website instead of including copies of those documents in the solicitation package. *See In re Drone LC, Inc.*, Case No. 17-10426 (Bankr. D. Del. Aug. 1, 2017) (D.I. 435); *In re Venoco, LLC*, Case No. 17-10828 (Bankr. D. Del. Mar. 23, 2018) (D.I. 837); *In re Draw Another Circle, LLC*, Case No. 16-11452 (Bankr. D. Del. December 19, 2016) (D.I. 1067); *In re Dune Energy, Inc.*, Case No. 15-10336 (Bankr. W.D. Tex. Aug. 18, 2015) (D.I. 453); *In re Borders Group, Inc., et al.*, Case No. 11-10614 (Bankr. S.D.N.Y. Nov. 14, 2011) (D.I. 2122).

30. Bankruptcy Rule 3017(e) also provides that “the court shall consider the procedures for transmitting the documents and information required by [Bankruptcy Rule 3017(d)] to beneficial holders of stock, bonds, debentures, notes and other securities, determine the adequacy of the procedures, and enter any orders the court deems appropriate.” Because of the complexity and difficulty associated with reaching the beneficial holders of the Prepetition Unsecured Notes, many of which hold their securities indirectly through various intermediaries such as through brokerage or other custodian accounts, the Debtor proposes to mail the Solicitation Packages to (a) each directly registered Holder of Prepetition Unsecured Notes as of



the Voting Record Date, and (b) each broker, commercial bank, transfer agent, trust company, dealer or other intermediary or nominee, identified by the Balloting Agent as an entity through which beneficial holders indirectly hold Prepetition Unsecured Notes, or their mailing agent (each of the foregoing, a “Nominee”) as of the Voting Record Date.

31. The Debtor proposes that it be authorized to send Solicitation Packages to Nominees in paper format and/or *via* electronic transmission in accordance with the customary requirements of each Nominee. The Debtor will send sufficient numbers of Solicitation Packages, including sufficient Beneficial Ballots (the “Beneficial Ballots”), to the Nominee to distribute via first class mail to the beneficial holders of the Prepetition Unsecured Notes Claims as of the Voting Record Date for whom such Nominee acts. The Debtor will also cause a Master Ballot (as hereinafter defined) to be distributed to each Nominee for use in tabulating votes cast on Beneficial Ballots submitted to such Nominee (as described more fully below). If it is a Nominee’s customary and accepted practice to forward the solicitation information to (and collect votes from) beneficial holders by e-mail, telephone or other customary means of communications, the Nominee may employ that method of communication in lieu of sending the paper Beneficial Ballot and/or Solicitation Package. Solely for voting purposes, the voting amounts of those Prepetition Notes Claims shall be the amounts set forth on the books and records of the applicable Nominee as of the Voting Record Date as evidenced by the securities position report from the Depository Trust Company.

32. The Debtor proposes that the Bankruptcy Court order that, upon receipt of sufficient copies of the Solicitation Packages from the Balloting Agent, Nominees promptly distribute the Solicitation Packages to the beneficial holders of Prepetition Unsecured Notes by no later than five (5) Business Days after receipt by the Nominees of the Solicitation Packages in

accordance with each Nominee's customary procedures. Such Nominees shall, upon receipt of the Solicitation Packages, promptly distribute such Solicitation Packages to Beneficial Holders including Beneficial Ballots (or a summary thereof) using one of the following two methods (to be selected by the Nominee) within five (5) Business Days of receipt of the Solicitation Packages:

- a) **Pre-Validated Ballots**: The Nominee may "pre-validate" a Beneficial Ballot by (i) signing the Beneficial Ballot; (ii) indicating the amount and the account number of the Prepetition Unsecured Notes Claims held by the Nominee for the beneficial holder; and (iii) forwarding such Beneficial Ballot, together with the Solicitation Package, a pre-addressed, postage-paid return envelope addressed to, and provided by, the Balloting Agent, and other materials requested to be forwarded, to the beneficial holder for voting. The beneficial holder must then complete the information requested in the Beneficial Ballot, and return the Beneficial Ballot directly to the Balloting Agent in the pre-addressed, postage-paid return envelope so that it is RECEIVED by Balloting Agent on or before the Voting Deadline. A list of the Beneficial Holders to whom "pre-validated" Beneficial Ballots were delivered should be maintained by Nominees for inspection for at least one (1) year from the Voting Deadline.
- b) **Master Ballots**: If the Nominee elects not to pre-validate Beneficial Ballots, the Nominee may obtain the votes of beneficial holders by forwarding to the beneficial holders the unsigned Beneficial Ballots, VIF, e-mail, or other customary method of collecting votes from a Beneficial Holder, together with the Solicitation Package, a pre-addressed, postage-paid return envelope provided by, and addressed to, the Nominee, and other materials requested to be forwarded. Each such beneficial holder must then indicate his, her, or its vote on the Beneficial Ballot, complete the information requested on the Beneficial Ballot, review the certifications contained on the Beneficial Ballot, execute the Beneficial Ballot, and return the Beneficial Ballot to the Nominee. If it is the accepted practice for a Nominee to collect votes via e-mail, telephone, or other customary method of communication, the Beneficial Holder shall follow the Nominee's instruction for completing and submitting its vote to the Nominee. After collecting the Beneficial Holders' votes, the Nominee should, in turn, complete a master ballot (the "**Master Ballot**") compiling the votes and other information from the beneficial holders, execute the Master Ballot, and deliver the Master Ballot to the Balloting Agent so that it is RECEIVED by the Balloting Agent on or before the Voting Deadline. All Beneficial Ballots returned by beneficial holders should either be forwarded to the Balloting Agent (along with the Master Ballot) or retained by Nominees for inspection for at least one (1) year from the Voting Deadline.<sup>4</sup>

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<sup>4</sup> Nominees will be permitted to submit their Master Ballots to the Balloting Agent by e-mail.

EACH NOMINEE SHOULD ADVISE ITS BENEFICIAL HOLDERS TO RETURN THEIR BENEFICIAL BALLOTS (OR OTHERWISE CONVEY THEIR VOTES) TO THE NOMINEE BY A DATE CALCULATED BY THE NOMINEE TO ALLOW IT TO PREPARE AND RETURN THE MASTER BALLOT TO THE BALLOTING AGENT SO THAT IT IS RECEIVED BY THE BALLOTING AGENT ON OR BEFORE THE VOTING DEADLINE.<sup>5</sup>

**D. Approval of Form of Ballots**

33. Bankruptcy Rule 3017(d) requires that a debtor mail a form of ballot to “creditors and equity security holders entitled to vote on the plan.” The Debtor proposes to distribute to Holders of Impaired Classes of Claims one or more ballots (each a “Ballot” and collectively, the “Ballots”), substantially in the form attached hereto as **Exhibit D**, applicable to each such creditor. The Debtor further proposes to distribute to Holders of Claims and Interests not entitled to vote on the plan notices informing them of their ineligibility to vote (the “Notice of Non-Voting Status”), substantially in the form attached hereto as **Exhibit B**.

**E. Voting Deadline and Procedures**

1. Establishment of Voting Deadline

34. Bankruptcy Rule 3017(c) provides that, in connection with or before approval of a disclosure statement, a court shall fix a time within which the holders of claims and interests entitled to vote may accept or reject the relevant chapter 11 plan. Local Rule 3017-2(d)(ii) provides that a voting deadline shall be no more than ten (10) days prior to the relevant confirmation hearing.

35. In accordance with Bankruptcy Rule 3017(c), the Debtor requests that the Court enter an order requiring that, to be counted as a vote to accept or reject the Plan, any Ballot

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<sup>5</sup> Notwithstanding the foregoing, Nominees are authorized to transmit Solicitation Packages and collect votes to accept or to reject the Plan from beneficial holders in accordance with their customary practices, including the use of a “voting instruction form” in lieu of (or in addition to) a Beneficial Ballot, and collecting votes from beneficial holders through online voting, by phone, facsimile, or other electronic means.

accepting or rejecting the Plan must be properly executed (original or facsimile signatures are acceptable) completed, have only one box checked to accept or reject, and which shall be delivered so as to be actually received by the Balloting Agent, not later than May 13, 2019, at 4:00 p.m. (prevailing Eastern Time) (the “Voting Deadline”). Class 3, Class 4, and Class 5 Ballots are to be delivered to the Balloting Agent by regular mail, overnight courier or hand delivery to the Balloting Agent at the following address: Orexigen Ballot Processing Center c/o KCC, 2335 Alaska Avenue, El Segundo, CA 90245. Any Ballot received by the Balloting Agent by facsimile, e-mail or other electronic communication or received after the Voting Deadline will not be counted except as otherwise consented to by the Debtor.

36. The Debtor submits that its solicitation period of 30 days provides sufficient time for Holders of the Impaired Classes of Claims entitled to vote to make informed decisions to accept or reject the Plan and submit timely Ballots. Therefore, the Voting Deadline should be approved.

2. Temporary Allowance of Claims for Voting Purposes

37. Bankruptcy Rule 3018(a) provides that “[n]otwithstanding objection to a claim or interest, the court after notice and hearing may temporarily allow the claim or interest in an amount that the court deems proper for the purposes of accepting or rejecting a plan.” 11 U.S.C. §§ 502, 1126. The Debtor respectfully requests the Court set a deadline of April 17, 2019, for the Debtor to file and serve objections to filed proofs of claim for purposes of voting on the Plan, unless the Court sets a later date upon request by the Debtor. If a creditor wants to file a motion seeking to have its Claim temporarily allowed for voting purposes (any such motion, a “3018 Motion”), the Debtor submits that the Court should set the deadline for filing and serving (i) the 3018 Motion as April 26, 2019, at 4 p.m. (prevailing Eastern Time) and (ii) any objection to a 3018 Motion as May 3, 2019, at 4 p.m. (prevailing Eastern Time).

3. Approval of Procedures for Vote Tabulation

38. Section 1126(c) of the Bankruptcy Code provides:

A class of claims has accepted a plan if such plan has been accepted by creditors, other than any entity designated under subsection (e) of this section, that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors, other than any entity designated under subsection (e) of this section, that have accepted or rejected such plan.

39. The Debtor proposes, solely for voting purposes and not for purposes of allowance or distribution on account of a Claim and without prejudice to the rights of the Debtor in any other context, that the amount of a Claim used to tabulate acceptance or rejection of the Plan be one of the following alternatives:

- (a) if no proof of Claim was timely filed, the Claim amount listed in the Schedules of Assets and Liabilities filed with the Court by the Debtor on May 11, 2018 (D.I. 287), the Amended Schedules of Assets and Liabilities filed with the Court by the Debtor on October 3, 2018 (D.I. 768), and the Amended Schedules of Assets and Liabilities filed with the Court by the Debtor on December 12, 2018 (D.I. 862) (collectively, the “Schedules”), provided that such Claim is not scheduled as contingent, disputed, or unliquidated;
- (b) the liquidated amount specified in a proof of Claim to the extent that the proof of Claim is not the subject of an objection; if such Claim was filed as wholly contingent or unliquidated, such Claim shall vote in the amount of \$1.00; or
- (c) the amount temporarily allowed by the Court for voting purposes, pursuant to Bankruptcy Rule 3018(a), after notice and a hearing at or before the Confirmation Hearing.

40. If a Holder of a Claim casts a Ballot and either (i) the entirety of such Holder’s Claim is the subject of an objection filed before the Voting Deadline or (ii) such Claim was scheduled as contingent, disputed, or unliquidated, the Debtor requests that such Holder’s Ballot not be counted. If a Holder of a Claim casts a Ballot and part of such Holder’s Claim is the

subject of an objection filed before the Voting Deadline, the Debtor requests that such Holder's Ballot be treated as a Claim for voting purposes only to the extent of the amount of the Claim not subject to any objection. If a Holder of a Claim disagrees with the treatment of its Claim for voting purposes, such Holder may seek authority from the Court to do so following notice and a hearing, pursuant to Bankruptcy Rule 3018(a).

41. Notwithstanding anything to the contrary contained herein, any Holder of a Claim who has filed a proof of Claim that is duplicative of another Claim(s) within the same Class of Claims entitled to vote to accept or reject the Plan, as determined by the Debtor, shall be provided with only one Solicitation Package and one Ballot for voting a single Claim in such class, regardless of whether the Debtor has objected to such duplicate Claim(s).

42. Any Holder who holds multiple Claims within a single Class shall have such Claims aggregated, for purposes of the numerosity requirement of section 1126(c) of the Bankruptcy Code, as if such Holder held one Claim in such Class; the creditor will receive a single Ballot with respect to all of its Claims in each such Class, and the votes related to such Claims will be treated as a single vote to accept or reject the Plan.

43. In addition, the Debtor requests that the following voting procedures and standard assumptions ("Tabulation Rules") be used in tabulating Ballots:

- (a) any Ballot that is timely received, properly completed, and 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. Except with the consent of the Debtor, a Holder of a Claim may not change its vote once its Ballot is submitted to the Balloting Agent;
- (b) any Ballot that is illegible or contains insufficient information to permit the identification of the claimant will not be counted;

- (c) any Ballot cast by a Person that does not hold a Claim in a Class that is entitled to vote to accept or reject the Plan will not be counted;
- (d) any Ballot cast for a scheduled Claim designated or determined as unliquidated, contingent, or disputed or as zero or unknown in amount, no timely proof of claim was filed, and for which no 3018(a) Motion has been Filed by the 3018(a) Motion Deadline will not be counted;
- (e) any Ballot timely received that is cast in a manner that indicates neither acceptance nor rejection of this Plan or that indicates both acceptance and rejection of this Plan will not be counted;
- (f) 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;
- (g) any Ballot not bearing an original or facsimile signature will not be counted;
- (h) any Ballot received by the Balloting Agent by facsimile, e-mail or other electronic communication will not be counted (unless otherwise permitted by the Debtor in writing); and
- (i) any Ballot that partially rejects and partially accepts the Plan will not be counted.

44. The Debtor requests that if no Holders of Allowed Claims in a particular class of Claims eligible to accept or reject the Plan vote on the Plan, the Plan shall be deemed accepted by that particular class of Claims.

45. The last timely, properly completed Ballot received from a Holder for the same Claim(s) shall be counted and any superseded or otherwise improperly completed Ballot shall not be counted unless otherwise agreed to by the Debtor.

46. The Debtor submits that the proposed Tabulation Rules and other related vote tabulation procedures set forth above will establish a fair and equitable voting process and, therefore, should be approved.

### III. CONFIRMATION HEARING

#### A. The Confirmation Hearing and Notice Thereof

47. Bankruptcy Rule 3017(c) provides that “[o]n or before approval of the disclosure statement, the court shall fix a time within which the holders of claims and equity interests may accept or reject the plan and may fix a date for the hearing on confirmation.” In accordance with Local Rule 3017-2(f), the Debtor requests that the Confirmation Hearing be scheduled for May 17, 2019, at 11:00 a.m. (prevailing Eastern Time). The Confirmation Hearing may be adjourned or continued from time to time by the Court or the Debtor without further notice other than adjournments announced in open Court or as indicated in any notice of agenda of matters scheduled for hearing filed with the Court. The proposed date for the Confirmation Hearing is in compliance with the Bankruptcy Rules and the Local Rules and will enable the Debtor to pursue confirmation of the Plan in a timely fashion.

48. The Debtor proposes to provide to all parties who have filed or scheduled Claims or Interests, or who have filed a notice of appearance pursuant to Bankruptcy Rule 2002,<sup>6</sup> a copy of the Confirmation Hearing Notice, a form of which is attached hereto as **Exhibit C**, setting forth: (i) the Voting Deadline, (ii) the Confirmation Objection Deadline, (iii) procedures for filing objections and responses to the final approval of the adequacy of the Disclosure Statement or to confirmation of the Plan, (iv) instructions how to obtain copies of the Plan and Disclosure Statement, and (v) the time, date, and place for the Confirmation Hearing.

49. The Debtor will also publish the Confirmation Hearing Notice in *The USA Today*, *National Edition* no later than April 12, 2019.

#### B. Objection Procedures

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<sup>6</sup> The Debtor shall not be required to serve the Confirmation Hearing Notice on any party previously served for whom the Debtor or the Balloting Agent received returned mail, with no forwarding address.



50. In accordance with Local Rule 3017-2(f), the Debtor proposes that the Confirmation Objection Deadline be set for **May 6, 2019, at 4:00 p.m. (prevailing Eastern Time)**. Any objection to confirmation of the Plan must be in writing, must conform to the Bankruptcy Rules, must set forth the name, address, phone number and email of the objector, the nature and amount of Claims or Interests asserted by the objector against the Debtor, the basis and specific grounds of the objection, and must be filed with the Bankruptcy Court, with a copy to chambers, together with proof of service thereof, and served by no later than the Confirmation Objection Deadline upon: (i) counsel to the Debtor: Hogan Lovells US LLP, 875 Third Avenue, New York, NY, 10022, Attn: Christopher R. Donoho III, Christopher R. Bryant and John D. Beck; (ii) co-counsel to the Debtor: Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street, 16th Floor, Wilmington, DE 19899, Attn: Andrew Remming, Esq. & Robert Dehney, Esq.; (iii) the Office of the United States Trustee: 844 King Street, Suite 2207, Lockbox #35, Wilmington, Delaware, 19899 (Attn: Richard Schepacarter); (iv) counsel to certain of the Prepetition Secured Noteholders: Quinn Emanuel Urquhart & Sullivan LLP, 865 S. Figueroa Street, 10th Floor, Los Angeles, CA 90017, Attn: Eric Winston and Bennett Murphy (v) counsel to the Creditors' Committee: Irell & Manella LLP, 840 Newport Center Drive, Suite 400, Newport Beach, CA 92660, Attn: Jeffrey M. Reisner and Kerri A. Lyman; (vi) counsel to the Prepetition Secured Notes Indenture Trustee: Kelley Drye & Warren LLP, 101 Park Ave, New York, NY 10178, Attn: James Carr and Benjamin D. Feder; and (vii) such other parties as the Bankruptcy Court may order. The Debtor believes that if there are objections, it will assist the Court and may expedite the Confirmation Hearing if the Debtor and any other party supporting confirmation of the Plan are given an opportunity to reply to any such objections. Accordingly,

the Debtor requests for itself, and any other parties supporting the Plan, authorization to file and serve replies or an omnibus reply to any such objections on or before May 15, 2019.

51. The Confirmation Objection Deadline and proposed reply schedule will afford the Debtor and other parties in interest sufficient time to consider the objections and file any replies, while leaving the Court sufficient time to consider any such objections and replies before the Confirmation Hearing.

52. Pursuant to Local Rule 3017-2(c)(vi), objections to the adequacy of the Disclosure Statement and confirmation of the Plan, if any, cannot raise any objections to the following relief to be approved in the Joint Interim Approval and Procedures Order: (i) approval of the Disclosure Statement on an interim basis; (ii) the voting procedures; (iii) the forms of notice to be provided to creditors and interest holders; and (iv) the forms of ballots to be provided to creditors and interest holders entitled to vote on the proposed plan of liquidation

53. The Debtor respectfully requests that the Court approve these procedures for filing objections to final approval of the adequacy of the Disclosure Statement and confirmation of the Plan and replies thereto pursuant to Bankruptcy Rules 2002, 3017, and 3020 and Local Rule 3017-2. Pursuant to Local Rule 3017-2(c), the Debtor will ask the Court to enter the Joint Interim Approval and Procedures Order without prior notice or a hearing if no objections are timely filed to the relief requested in this Motion to be approved at the hearing scheduled for March 27, 2019.

### **NOTICE**

Notice of this Motion will be provided to: (a) the Office of the United States Trustee for the District of Delaware; (b) counsel to the Creditors' Committee; (c) all parties entitled to notice of this Motion pursuant to Bankruptcy Rule 2002; and (d) all Prepetition Secured Noteholders appearing in the Existing Note Register and MAA. The Debtor submits

that, in light of the nature of the relief requested, no other or further notice is necessary or required.

**NO PRIOR REQUEST**

54. No prior request for the relief sought herein has been made to this or any other court.

*(Signature page follows)*

Dated: March 6, 2019

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

By: /s/ Robert J. Dehney

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*-and-*

HOGAN LOVELLS US LLP

Christopher R. Donoho, III (pro hac vice)  
Christopher R. Bryant (pro hac vice)  
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875 Third Avenue  
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*Counsel for the Debtor and Debtor in Possession*

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

OREXIGEN THERAPEUTICS, INC.,

Debtor.<sup>1</sup>

Chapter 11

Case No. 18-10518 (KG)

**Hearing Date: March 27, 2019, at  
2:00 p.m. (Prevailing Eastern Time)**

**Objection Deadline: March 20, 2019,  
at 4:00 p.m. (Prevailing Eastern  
Time)**

**NOTICE OF DEBTOR'S MOTION FOR ENTRY OF AN ORDER (A) APPROVING  
THE DISCLOSURE STATEMENT ON AN INTERIM BASIS, (B) ESTABLISHING  
PROCEDURES FOR SOLICITATION AND TABULATION OF VOTES  
TO ACCEPT OR REJECT THE PLAN, (C) APPROVING THE FORMS  
OF BALLOTS AND SOLICITATION MATERIALS, (D) ESTABLISHING  
THE VOTING RECORD DATE, (E) SCHEDULING THE CONFIRMATION HEARING  
AND DEADLINE FOR FILING OBJECTIONS TO FINAL  
APPROVAL OF THE DISCLOSURE STATEMENT AND CONFIRMATION  
OF THE PLAN, AND (F) APPROVING THE RELATED FORM OF NOTICE**

PLEASE TAKE NOTICE that on March 6, 2019, Orexigen Therapeutics, Inc. (the "Debtor") in the above-captioned chapter 11 case, filed the *Debtor's Motion For Entry Of An Order (A) Approving The Disclosure Statement On An Interim Basis, (B) Establishing Procedures For Solicitation And Tabulation Of Votes To Accept Or Reject The Plan, (C) Approving The Forms Of Ballots And Solicitation Materials, (D) Establishing The Voting Record Date, (E) Scheduling The Confirmation Hearing And Deadline For Filing Objections To Final Approval Of The Disclosure Statement And Confirmation Of The Plan, And (F) Approving The Related Form Of Notice* (the "Motion").

PLEASE TAKE FURTHER NOTICE that any party wishing to oppose the entry of an order granting the relief requested in the Motion must file a response or objection ("Objection") if any, to the Motion with the Clerk of the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801 on or before **March 20, 2019 at 4:00 p.m. (Eastern Time) (the "Objection Deadline")**. At the same time,

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<sup>1</sup> 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, 875 Third Avenue, New York, NY 10022, Attn: Chris Bryant and John Beck.

you must serve such Objection upon the undersigned counsel for the Debtor so as to be received on or before the Objection Deadline.

PLEASE TAKE FURTHER NOTICE that only objections made in writing and timely filed and received, in accordance with the procedures above, will be considered by the Bankruptcy Court at such hearing.

PLEASE TAKE FURTHER NOTICE THAT A HEARING ON THE MOTION WILL BE HELD ON **MARCH 27, 2019 AT 2:00 P.M. (EASTERN TIME)** BEFORE THE HONORABLE KVEIN GROSS AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 N. MARKET STREET, 6TH FLOOR, COURTROOM #3, WILMINGTON, DELAWARE 19801.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: March 6, 2019

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

By: /s/ Tamara K. Mann

Robert J. Dehney (DE Bar No. 3578)  
Andrew R. Remming (DE Bar No. 5120)  
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*-and-*

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*Counsel for the 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.<sup>1</sup>

Chapter 11

Case No. 18-10518 (KG)

Re: Docket No. \_\_\_\_

**ORDER (A) APPROVING THE DISCLOSURE STATEMENT ON AN INTERIM BASIS, (B) ESTABLISHING PROCEDURES FOR SOLICITATION AND TABULATION OF VOTES TO ACCEPT OR REJECT THE PLAN, (C) APPROVING THE FORMS OF BALLOTS AND SOLICITATION MATERIALS, (D) ESTABLISHING THE VOTING RECORD DATE, (E) SCHEDULING THE CONFIRMATION HEARING AND DEADLINE FOR FILING OBJECTIONS TO FINAL APPROVAL OF THE DISCLOSURE STATEMENT AND CONFIRMATION OF THE PLAN, AND (F) APPROVING THE RELATED FORM OF NOTICE**

Upon consideration of the *Motion of the Debtor for Entry of an Order (A) Approving the Disclosure Statement on an Interim Basis, (B) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Plan, (C) Approving the Form of Ballot and Solicitation Materials, (D) Establishing the Voting Record Date, (E) Scheduling the Confirmation Hearing and Deadline for Filing Objections to Final Approval of the Disclosure Statement and Confirmation of the Plan, and (F) Approving the Related Form of Notice* (the “Motion”); all pleadings related thereto, the hearing on the relief requested in the Motion to be approved at the initial hearing; and based on the record in the Case;<sup>2</sup> and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein;

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<sup>1</sup> 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, 875 Third Avenue, New York, NY 10022, Attn: Chris Bryant and John Beck.



**THE COURT HEREBY FINDS AS FOLLOWS:**

A. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.

B. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

C. Notice of the Motion was sufficient and proper under the circumstances and was provided in accordance with the Bankruptcy Code, Bankruptcy Rules, and Local Rules.

D. The relief requested in the Motion and granted herein is warranted under the circumstances and is in the best interests of the Debtor, its estate, its creditors, and other parties in interest.

E. The forms of ballot attached to the Motion as **Exhibit D** (the “Ballots”) (i) are consistent with Official Form No. B-314, (ii) adequately address the particular needs of the Case, (iii) are appropriate for the Voting Classes, and (iv) comply with Bankruptcy Rule 3017(d).

F. Ballots need not be provided to (i) Holders of Unclassified Claims or (ii) Holders of Claims or Interests in the following Classes, as such non-Voting Classes are either (a) Unimpaired and are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code or (b) Impaired but will neither retain nor receive any property under the Plan and, thus, are conclusively deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code:

<b>Class</b>	<b>Type</b>	<b>Status Under Plan</b>	<b>Voting Status</b>
1	Priority Claims	Unimpaired	Deemed to Accept
2	Other Secured Claims	Unimpaired	Deemed to Accept

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<sup>2</sup> Capitalized terms not otherwise defined herein shall be given the meanings ascribed to them in the Motion or the Plan and Disclosure Statement, as applicable.

6	Interests	Impaired	Deemed to Reject
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G. The Note Register Procedures provide a fair and equitable process to the Debtor, the Wind Down Administrator, Prepetition Secured Notes Indenture Trustee and the Prepetition Secured Noteholders to ensure the accuracy of the Note Register, Plan voting, and Plan distributions.

H. The period during which the Debtor may solicit votes to accept or reject the Plan, as established by this Order, provides sufficient time for Holders of Claims to make informed decisions to accept or reject the Plan and timely submit their Ballots.

I. The Tabulation Rules for the solicitation and tabulation of votes to accept or reject the Plan, as approved by this Order, provide a fair and equitable voting process and are consistent with section 1126 of the Bankruptcy Code.

J. The contents of the Solicitation Packages and the procedures for providing notice of the hearing on confirmation of the Plan and the other matters set forth in the Confirmation Hearing Notice comply with Bankruptcy Rules 2002 and 3017 and, under the circumstances, constitute sufficient notice to all interested parties in accordance with the Bankruptcy Code, the Bankruptcy Rules, and Local Rules.

IT IS HEREBY FOUND AND DETERMINED THAT:

1. The Motion is GRANTED as set forth herein.
2. The Disclosure Statement is approved on an interim basis under sections 105(d) and 1125 of the Bankruptcy Code, Bankruptcy Rule 3017, and Local Rule 3017-2.
3. The Confirmation Hearing shall be held on May 17, 2019, at 11:00 a.m. (prevailing Eastern Time), before the Honorable Kevin Gross, United States Bankruptcy Judge,

in Courtroom #3 of the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 5th Floor, Wilmington, Delaware 19801.

4. The deadline to file objections to the adequacy of the Disclosure Statement on a final basis and confirmation of the Plan (the “Objection Deadline”) shall be **May 6, 2019, at 4:00 p.m. (prevailing Eastern Time)**. The Confirmation Hearing may be continued from time to time by the Court or the Debtor without further notice other than adjournments announced in open court.

5. Objections to the adequacy of the Disclosure Statement and confirmation of the Plan, if any, must:

- (a) be in writing;
- (b) comply with the Bankruptcy Rules and the Local Rules;
- (c) state the name, address, phone number and email of the objecting party and the amount and nature of the Claim or Interest of such Person;
- (d) state with particularity the basis and nature of any objection to the adequacy of the Disclosure Statement and confirmation of the Plan and a proposed modification to the Plan and Disclosure Statement that would resolve such objection; and
- (e) be filed, together with proof of service, with the Court and served so that they are actually received by the notice parties identified in the Confirmation Hearing Notice by the Objection Deadline.

6. Pursuant to Local Rule 3017-2(c)(vi), objections to the adequacy of the Disclosure Statement and confirmation of the Plan, if any, shall not raise any objections to the following relief approved in the Joint Interim Approval and Procedures Order: (i) approval of the Disclosure Statement on an interim basis; (ii) the voting procedures; (iii) the forms of notice to be provided to creditors and interest holders; and (iv) the forms of ballots to be provided to

creditors and interest holders entitled to vote on the proposed plan of liquidation.

7. The Confirmation Hearing Notice, attached as **Exhibit C** to the Motion, is approved, and shall be served upon all parties who have filed or scheduled Claims or Interests, or who have filed a notice of appearance pursuant to Bankruptcy Rule 2002, as soon as practicable after the entry of this Order. The Confirmation Hearing Notice provides sufficient notification of the information contained therein to all creditors and other parties in interest, and no other or further notice shall be necessary or required.

8. The Debtor shall distribute to each record and beneficial Holder of a Claim entitled to vote on the Plan a Solicitation Package comprised of:

- (a) The Confirmation Hearing Notice;
- (b) an appropriate Ballot including voting instructions;
- (c) a return envelope; and
- (d) such other materials as the Debtor may determine or the Court may direct.

9. The Ballots in the forms attached as **Exhibit D** to the Motion are hereby approved. The Debtor is authorized to modify the Ballots to address the particular circumstances of the Case and to include certain additional information that the Debtor believes to be relevant and appropriate for each class of Claims entitled to vote to accept or reject the Plan.

10. The Notice of Non-Voting Status, to be provided to Holders of Claims or Interests that are ineligible to vote on the Plan, attached as **Exhibit B** to the Motion, is hereby approved. Such Holders of Claims or Interests shall not be provided with a Ballot because such Holders are either (a) Unimpaired and presumed to accept the Plan under section 1126(f) of the Bankruptcy Code or (b) Impaired and deemed to reject the Plan under section 1126(g) of the Bankruptcy Code. Such non-voting Holders shall receive a copy of the Confirmation Hearing Notice.

11. The Debtor shall transmit the Solicitation Packages by mail to Holders of Claims eligible to vote on the Plan. The Debtor or Balloting Agent shall transmit the Solicitation Package on or before April 12, 2019.

12. The Debtor shall mail the Solicitation Packages to (a) each directly registered Holder of Prepetition Unsecured Notes as of the Voting Record Date, and (b) each broker, commercial bank, transfer agent, trust company, dealer or other intermediary or nominee, identified by the Balloting Agent as an entity through which beneficial holders indirectly hold Prepetition Unsecured Notes, or their mailing agent (each of the foregoing, a “Nominee”) as of the Voting Record Date.

13. The Debtor is authorized to send Solicitation Packages to Nominees in paper format and/or via electronic transmission in accordance with the customary requirements of each Nominee. Upon receipt of sufficient copies of the Solicitation Packages from the Balloting Agent, including a Master Ballot for use in tabulating votes cast on Beneficial Ballots submitted to such Nominee and sufficient Beneficial Ballots, Nominees are hereby authorized and directed to promptly distribute the Solicitation Packages via first class mail to the beneficial holders of Prepetition Unsecured Notes by no later than five (5) business days after receipt by the Nominees of the Solicitation Packages in accordance with each Nominee’s customary procedures using one of the following two methods (to be selected by the Nominee):

- (a) **Pre-Validated Ballots**: The Nominee may “pre-validate” a Beneficial Ballot by (i) signing the Beneficial Ballot; (ii) indicating the amount and the account number of the Prepetition Unsecured Notes Claims held by the Nominee for the beneficial holder; and (iii) forwarding such Beneficial Ballot, together with the Solicitation Package, a pre-addressed, postage-paid return envelope addressed to, and provided by, the Balloting Agent, and other materials requested to be forwarded, to the beneficial holder for voting. The beneficial holder must then complete the information requested in the Beneficial Ballot, and return the Beneficial Ballot directly to the Balloting Agent in the pre-addressed, postage-paid return envelope

so that it is RECEIVED by the Balloting Agent on or before the Voting Deadline. A list of the Beneficial Holders to whom “pre-validated” Beneficial Ballots were delivered should be maintained by Nominees for inspection for at least one (1) year from the Voting Deadline.

- (b) **Master Ballots**: If the Nominee elects not to pre-validate Beneficial Ballots, the Nominee may obtain the votes of beneficial holders by forwarding to the beneficial holders the unsigned Beneficial Ballots, VIF, e-mail, or other customary method of collecting votes from a Beneficial Holder, together with the Solicitation Package, a pre-addressed, postage-paid return envelope provided by, and addressed to, the Nominee, and other materials requested to be forwarded. Each such beneficial holder must then indicate his, her, or its vote on the Beneficial Ballot, complete the information requested on the Beneficial Ballot, review the certifications contained on the Beneficial Ballot, execute the Beneficial Ballot, and return the Beneficial Ballot to the Nominee. If it is the accepted practice for a Nominee to collect votes via e-mail, telephone, or other customary method of communication, the Beneficial Holder shall follow the Nominee’s instruction for completing and submitting its vote to the Nominee. After collecting the Beneficial Holders’ votes, the Nominee should, in turn, complete a Master Ballot compiling the votes and other information from the beneficial holders, execute the Master Ballot, and deliver the Master Ballot to the Balloting Agent so that it is RECEIVED by the Balloting Agent on or before the Voting Deadline. All Beneficial Ballots returned by beneficial holders should either be forwarded to the Balloting Agent (along with the Master Ballot) or retained by Nominees for inspection for at least one (1) year from the Voting Deadline.<sup>3</sup> EACH NOMINEE SHOULD ADVISE ITS BENEFICIAL HOLDERS TO RETURN THEIR BENEFICIAL BALLOTS (OR OTHERWISE CONVEY THEIR VOTES) TO THE NOMINEE BY A DATE CALCULATED BY THE NOMINEE TO ALLOW IT TO PREPARE AND RETURN THE MASTER BALLOT TO THE BALLOTING AGENT SO THAT IT IS RECEIVED BY THE BALLOTING AGENT ON OR BEFORE THE VOTING DEADLINE.<sup>4</sup>

14. If it is a Nominee’s customary and accepted practice to forward the solicitation information to (and collect votes from) beneficial holders by e-mail, telephone or other customary means of communications, the Nominee may employ that method of communication in lieu of sending the paper Beneficial Ballot and/or Solicitation Package. the voting amounts of

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<sup>3</sup> Nominees shall be permitted to submit their Master Ballots to the Balloting Agent by e-mail.

<sup>4</sup> Notwithstanding the foregoing, Nominees are authorized to transmit Solicitation Packages and collect votes to accept or to reject the Plan from beneficial holders in accordance with their customary practices, including the use of

those Prepetition Notes Claims shall be the amounts set forth on the books and records of the applicable Nominee as of the Voting Record Date as evidenced by the securities position report from the Depository Trust Company.

15. The Debtor is not required to distribute paper copies of the Plan and Disclosure Statement unless a Holder of a Claim or Interest makes a request for copies of such documents at least five (5) Business Days before the Voting Deadline, to [OrexigenInfo@kccllc.com](mailto:OrexigenInfo@kccllc.com) or via telephone at 1-888-830-4646. The Debtor shall make the Plan and Disclosure Statement available in electronic format online at <https://www.kccllc.net/orexigen>.

16. The Note Register Procedures are hereby approved as follows:

- (a) On or prior to March 29, 2019, the Debtor shall transmit, or cause to be transmitted, a notice (the “Note Register Notice”) *via* overnight delivery to (x) each Prepetition Secured Noteholder appearing in the Note Register on such date (the “Existing Note Register”) at (i) the address shown in the Existing Note Register, and (ii) any other address which such Prepetition Secured Noteholder has included in a pleading filed in the Case or provided to the Debtor, and (y) as to each Prepetition Secured Noteholder who executed that certain Master Assignment and Acceptance, dated April 9, 2018 (the “MAA”), at the address set forth in the MAA. With respect to a Note Register Notice delivered to a Prepetition Secured Noteholder under sub-clause (y) above, such Note Register Notice shall also specify any inconsistencies between the Existing Note Register and the MAA with respect to such Prepetition Secured Noteholder or that there is no such inconsistency. The Note Register Notice shall include a form of Note Register Voting Response and Note Register Distribution Response and, in blank, the forms described in sub-clause (c)(i) – (iii) below.
- (b) Subject to clauses (d) and (f) below, and for the purposes of voting to accept or reject the Plan, (i) in the event a Prepetition Secured Noteholder determines that any information set forth in the Existing Note Register and/or the MAA as provided to the Prepetition Secured Noteholder in the Note Register Notice is incorrect or incomplete, or (ii) if a Prepetition Secured Noteholder desires to update any information contained in the Existing Note Register and/or the MAA as set forth in the Note Register

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a “voting instruction form” in lieu of (or in addition to) a Beneficial Ballot, and collecting votes from beneficial holders through online voting, by phone, facsimile, or other electronic means.

Notice, such Prepetition Secured Noteholder shall respond in writing to the Debtor to correct or update the information in the Existing Note Register and/or the MAA, as applicable, so that such response (a “Note Register Voting Response”) is actually received by the Debtor at the physical or email addresses set forth in the Note Register Notice, not later than **April 8, 2019, at 4:00 p.m. (prevailing Eastern Time)** (the “Note Register Voting Response Deadline”). Such Note Register Voting Response may provide updated or corrected information respecting the following :

- i. such Prepetition Secured Noteholder’s legal name;
- ii. the dollar amount (in U.S. dollars) held by such Prepetition Secured Noteholder;
- iii. such Prepetition Secured Noteholder’s mailing address; and
- iv. such Prepetition Secured Noteholder's bank account and wire instructions where Plan distributions should be sent.

If such Prepetition Secured Noteholder has transferred any or all of the Prepetition Secured Notes listed in the Note Register Notice and/or the MAA; as applicable, such Prepetition Secured Noteholder shall provide the information described in clauses (b)(i) through (b)(iv) above with respect to the transferee, to the extent such information is available to such Prepetition Secured Noteholder.

- (c) In addition, for purposes of making distributions under the Plan, a Prepetition Secured Noteholder who has submitted a Note Register Voting Response and who has transferred any or all of the Prepetition Secured Notes listed in the Note Register Notice shall provide the following documents and information (except to the extent such Prepetition Secured Noteholder may have previously provided such information to the Debtor) so that such documents and information (the “Note Register Distribution Response”) are actually received by the Debtor at the physical or email addresses set forth in the Note Register Notice, not later than **April 19, 2019, at 4:00 p.m. (prevailing Eastern Time)** (the “Note Register Distribution Response Deadline”):

- i. such transferee’s tax identification number provided on a form W-8 or W-9, as applicable, to the extent such information is available to such Prepetition Secured Noteholder;



- ii. an executed letter of instruction; and
  - iii. completed bond power, together with original note certificate.
- (d) If the Debtor does not agree with any information contained in a Note Register Voting Response and/or Note Register Distribution Response, or the information is incomplete, the Debtor may, in the exercise of its reasonable discretion, request additional information from the applicable Prepetition Secured Noteholder; *provided, however*, unless the Court orders otherwise, if the dollar amount of Prepetition Secured Notes asserted to be held by such Prepetition Secured Noteholder in its Note Register Voting Response and/or Note Register Distribution Response is not consistent with the amount set forth in the MAA with respect to such Prepetition Secured Noteholder, and the parties are unable to reconcile the discrepancy(ies) prior to (i) the Voting Record Date, in the case of a Note Register Voting Response; or (ii) the Effective Date, in the case of a Note Register Distribution Response, the amount set forth in the MAA shall control for purposes of voting and distribution, as applicable, and the Debtor shall give prompt written notice to such Prepetition Secured Noteholder of such determination.
- (e) In the case of any transferee of Prepetition Secured Notes or other Prepetition Secured Noteholder which is not named in the Existing Note Register (even if such transferee or other Prepetition Secured Noteholder is affiliated with a Prepetition Secured Noteholder which is named in the Existing Note Register and even if such transferee or other Prepetition Secured Noteholder is a party to the MAA), such transferee or other Prepetition Secured Noteholder shall promptly provide to the Debtor, the Wind Down Administrator or the Prepetition Secured Notes Indenture Trustee, in addition to the information required under clauses (b) and (c) above to the extent not previously provided by the applicable Prepetition Secured Noteholder, such information and/or documentation as any of them may request, in the exercise of their respective reasonable discretion, prior to any such transferee or Prepetition Secured Noteholder receiving any distribution under the Plan.
- (f) **If a Prepetition Secured Noteholder to whom a Note Register Notice is transmitted does not submit a Note Register Voting Response and/or Note Register Distribution Response by the Note Register Voting Response Deadline and/or Note Register Distribution Response Deadline, as applicable, the Debtor, the Wind Down Administrator, the Wind Down Entity, and the Prepetition Secured Notes Indenture**

**Trustee shall be authorized, for the purposes of determining who is entitled to voting to accept or reject the Plan, and/or for the purpose of making distributions under the Plan, as applicable, to continue to use the information set forth in the (i) Existing Note Register, to the extent there is no inconsistency between the Existing Note Register and MAA, and (ii) MAA, to the extent there is an inconsistency between the Existing Note Register and MAA, with respect to such Prepetition Secured Noteholder. The Note Register Notice shall include such a statement substantially similar to this clause (f).**

- (g) Prior to the Voting Record Date, for voting purposes, and the Effective Date, for purposes of distribution, the Debtor shall amend the Existing Note Register in accordance with the information obtained in Note Register Voting Responses and/or Note Register Distribution Responses, if any, and the MAA, subject to the other provisions above and, in the exercise of its reasonable discretion, any other information the Debtor may receive from a Prepetition Secured Noteholder. The amended register shall constitute the "Note Register" under, and as defined in, the Prepetition Secured Notes Indenture (the "New Note Register"). Upon completion, the Debtor shall deliver the New Note Register to the Prepetition Secured Notes Indenture Trustee and the Balloting Agent.
- (h) **The Debtor, the Wind Down Administrator, the Wind Down Entity, and the Prepetition Secured Notes Indenture Trustee, as the case may be, shall be authorized to use and rely on the New Note Register for, among other things, (i) all purposes set forth in the Prepetition Secured Notes Indenture, (ii) determining which Prepetition Secured Noteholders are entitled to vote on the Plan, and (iii) making distributions to Prepetition Secured Noteholders under the Plan.**

17. The voting record date shall be April 9, 2019 (the "Voting Record Date").

18. The deadline to submit Ballots to accept or reject the Plan shall be May 13, 2019, at 4:00 p.m. (prevailing Eastern Time). To be counted, Ballots bearing original or facsimile signatures must be delivered to the Balloting Agent by regular mail, overnight courier or hand delivery to the Balloting Agent at the following address: Orexigen Ballot Processing Center c/o KCC, 2335 Alaska Avenue, El Segundo, CA 90245.

19. The deadline for the Debtor to file and serve objections to filed proofs of claims

for purposes of voting on the Plan is April 17, 2018, unless the Court sets a later date upon request by the Debtor.

20. If a Holder of a Claim seeks to challenge the allowance of its Claim for voting purposes, such Holder must file a motion, pursuant to Bankruptcy Rule 3018(a), for an order temporarily allowing its Claim in a different amount or classification for purposes of voting to accept or reject the Plan (a “3018 Motion”) and serve the 3018 Motion on the Debtor so that it is received no later than April 26, 2019, at 4 p.m. (prevailing Eastern Time). The deadline to file an objection to a 3018 Motion shall be May 3, 2019, at 4 p.m. (prevailing Eastern Time).

21. For purposes of voting to accept or reject the Plan and not for purposes of allowance or distribution on account of a Claim and without prejudice to the rights of the Debtor in any other context, the amount of a Claim used to tabulate acceptance or rejection of the Plan shall be one of the following alternatives:

- (a) if no proof of Claim was timely filed, the Claim amount listed in the Debtor’s Schedules, provided that such Claim is not scheduled as contingent, disputed, or unliquidated;
- (b) the liquidated amount specified in a proof of Claim to the extent that the proof of Claim is not the subject of an objection, if such Claim is filed as wholly contingent or unliquidated, such Claim shall vote in the amount of \$1.00; or
- (c) the amount temporarily allowed by the Court for voting purposes, pursuant to Bankruptcy Rule 3018(a), after notice and a hearing at or before the Confirmation Hearing. If a Claim is the subject of an objection filed before the Voting Deadline, it will be a Claim for voting purposes only to the extent of the remaining amount of the Claim not subject to any objection.

22. The following Tabulation Rules are approved and shall be utilized in tabulating the Ballots:

- (a) any Ballot that is timely received, properly completed, and 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. Except with the consent of the Debtor, a Holder of a Claim may not change its vote once its Ballot is submitted to the Balloting Agent;
- (b) any Ballot that is illegible or contains insufficient information to permit the identification of the claimant will not be counted;
- (c) any Ballot cast by a Person that does not hold a Claim in a Class that is entitled to vote to accept or reject the Plan will not be counted;
- (d) any Ballot cast for a scheduled Claim designated or determined as unliquidated, contingent, or disputed or as zero or unknown in amount, no timely proof of claim was filed, and for which no 3018(a) Motion has been Filed by the 3018(a) Motion Deadline will not be counted;
- (e) any Ballot timely received that is cast in a manner that indicates neither acceptance nor rejection of this Plan or that indicates both acceptance and rejection of this Plan will not be counted;
- (f) 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;
- (g) any Ballot not bearing an original or facsimile signature will not be counted;
- (h) any Ballot received by the Balloting Agent by facsimile, e-mail or other electronic communication will not be counted (unless otherwise permitted by the Debtor); and
- (i) any Ballot that partially rejects and partially accepts the Plan will not be counted.

23. If no Holders of Allowed Claims in a particular class of Claims eligible to accept or reject the Plan vote on the Plan, the Plan shall be deemed accepted by that particular class of Claims.

24. The last timely, properly completed Ballot received by a Holder for the same Claim(s) shall be counted and any superseded or otherwise improperly completed Ballot shall not be counted except as otherwise agreed to by the Debtor.

25. Upon completion of the balloting, the Balloting Agent will certify the amount and number of Allowed Claims in each Voting Class accepting or rejecting the Plan. The Debtor shall cause such certification to be filed with the Court prior to Confirmation Hearing.

26. The Debtor is authorized to make non-substantive and ministerial changes to any documents in the Solicitation Package without further approval of the Court prior to its dissemination, including, without limitation, changes to correct typographical and grammatical errors and to make conforming changes among the Plan and Disclosure Statement and any other materials included in the Solicitation Package prior to their distribution.

27. The Debtor is not required to seek to locate any more current addresses for, or reserve, any persons or entities to whom any mailing is returned because the addressed recipient has moved, unless a forwarding address is provided.

28. The Debtor shall file its Plan Supplement not later than April 29, 2019.

29. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

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

31. Notwithstanding the possible applicability of Bankruptcy Rules 6004, 7062 and 9014, or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

32. The Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: \_\_\_\_\_, 2019  
Wilmington, Delaware

\_\_\_\_\_  
THE HONORABLE KEVIN GROSS  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit B**

**Notice of Non-Voting Status**

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

In re:

OREXIGEN THERAPEUTICS, INC.,

Debtor.<sup>1</sup>

Chapter 11

Case No. 18-10518 (KG)

**NOTICE OF NON-VOTING STATUS**

**PLEASE TAKE NOTICE THAT** on \_\_\_\_\_, 2019, the United States Bankruptcy Court for the District of Delaware (the “Court”) entered the *Order (A) Approving the Disclosure Statement on an Interim Basis, (B) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Plan, (C) Approving the Forms of Ballot and Solicitation Materials, (D) Establishing the Voting Record Date, (E) Scheduling the Confirmation Hearing and Deadline for Filing Objections to Final Approval of the Disclosure Statement and Confirmation of the Plan, and (F) Approving the Related Form of Notice* (the “Joint Interim Approval and Procedures Order”) which, among other things: (a) granted interim approval to the disclosure statement for the plan of liquidation (as may be amended or supplemented from time to time and including all exhibits thereto, the “Disclosure Statement”) of Orexigen Therapeutics, Inc. (the “Debtor”) and (b) authorized the Debtor to solicit votes with regard to the acceptance or rejection of Debtor’s plan of liquidation (as may be amended or supplemented from time to time and including all exhibits thereto, the “Plan”).<sup>2</sup>

**PLEASE TAKE FURTHER NOTICE THAT** the Disclosure Statement, the Joint Interim Approval and Procedures Order, the Plan and the other documents and materials included in the Solicitation Package may be obtained at no charge from Kurtzman Carson Consultants LLC (“KCC”) by: (a) accessing the Debtor’s case website at [www.kccllc.net/orexigen](http://www.kccllc.net/orexigen); or (b) contacting KCC by email at [OrexigenInfo@kccllc.com](mailto:OrexigenInfo@kccllc.com) or via telephone at 1-888-830-4646 (U.S./Canada) or 1-310-751-2641 (International).

**PLEASE TAKE FURTHER NOTICE THAT** you are receiving this notice because, under the terms of Articles I of the Plan and the applicable provisions of the Bankruptcy Code, you are not a Holder of a Claim against or Interest in the Debtor entitled to vote to approve or reject the Plan. Accordingly, this notice and the *Notice of Order (A) Approving the Disclosure Statement on an Interim Basis, (B) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Plan, (C) Approving the Forms of Ballot and Solicitation Materials, (D) Establishing the Voting Record Date, (E) Scheduling the Confirmation Hearing*

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<sup>1</sup> 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, 875 Third Avenue, New York, NY 10022, Attn: Chris Bryant and John Beck.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Disclosure Statement or the Plan, as applicable.



*and Deadline for Filing Objections to Final Approval of the Disclosure Statement and Confirmation of the Plan, and (F) Approving the Related Form of Notice* are being sent to you for informational purposes only.

**PLEASE TAKE FURTHER NOTICE THAT** the Bankruptcy Court will hold a hearing (the “Confirmation Hearing”) to consider final approval of the adequacy of the Disclosure Statement and confirmation of the Plan on \_\_\_\_\_, **2019, at 11:00 a.m. (prevailing Eastern Time)**, before the Honorable Kevin Gross, United States Bankruptcy Judge, in Courtroom #3 of the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 5th Floor, Wilmington, Delaware 19801. The Confirmation Hearing may be continued from time to time without further notice other than the announcement by the Debtor in open court of the adjourned date(s) at the Confirmation Hearing or any continued hearing or as indicated in any notice of agenda of matters scheduled for hearing filed with the Bankruptcy Court. The Debtor may modify the Plan and Disclosure Statement, if necessary, prior to, during, or as a result of the Confirmation Hearing in accordance with the terms of the Plan and Disclosure Statement without further notice.

**PLEASE TAKE FURTHER NOTICE THAT** the Court has established \_\_\_\_\_, **2019, at 4:00 p.m. (prevailing Eastern Time)** as the deadline for filing and serving objections to the Confirmation of the Plan (the “Objection Deadline”). Any objection to confirmation of the Plan must be in writing, must comply with the Bankruptcy Rules and Local Rules, must set forth the name, address, phone number and email of the objector, the nature and amount of the Claim or Interests held or asserted by the objector against the Debtor, state with particularity the basis and nature of any objection to the adequacy of the Disclosure Statement and confirmation of the Plan and a proposed modification to the Plan and Disclosure Statement that would resolve such objection, and must be filed, together with proof of service thereof (with a copy to chambers), and served by no later than the Objection Deadline upon: (i) counsel to the Debtor: Hogan Lovells US LLP, 875 Third Avenue, New York, NY, 10022, Attn: Christopher R. Donoho III, Christopher R. Bryant and John D. Beck; (ii) co-counsel to the Debtor: Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street, 16th Floor, Wilmington, DE 19899, Attn: Andrew Remming, Esq. & Robert Dehney, Esq.; (iii) the Office of the United States Trustee: 844 King Street, Suite 2207, Lockbox #35, Wilmington, Delaware, 19899 (Attn: Richard Schepacarter); (iv) counsel to certain of the Prepetition Secured Noteholders: Quinn Emanuel Urquhart & Sullivan LLP, 865 S. Figueroa Street, 10th Floor, Los Angeles, CA 90017, Attn: Eric Winston and Bennett Murphy (v) counsel to the Creditors’ Committee: Irell & Manella LLP, 840 Newport Center Drive, Suite 400, Newport Beach, CA 92660, Attn: Jeffrey M. Reisner and Kerri A. Lyman; (vi) counsel to the Prepetition Secured Notes Indenture Trustee: Kelley Drye & Warren LLP, 101 Park Ave, New York, NY 10178, Attn: James Carr and Benjamin D. Feder; and (vii) such other parties as the Bankruptcy Court may order.

**PLEASE TAKE FURTHER NOTICE THAT** objections to the adequacy of the Disclosure Statement and confirmation of the Plan, if any, shall not raise any objections to the following relief approved in the Joint Interim Approval and Procedures Order: (i) approval of the Disclosure Statement on an interim basis; (ii) the voting procedures; (iii) the forms of notice to be provided to creditors and interest holders; and (iv) the forms of ballots to be provided to creditors and interest holders entitled to vote on the Plan.

**PLEASE TAKE FURTHER NOTICE THAT** if you have any questions about the status of any of your Claims, you should contact KCC in accordance with the instructions provided above.

Dated: \_\_\_\_\_, 2019

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

By: /s/ Draft

Robert J. Dehney (DE Bar No. 3578)  
Andrew R. Remming (DE Bar No. 5120)  
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*-and-*

HOGAN LOVELLS US LLP

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Christopher R. Bryant (pro hac vice)  
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john.beck@hoganlovells.com

*Counsel for the Debtor and Debtor in Possession*

**EXHIBIT C**

**Confirmation Hearing Notice**

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

In re:

OREXIGEN THERAPEUTICS, INC.,

Debtor.<sup>1</sup>

Chapter 11

Case No. 18-10518 (KG)

**NOTICE OF ORDER (A) APPROVING THE DISCLOSURE STATEMENT ON AN INTERIM BASIS, (B) ESTABLISHING PROCEDURES FOR SOLICITATION AND TABULATION OF VOTES TO ACCEPT OR REJECT THE PLAN, (C) APPROVING THE FORMS OF BALLOT AND SOLICITATION MATERIALS, (D) ESTABLISHING THE VOTING RECORD DATE, (E) SCHEDULING THE CONFIRMATION HEARING AND DEADLINE FOR FILING OBJECTIONS TO FINAL APPROVAL OF THE DISCLOSURE STATEMENT AND CONFIRMATION OF THE PLAN, AND (F) APPROVING THE RELATED FORM OF NOTICE**

**TO ALL HOLDERS OF CLAIMS AND INTERESTS AND PARTIES IN INTEREST:**

1. **PLEASE TAKE NOTICE THAT** on \_\_\_\_\_, 2019, the United States Bankruptcy Court for the District of Delaware (the “Court”) entered the *Order (A) Approving the Disclosure Statement on an Interim Basis, (B) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Plan, (C) Approving the Forms of Ballot and Solicitation Materials, (D) Establishing the Voting Record Date, (E) Scheduling the Confirmation Hearing and Deadline for Filing Objections to Final Approval of the Disclosure Statement and Confirmation of the Plan, and (F) Approving the Related Form of Notice* (the “Joint Interim Approval and Procedures Order”) which, among other things: (a) granted interim approval to the disclosure statement for the plan of liquidation (as may be amended or supplemented from time to time and including all exhibits thereto, the “Disclosure Statement”) of Orexigen Therapeutics, Inc. (the “Debtor”) and (b) authorized the Debtor to solicit votes with regard to the acceptance or rejection of Debtor’s plan of liquidation (as may be amended or supplemented from time to time and including all exhibits thereto, the “Plan”).<sup>2</sup>
2. **PLEASE TAKE FURTHER NOTICE THAT** \_\_\_\_\_, 2019 at 4:00 p.m. **prevailing Eastern Time** is the Voting Record Date for purposes of determining (a) which Holders of Claims are entitled to vote on the Plan and (b) whether Claims have

<sup>1</sup> 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, 875 Third Avenue, New York, NY 10022, Attn: Chris Bryant and John Beck.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Disclosure Statement or the Plan, as applicable.

been properly transferred to an assignee pursuant to Bankruptcy Rule 3001(e) such that the applicable assignee can vote as the Holder of the Claim.

3. **PLEASE TAKE FURTHER NOTICE THAT** if you are a Holder of a Claim against the Debtor as of the Voting Record Date and are entitled to vote on the Plan, you have received a Ballot and voting instructions appropriate for your Claim(s). For your vote to be counted in connection with Confirmation of the Plan, you must follow the appropriate voting instructions, complete all required information on the Ballot and execute and return the completed Ballot so that it is **actually received** in accordance with the voting instructions by \_\_\_\_\_, **2019, at 4:00 p.m. (prevailing Eastern Time)** (the "Voting Deadline"). Any failure to follow the voting instructions included with the Ballot may disqualify your Ballot and your vote on the Plan.
4. **PLEASE TAKE FURTHER NOTICE THAT** the Court has established \_\_\_\_\_, **2019, at 4:00 p.m. (prevailing Eastern Time)** as the deadline for filing and serving objections to the Confirmation of the Plan (the "Objection Deadline"). Any objection to confirmation of the Plan must be in writing, must comply with the Bankruptcy Rules and Local Rules, must set forth the name, address, phone number and email of the objector, the nature and amount of the Claim or Interests held or asserted by the objector against the Debtor, state with particularity the basis and nature of any objection to the adequacy of the Disclosure Statement and confirmation of the Plan and a proposed modification to the Plan and Disclosure Statement that would resolve such objection, and must be filed, together with proof of service thereof (with a copy to chambers), and served by no later than the Objection Deadline upon: (i) counsel to the Debtor: Hogan Lovells US LLP, 875 Third Avenue, New York, NY, 10022, Attn: Christopher R. Donoho III, Christopher R. Bryant and John D. Beck; (ii) co-counsel to the Debtor: Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street, 16th Floor, Wilmington, DE 19899, Attn: Andrew Remming, Esq. & Robert Dehney, Esq.; (iii) the Office of the United States Trustee: 844 King Street, Suite 2207, Lockbox #35, Wilmington, Delaware, 19899 (Attn: Richard Schepacarter); (iv) counsel to certain of the Prepetition Secured Noteholders: Quinn Emanuel Urquhart & Sullivan LLP, 865 S. Figueroa Street, 10th Floor, Los Angeles, CA 90017, Attn: Eric Winston and Bennett Murphy (v) counsel to the Creditors' Committee: Irell & Manella LLP, 840 Newport Center Drive, Suite 400, Newport Beach, CA 92660, Attn: Jeffrey M. Reisner and Kerri A. Lyman; (vi) counsel to the Prepetition Secured Notes Indenture Trustee: Kelley Drye & Warren LLP, 101 Park Ave, New York, NY 10178, Attn: James Carr and Benjamin D. Feder; and (vii) such other parties as the Bankruptcy Court may order.
5. **PLEASE TAKE FURTHER NOTICE THAT** objections to the adequacy of the Disclosure Statement and confirmation of the Plan, if any, shall not raise any objections to the following relief approved in the Joint Interim Approval and Procedures Order: (i) approval of the Disclosure Statement on an interim basis; (ii) the voting procedures; (iii) the forms of notice to be provided to creditors and interest holders; and (iv) the forms of ballots to be provided to creditors and interest holders entitled to vote on the Plan.

6. **PLEASE TAKE FURTHER NOTICE THAT** the Bankruptcy Court will hold a hearing (the “Confirmation Hearing”) to consider final approval of the adequacy of the Disclosure Statement and confirmation of the Plan on \_\_\_\_\_, **2019 at 11:00 a.m. (prevailing Eastern Time)**, before the Honorable Kevin Gross, United States Bankruptcy Judge, in Courtroom #3 of the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 5th Floor, Wilmington, Delaware 19801. The Confirmation Hearing may be continued from time to time without further notice other than the announcement by the Debtor in open court of the adjourned date(s) at the Confirmation Hearing or any continued hearing or as indicated in any notice of agenda of matters scheduled for hearing filed with the Bankruptcy Court. The Debtor may modify the Plan and Disclosure Statement, if necessary, prior to, during, or as a result of the Confirmation Hearing in accordance with the terms of the Plan and Disclosure Statement without further notice.
7. **PLEASE TAKE FURTHER NOTICE THAT** your rights are described in the Debtor’s Disclosure Statement and all exhibits related thereto (as may be amended, supplemented or otherwise modified from time to time and including all exhibits or supplements thereto, the “Disclosure Statement”). The Disclosure Statement and the Plan are available by going to the Debtor’s case website <https://www.kccllc.net/orexigen> or by contacting KCC via email at [OrexigenInfo@kccllc.com](mailto:OrexigenInfo@kccllc.com) or via telephone at (888) 830-4646 (U.S./Canada) or (310) 751-2641 (International).
8. **PLEASE TAKE FURTHER NOTICE THAT**<sup>3</sup> Article VI of the Plan contains the following release, exculpation and injunction provisions:

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<sup>3</sup> The Plan defines Debtor Related Persons, Related Persons, Exculpated Parties and Released Parties as follows:

“Debtor Related Persons” means, 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.

“Related Persons” means, 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.

“Exculpated Parties” means (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.

“Released Parties” means, subject to the limitations expressly provided in the Plan, (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

**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

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(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.

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:

- (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 and Interests.** 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 AND INTERESTS 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.

(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 the 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, and 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.

**6.3. 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.

Dated: \_\_\_\_\_, 2019

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

By: /s/ Draft

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*-and-*

HOGAN LOVELLS US LLP

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*Counsel for the Debtor and Debtor in Possession*

**EXHIBIT D-1**

**Class 3 Ballot — Prepetition Secured Noteholder Claims**

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

In re:

OREXIGEN THERAPEUTICS, INC.,

Debtor.<sup>1</sup>

Chapter 11

Case No. 18-10518 (KG)

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**BALLOT FOR ACCEPTING OR REJECTING DEBTOR'S PLAN OF LIQUIDATION**

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**CLASS 3 BALLOT — PREPETITION SECURED NOTEHOLDER CLAIMS**

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**PLEASE READ AND FOLLOW THE INSTRUCTIONS FOR  
COMPLETING BALLOTS CAREFULLY BEFORE COMPLETING THE BALLOT.**

**THIS BALLOT MUST BE ACTUALLY RECEIVED BY KCC ON OR  
BEFORE \_\_\_\_\_, 2019, AT 4:00 P.M. (THE "VOTING  
DEADLINE").**

**IF YOUR SIGNED AND COMPLETED BALLOT IS NOT RECEIVED BY THE  
VOTING DEADLINE, THE DEBTOR  
MAY REJECT YOUR BALLOT AS INVALID.**

**IF THE PLAN IS CONFIRMED BY THE BANKRUPTCY COURT, IT WILL BE  
BINDING ON YOU WHETHER OR NOT YOU VOTE.**

**If no Holders of Class 3 Claims eligible to vote to accept or reject the Plan timely vote on  
the Plan, the Court may, at the Confirmation Hearing, deem Class 3 to have accepted  
the Plan. If you wish to vote, you should timely submit the signed and completed Ballot  
accepting or rejecting the  
Plan.**

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<sup>1</sup> 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, 875 Third Avenue, New York, NY 10022, Attn: Chris Bryant and John Beck.

Orexigen Therapeutics, Inc. (the “Debtor”), the debtor and debtor in possession in the above-captioned chapter 11 case, has sent this Ballot to you because its records indicate that you are a Holder of a Class 3 Claim as of the Voting Record Date (\_\_\_\_\_, 2019, at 4:00 p.m. prevailing Eastern Time) and accordingly, you have a right to vote to accept or reject the Debtor’s plan of liquidation (as may be amended or supplemented from time to time and including all exhibits thereto, the “Plan”).<sup>2</sup>

Your rights are described in the Debtor’s disclosure statement and all exhibits related thereto (as may be amended, supplemented or otherwise modified from time to time and including all exhibits or supplements thereto, the “Disclosure Statement”). The Disclosure Statement and the Plan are available by going to the Debtor’s case website <https://www.kccllc.net/orexigen> or by contacting KCC via email at [OrexigenInfo@kccllc.com](mailto:OrexigenInfo@kccllc.com) or via telephone at (888) 830-4646 (U.S./Canada) or (310) 751-2641 (International).

The Court has approved the Disclosure Statement on an interim basis. The Bankruptcy Court shall hold a hearing (the “Confirmation Hearing”) to consider final approval of the adequacy of the Disclosure Statement and Confirmation of the Plan on \_\_\_\_\_, **2019 at 11:00 a.m. (Eastern Time)**, before the Honorable Kevin Gross, United States Bankruptcy Judge, in Courtroom #3 of the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 5th Floor, Wilmington, Delaware 19801. The Confirmation Hearing may be continued from time to time without further notice other than the announcement by the Debtor in open court of the adjourned date(s) at the Confirmation Hearing or any continued hearing or as indicated in any notice of agenda of matters scheduled for hearing filed with the Bankruptcy Court. The Debtor may modify the Plan and Disclosure Statement, if necessary, prior to, during, or as a result of the Confirmation Hearing in accordance with the terms of the Plan and Disclosure Statement without further notice.

This Ballot may not be used for any purpose other than to vote to accept or reject the Plan and, if desired, to opt out of certain release provisions as explained below. This Ballot does not constitute, and shall not be deemed to be, a proof of claim or an assertion or admission of a Claim. If you believe you have received this Ballot in error, please contact KCC at the address or telephone number set forth above.

*You should carefully and thoroughly review the Disclosure Statement and the Plan before you vote. You may wish to seek legal advice concerning the Plan and the Plan’s classification and treatment of your Claim. Your Claim has been placed in Class 3 under the Plan. If you hold Claims in more than one Class, you will receive a Ballot for each Class in which you are entitled to vote.*

If KCC does not actually receive your signed and completed Ballot on or before the Voting Deadline, **which is \_\_\_\_\_, 2019, at 4:00 p.m. (prevailing Eastern Time)** and if the Voting Deadline is not extended, your vote will not count. **If the Court confirms the Plan, it will bind you regardless of whether you vote.** Original and facsimile signatures are acceptable.

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Plan or Disclosure Statement, as applicable.

**Item 1. Amount of Claim.**

The undersigned hereby certifies that as of the Voting Record Date, the undersigned was the Holder of Class 3 Claims in the following aggregate unpaid amount (insert amount in box below):

Amount of Claim: <sup>3</sup> \$ _____
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**Item 2. Vote on Plan.**

**THE DEBTOR AND CREDITORS' COMMITTEE RECOMMEND THAT YOU VOTE TO ACCEPT THE PLAN.**

The Holder of Class 3 Claims set forth in Item 1 votes to (please check one):

<b><u>ACCEPT THE PLAN</u></b> <input type="checkbox"/>	<b><u>REJECT THE PLAN</u></b> <input type="checkbox"/>
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If your Ballot indicates both an acceptance and a rejection of the Plan, or does not indicate either an acceptance or rejection of the Plan, it will not be counted.

If no Holders of Class 3 Claims eligible to vote to accept or reject the Plan vote on the Plan, the Court may, at the Confirmation Hearing, deem Class 3 to have accepted the Plan.

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<sup>3</sup> For voting purposes only, subject to tabulation rules.



*If the Plan becomes effective, the exculpation, releases and injunctions contained in Article VI of the Plan, including without limitation the releases of any Claims you may have against the Released Parties, each to the extent provided therein, will become effective and binding on all Creditors of the Debtor.<sup>4</sup> You are urged to carefully review Article VI of the Plan.*

**Item 3. Releases. COMPLETE THIS ITEM ONLY IF YOU VOTED TO REJECT THE PLAN IN ITEM 2 ABOVE.**

**IMPORTANT INFORMATION REGARDING CERTAIN RELEASES BY HOLDERS OF CLAIMS:**

IF YOU VOTE TO ACCEPT THE PLAN, YOU WILL BE DEEMED TO GRANT THE RELEASES IN SECTION 6.2(b) OF THE PLAN. IF YOU VOTE TO REJECT THE PLAN AND SUBMIT YOUR BALLOT WITHOUT CHECKING THE BOX BELOW, YOU WILL BE DEEMED TO CONSENT TO THE RELEASES PROVIDED IN SECTION 6.2(b) OF THE PLAN. LIKewise, IF YOU FAIL TO VOTE, YOU WILL BE DEEMED TO HAVE CONSENTED TO THE RELEASES PROVIDED IN SECTION 6.2(b).

IF YOU VOTE TO REJECT THE PLAN, YOU MAY OPT OUT OF THE RELEASES PROVIDED IN SECTION 6.2(b) OF THE PLAN (AS SET FORTH BELOW) BY CHECKING THE BOX BELOW AND YOU WILL NOT BE BOUND BY SUCH RELEASES. CHECK

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<sup>4</sup> The Plan defines Debtor Related Persons, Related Persons, Exculpated Parties and Released Parties as follows:

“Debtor Related Persons” means, 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.

“Related Persons” means, 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.

“Exculpated Parties” means (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.

“Released Parties” means, subject to the limitations expressly provided in the Plan, (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.

THE BOX BELOW IF YOU ELECT NOT TO GRANT THE RELEASES PROVIDED IN 6.2(b) OF THE PLAN. THE ELECTION TO WITHHOLD CONSENT TO GRANT SUCH RELEASES IS AT YOUR OPTION.

The Holder of Class 3 Claims set forth in Item 1 elects to:

Opt out of the releases provided in Section 6.2(b) of the Plan

**IF YOU CHECK THE BOX ABOVE BUT VOTE TO ACCEPT THE PLAN, YOU WILL BE DEEMED TO GRANT THE APPLICABLE RELEASES IN ARTICLE VI OF THE PLAN EVEN THOUGH YOU CHECKED THE BOX ABOVE.**

### **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:

- (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 and Interests.** 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 AND INTERESTS 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.

(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 the 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, and 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.

**6.3. 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.

**Item 4. Signature and Required Information**

\_\_\_\_\_  
(Please print or type)

Signature: \_\_\_\_\_

Name of Signatory: \_\_\_\_\_  
(If other than Holder)<sup>5</sup>

Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date Completed: \_\_\_\_\_

\_\_\_\_\_  
<sup>5</sup> If you are completing this Ballot on behalf of another person or entity, indicate your relationship with such person or entity and the capacity in which you are signing. You may be required to provide additional information or documentation with respect to such relationship.



**PLEASE COMPLETE, SIGN (ORIGINAL OR FACSIMILE SIGNATURE) AND DATE THE BALLOT AND RETURN IT PROMPTLY TO ONE OF THE BELOW ADDRESSES. YOUR BALLOT MUST BE ACTUALLY RECEIVED BY THE VOTING DEADLINE, WHICH IS \_\_\_\_\_, 2019 AT 4:00 P.M. (PREVAILING EASTERN TIME).**

**To return your Ballot via first class mail, hand delivery, or overnight courier:**

**Orexigen Ballot Processing Center  
c/o KCC  
2335 Alaska Avenue  
El Segundo, CA 90245**

**In addition, to submit your Ballot via the Balloting Agent's online portal, please visit <https://www.kccllc.net/orexigen>. Click on the "Submit eBallot" section of the website and follow the instructions to submit your Ballot.**

**IMPORTANT NOTE: You will need the following information to retrieve and submit your customized electronic Ballot:**

**Unique eBallot ID#: \_\_\_\_\_**

**PIN#: \_\_\_\_\_**

**The Balloting Agent's online portal is the sole manner in which Ballots will be accepted via electronic or online transmission. Ballots submitted by facsimile, email or other means of electronic transmission will not be counted.**

**Each eBallot ID# is to be used solely for voting only those Claims described in Item 1 of your electronic Ballot. Please complete and submit an electronic Ballot for each eBallot ID# you receive, as applicable. Creditors who cast a Ballot using the Balloting Agent's online portal should NOT also submit a paper Ballot.**

**INSTRUCTIONS FOR COMPLETING BALLOTS**

1. The Debtor is soliciting the votes of Holders of Claims with respect to the Plan attached as **Exhibit A** to the Disclosure Statement. Capitalized terms used in the Ballot or in these instructions but not otherwise defined therein or herein shall have the meaning set forth in the Plan or the Disclosure Statement, as applicable.
2. The Court may confirm the Plan and thereby bind you by the terms of the Plan. Please review the Disclosure Statement for more information.
3. To ensure that your vote is counted, you must: (a) complete the Ballot; (b) indicate your decision either to accept or reject the Plan in the boxes provided in Item 2 of the Ballot; and (c) sign and return the Ballot to the address set forth herein (an original or facsimile signature is acceptable). If KCC does not actually receive your signed and completed Ballot on or before the Voting Deadline, **which is \_\_\_\_\_, 2019, at 4:00 p.m. (prevailing Eastern Time)** and if the Voting Deadline is not extended, your vote will not count. Your completed Ballot must be received by KCC on or before the Voting Deadline.
4. You must vote all of your Claims within a particular Class either to accept or reject the Plan and may not split your vote. A Ballot that partially rejects and partially accepts the Plan will be counted as an acceptance of the Plan. Further, to the extent there are multiple Claims within the same Class held by a single Holder, the Debtor may aggregate the Claims of any particular Holder within a Class for voting purposes as if such Holder held one Claim within that Class and for purposes of the numerosity requirement of 1126(c) of the Bankruptcy Code the votes related to such Claims shall be treated as a single vote to accept or reject the Plan.
5. If a Ballot is received after the Voting Deadline, it will not be counted unless the Debtor determines otherwise in writing. Except as otherwise provided herein, such delivery will be deemed made only when KCC actually receives the originally executed Ballot. Instead of effecting delivery by mail, it is recommended, though not required, that Holders use an overnight or hand delivery service. In all cases, Holders should allow sufficient time to assure timely delivery. Delivery of a Ballot to KCC by facsimile or e-mail shall not be valid. No Ballot should be sent to any of the Debtor, the Debtor's agents (other than KCC) or the Debtor's legal advisors and if so sent will not be counted.
6. Unless you received consent from the Debtor, you may not change your vote once you submit a Ballot.
7. The Ballot is not a letter of transmittal and may not be used for any purpose other than to vote to accept or reject the Plan. Accordingly, at this time, Holders of Claims should not surrender certificates or instruments representing or evidencing their Claims and neither the Debtor nor KCC will accept delivery of any such certificates or instruments surrendered together with a Ballot.
8. This Ballot does not constitute and shall not be deemed to be: (a) a proof of claim; or (b) an assertion or admission of a Claim.

9. Please be sure to sign and date your Ballot (original and facsimile signatures are acceptable). In addition, please provide your name and mailing address if it is different from that set forth on the attached mailing label or if no such mailing label is attached to the Ballot.
10. If you hold Claims in more than one Class under the Plan or in multiple accounts, you may receive more than one Ballot coded for each different Class or account. Each Ballot votes only your Claims indicated on that Ballot. Please complete and return each Ballot you received.
11. The following Ballots shall not be counted in determining the acceptance or rejection of the Plan: (a) any Ballot that is illegible or contains insufficient information to permit the identification of the claimant; (b) any Ballot cast by a Party that does not hold a Claim in a Class that is entitled to vote on the Plan; (c) any Ballot cast by a Person that does not hold a Claim in a Class that is entitled to vote to accept or reject the Plan; (d) any Ballot cast for a scheduled Claim designated or determined as unliquidated, contingent, or disputed or as zero or unknown in amount, no timely proof of claim was filed, and for which no 3018(a) Motion has been Filed by the 3018(a) Motion Deadline; (e) any Ballot timely received that is cast in a manner that indicates neither acceptance nor rejection of this Plan or that indicates both acceptance and rejection of this Plan; (f) any Ballot or received by the Balloting Agent after the Voting Deadline, unless the Debtor agrees in writing to an extension of such deadline; (g) any Ballot not bearing an original or facsimile signature; (h) any Ballot received by the Balloting Agent by facsimile, e-mail or other electronic communication (unless otherwise permitted by the Debtor in writing); and (i) any Ballot that partially rejects and partially accepts the Plan.
12. If you believe you have received the wrong Ballot, you should contact KCC immediately by phone at (888) 830-4646 (U.S./Canada) or (310) 751-2641 (International) or by email at [OrexigenInfo@kccllc.com](mailto:OrexigenInfo@kccllc.com).

**PLEASE SUBMIT YOUR BALLOT PROMPTLY**

**EXHIBIT D-2**

**Class 4 Ballot — General Unsecured Claims**

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

In re:

OREXIGEN THERAPEUTICS, INC.,

Debtor.<sup>1</sup>

Chapter 11

Case No. 18-10518 (KG)

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**BALLOT FOR ACCEPTING OR REJECTING DEBTOR'S PLAN OF LIQUIDATION**

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**CLASS 4 CLAIMS — GENERAL UNSECURED CLAIMS**

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**PLEASE READ AND FOLLOW THE INSTRUCTIONS FOR  
COMPLETING BALLOTS CAREFULLY BEFORE COMPLETING THE BALLOT.**

**THIS BALLOT MUST BE ACTUALLY RECEIVED BY KCC ON OR  
BEFORE \_\_\_\_\_, 2019, AT 4:00 P.M. (PREVAILING EASTERN TIME) (THE  
"VOTING DEADLINE").**

**IF YOUR SIGNED AND COMPLETED BALLOT IS NOT RECEIVED BY THE  
VOTING DEADLINE, THE DEBTOR  
MAY REJECT YOUR BALLOT AS INVALID.**

**IF THE PLAN IS CONFIRMED BY THE BANKRUPTCY COURT, IT WILL BE  
BINDING ON YOU WHETHER OR NOT YOU VOTE.**

**If no Holders of Class 4 Claims eligible to vote to accept or reject the Plan timely vote on  
the Plan, the Court may, at the Confirmation Hearing, deem Class 4 to have accepted  
the Plan. If you wish to vote, you should timely submit the signed and completed Ballot  
accepting or rejecting the  
Plan.**

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<sup>1</sup> 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, 875 Third Avenue, New York, NY 10022, Attn: Chris Bryant and John Beck.

Orexigen Therapeutics, Inc. (the “Debtor”), the debtor and debtor in possession in the above-captioned chapter 11 case, has sent this Ballot to you because its records indicate that you are a Holder of a Class 4 Claim as of the Voting Record Date, \_\_\_\_\_, 2019, at 4:00 p.m. (prevailing Eastern Time) and accordingly, you have a right to vote to accept or reject the Debtor’s plan of liquidation (as may be amended or supplemented from time to time and including all exhibits thereto, the “Plan”).<sup>2</sup>

Your rights are described in the Debtor’s disclosure statement and all exhibits related thereto (as may be amended, supplemented or otherwise modified from time to time and including all exhibits or supplements thereto, the “Disclosure Statement”). The Disclosure Statement and the Plan are available by going to the Debtor’s case website <https://www.kccllc.net/orexigen> or by contacting KCC via email at [OrexigenInfo@kccllc.com](mailto:OrexigenInfo@kccllc.com) or via telephone at (888) 830-4646 (U.S./Canada) or (310) 751-2641 (International).

The Court has approved the Disclosure Statement on an interim basis. The Bankruptcy Court shall hold a hearing (the “Confirmation Hearing”) to consider final approval of the adequacy of the Disclosure Statement and Confirmation of the Plan on \_\_\_\_\_, **2019 at 11:00 a.m. (prevailing Eastern Time)**, before the Honorable Kevin Gross, United States Bankruptcy Judge, in Courtroom #3 of the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 5th Floor, Wilmington, Delaware 19801. The Confirmation Hearing may be continued from time to time without further notice other than the announcement by the Debtor in open court of the adjourned date(s) at the Confirmation Hearing or any continued hearing or as indicated in any notice of agenda of matters scheduled for hearing filed with the Bankruptcy Court. The Debtor may modify the Plan and Disclosure Statement, if necessary, prior to, during, or as a result of the Confirmation Hearing in accordance with the terms of the Plan and Disclosure Statement without further notice.

This Ballot may not be used for any purpose other than to vote to accept or reject the Plan and, if desired, to opt out of certain release provisions as explained below. This Ballot does not constitute, and shall not be deemed to be, a proof of claim or an assertion or admission of a Claim. If you believe you have received this Ballot in error, please contact KCC at the address or telephone number set forth above.

*You should carefully and thoroughly review the Disclosure Statement and the Plan before you vote. You may wish to seek legal advice concerning the Plan and the Plan’s classification and treatment of your Claim. Your Claim has been placed in Class 4 under the Plan. If you hold Claims in more than one Class, you will receive a Ballot for each Class in which you are entitled to vote.*

If KCC does not actually receive your signed and completed Ballot on or before the Voting Deadline, **which is \_\_\_\_\_, 2019 at 4:00 p.m. (prevailing Eastern Time)** and if the Voting Deadline is not extended, your vote will not count. **If the Court confirms the Plan, it will bind you regardless of whether you vote.** Original and facsimiles signatures are acceptable.

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Plan or Disclosure Statement, as applicable.

**Item 1. Amount of Claim.**

The undersigned hereby certifies that as of the Voting Record Date, the undersigned was the Holder of Class 4 Claims in the following aggregate unpaid amount (insert amount in box below):

Amount of Claim: <sup>3</sup> \$ _____
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**Item 2. Vote on Plan.**

**THE DEBTOR AND CREDITORS' COMMITTEE RECOMMEND THAT YOU VOTE TO ACCEPT THE PLAN.**

The Holder of Class 4 Claims set forth in Item 1 votes to (please check one):

<b><u>ACCEPT THE PLAN</u></b>	<b><u>REJECT THE PLAN</u></b>
<input type="checkbox"/>	<input type="checkbox"/>

If your Ballot indicates both an acceptance and a rejection of the Plan, or does not indicate either an acceptance or rejection of the Plan, it will not be counted.

If no Holders of Class 4 Claims eligible to vote to accept or reject the Plan vote on the Plan, the Court may, at the Confirmation Hearing, deem Class 4 to have accepted the Plan.

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<sup>3</sup> For voting purposes only, subject to tabulation rules.

*If the Plan becomes effective, the exculpation, releases and injunctions contained in Article VI of the Plan, including without limitation the releases of any Claims you may have against the Released Parties, each to the extent provided therein, will become effective and binding on all Creditors of the Debtor.<sup>4</sup> You are urged to carefully review Article VI of the Plan.*

**Item 3. Releases. COMPLETE THIS ITEM ONLY IF YOU VOTED TO REJECT THE PLAN IN ITEM 2 ABOVE.**

**IMPORTANT INFORMATION REGARDING CERTAIN RELEASES BY HOLDERS OF CLAIMS:**

IF YOU VOTE TO ACCEPT THE PLAN, YOU WILL BE DEEMED TO GRANT THE RELEASES IN SECTION 6.2(b) OF THE PLAN. IF YOU VOTE TO REJECT THE PLAN AND SUBMIT YOUR BALLOT WITHOUT CHECKING THE BOX BELOW, YOU WILL BE DEEMED TO CONSENT TO THE RELEASES PROVIDED IN SECTION 6.2(b) OF THE PLAN. LIKewise, IF YOU FAIL TO VOTE, YOU WILL BE DEEMED TO HAVE CONSENTED TO THE RELEASES PROVIDED IN SECTION 6.2(b).

IF YOU VOTE TO REJECT THE PLAN, YOU MAY OPT OUT OF THE RELEASES PROVIDED IN SECTION 6.2(b) OF THE PLAN (AS SET FORTH BELOW) BY CHECKING

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<sup>4</sup> The Plan defines Debtor Related Persons, Related Persons, Exculpated Parties and Released Parties as follows:

“Debtor Related Persons” means, 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.

“Related Persons” means, 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.

“Exculpated Parties” means (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) and, (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.

“Released Parties” means, subject to the limitations expressly provided in the Plan, (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); and (e) the Prepetition Secured Notes Indenture Trustee and its Related Persons and (f) the Prepetition Unsecured Notes Indenture Trustees.



THE BOX BELOW AND YOU WILL NOT BE BOUND BY SUCH RELEASES. CHECK THE BOX BELOW IF YOU ELECT NOT TO GRANT THE RELEASES PROVIDED IN 6.2(b) OF THE PLAN. THE ELECTION TO WITHHOLD CONSENT TO GRANT SUCH RELEASES IS AT YOUR OPTION.

The Holder of Class 4 Claims set forth in Item 1 elects to:

Opt out of the releases provided in Section 6.2(b) of the Plan

**IF YOU CHECK THE BOX ABOVE BUT VOTE TO ACCEPT THE PLAN, YOU WILL BE DEEMED TO GRANT THE APPLICABLE RELEASES IN SECTION 6.2(b) OF THE PLAN EVEN THOUGH YOU CHECKED THE BOX ABOVE.**

### **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:

- (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 and Interests.** 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 AND INTERESTS 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.

(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 the 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, and 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.

**6.3. 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.

**Item 4. Signature and Required Information**

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(Please print or type)

Signature: \_\_\_\_\_

Name of Signatory: \_\_\_\_\_  
(If other than Holder)<sup>5</sup>

Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date Completed: \_\_\_\_\_

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<sup>5</sup> If you are completing this Ballot on behalf of another person or entity, indicate your relationship with such person or entity and the capacity in which you are signing. You may be required to provide additional information or documentation with respect to such relationship.

**PLEASE COMPLETE, SIGN (ORIGINAL OR FACSIMILE SIGNATURE) AND DATE THE BALLOT AND RETURN IT PROMPTLY TO ONE OF THE BELOW ADDRESSES. YOUR BALLOT MUST BE ACTUALLY RECEIVED BY THE VOTING DEADLINE, WHICH IS \_\_\_\_\_, 2019 AT 4:00 P.M. (PREVAILING EASTERN TIME).**

**To return your Ballot via first class mail, hand delivery, or overnight courier:**

**Orexigen Ballot Processing Center  
c/o KCC  
2335 Alaska Avenue  
El Segundo, CA 90245**

**In addition, to submit your Ballot via the Balloting Agent's online portal, please visit <https://www.kccllc.net/orexigen>. Click on the "Submit eBallot" section of the website and follow the instructions to submit your Ballot.**

**IMPORTANT NOTE: You will need the following information to retrieve and submit your customized electronic Ballot:**

**Unique eBallot ID#: \_\_\_\_\_**

**PIN#: \_\_\_\_\_**

**The Balloting Agent's online portal is the sole manner in which Ballots will be accepted via electronic or online transmission. Ballots submitted by facsimile, email or other means of electronic transmission will not be counted.**

**Each eBallot ID# is to be used solely for voting only those Claims described in Item 1 of your electronic Ballot. Please complete and submit an electronic Ballot for each eBallot ID# you receive, as applicable. Creditors who cast a Ballot using the Balloting Agent's online portal should NOT also submit a paper Ballot.**



**INSTRUCTIONS FOR COMPLETING BALLOTS**

1. The Debtor is soliciting the votes of Holders of Claims with respect to the Plan attached as **Exhibit A** to the Disclosure Statement. Capitalized terms used in the Ballot or in these instructions but not otherwise defined therein or herein shall have the meaning set forth in the Plan or the Disclosure Statement, as applicable.
2. The Court may confirm the Plan and thereby bind you by the terms of the Plan. Please review the Disclosure Statement for more information.
3. To ensure that your vote is counted, you must: (a) complete the Ballot; (b) indicate your decision either to accept or reject the Plan in the boxes provided in Item 2 of the Ballot; and (c) sign and return the Ballot to the address set forth herein (an original or facsimile signature is acceptable). If KCC does not actually receive your signed and completed Ballot on or before the Voting Deadline, **which is \_\_\_\_\_, 2019 at 4:00 p.m. (prevailing Eastern Time)** and if the Voting Deadline is not extended, your vote will not count. Your completed Ballot must be received by KCC on or before the Voting Deadline.
4. You must vote all of your Claims within a particular Class either to accept or reject the Plan and may not split your vote. A Ballot that partially rejects and partially accepts the Plan will be counted as an acceptance of the Plan. Further, to the extent there are multiple Claims within the same Class held by a single Holder, the Debtor may, aggregate the Claims of any particular Holder within a Class for voting purposes as if such Holder held one Claim within that Class and for purposes of the numerosity requirement of 1126(c) of the Bankruptcy Code the votes related to such Claims shall be treated as a single vote to accept or reject the Plan.
5. If a Ballot is received after the Voting Deadline, it will not be counted unless the Debtor determines otherwise in writing. Except as otherwise provided herein, such delivery will be deemed made only when KCC actually receives the originally executed Ballot. Instead of effecting delivery by mail, it is recommended, though not required, that Holders use an overnight or hand delivery service. In all cases, Holders should allow sufficient time to assure timely delivery. Delivery of a Ballot to KCC by facsimile or e-mail shall not be valid. No Ballot should be sent to any of the Debtor, the Debtor's agents (other than KCC) or the Debtor's legal advisors and if so sent will not be counted.
6. Unless you received consent from the Debtor, you may not change your vote once you submit a Ballot.
7. The Ballot is not a letter of transmittal and may not be used for any purpose other than to vote to accept or reject the Plan. Accordingly, at this time, Holders of Claims should not surrender certificates or instruments representing or evidencing their Claims and neither the Debtor nor KCC will accept delivery of any such certificates or instruments surrendered together with a Ballot.
8. This Ballot does not constitute and shall not be deemed to be: (a) a proof of claim; or (b) an assertion or admission of a Claim.

9. Please be sure to sign and date your Ballot (original and facsimile signatures are acceptable). In addition, please provide your name and mailing address if it is different from that set forth on the attached mailing label or if no such mailing label is attached to the Ballot.
10. If you hold Claims in more than one Class under the Plan or in multiple accounts, you may receive more than one Ballot coded for each different Class or account. Each Ballot votes only your Claims indicated on that Ballot. Please complete and return each Ballot you received.
11. The following Ballots shall not be counted in determining the acceptance or rejection of the Plan: (a) any Ballot that is illegible or contains insufficient information to permit the identification of the claimant; (b) any Ballot cast by a Party that does not hold a Claim in a Class that is entitled to vote on the Plan; (c) any Ballot cast by a Person that does not hold a Claim in a Class that is entitled to vote to accept or reject the Plan; (d) any Ballot cast for a scheduled Claim designated or determined as unliquidated, contingent, or disputed or as zero or unknown in amount, no timely proof of claim was filed, and for which no 3018(a) Motion has been Filed by the 3018(a) Motion Deadline; (e) any Ballot timely received that is cast in a manner that indicates neither acceptance nor rejection of this Plan or that indicates both acceptance and rejection of this Plan; (f) any Ballot or received by the Balloting Agent after the Voting Deadline, unless the Debtor agrees in writing to an extension of such deadline; (g) any Ballot not bearing an original or facsimile signature; (h) any Ballot received by the Balloting Agent by facsimile, e-mail or other electronic communication (unless otherwise permitted by the Debtor in writing); and (i) any Ballot that partially rejects and partially accepts the Plan.
12. If you believe you have received the wrong Ballot, you should contact KCC immediately by phone at (888) 830-4646 (U.S./Canada) or (310) 751-2641 (International) or by email at [OrexigenInfo@kccllc.com](mailto:OrexigenInfo@kccllc.com).

**PLEASE SUBMIT YOUR BALLOT PROMPTLY**

**EXHIBIT D-3**

**Class 4 Ballot — Beneficial Ballot for Prepetition Unsecured Notes Claims**

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

In re:

OREXIGEN THERAPEUTICS, INC.,

Debtor.<sup>1</sup>

Chapter 11

Case No. 18-10518 (KG)

**BENEFICIAL BALLOT FOR ACCEPTING OR REJECTING THE  
DEBTORS' PLAN OF LIQUIDATION**

**CLASS 4 GENERAL UNSECURED CLAIMS ON ACCOUNT OF UNSECURED NOTES**

**PLEASE READ AND FOLLOW THE INSTRUCTIONS FOR COMPLETING  
BENEFICIAL BALLOTS CAREFULLY BEFORE COMPLETING THE BENEFICIAL  
BALLOT**

**IN ORDER FOR YOUR VOTE TO BE COUNTED, YOUR BALLOT MUST BE COMPLETED, EXECUTED, AND RETURNED SO AS TO BE *ACTUALLY RECEIVED* BY KCC (THE "BALLOTING AGENT") BY \_\_\_\_\_, 2019, AT 4:00 P.M., PREVAILING EASTERN TIME (THE "VOTING DEADLINE"). IF, HOWEVER, YOU RECEIVED A RETURN ENVELOPE ADDRESSED TO YOUR NOMINEE, YOU MUST FOLLOW THE DIRECTIONS OF YOUR NOMINEE TO CAST YOUR VOTE AND ALLOW SUFFICIENT TIME FOR YOUR NOMINEE TO RECEIVE YOUR VOTE AND TRANSMIT SUCH VOTE ON A MASTER BALLOT, WHICH MASTER BALLOT MUST BE RETURNED TO THE BALLOTING AGENT BY THE VOTING DEADLINE IN ORDER FOR YOUR VOTE TO BE COUNTED.**

Orexigen Therapeutics, Inc. (the "Debtor"), the debtor and debtor in possession in the above-captioned chapter 11 case, has sent this Beneficial Ballot to you because you are a Holder of a Class 4 General Unsecured Claim on account of Prepetition Unsecured Notes as of the Voting Record Date (\_\_\_\_\_, 2019 at 4:00 p.m. (prevailing Eastern time)) and accordingly, you have a right to vote to accept or reject the *Debtor's Plan of Liquidation* (as may be amended or supplemented from time to time and including all exhibits thereto, the "Plan").<sup>2</sup>

Your rights are described in the Debtor's disclosure statement and all exhibits related thereto (as may be amended, supplemented or otherwise modified from time to time and including all exhibits or supplements thereto, the "Disclosure Statement"). The Disclosure Statement and the Plan are available by going to the Debtor's case website

<sup>1</sup> 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, 875 Third Avenue, New York, NY 10022, Attn: Chris Bryant and John Beck.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Plan or Disclosure Statement, as applicable.

<https://www.kccllc.net/orexigen> or by contacting KCC via email at [OrexigenInfo@kccllc.com](mailto:OrexigenInfo@kccllc.com) or via telephone at (888) 830-4646.

The Court has approved the Disclosure Statement on an interim basis. The Bankruptcy Court shall hold a hearing (the “Confirmation Hearing”) to consider final approval of the adequacy of the Disclosure Statement and Confirmation of the Plan on \_\_\_\_\_, **2019 at 11:00 a.m. (prevailing Eastern Time)**, before the Honorable Kevin Gross, United States Bankruptcy Judge, in Courtroom #3 of the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 5th Floor, Wilmington, Delaware 19801. The Confirmation Hearing may be continued from time to time without further notice other than the announcement by the Debtor in open court of the adjourned date(s) at the Confirmation Hearing or any continued hearing or as indicated in any notice of agenda of matters scheduled for hearing filed with the Bankruptcy Court. The Debtor may modify the Plan and Disclosure Statement, if necessary, prior to, during, or as a result of the Confirmation Hearing in accordance with the terms of the Plan and Disclosure Statement without further notice.

This Beneficial Ballot may not be used for any purpose other than to vote to accept or reject the Plan and, if desired to opt out of certain release provisions as explained below. This Beneficial Ballot does not constitute, and shall not be deemed to be, a proof of claim or an assertion or admission of a Claim. If you believe you have received this Ballot in error, please contact KCC at the address or telephone number set forth above.

*You should carefully and thoroughly review the Disclosure Statement and the Plan before you vote. You may wish to seek legal advice concerning the Plan and the Plan’s classification and treatment of your Claim. Your Claim has been placed in Class 4 under the Plan. If you hold Claims in more than one Class, you will receive a Ballot for each Class in which you are entitled to vote.*

In order for your vote to count, your Nominee must receive your completed Beneficial Ballot in sufficient time for your Nominee to include your vote on a Master Ballot that must be received by KCC on or before the Voting Deadline, **which is \_\_\_\_\_, 2019 at 4:00 p.m. (prevailing Eastern Time). If the Court confirms the Plan, it will bind you regardless of whether you vote.** Original and facsimile signatures are acceptable.

**Item 1. Principal Amount of Class 4 General Unsecured Claims on account of Prepetition Unsecured Notes Claim**

The undersigned hereby certifies that as of the Voting Record Date, \_\_\_\_\_, 2019, at 4:00 p.m. (prevailing Eastern Time) the undersigned Holder was the beneficial owner of Class 4 General Unsecured Claims on account of Prepetition Unsecured Notes in the following principal amount (insert amount in box below):

Principal Amount of Claim:  \$ _____
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**Item 2. Vote on Plan**

The Holder of the Class 4 General Unsecured Claims on account of Prepetition Unsecured Notes set forth in Item 1 votes to (please check one):

<p><b><u>ACCEPT THE PLAN</u></b></p> <input type="checkbox"/>	<p><b><u>REJECT THE PLAN</u></b></p> <input type="checkbox"/>
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If your Ballot indicates both an acceptance and a rejection of the Plan, or does not indicate either an acceptance or rejection of the Plan, it will not be counted.

If no Holders of Class 4 Claims eligible to vote to accept or reject the Plan vote on the Plan, the Court may, at the Confirmation Hearing, deem Class 4 to have accepted the Plan.

***If the Plan becomes effective, the exculpation, releases and injunctions contained in Article VI of the Plan, including without limitation the releases of any Claims you may have against the Released Parties, each to the extent provided therein, will become effective and binding on all Creditors of the Debtor.<sup>3</sup> You are urged to carefully review Article VI of the Plan.***

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<sup>3</sup> The Plan defines Debtor Related Persons, Related Persons, Exculpated Parties and Released Parties as follows:

“Debtor Related Persons” means, 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.

“Related Persons” means, 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.

“Exculpated Parties” means (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

**Item 3. Releases. COMPLETE THIS ITEM ONLY IF YOU VOTED TO REJECT THE PLAN IN ITEM 2 ABOVE.**

**IMPORTANT INFORMATION REGARDING CERTAIN RELEASES BY HOLDERS OF CLAIMS:**

IF YOU VOTE TO ACCEPT THE PLAN, YOU WILL BE DEEMED TO GRANT THE RELEASES IN SECTION 6.2(b) OF THE PLAN. IF YOU VOTE TO REJECT THE PLAN AND SUBMIT YOUR BALLOT WITHOUT CHECKING THE BOX BELOW, YOU WILL BE DEEMED TO CONSENT TO THE RELEASES PROVIDED IN SECTION 6.2(b) OF THE PLAN. LIKewise, IF YOU FAIL TO VOTE, YOU WILL BE DEEMED TO HAVE CONSENTED TO THE RELEASES PROVIDED IN SECTION 6.2(b).

IF YOU VOTE TO REJECT THE PLAN, YOU MAY OPT OUT OF THE RELEASES PROVIDED IN SECTION 6.2(b) OF THE PLAN (AS SET FORTH BELOW) BY CHECKING THE BOX BELOW AND YOU WILL NOT BE BOUND BY SUCH RELEASES. CHECK THE BOX BELOW IF YOU ELECT NOT TO GRANT THE RELEASES PROVIDED IN 6.2(b) OF THE PLAN. THE ELECTION TO WITHHOLD CONSENT TO GRANT SUCH RELEASES IS AT YOUR OPTION.

The Holder of Class 4 Claims set forth in Item 1 elects to:

Opt out of the releases provided in Section 6.2(b) of the Plan

**IF YOU CHECK THE BOX ABOVE BUT VOTE TO ACCEPT THE PLAN, YOU WILL BE DEEMED TO GRANT THE APPLICABLE RELEASES IN ARTICLE VI OF THE PLAN EVEN THOUGH YOU CHECKED THE BOX ABOVE.**

**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**

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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.

“Released Parties” means, subject to the limitations expressly provided in the Plan, (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.

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:

- (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 and Interests.** 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 AND INTERESTS 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.

(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 the 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, and 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.

**6.3. 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.

**Item 4. Certification of Class 4 General Unsecured Claims on account of Prepetition Unsecured Notes Held in Additional Accounts.**

By completing and returning this Ballot, the Beneficial Holder of the Class 4 General Unsecured Claim on account of Prepetition Unsecured Notes identified in Item 1 certifies that (a) this Ballot is the only Ballot submitted for the Class 4 General Unsecured Claims on account of Prepetition Unsecured Notes owned by such Beneficial Holder as indicated in Item 1, except for the Class 4 General Unsecured Claims on account of Prepetition Unsecured Notes identified in the following table, and (b) all Ballots for Class 4 General Unsecured Claims on account of Prepetition Unsecured Notes submitted by the Beneficial Holder indicate the same vote to accept or reject the Plan that the Beneficial Holder has indicated in Item 2 of this Ballot (please use additional sheets of paper if necessary). **To be clear, if any Beneficial Holder holds a Class 4 General Unsecured Claim on account of Prepetition Unsecured Notes through one or more Nominees, such Beneficial Holder must identify all Class 4 General Unsecured Claim on account of Prepetition Unsecured Notes held through its own name and/or each Nominee in the following table, and must indicate the same vote to accept or reject the Plan on all Ballots submitted.**

ONLY COMPLETE ITEM 4 IF YOU HAVE SUBMITTED OTHER BALLOTS ON  
ACCOUNT OF A CLASS 4 GENERAL UNSECURED CLAIMS ON ACCOUNT OF  
PREPETITION UNSECURED NOTES

Account Number of Other Class 4 General Unsecured Claims on account of Prepetition Unsecured Notes Voted	Name of Owner <sup>4</sup>	Principal Amount of Other Class 4 General Unsecured Claims on account of Prepetition Unsecured Notes Voted	CUSIP of Other Class 4 General Unsecured Claims on account of Prepetition Unsecured Notes Voted

**Item 5. Certifications**

By signing this Beneficial Ballot, the undersigned certifies that:

1. that either: (a) it is the Holder of the Class 4 General Unsecured Claims on account of Prepetition Unsecured Notes being voted; or (b) it is an authorized signatory for an entity that is a Holder of the Class 4 General Unsecured Claims on account of Prepetition Unsecured Notes being voted;
2. that it has received a copy of the Solicitation Package and acknowledges that the solicitation is being made pursuant to the terms and conditions set forth therein;
3. that it has cast the same vote with respect to all Class 4 General Unsecured Claims on account of Prepetition Unsecured Notes;
4. that no other Beneficial Ballots with respect to the amount of the Class 4 General Unsecured Claims on account of Prepetition Unsecured Notes identified in Item 1 have been cast or, if any other Beneficial Ballots have been cast with respect to such Claim(s), then any such Beneficial Ballots dated earlier are hereby revoked;
5. that it acknowledges that a vote to accept the Plan constitutes an acceptance of the treatment of such Class 4 General Unsecured Claims on account of Prepetition Unsecured Notes;

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<sup>4</sup> Insert your name if the Class 4 General Unsecured Claims on account of Prepetition Unsecured Notes are held by you in your own name or, if held in street name through a Nominee, insert the name of your broker or bank.

6. that it understands and, if accepting the Plan, agrees with the treatment provided for its Claim(s) under the Plan; and
7. that it acknowledges and agrees that the Debtor may make conforming changes to the Plan to the extent provided by Bankruptcy Rule 3019 as may be reasonably necessary; provided, that the Debtor will not re-solicit acceptances or rejections of the Plan in the event of such conforming changes.

Name of Beneficial Holder: \_\_\_\_\_  
*(print or type)*

Signature: \_\_\_\_\_

Name of Signatory: \_\_\_\_\_  
*(if other than Beneficial Holder)*

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date Completed: \_\_\_\_\_

**IF YOU RECEIVED A BALLOT AND A RETURN ENVELOPE ADDRESSED TO YOUR NOMINEE, YOUR COMPLETED BALLOT MUST BE SENT TO YOUR NOMINEE, NOT KCC, ALLOWING SUFFICIENT TIME FOR YOUR NOMINEE TO RECEIVE YOUR BALLOT, COMPLETE A MASTER BALLOT, AND TRANSMIT THE MASTER BALLOT TO KCC SO THAT IT IS ACTUALLY RECEIVED BEFORE THE VOTING DEADLINE.**

**INSTRUCTIONS FOR COMPLETING BENEFICIAL BALLOTS**

1. The Debtor is soliciting the votes of Holders of Claims with respect to the Plan attached as **Exhibit A** to the Disclosure Statement. Capitalized terms used in the Beneficial Ballot or in these instructions (the “**Beneficial Ballot Instructions**”) but not otherwise defined in the Beneficial Ballots or these instructions shall have the meaning set forth in the Plan, the Disclosure Statement, or the Joint Interim Approval and Procedures Order.
2. The Bankruptcy Court may confirm the Plan and thereby bind Beneficial Holders of Claims, if, among other things, the Plan is confirmed. Please review the Disclosure Statement for more information.
3. To ensure that your vote is counted, you must: (a) complete the Beneficial Ballot; (b) indicate your decision either to accept or reject the Plan in the boxes provided in the Beneficial Ballot; and (c) sign and return the Beneficial Ballot to your nominee as instructed (original or facsimile signature is acceptable). The Voting Deadline for the receipt of Master Ballots by the Balloting Agent is 4:00 p.m. (prevailing Eastern Time) on \_\_\_\_\_, 2019. If you hold your securities in street name through a broker, bank or other nominee, you should promptly return this ballot to your nominee (or its agent), as specified. (You should not return your ballot to the Balloting Agent.) Please allow sufficient time for your nominee to process and forward your vote to the Balloting Agent by the Voting Deadline. If the Claims and Balloting Agent does not timely receive your vote, your vote will not count. Do not fax this ballot to the Balloting Agent.
4. A Beneficial Ballot that partially rejects and partially accepts the Plan will not be counted. Further, if a Beneficial Holder has multiple Claims within the same Class, the Debtor may, in their discretion, aggregate the Claims of any particular Beneficial Holder within a Class for the purpose of counting votes.
5. This Beneficial Ballot is not a letter of transmittal and may not be used for any purpose other than to vote to accept or reject the Plan or, alternatively, the releases provided in Section 6.2(b) of the Plan and make certifications with respect to the Ballots. Accordingly, at this time, Holders of Claims should not surrender certificates or instruments representing their Claims and you should not accept delivery of any such certificates or instruments surrendered together with a Ballot.
6. This Beneficial Ballot does not constitute, and shall not be deemed to be: (a) a proof of claim; or (b) an assertion or admission of a Claim.
7. Please be sure to sign and date your Beneficial Ballot (original and facsimile signatures are acceptable). You should indicate that you are signing a Beneficial Ballot in your capacity as a trustee, executor, administrator, guardian, attorney in fact, officer of a corporation or otherwise acting in a fiduciary or representative capacity and, if required or requested by KCC, the Debtor, or the Bankruptcy Court, must submit proper evidence to the requesting party to so act on behalf of such Beneficial Holder. In addition, please provide your name and mailing address if it is different from that set forth on the attached mailing label or if no such mailing label is attached to the Beneficial Ballot.



8. The following Ballots and Beneficial Ballots shall not be counted in determining the acceptance or rejection of the Plan: (a) any Ballot or Beneficial Ballot that is illegible or contains insufficient information to permit the identification of the claimant; (b) any Ballot or Beneficial Ballot cast by a Party that does not hold a Claim in a Class that is entitled to vote on the Plan; (c) any Ballot or Beneficial Ballot cast by a Person that does not hold a Claim in a Class that is entitled to vote to accept or reject the Plan; (d) any Ballot or Beneficial Ballot cast for a scheduled Claim designated or determined as unliquidated, contingent, or disputed or as zero or unknown in amount, no timely proof of claim was filed, and for which no 3018(a) Motion has been Filed by the 3018(a) Motion Deadline; (e) any Ballot or Beneficial Ballot timely received that is cast in a manner that indicates neither acceptance nor rejection of this Plan or that indicates both acceptance and rejection of this Plan; (f) any Ballot or Beneficial Ballot received by the Balloting Agent after the Voting Deadline, unless the Debtor agrees in writing to an extension of such deadline; (g) any Ballot or Beneficial Ballot not bearing an original or facsimile signature; (h) any Ballot or Beneficial Ballot received by the Balloting Agent by facsimile, e-mail or other electronic communication (unless otherwise permitted by the Debtor in writing); and (i) any Ballot or Beneficial Ballot that partially rejects and partially accepts the Plan will not be counted.
9. If you believe you have received this Beneficial Ballot in error, you should contact KCC immediately.

**PLEASE SUBMIT YOUR BENEFICIAL  
BALLOT TO YOUR VOTING NOMINEE PROMPTLY!**

**IF YOU HAVE ANY QUESTIONS REGARDING THIS BALLOT OR THE VOTING PROCEDURES, PLEASE CONTACT KCC BY: (A) CALLING KCC AT (888) 830-4646, OR (B) BY EMAIL TO OREXIGENINFO@KCCLLC.COM AND INCLUDE “OREXIGEN” IN THE SUBJECT LINE.**

NOTHING CONTAINED HEREIN OR IN THE ENCLOSED DOCUMENTS SHALL RENDER YOU OR ANY OTHER ENTITY THE AGENT OF THE DEBTOR OR THE AGENT OR AUTHORIZE YOU OR ANY OTHER ENTITY TO USE ANY DOCUMENT OR MAKE ANY STATEMENTS ON BEHALF OF ANY OF THE DEBTOR WITH RESPECT TO THE PLAN, EXCEPT FOR THE STATEMENTS CONTAINED IN THE DOCUMENTS ENCLOSED HEREWITH.

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**EXHIBIT D-4**

**Class 4 Ballot — Master Ballot for Prepetition Unsecured Notes Claims**

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

In re:

OREXIGEN THERAPEUTICS, INC.,

Debtor.<sup>1</sup>

Chapter 11

Case No. 18-10518 (KG)

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**MASTER BALLOT FOR ACCEPTING OR REJECTING THE  
DEBTORS' PLAN OF LIQUIDATION**

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**CLASS 4 GENERAL UNSECURED CLAIMS ON ACCOUNT OF UNSECURED NOTES**

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**PLEASE READ AND FOLLOW THE INSTRUCTIONS FOR COMPLETING  
THE MASTER BALLOT CAREFULLY BEFORE COMPLETING THE MASTER  
BALLOT.**

**THIS MASTER BALLOT MUST BE ACTUALLY RECEIVED BY \_\_\_\_\_, 2019, AT  
4:00 P.M. PREVAILING EASTERN TIME (THE "VOTING DEADLINE").**

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Orexigen Therapeutics, Inc. (the "Debtor"), the debtor and debtor in possession in the above-captioned chapter 11 case, has sent this Master Ballot to you because our records indicate that you are a broker, dealer, commercial bank, trust company or other agent nominee (each, a "Nominee") of a Beneficial Holder<sup>2</sup> of a Class 4 General Unsecured Claim on account of Prepetition Unsecured Notes under the Debtor's plan of liquidation (as may be amended or supplemented from time to time and including all exhibits thereto, the "Plan")<sup>3</sup> as of the Voting Record Date, \_\_\_\_\_, 2019, at 4:00 p.m. prevailing Eastern Time.

Your rights are described in the Debtor's disclosure statement and all exhibits related thereto (as may be amended, supplemented or otherwise modified from time to time and including all exhibits or supplements thereto, the "Disclosure Statement"). The Disclosure Statement and the Plan are available by going to the Debtor's case website

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<sup>1</sup> 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, 875 Third Avenue, New York, NY 10022, Attn: Chris Bryant and John Beck.

<sup>2</sup> "Beneficial Holder" means a beneficial owner of publicly-traded Securities whose Claims have not been satisfied prior to the Voting Record Date pursuant to Bankruptcy Court order or otherwise, as reflected in the records maintained by the Nominees holding through (i) Wilmington Trust, National Association, in its capacity as 2013 Notes Indenture Trustee; and/or (ii) Wilmington Savings Fund Society, FSB, its capacity as 2017 Notes Indenture Trustee, as of the Voting Record Date.

<sup>3</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Plan or Disclosure Statement, as applicable.

<https://www.kccllc.net/orexigen> or by contacting KCC via email at [OrexigenInfo@kccllc.com](mailto:OrexigenInfo@kccllc.com) or via telephone at (917) 281-4800.

The Court has approved the Disclosure Statement on an interim basis. The Bankruptcy Court shall hold a hearing (the “Confirmation Hearing”) to consider final approval of the adequacy of the Disclosure Statement and Confirmation of the Plan on \_\_\_\_\_, **2019 at 11:00 a.m. (prevailing Eastern Time)**, before the Honorable Kevin Gross, United States Bankruptcy Judge, in Courtroom #3 of the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 5th Floor, Wilmington, Delaware 19801. The Confirmation Hearing may be continued from time to time without further notice other than the announcement by the Debtor in open court of the adjourned date(s) at the Confirmation Hearing or any continued hearing or as indicated in any notice of agenda of matters scheduled for hearing filed with the Bankruptcy Court. The Debtor may modify the Plan and Disclosure Statement, if necessary, prior to, during, or as a result of the Confirmation Hearing in accordance with the terms of the Plan and Disclosure Statement without further notice.

This Master Ballot may not be used for any purpose other than to vote to accept or reject the Plan and, if desired, to opt out of certain release provisions as explained below. This Master Ballot does not constitute, and shall not be deemed to be, a proof of claim or an assertion or admission of a claim. If you believe you have received this Ballot in error, please contact KCC at the address or telephone number set forth above.

*You should carefully and thoroughly review the Disclosure Statement and the Plan before you vote. You may wish to seek legal advice concerning the Plan and the Plan’s classification and treatment of your Claim. Your Claim has been placed in Class 4 under the Plan. If you hold Claims in more than one Class, you will receive a Ballot for each Class in which you are entitled to vote.*

If KCC does not actually receive your signed and completed Master Ballot on or before the Voting Deadline, **which is \_\_\_\_\_, 2019 at 4:00 p.m. (prevailing Eastern Time)** and if the Voting Deadline is not extended, the votes transmitted by such Master Ballot may not be included in the tabulation. **If the Court confirms the Plan, it will bind you regardless of whether you vote.**

**Item 1. Certification of Authority to Vote.**

The undersigned certifies that, as of the Voting Record Date, the undersigned (please check the applicable box):

- is a broker, bank, or other nominee for the beneficial holders of the aggregate principal amount of the Class 4 General Unsecured Claims on account of Prepetition Unsecured Notes listed in Item 2 below and is the record holder of such bonds; or
- is acting under a power of attorney and/or agency agreement (a copy of which will be provided upon request) granted by a broker, bank, or other nominee that is the registered holder of the aggregate principal amount of Class 4 General Unsecured Claims on account of Prepetition Unsecured Notes listed in Item 2 below; or

has been granted a proxy (an original of which is attached hereto) from a broker, bank, other nominee, or a beneficial owner, that is the registered holder of the aggregate principal amount of Class 4 General Unsecured Claims on account of Prepetition Unsecured Notes listed in Item 2 below

and, accordingly, has full power and authority to vote to accept or reject the Plan on behalf of the beneficial holders of the Class 4 General Unsecured Claims on account of Prepetition Unsecured Notes described in Item 2 below.

**Items 2a, 2b and 3. Class 4 General Unsecured Claims on account of Prepetition Unsecured Notes Vote on Plan and Releases Provided In Section 6.2(b) of the Plan.**

The undersigned transmits the following votes of Beneficial Holders of Class 4 General Unsecured Claims on account of Prepetition Unsecured Notes against the Debtor and certifies that the following Beneficial Holders of Class 4 General Unsecured Claims on account of Prepetition Unsecured Notes, as identified by their respective customer account numbers set forth below, are Beneficial Holders of such securities as of the Voting Record Date and have delivered to the undersigned, as Nominee, Ballots casting such votes.

Below please indicate in the appropriate column the aggregate principal amount voted for each account or attach such information to this Master Ballot in the form of the following table. Please note that each Holder must vote all such Beneficial Holder's Class 4 General Unsecured Claims on account of Prepetition Unsecured Notes to accept or reject the Plan and may not split such vote. Any Ballot executed by the Holder that does not indicate an acceptance or rejection of the Plan or that indicates both an acceptance and a rejection of the Plan will not be counted as a vote on the Plan **OR** Beneficial Holders that did not cast a vote to accept or reject the Plan but checked the box to opt out of the releases set forth in Article VI of the Plan<sup>4</sup> (use additional sheets in the format below as necessary):

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<sup>4</sup> The Plan defines Debtor Related Persons, Related Persons, Exculpated Parties and Released Parties as follows:

“Debtor Related Persons” means, 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.

“Related Persons” means, 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.

“Exculpated Parties” means (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.

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.

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“Released Parties” means, subject to the limitations expressly provided in the Plan, (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.

**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:

- (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 and Interests.** 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 AND INTERESTS 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.

(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 the 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, and 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.

**6.3. 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.

<b>ITEM 2-VOTE ON PLAN OF REORGANIZATION AND OPT OUT OF RELEASES</b>			
<b>Your Customer Account Number for Each Beneficial Holder of Voting Class 4 General Unsecured Claims on account of Prepetition Unsecured Notes</b>	<b>Principal Amount of Prepetition Unsecured Notes ACCEPT</b>	<b>Principal Amount of Prepetition Unsecured Notes REJECT</b>	<b>OPT OUT OF RELEASE PROVISIONS If the box in Item 3 of the Beneficial Ballot was completed, place an "X" in the column below</b>
	\$	\$	
	\$	\$	
	\$	\$	
	\$	\$	
	\$	\$	
	\$	\$	
	\$	\$	
	\$	\$	
	\$	\$	
	\$	\$	
<b>TOTAL:</b>	\$	\$	

**Item 4. Certification as to Transcription of Information from Item 4 of the Ballots as to Class 4 General Unsecured Claims on account of Prepetition Unsecured Notes Voted through Other Ballots.**

The undersigned certifies that the undersigned has transcribed in the following table the information, if any, provided by the Beneficial Holders in Item 4 of each of the Beneficial Holder’s original Ballots, identifying any Class 4 General Unsecured Claims on account of Prepetition Unsecured Notes for which such Beneficial Holders have submitted other Ballots other than to the undersigned:

Your Customer Account Number for Each Beneficial Holder Who Completed Item 4 of the Ballots	TRANSCRIBE FROM ITEM 4 OF THE BALLOTS:			
	Account Number of Other Class (Class Number) Claims Voted	Name of Owner	Principal Amount of Other Class 4 General Unsecured Claims on account of Prepetition Unsecured Notes Voted	CUSIP of Other Class 4 General Unsecured Claims on account of Prepetition Unsecured Notes Voted
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				

**Item 5. Certification.**

By signing this Master Ballot, the undersigned certifies that:

1. it has received a copy of the Ballots and the Solicitation Package and has delivered the same to the Beneficial Holders listed on the Ballots;
2. it has received a completed and signed Ballot from each Beneficial Holder listed in Item 2 of this Master Ballot
3. it is the registered Holder of the securities being voted;
4. it has been authorized by each such Beneficial Holder to vote on the Plan or the releases provided in section 6.2(b) of the Plan;
5. it has properly disclosed: (i) the number of Beneficial Holders who completed Ballots; (ii) the respective amounts of the Class 4 General Unsecured Claims on account of Prepetition Unsecured Notes voted, as the case may be, by each Beneficial Holder who completed a Ballot; (iii) each such Beneficial Holder's respective vote concerning the Plan or releases provided in section 6.2(b) of the Plan; (iv) each such Beneficial Holder's

certification as to other Class 4 General Unsecured Claims on account of Prepetition Unsecured Notes voted; and (v) the customer account or other identification number for each such Beneficial Holder; and

- 6. each such Beneficial Holder has certified to the undersigned that it is eligible to vote on the Plan or the releases provided in Section 6.2(b); and it will maintain Ballots and evidence of separate transactions returned by Beneficial Holders (whether properly completed or defective) for at least one year after the Effective Date and disclose all such information to the Bankruptcy Court, the Debtor or Wind Down Entity, as the case may be, if so ordered.

Name of Nominee: \_\_\_\_\_  
(Print or Type)

Name of Proxy Holder or Agent for Nominee:  
\_\_\_\_\_  
(Print or Type)

Participant Number:  
\_\_\_\_\_

Signature: \_\_\_\_\_

Name of Signatory: \_\_\_\_\_  
(Print or Type)

Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Email Address: \_\_\_\_\_

Date Completed: \_\_\_\_\_

**PLEASE COMPLETE, SIGN, AND DATE THIS  
MASTER BALLOT AND RETURN IT PROMPTLY TO:**

<p><b><u>If by First Class Mail, Hand Delivery, Overnight Mail, or via Electronic Mail to:</u></b></p> <p><b>Orexigen Ballot Processing Center c/o KCC 1290 Avenue of the Americas, 9th Floor New York, NY 10104 Email: OREXIGENINFO@KCCLLC.COM</b></p>
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**YOUR MASTER BALLOT MUST BE RECEIVED BY THE VOTING DEADLINE,  
WHICH IS 4:00 P.M. PREVAILING EASTERN TIME ON \_\_\_\_\_, 2019.**

**INSTRUCTIONS FOR COMPLETING MASTER BALLOT**

1. The Debtor is soliciting the votes of Holders of Claims with respect to the Plan attached as **Exhibit A** to the Disclosure Statement. Capitalized terms used in the Master Ballot or in these instructions but not otherwise defined in the Master Ballot or these instructions shall have the meanings set forth in the Plan or Disclosure Statement.
2. The Bankruptcy Court may confirm the Plan and thereby bind Beneficial Holders of Claims, if, among other things, the Plan is confirmed. Please review the Disclosure Statement for more information.
3. You should immediately distribute the Ballots and the Solicitation Package to all Beneficial Holders of Claims and take any action required to enable each such Beneficial Holder to timely vote the Claims that it holds. Any Ballot returned to you by a Beneficial Holder of a Claim shall not be counted for purposes of accepting or rejecting the Plan until you properly complete and deliver, to KCC, a Master Ballot that reflects the vote of such Beneficial Holders by 4:00 p.m. prevailing Eastern Time on \_\_\_\_\_, 2019, or otherwise validate the Ballot in a manner acceptable to KCC.
4. With regard to any Ballots returned to you by a Beneficial Holder, you must: (a) compile and validate the votes and other relevant information of each such Beneficial Holder on the Master Ballot using the customer name or account number assigned by you to each such Beneficial Holder; (b) execute the Master Ballot; (c) transmit such Master Ballot to KCC by the Voting Deadline; and (d) retain such Ballots in your files for a period of one year after the Effective Date of the Plan. You may be ordered to produce the Ballots to the Bankruptcy Court, the Debtor, or the Wind Down Entity, as applicable.
5. If a Master Ballot is received after the Voting Deadline, it will not be counted unless the Debtor determine otherwise. The method of delivery of Master Ballots to KCC is at the election and risk of each Entity. Except as otherwise provided herein, such delivery will be deemed made only when KCC actually receives the originally executed Master Ballot. Instead of effecting delivery by mail, it is recommended, though not required, that Entities use an overnight or hand delivery service. In all cases, Entities should allow sufficient time to assure timely delivery. No Master Ballot should be sent to any of the Debtor, the Debtor's agents (other than KCC), any of the Prepetition Unsecured Notes Indenture Trustees or the Debtor's financial or legal advisors and if so sent will not be counted.
6. If multiple Master Ballots are received from the same Nominee with respect to the same Ballot belonging to a Beneficial Holder of a Claim prior to the Voting Deadline, the last Master Ballot timely received will supersede and revoke any earlier dated Master Ballot.
7. This Master Ballot is not a letter of transmittal and may not be used for any purpose other than to vote to accept or reject the Plan or, alternatively, the releases provided in Section 6.2(b) of the Plan and make certifications with respect to the Ballots. Accordingly, at this time, Holders of Claims should not surrender certificates or instruments representing their



Claims and you should not accept delivery of any such certificates or instruments surrendered together with a Ballot.

8. This Master Ballot does not constitute, and shall not be deemed to be: (a) a Proof of Claim; or (b) an assertion or admission of a Claim.
9. Please be sure to sign and date your Master Ballot (original and facsimile signatures are acceptable). You should indicate that you are signing a Master Ballot in your capacity as a trustee, executor, administrator, guardian, attorney in fact, officer of a corporation or otherwise acting in a fiduciary or representative capacity and, if required or requested by KCC, the Debtor, or the Bankruptcy Court, must submit proper evidence to the requesting party to so act on behalf of such Beneficial Holder. In addition, please provide your name and mailing address if it is different from that set forth on the attached mailing label or if no such mailing label is attached to the Master Ballot.
10. If you are both the Nominee and the Beneficial Holder of any of the Class 4 General Unsecured Claims on account of Prepetition Unsecured Notes and you wish to vote such Class 4 General Unsecured Claims on account of Prepetition Unsecured Notes, you may return a Ballot or Master Ballot for such Class 4 General Unsecured Claims on account of Prepetition Unsecured Notes.
11. The following Ballots and Master Ballots shall not be counted in determining the acceptance or rejection of the Plan: (a) any Ballot or Master Ballot that is illegible or contains insufficient information to permit the identification of the claimant; (b) any Ballot or Master Ballot cast by a Party that does not hold a Claim in a Class that is entitled to vote on the Plan; (c) any Ballot or Master Ballot cast by a Person that does not hold a Claim in a Class that is entitled to vote to accept or reject the Plan; (d) any Ballot or Master Ballot cast for a scheduled Claim designated or determined as unliquidated, contingent, or disputed or as zero or unknown in amount, no timely proof of claim was filed, and for which no 3018(a) Motion has been Filed by the 3018(a) Motion Deadline; (e) any Ballot or Master Ballot timely received that is cast in a manner that indicates neither acceptance nor rejection of this Plan or that indicates both acceptance and rejection of this Plan; (f) any Ballot or Master Ballot received by the Balloting Agent after the Voting Deadline, unless the Debtor agrees in writing to an extension of such deadline; (g) any Ballot or Master Ballot not bearing an original or facsimile signature; (h) any Ballot received by the Balloting Agent by facsimile, e-mail or other electronic communication (unless otherwise permitted by the Debtor in writing); and (i) any Ballot or Master Ballot that partially rejects and partially accepts the Plan.
12. If you believe that you have received this Master Ballot in error, please contact KCC immediately.

**PLEASE SUBMIT YOUR MASTER BALLOT PROMPTLY!**

**IF YOU HAVE ANY QUESTIONS REGARDING THIS MASTER BALLOT OR THE VOTING PROCEDURES, PLEASE CONTACT KCC BY: (A) CALLING KCC AT (917) 281-4800, OR (B) BY EMAIL TO [OREXIGENINFO@KCCLLC.COM](mailto:OREXIGENINFO@KCCLLC.COM) AND INCLUDE “OREXIGEN” IN THE SUBJECT LINE.**

NOTHING CONTAINED HEREIN OR IN THE ENCLOSED DOCUMENTS SHALL RENDER YOU OR ANY OTHER ENTITY THE AGENT OF THE DEBTORS OR THE SECURITIES VOTING AGENT OR AUTHORIZE YOU OR ANY OTHER ENTITY TO USE ANY DOCUMENT OR MAKE ANY STATEMENTS ON BEHALF OF ANY OF THE DEBTORS WITH RESPECT TO THE PLAN, EXCEPT FOR THE STATEMENTS CONTAINED IN THE DOCUMENTS ENCLOSED HERewith.

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**EXHIBIT D-5**

**Class 5 Ballot — Prepetition Secured Noteholder Subordinated Deficiency Claims**

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

In re:

OREXIGEN THERAPEUTICS, INC.,

Debtor.<sup>1</sup>

Chapter 11

Case No. 18-10518 (KG)

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**BALLOT FOR ACCEPTING OR REJECTING DEBTOR'S PLAN OF LIQUIDATION**

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**CLASS 5 CLAIMS — PREPETITION SECURED NOTEHOLDER SUBORDINATED  
DEFICIENCY CLAIMS**

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**PLEASE READ AND FOLLOW THE INSTRUCTIONS FOR  
COMPLETING BALLOTS CAREFULLY BEFORE COMPLETING THE BALLOT.**

**THIS BALLOT MUST BE ACTUALLY RECEIVED BY KCC ON OR  
BEFORE \_\_\_\_\_, 2019 AT 4:00 P.M. (PREVAILING EASTERN TIME) (THE  
"VOTING DEADLINE").**

**IF YOUR SIGNED AND COMPLETED BALLOT IS NOT RECEIVED BY THE  
VOTING DEADLINE, THE DEBTOR  
MAY REJECT YOUR BALLOT AS INVALID.**

**IF THE PLAN IS CONFIRMED BY THE BANKRUPTCY COURT, IT WILL BE  
BINDING ON YOU WHETHER OR NOT YOU VOTE.**

**If no Holders of Class 5 Claims eligible to vote to accept or reject the Plan timely vote on  
the Plan, the Court may, at the Confirmation Hearing, deem Class 5 to have accepted  
the Plan. If you wish to vote, you should timely submit the signed and completed the Ballot  
accepting or rejecting the  
Plan.**

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<sup>1</sup> 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, 875 Third Avenue, New York, NY 10022, Attn: Chris Bryant and John Beck.

Orexigen Therapeutics, Inc. (the “Debtor”), the debtor and debtor in possession in the above-captioned chapter 11 case, has sent this Ballot to you because its records indicate that you are a Holder of a Class 5 Claim as of the Voting Record Date (\_\_\_\_\_, 2019, at 4:00 p.m. prevailing Eastern Time) and accordingly, you have a right to vote to accept or reject the Debtor’s plan of liquidation (as may be amended or supplemented from time to time and including all exhibits thereto, the “Plan”).<sup>2</sup>

Your rights are described in the Debtor’s disclosure statement, and all exhibits related thereto (as may be amended, supplemented or otherwise modified from time to time and including all exhibits or supplements thereto, the “Disclosure Statement”). The Disclosure Statement and the Plan are available by going to the Debtor’s case website <https://www.kccllc.net/orexigen> or by contacting KCC via email at [OrexigenInfo@kccllc.com](mailto:OrexigenInfo@kccllc.com) or via telephone at (888) 830-4646 (U.S./Canada) or (310) 751-2641 (International).

The Court has approved the Disclosure Statement on an interim basis. The Bankruptcy Court shall hold a hearing (the “Confirmation Hearing”) to consider final approval of the adequacy of the Disclosure Statement and Confirmation of the Plan on \_\_\_\_\_, **2019 at 11:00 a.m. (Eastern Time)**, before the Honorable Kevin Gross, United States Bankruptcy Judge, in Courtroom #3 of the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 5th Floor, Wilmington, Delaware 19801. The Confirmation Hearing may be continued from time to time without further notice other than the announcement by the Debtor in open court of the adjourned date(s) at the Confirmation Hearing or any continued hearing or as indicated in any notice of agenda of matters scheduled for hearing filed with the Bankruptcy Court. The Debtor may modify the Plan and Disclosure Statement, if necessary, prior to, during, or as a result of the Confirmation Hearing in accordance with the terms of the Plan and Disclosure Statement without further notice.

This Ballot may not be used for any purpose other than to vote to accept or reject the Plan and, if desired, to opt out of certain release provisions as explained below. This Ballot does not constitute, and shall not be deemed to be, a proof of claim or an assertion or admission of a Claim. If you believe you have received this Ballot in error, please contact KCC at the address or telephone number set forth above.

*You should carefully and thoroughly review the Disclosure Statement and the Plan before you vote. You may wish to seek legal advice concerning the Plan and the Plan’s classification and treatment of your Claim. Your Claim has been placed in Class 5 under the Plan. If you hold Claims in more than one Class, you will receive a Ballot for each Class in which you are entitled to vote.*

If KCC does not actually receive your signed and completed Ballot on or before the Voting Deadline, **which is \_\_\_\_\_, 2019 at 4:00 p.m. (prevailing Eastern Time)** and if the Voting Deadline is not extended, your vote will not count. **If the Court confirms the Plan, it will bind you regardless of whether you vote.** Original and facsimile signatures are acceptable.

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Plan or Disclosure Statement, as applicable.

**Item 1. Amount of Claim.**

The undersigned hereby certifies that as of the Voting Record Date, the undersigned was the Holder of Class 5 Claims in the following aggregate unpaid amount (insert amount in box below):

Amount of Claim: <sup>3</sup> \$ _____
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**Item 2. Vote on Plan.**

**THE DEBTOR AND CREDITORS' COMMITTEE RECOMMEND THAT YOU VOTE TO ACCEPT THE PLAN.**

The Holder of Class 5 Claims set forth in Item 1 votes to (please check one):

<b><u>ACCEPT THE PLAN</u></b>  <input type="checkbox"/>	<b><u>REJECT THE PLAN</u></b>  <input type="checkbox"/>
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If your Ballot indicates both an acceptance and a rejection of the Plan, or does not indicate either an acceptance or rejection of the Plan, it will not be counted.

If no Holders of Class 5 Claims eligible to vote to accept or reject the Plan vote on the Plan, the Court may, at the Confirmation Hearing, deem Class 5 to have accepted the Plan.

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<sup>3</sup> For voting purposes only, subject to tabulation rules.

*If the Plan becomes effective, the exculpation, releases and injunctions contained in Article VI of the Plan, including without limitation the releases of any Claims you may have against the Released Parties, each to the extent provided therein, will become effective and binding on all Creditors of the Debtor.<sup>4</sup> You are urged to carefully review Article VI of the Plan.*

**Item 3. Releases. COMPLETE THIS ITEM ONLY IF YOU VOTED TO REJECT THE PLAN IN ITEM 2 ABOVE.**

**IMPORTANT INFORMATION REGARDING CERTAIN RELEASES BY HOLDERS OF CLAIMS:**

IF YOU VOTE TO ACCEPT THE PLAN, YOU WILL BE DEEMED TO GRANT THE RELEASES IN SECTION 6.2(b) OF THE PLAN. IF YOU VOTE TO REJECT THE PLAN AND SUBMIT YOUR BALLOT WITHOUT CHECKING THE BOX BELOW, YOU WILL BE DEEMED TO CONSENT TO THE RELEASES PROVIDED IN SECTION 6.2(b) OF THE PLAN. LIKewise, IF YOU FAIL TO VOTE, YOU WILL BE DEEMED TO HAVE CONSENTED TO THE RELEASES PROVIDED IN SECTION 6.2(b).

IF YOU VOTE TO REJECT THE PLAN, YOU MAY OPT OUT OF THE RELEASES PROVIDED IN SECTION 6.2(b) OF THE PLAN (AS SET FORTH BELOW) BY CHECKING THE BOX BELOW AND YOU WILL NOT BE BOUND BY SUCH RELEASES. CHECK

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<sup>4</sup> The Plan defines Debtor Related Persons, Related Persons, Exculpated Parties and Released Parties as follows:

“Debtor Related Persons” means, 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.

“Related Persons” means, 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.

“Exculpated Parties” means (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.

“Released Parties” means, subject to the limitations expressly provided in the Plan, (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.

THE BOX BELOW IF YOU ELECT NOT TO GRANT THE RELEASES PROVIDED IN 6.2(b) OF THE PLAN. THE ELECTION TO WITHHOLD CONSENT TO GRANT SUCH RELEASES IS AT YOUR OPTION.

The Holder of Class 5 Claims set forth in Item 1 elects to:

Opt out of the releases provided in Section 6.2(b) of the Plan

**IF YOU CHECK THE BOX ABOVE BUT VOTE TO ACCEPT THE PLAN, YOU WILL BE DEEMED TO GRANT THE APPLICABLE RELEASES IN ARTICLE VI OF THE PLAN EVEN THOUGH YOU CHECKED THE BOX ABOVE.**

### **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:

- (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 and Interests.** 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 AND INTERESTS 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.

(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 the 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, and 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.

**6.3. 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.

**Item 4. Signature and Required Information**

\_\_\_\_\_  
(Please print or type)

Signature: \_\_\_\_\_

Name of Signatory: \_\_\_\_\_  
(If other than Holder)<sup>5</sup>

Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date Completed: \_\_\_\_\_

\_\_\_\_\_  
<sup>5</sup> If you are completing this Ballot on behalf of another person or entity, indicate your relationship with such person or entity and the capacity in which you are signing. You may be required to provide additional information or documentation with respect to such relationship.

**PLEASE COMPLETE, SIGN (ORIGINAL OR FACSIMILE SIGNATURE) AND DATE THE BALLOT AND RETURN IT PROMPTLY TO ONE OF THE BELOW ADDRESSES. YOUR BALLOT MUST BE ACTUALLY RECEIVED BY THE VOTING DEADLINE, WHICH IS \_\_\_\_\_, 2019 AT 4:00 P.M. (PREVAILING EASTERN TIME).**

**To return your Ballot via first class mail, hand delivery, or overnight courier:**

**Orexigen Ballot Processing Center  
c/o KCC  
2335 Alaska Avenue  
El Segundo, CA 90245**

**In addition, to submit your Ballot via the Balloting Agent’s online portal, please visit <https://www.kccllc.net/orexigen>. Click on the “Submit eBallot” section of the website and follow the instructions to submit your Ballot.**

**IMPORTANT NOTE: You will need the following information to retrieve and submit your customized electronic Ballot:**

**Unique eBallot ID#: \_\_\_\_\_**

**PIN#: \_\_\_\_\_**

**The Balloting Agent’s online portal is the sole manner in which Ballots will be accepted via electronic or online transmission. Ballots submitted by facsimile, email or other means of electronic transmission will not be counted.**

**Each eBallot ID# is to be used solely for voting only those Claims described in Item 1 of your electronic Ballot. Please complete and submit an electronic Ballot for each eBallot ID# you receive, as applicable. Creditors who cast a Ballot using the Balloting Agent’s online portal should NOT also submit a paper Ballot.**

**INSTRUCTIONS FOR COMPLETING BALLOTS**

1. The Debtor is soliciting the votes of Holders of Claims with respect to the Plan attached as **Exhibit A** to the Disclosure Statement. Capitalized terms used in the Ballot or in these instructions but not otherwise defined therein or herein shall have the meaning set forth in the Plan or the Disclosure Statement, as applicable.
2. The Court may confirm the Plan and thereby bind you by the terms of the Plan. Please review the Disclosure Statement for more information.
3. To ensure that your vote is counted, you must: (a) complete the Ballot; (b) indicate your decision either to accept or reject the Plan in the boxes provided in Item 2 of the Ballot; and (c) sign and return the Ballot to the address set forth herein (original or facsimile signature is acceptable). If KCC does not actually receive your signed and completed Ballot on or before the Voting Deadline, **which is \_\_\_\_\_, 2019 at 4:00 p.m. (prevailing Eastern Time)** and if the Voting Deadline is not extended, your vote will not count. Your completed Ballot must be received by KCC on or before the Voting Deadline.
4. You must vote all of your Claims within a particular Class either to accept or reject the Plan and may not split your vote. A Ballot that partially rejects and partially accepts the Plan will be counted as an acceptance of the Plan. Further, to the extent there are multiple Claims within the same Class held by a single Holder, the Debtor may, aggregate the Claims of any particular Holder within a Class for voting purposes as if such Holder held one Claim within that Class and for purposes of the numerosity requirement of 1126(c) of the Bankruptcy Code the votes related to such Claims shall be treated as a single vote to accept or reject the Plan.
5. If a Ballot is received after the Voting Deadline, it will not be counted unless the Debtor determines otherwise in writing. Except as otherwise provided herein, such delivery will be deemed made only when KCC actually receives the originally executed Ballot. Instead of effecting delivery by mail, it is recommended, though not required, that Holders use an overnight or hand delivery service. In all cases, Holders should allow sufficient time to assure timely delivery. Delivery of a Ballot to KCC by facsimile or e-mail shall not be valid. No Ballot should be sent to any of the Debtor, the Debtor's agents (other than KCC) or the Debtor's legal advisors and if so sent will not be counted.
6. Unless you received consent from the Debtor, you may not change your vote once you submit a Ballot.
7. The Ballot is not a letter of transmittal and may not be used for any purpose other than to vote to accept or reject the Plan. Accordingly, at this time, Holders of Claims should not surrender certificates or instruments representing or evidencing their Claims and neither the Debtor nor KCC will accept delivery of any such certificates or instruments surrendered together with a Ballot.
8. This Ballot does not constitute and shall not be deemed to be: (a) a proof of claim; or (b) an assertion or admission of a Claim.



9. Please be sure to sign and date your Ballot. In addition, please provide your name and mailing address if it is different from that set forth on the attached mailing label or if no such mailing label is attached to the Ballot.
10. If you hold Claims in more than one Class under the Plan or in multiple accounts, you may receive more than one Ballot coded for each different Class or account. Each Ballot votes only your Claims indicated on that Ballot. Please complete and return each Ballot you received.
11. The following Ballots shall not be counted in determining the acceptance or rejection of the Plan: (a) any Ballot that is illegible or contains insufficient information to permit the identification of the claimant; (b) any Ballot cast by a Party that does not hold a Claim in a Class that is entitled to vote on the Plan; (c) any Ballot cast by a Person that does not hold a Claim in a Class that is entitled to vote to accept or reject the Plan; (d) any Ballot cast for a scheduled Claim designated or determined as unliquidated, contingent, or disputed or as zero or unknown in amount, no timely proof of claim was filed, and for which no 3018(a) Motion has been Filed by the 3018(a) Motion Deadline; (e) any Ballot timely received that is cast in a manner that indicates neither acceptance nor rejection of this Plan or that indicates both acceptance and rejection of this Plan; (f) any received by the Balloting Agent after the Voting Deadline, unless the Debtor agrees in writing to an extension of such deadline; (g) any Ballot not bearing an original or facsimile signature; (h) any Ballot received by the Balloting Agent by facsimile, e-mail or other electronic communication (unless otherwise permitted by the Debtor in writing); and (i) any Ballot that partially rejects and partially accepts the Plan.
12. If you believe you have received the wrong Ballot, you should contact KCC immediately by phone at (888) 830-4646 (U.S./Canada) or (310) 751-2641 (International) or by email at [OrexigenInfo@kccllc.com](mailto:OrexigenInfo@kccllc.com).

**PLEASE MAIL YOUR BALLOT PROMPTLY**