

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

In re: : Chapter 11
: :
OREXIGEN THERAPEUTICS, INC., : Case No. 18-10518 (JTD)
: :
Debtor. : :
: :
PROVINCE, INC., AS WIND DOWN :
ADMINISTRATOR OF THE :
OREXIGEN WIND DOWN ENTITY, :
: :
Plaintiff, : :
: :
v. : Adv. Pro. No.
: :
: :
NASDAQ CORPORATE SOLUTIONS, :
LLC, :
: :
: :
Defendant

**COMPLAINT FOR AVOIDANCE AND RECOVERY OF
PREFERENTIAL TRANSFERS PURSUANT TO 11 U.S.C. §§ 547 & 550**

Province, Inc. (“Plaintiff”), in its capacity as the Wind Down Administrator of the Orexigen Wind Down Entity, by its undersigned attorneys, files this complaint (the “Complaint”) against NASDAQ Corporate Solutions, LLC (the “Defendant”), and in support thereof alleges as follows:

NATURE OF THE ACTION

1. Plaintiff seeks to avoid and recover from Defendant, or from any other person or entity for whose benefit the transfers were made, all preferential transfers of property that occurred during the ninety (90) day period prior to the commencement of the Chapter 11 case of Orexigen Therapeutics, Inc. (the “Debtor”) pursuant to sections 547 and 550 of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”).



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JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334(b).

3. Further, under the Plan (defined below), the United States Bankruptcy Court for the District of Delaware (the “Court”) retained jurisdiction over all matters arising in, arising under, and related to the above-captioned bankruptcy case (the “Bankruptcy Case”), administered under Case No. 18-10518 (JTD). More specifically, the Court retained jurisdiction to decide or resolve adversary proceedings related to the Bankruptcy Case, to resolve any dispute or any other matter that may arise in connection with or are related to the Plan or Confirmation Order (each defined below).

4. The statutory and legal predicates for the relief sought herein are sections 547 and 550 of the Bankruptcy Code and Rule 7001 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

5. This adversary proceeding is a “core” proceeding to be heard and determined by the Court pursuant to 28 U.S.C. § 157(b)(2) and the Court may enter final orders for matters contained herein.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1409 because the Debtor’s Bankruptcy Case is pending in the District of Delaware.

7. Personal jurisdiction over Defendant exists in this Court because Defendant conducted business in the United States, directed activities toward the Debtor in the United States, and/or the transfers at issue occurred in the United States.

8. Defendant is subject to nationwide service of process by first-class mail, postage prepaid pursuant to Bankruptcy Rules 7004(b) and (d).

9. Pursuant to Rule 7008-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, Plaintiff states that it does consent to the entry of final orders or judgments by the Court if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

PROCEDURAL BACKGROUND

10. On March 12, 2018 (the "Petition Date"), the Debtor commenced this Bankruptcy Case by filing a voluntary petition for relief under the Bankruptcy Code. The Debtor is administering this Bankruptcy Case as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

11. No trustee or examiner has been appointed in this Bankruptcy Case. On March 27, 2018, the Office of the United States Trustee appointed an Official Committee of Unsecured Creditors pursuant to Bankruptcy Code section 1102 [D.I. 91].

12. On May 17, 2019, the Court entered the *Findings of Fact, Conclusions of Law, and Order Confirming Debtor's Modified Amended Plan of Liquidation* [D.I. 1113] (the "Confirmation Order") confirming the *Debtors' Modified Amended Plan of Liquidation* [D.I. 1099] (as modified, amended, and including all supplements, the "Plan")

13. On May 31, 2019, the Debtor filed the Notice of (I) Effective Date of Debtor's Modified Amended Plan of Liquidation and (II) Bar Dates for Certain Claims [D.I. 1127] informing parties in interest that the Plan became effective and was substantially consummated on May 31, 2019 (the "Effective Date").

14. On the Effective Date, among other things, pursuant to Articles II and V of the Plan, as approved by the Confirmation Order, the Wind Down Entity (as defined in the Plan) was formed

and preference claims were assigned to and retained by Plaintiff. Pursuant to Article V of the Plan, Plaintiff has the right, standing and authority to prosecute, compromise, settle and/or deal with this cause of action.

THE PARTIES

15. Pursuant to the Plan and the Confirmation Order, Plaintiff is authorized and has standing among other things, to commence, prosecute, and compromise this cause of action.

16. Upon information and belief, Defendant was, at all relevant times a vendor to or creditor of the Debtor, that provided goods and services to the Debtor. Upon further information and belief, Defendant may be served at the following address: NASDAQ Corporate Solutions, LLC, 1 Liberty Plaza, New York, New York 10006.

FACTUAL BACKGROUND

17. Upon information and belief, during the ninety (90) day period prior to the Petition Date, the Debtor (the "Transferor") made transfers (the "Avoidable Transfers") to Defendant on the dates, and in the amounts, listed on **Exhibit A**.

18. During the course of this proceeding, Plaintiff may learn of additional transfers made to Defendant during the ninety (90) day period prior to the Petition Date. It is Plaintiff's intention to avoid and recover all transfers made by the Debtor of an interest of the Debtor in property and to or for the benefit of Defendant or any other transferee. Plaintiff reserves its right to amend this original Complaint to include: (i) further information regarding the Avoidable Transfer(s), (ii) additional transfers, (iii) modifications of and/or revision to Defendant's name, (iv) additional defendants, and/or (v) additional causes of action (*e.g.*, but not exclusively, 11 U.S.C. §§ 542, 544, 545, and/or 549) (collectively, the "Amendments"), that may become known

to Plaintiff at any time during this adversary proceeding, through formal discovery or otherwise, and for the Amendments to relate back to this original Complaint.

**COUNT I – TO AVOID PREFERENTIAL TRANSFERS
PURSUANT TO SECTION 547(b) OF THE BANKRUPTCY CODE**

19. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 18 as if fully set forth herein.

20. Pursuant to section 547(b) of the Bankruptcy Code, a debtor in possession may avoid any transfer of an interest of the debtor in possession in property (a) to or for the benefit of a creditor, (b) for or on account of an antecedent debt owed by the debtor in possession before such transfer was made, (c) made while the debtor in possession was insolvent, (d) made on or within 90 days, or in certain circumstances within one year, before the filing of the petition, and (e) that enables such creditor to receive more in satisfaction of its claims than it would receive in a case under chapter 7 of the Bankruptcy Code if the transfer had not been made. After reasonable diligence under the circumstances of this Bankruptcy Case, including with respect to potential defenses under section 547(c), the plaintiff believes that each of the Avoidable Transfers are avoidable.

21. During the ninety (90) day period prior to the Petition Date, the Transferor made the Avoidable Transfers to the Defendant on the dates, and in the amounts, listed on Exhibit A.

22. The Avoidable Transfers were made to or for the benefit of Defendant, a creditor of the Debtor.

23. The Avoidable Transfers were for or on account of antecedent debts owed by the Transferor to Defendant before such transfers were made.

24. The Avoidable Transfers were made at a time when the Debtor were insolvent. Plaintiff is entitled to the presumption of insolvency for each Transfer made during the ninety (90) day period prior to the Petition Date pursuant to 11 U.S.C. § 547(f).

25. Each of the Avoidable Transfers was made during the ninety (90) day period prior to the Petition Date.

26. The Avoidable Transfers enabled Defendant to receive more in satisfaction of its claim against the Debtor than it would have received in a case under chapter 7 of the Bankruptcy Code had the payment not been made.

27. By reason of the foregoing, Plaintiff is entitled to an order and judgment under section 547 of the Bankruptcy Code avoiding the Avoidable Transfers.

**COUNT II – TO RECOVER AVOIDED TRANSFERS
PURSUANT TO SECTION 550(a) OF THE BANKRUPTCY CODE**

28. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 27 as if fully set forth herein.

29. Defendant was the initial transferee of the Avoidable Transfers or the immediate or mediate transferee of such initial transferee or the person for whose benefit the Avoidable Transfers were made.

30. Plaintiff is entitled to recover from Defendant the Avoidable Transfers pursuant to section 550(a) of the Bankruptcy Code, to the extent they are avoided pursuant to section 547 of the Bankruptcy Code, plus interest thereon to the date of payment and the costs of this action.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment against Defendant granting the following relief:

- A. On Plaintiff's First and Second Claims for Relief, judgment in favor of Plaintiff and against Defendant, avoiding all of the Avoidable Transfers and directing

Defendant to return to Plaintiff the amount of the Avoidable Transfers, pursuant to 11 U.S.C. §§ 547(b) and 550(a), plus interest from the date of demand at the maximum legal rate and to the fullest extent allowed by applicable law, together with the costs and expenses of this action including, without limitation, attorneys' fees;

B. Granting Plaintiff such other and further relief as this Court may deem just and proper.

Dated: March 11, 2020

COZEN O'CONNOR

/s/ Gregory F. Fischer

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Debtors: Orexigen Therapeutics, Inc.
Case No.: 18-10518 (KG)
Preference Period: 12/12/2017 to 3/11/2018

EXHIBIT A

Vendor Name	Transferor	Payment Date	Payment Amount
NASDAQ Corporate Solutions LLC	Orexigen Therapeutics, Inc.	1/2/2018	\$ 10,000.00
	Orexigen Therapeutics, Inc.	1/19/2018	\$ 55,000.00
			\$ 65,000.00