

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

In re

Chapter 11

Orexigen Therapeutics, Inc.,

Case No. 18-10518 (___)

Debtor.¹

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

The above-captioned debtor and debtor in possession (the “Debtor”) hereby moves the Court (the “Motion”) for entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** (the “Interim Order”) and **Exhibit B** (the “Final Order”), (a) authorizing the Debtor to (i) continue the Cash Management System (as defined below), (ii) honor certain related prepetition obligations, (iii) maintain its existing Business Forms (as defined below) in the ordinary course of business, and (iv) perform, if necessary, the Intercompany Transactions (as defined below) in the ordinary course upon the consent of the DIP Administrative Agent, (b) authorizing and directing the Debtor’s Banks to honor all related payment requests, (c) waiving the Debtor’s compliance with the deposit and investment guidelines set forth in section 345(b) of the Bankruptcy Code, (d) scheduling a final hearing to consider entry of the proposed Final Order, and (e) granting related relief. In support of this

¹ The last four digits of the Debtor’s federal tax identification number are 8822. The Debtor’s mailing address for purposes of this Chapter 11 Case is 3344 North Torrey Pines Court, Suite 200, La Jolla, CA, 92037.



Motion, the Debtor incorporates by reference the *Declaration of Michael A. Narachi in Support of First Day Relief* (the “First Day Declaration”), which was filed contemporaneously with this Motion, and respectfully states as follows:

JURISDICTION

1. This Court has jurisdiction over this Motion under 28 U.S.C. § 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This motion is a core proceeding under 28 U.S.C. § 157(b)(2)(A), and the Debtor confirms its consent pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”) to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

2. Venue is proper in this district under 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are sections 105, 345, and 363 of title 11 of the United States Code (the “Bankruptcy Code”), as supplemented by Rules 2015, 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Local Rule 2015-2.

GENERAL BACKGROUND

4. On the date hereof (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (this “Chapter 11 Case”). The Debtor continues to operate its business as debtor in possession pursuant to sections 1107(a)

and 1108 of the Bankruptcy Code. No party has requested the appointment of a trustee or examiner and no committee has been appointed in this Chapter 11 Case.

5. The Debtor is a biopharmaceutical company focused on the treatment of obesity and the commercialization of a single pharmaceutical drug for chronic weight management. Additional details regarding the Debtor's business and the facts and circumstances supporting the relief requested herein are set forth in the First Day Declaration, which was filed contemporaneously with this Motion and is incorporated by reference.

THE CASH MANAGEMENT SYSTEM

6. The Debtor maintains an integrated cash management system (as described herein, the "Cash Management System"), comprising four accounts (the "Bank Accounts") at two financial institutions (the "Banks"). Attached as **Exhibit C** is a table identifying the Bank Accounts, along with the financial institutions at which they are held (the "Banks"), and the last four digits of each Bank Account number.

7. The Cash Management System is centrally managed for the Debtor out of the Debtor's U.S. offices in San Diego, California, and all funds in the Bank Accounts are denominated and held in U.S. Dollars. The Debtor uses the Cash Management System in the ordinary course of business to collect, transfer, and disburse funds generated from its operations and to facilitate cash monitoring, forecasting, and reporting. The Debtor's treasury department maintains daily oversight of the Cash Management System and implements cash management controls for entering, processing, and releasing funds, including in connection with intercompany transactions with Orexigen Ireland (the "Intercompany Transactions"). Additionally, the Debtor regularly reconciles books and records to ensure that all transfers are accounted for properly.

The Bank Accounts

8. U.S. customer payments are made to an account receivable lockbox account at Silicon Valley Bank in the name of Orexigen Therapeutics, Inc. (the “AR Account”). The AR Account is swept daily into a general checking account at Silicon Valley Bank in the name of Orexigen Therapeutics, Inc. (the “Checking Account”). The Checking Account is also swept daily into a sweep account at Silicon Valley Bank in the name of Orexigen Therapeutics, Inc. (the “Sweep Account”), which holds excess cash and investments in U.S. Short-term Treasury and government securities. Funds are transferred from the Sweep Account to the Checking Account as necessary for disbursements to fund payroll and operations.

9. The Debtor also maintains a holding account at U.S. Bank (the “Holding Account”) for excess cash and investments in short-term U.S. Government securities. The Holding Account is managed by Wells Fargo. The Debtor transfers funds, as necessary, from the Checking Account into the Holding Account, and also the Debtor’s non-debtor affiliates transfer funds from foreign accounts to the Holding Account.

10. A diagram illustrating the foregoing Cash Management System is attached as **Exhibit D**.

Bank and Investment Fees

11. The Debtor pays on average approximately \$850 per month in bank and investment fees incurred in connection with the Bank Accounts (the “Bank Fees”). The Debtor pays the Bank Fees as they come due on a rolling basis over the course of each month, typically by direct debit. The Debtor estimates that there are no outstanding Bank Fees as of the Petition Date.

Business Forms

12. As part of the Cash Management System, the Debtor utilizes numerous preprinted business forms, including, without limitation, letterhead, purchase orders, invoices, and preprinted checks (the “Business Forms”), in the ordinary course of its business. The Debtor also maintains books and records to document, among other things, receipts and expenses. To minimize expenses to its estate and avoid confusion on the part of employees, customers, vendors, and suppliers during the pendency of this Chapter 11 Case, the Debtor requests that the Court authorize the continued use of its Business Forms and other correspondence and documents related to the Bank Accounts, as such forms were in existence immediately before the Petition Date and thereafter, without reference to the Debtor’s status as debtor in possession, rather than requiring the Debtor to incur the expense and delay of ordering entirely new business forms as required under the U.S. Trustee Guidelines.

Assets and Intercompany Receivables

13. As mentioned above, the Debtor operates a central, integrated cash management system. The Debtor has various intercompany agreements with Orexigen Ireland, including a license agreement and a Platform Contribution Transaction Agreement (“PCTA”). Per the PCTA, Orexigen Ireland is obligated to make annual payments of \$14,561,320 each year on August 31st from 2015 to 2019. As of the December 31, 2017, Orexigen Ireland was obligated to the Debtor under the PCTA in an approximate amount of \$29 million.

14. The Debtor also has provided various loans to Orexigen Ireland since 2015. As of December 31, 2017, the outstanding debt balance due from Orexigen Ireland to Orexigen is \$58.5 million (the “Intercompany Loans”). The Intercompany Loans are due and payable at five years from the various loan dates with interest rates ranging from 1.22% to 1.95%. Interest only payments are due on December 31st of each year.

15. Additionally, in an effort to pool their resources to further develop and commercialize the drug product in countries outside of the U.S., Orexigen and Orexigen Ireland share certain development and clinical costs. Orexigen performs certain services for Orexigen Ireland including, but not limited to, general, administrative, marketing, accounting, and regulatory approval support. The services performed by Orexigen are billed to Orexigen Ireland for reimbursement. As of December 31, 2017, Orexigen Ireland owed the Debtor approximately \$5.5 million on account of these services.

16. In total, the outstanding Intercompany balance as of December 31, 2017 is \$93 million in favor of the Debtor.

17. The Debtor believes Orexigen Ireland is currently able to operate independently and without additional funds from the Debtor. However, as business is transacted between the Debtor and Orexigen Ireland it is possible that at any given time there may be intercompany claims owing by the Debtor to nondebtor Orexigen Ireland. The Debtor asks for authority to continue to honor all Intercompany Transactions in the ordinary course of business, including any prepetition amounts due, with the consent of the DIP Administrative Agent (as defined in the First Day Declaration) and not in an amount to exceed \$25,000 on an interim basis. For the avoidance of doubt, the Debtor will seek Court authority to transfer any funds to Orexigen Ireland outside of the ordinary course of business.

RELIEF REQUESTED

18. The Debtor seeks entry of an Interim Order, pending the entry of a final order or the Interim Order becoming a final order (the "Final Order"), authorizing, but not directing, the Debtor to continue to operate the Cash Management System in the day-to-day operation of its business, and to honor certain prepetition obligations in accordance with the

operation of the Cash Management System. Specifically, the Debtor requests authority to: (a) continue to use, with the same account numbers, each of the Bank Accounts; (b) treat the Bank Accounts for all purposes as accounts of the Debtor as debtor in possession; and (c) conduct banking transactions by all usual means and debit the Bank Accounts on account of all usual items and payment instructions.

19. Additionally, the Debtor seeks authority to: (a) use, in its present form, its Business Forms and other correspondence and documents related to the Bank Accounts, without reference to the Debtor's status as debtor in possession; and (b) continue the Intercompany Transactions between and among the Debtor and Orexigen Ireland in the ordinary course of business and with the consent of the DIP Administrative Agent.

20. The Debtor further requests authority for the Banks to: (i) continue to maintain, service, and administer the Bank Accounts; (ii) debit the Bank Accounts in the ordinary course of business on account of (a) all checks drawn on the Bank Accounts that are cashed at the Banks or exchanged for cashier's checks by the payees thereof prior to the Petition Date, (b) all checks or other items deposited in one of the Bank Accounts at the Banks prior to the Petition Date that have been dishonored or returned unpaid for any reason, together with any fees and costs in connection therewith, and (c) all undisputed prepetition amounts outstanding as of the date hereof, if any, owed to any Bank as fees or service charges for the maintenance of any aspect of the applicable Cash Management System.

21. Further, the Debtor requests that the Court grant interim and final waivers of the requirements of section 345(b) of the Bankruptcy Code.

22. The Debtor also requests that, upon entry of the Interim Order, the Court schedule a final hearing (the “Final Hearing”) on the Motion to consider the relief requested herein on a final basis.

BASIS FOR RELIEF

I. Maintaining the Existing Cash Management System Is Essential to the Debtor’s Ongoing Operations and Restructuring Efforts.

23. The Operating Guidelines and Reporting Requirements of the United States Trustee for Chapter 11 Debtors in Possession and Chapter 11 Trustees, dated February 5, 2015 (the “U.S. Trustee Guidelines”), require debtors in possession to, among other things:

- a. establish one debtor in possession bank account for all estate monies required for the payment of taxes, including payroll taxes;
- b. close all existing bank accounts and open new debtor in possession accounts;
- c. maintain a separate debtor in possession account for cash collateral; and
- d. obtain checks that bear the designation “debtor in possession” and reference the bankruptcy case number and type of account on such checks.

24. These requirements are designed to provide a clear line of demarcation between prepetition and postpetition claims and payments and help protect against the inadvertent payment of prepetition claims by preventing banks from honoring checks drawn before the Petition Date. Considering, however, that the Debtor’s business and financial affairs are complex and require the collection, disbursement, and movement of funds through its Bank Accounts, enforcement of the provisions of the U.S. Trustee Guidelines during this Chapter 11 Case would severely disrupt the Debtor’s operations. Accordingly, the Debtor respectfully requests that the Court allow it to operate each of its Bank Accounts listed on **Exhibit C**

attached hereto as they were maintained in the ordinary course of business before the Petition Date.

25. Continuation of the Cash Management System is permitted pursuant to section 363(c)(1) of the Bankruptcy Code, which authorizes the debtor in possession to “use property of the estate in the ordinary course of business without notice or a hearing.” Additionally, courts in this and other districts have recognized that an integrated cash management system “allows efficient utilization of cash resources and recognizes the impracticalities of maintaining separate cash accounts for the many different purposes that require cash.” *In re Columbia Gas Sys., Inc.*, 136 B.R. 930, 934 (Bankr. D. Del. 1992), *aff’d in part and rev’d in part*, 997 F.2d 1039 (3d Cir. 1993). The United States Court of Appeals for the Third Circuit emphasized that requiring a debtor to maintain separate accounts “would be a huge administrative burden and economically inefficient.” *Columbia Gas*, 997 F.2d at 1061; *see also In re Southmark Corp.*, 49 F.3d 1111, 1114 (5th Cir. 1995) (finding cash management systems allow a debtor “to administer more efficiently and effectively its financial operations and assets”).

26. Bankruptcy courts treat requests for authority to continue utilizing existing cash management systems as a relatively “simple matter.” *In re Baldwin-United Corp.*, 79 B.R. 321, 327 (Bankr. S.D. Ohio 1987). In *In re Charter Co.*, 778 F.2d 617 (11th Cir. 1985), for example, the bankruptcy court entered an order authorizing the debtor and forty-three (43) of its subsidiaries “to continue to consolidate the management of their cash as has been usual and customary in the past, and to transfer monies from affiliated entity to entity, including operating entities that are not debtors.” *Id.* at 620. The Eleventh Circuit Court of Appeals then affirmed a subsequent district court decision denying a creditor’s motion for leave to appeal the

bankruptcy court's cash management order, holding that authorizing the debtors to utilize their prepetition "routine cash management system" was "entirely consistent" with applicable provisions of the Bankruptcy Code. *Id.* at 621.

27. Indeed, in large chapter 11 cases, bankruptcy courts in this district routinely grant chapter 11 debtors similar authority to continue using existing cash management systems. *In re Cubic Energy, Inc.*, No. 15-12500 (CSS) (Bankr. D. Del. Jan. 12, 2016) (authorizing debtors' continued use of cash management system and bank accounts); *In re Offshore Group Investment Limited*, No. 15-12422 (BLS) (Bankr. D. Del. Jan. 5, 2016) (same); *In re Hercules Offshore, Inc.*, No. 15-11685 (BLS) (Bankr. D. Del. Sept. 8, 2015) (same); *In re Brookstone Holdings Corp.*, No. 14-10752 (BLS) (Bankr. D. Del. Apr. 4, 2014) (same); *In re Dolan Co.*, No. 14-10614 (BLS) (Bankr. D. Del. Mar. 25, 2014) (same); *In re F & H Acquisition Corp.*, No. 13-13220 (KG) (Bankr. D. Del. Dec. 17, 2013) (same); *In re Overseas Shipholding Group, Inc.*, No. 12-20000 (PJW) (Bankr. D. Del. Jan. 24, 2013) (same).²

28. Here, the Debtor has utilized the Cash Management System in its current form as part of its ordinary and usual business practices, and as such, the Debtor believes the continued use of the Cash Management System falls within the purview of ordinary course transactions permitted under section 363(c)(1) of the Bankruptcy Code. Moreover, appropriate circumstances exist for the Court to authorize the Debtor's continued use of the Cash Management System under sections 363(b)(1) and 105(a) of the Bankruptcy Code.

29. The relief requested in this Motion will help minimize any disruption in the Debtor's business operations during its restructuring, and preserve the value of the Debtor's estate. Indeed, any disruptions in the Cash Management System could lead to delays in

² Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon reasonable request to the Debtor's proposed counsel.

satisfying the Debtor's obligations to its vendors and suppliers and meeting the demands of its various customers. In order to avoid the potential erosion of value that could ensue from any such interruptions in the Debtor's ordinary course business operations, the Debtor believes it is imperative that it be authorized to continue the Cash Management System consistent with its historical practice.

30. Moreover, requiring the Debtor to maintain separate accounts now would decentralize the Debtor's Cash Management System because, given the Debtor's complex relationships and financial structure, it would be difficult to establish an entirely new cash management system for the Debtor. Indeed, strict adherence to the U.S. Trustee Guidelines would prove to be exceedingly burdensome to the Debtor and its management, reduce efficiencies, and cause unnecessary expense. The delays that would result from opening the new accounts and revising cash management procedures would disrupt the Debtor's business operations at this critical time, have little or no benefit to the Debtor's estates, and erode the value of the Debtor's enterprise to the detriment of all stakeholders. Accordingly, the Debtor should be allowed to continue using the Cash Management System consistent with its historical practice.

II. Authorizing the Debtor to Continue Using Debit, Wire, Credit Card, and ACH Payments Is Warranted.

31. The Debtor requests that the Court grant further relief from the U.S. Trustee Guidelines to the extent they require the Debtor to make all disbursements by check. In particular, the U.S. Trustee Guidelines require that all receipts and all disbursements of estate funds must be made by check with a notation representing the reason for the disbursement. As discussed above, in the ordinary course of business, the Debtor conducts transactions through ACH transfers and other similar methods. The Debtor also utilizes two (2) credit card accounts

to pay for certain miscellaneous business operation and other expenses of its employees. If the Debtor's ability to conduct transactions by debit, wire, ACH transfer, credit card or other similar methods is impaired, the Debtor may be unable to perform under certain contracts, its business operations may be unnecessarily disrupted, and its estate may incur additional costs.

III. Authorizing the Banks to Continue to Maintain, Service, and Administer the Bank Accounts in the Ordinary Course of Business Is Warranted.

32. The Debtor respectfully requests that the Court authorize the Banks to continue to maintain, service, and administer its Bank Accounts as accounts of the Debtor as debtor in possession, without interruption and in the ordinary course of business. In this regard, the Banks should be authorized to receive, process, honor, and pay any and all checks, ACH transfers and other instructions, and drafts payable through, drawn, or directed on such Bank Accounts after the Petition Date by holders, makers, or other parties entitled to issue instructions with respect thereto; *provided, however*, any check, draft, or other notification that the Debtor advises the Banks to have been drawn, issued, or otherwise presented before the Petition Date may be honored by the Banks only to the extent authorized by order of the Court.

33. The Debtor further requests that the Court authorize the Banks to accept and honor all representations from the Debtor as to which checks, drafts, wires, or ACH transfers should be honored or dishonored consistent with any order of the Court and governing law, whether such checks, drafts, wires, or ACH transfers are dated before or subsequent to the Petition Date. The Debtor also requests that, to the extent a Bank honors a prepetition check or other item drawn on any account either: (a) at the direction of the Debtor; or (b) in a good-faith belief that the Court has authorized such prepetition check or item to be honored, such Bank will not be deemed to be liable to the Debtor or to its estate on account of such prepetition check or other item honored postpetition. The Debtor respectfully submits that such relief is

reasonable and appropriate because the Banks are not in a position to independently verify or audit whether a particular item may be paid in accordance with a Court order or otherwise. Moreover, the Debtor requests that the Court authorize the Banks to (a) continue to charge the Debtor regular and ordinary course Bank Fees, as applicable, and (b) charge-back returned items to the Bank Accounts, whether such items are dated before, on, or subsequent to the Petition Date, in the ordinary course of business.

34. Courts in this district, in similar large chapter 11 cases, have regularly waived the U.S. Trustee Guidelines on the grounds that they are impractical and potentially detrimental to a debtor's postpetition business operations and restructuring efforts. *See, e.g., In re Cubic Energy, Inc.*, No. 15-12500 (CSS) (Bankr. D. Del. Jan. 12, 2016) (authorizing continued use of pre-petition bank accounts during bankruptcy cases); *In re Offshore Group Investment Limited*, No. 15-12422 (BLS) (Bankr. D. Del. Jan. 5, 2016) (same); *In re Hercules Offshore, Inc.*, No. 15-11685 (BLS) (Bankr. D. Del. Sept. 8, 2015) (same); *In re GSE Envtl., Inc.*, No. 14-11126 (Bankr. D. Del. May 6, 2014) (same); *In re Dolan Co.*, No. 14-10614 (BLS) (Bankr. D. Del. Mar. 25, 2014) (same); *In re FAH Liquidating Corp. f/k/a Fisker Auto Holdings, Inc.*, No. 13- 13087 (KG) (Bankr. D. Del. Dec. 13, 2013) (same); *In re Physiotherapy Holdings, Inc.*, No. 13-12965 (KG) (Bankr. D. Del. Nov. 14, 2013) (same) *In re Dex One Corp.*, No. 13-10533 (KG) (Bankr. D. Del. Mar. 19, 2013) (same).

IV. The Court Should Authorize the Debtor to Continue Using Its Existing Business Forms.

35. To avoid disruption of the Cash Management System and unnecessary expense, pursuant to Local Rule 2015-2(a), the Debtor requests that it be authorized to continue to use its Business Forms substantially in the form existing immediately before the Petition Date, without reference to its status as debtor in possession. The Debtor submits that parties in

interest will not be prejudiced if the Debtor is authorized to continue to use its Business Forms substantially in the forms existing immediately before the Petition Date. Parties doing business with the Debtor will be aware of its status as debtor in possession and, thus, changing the Business Forms is unnecessary and would be unduly burdensome.

36. In similar chapter 11 cases, courts in this district have allowed debtors to use their prepetition business forms without the “debtor in possession” label. *See, e.g., In re Offshore Group Investment Limited*, No. 15-12422 (BLS) (Bankr. D. Del. Jan. 5, 2016) (authorizing continued use of business forms); *In re Hercules Offshore, Inc.*, No. 15-11685 (BLS) (Bankr. D. Del. Sept. 8, 2015) (same); *In re GSE Env'tl., Inc.*, No. 14-11126 (Bankr. D. Del. May 6, 2014) (same); *In re Dolan Co.*, No. 14-10614 (BLS) (Bankr. D. Del. Mar. 25, 2014) (same); *In re Sorenson Commc'ns, Inc.*, No. 14-10454 (BLS) (Bankr. D. Del. Mar. 4, 2014) (same); *In re FAH Liquidating Corp. f/k/a Fisker Auto. Holdings, Inc.*, No. 13-13087 (KG) (Bankr. D. Del. Dec. 13, 2013) (same); *In re Physiotherapy Holdings, Inc.*, No. 13-12965 (KG) (Bankr. D. Del. Nov. 14, 2013) (same).

V. The Court Should Authorize the Debtor to Continue Conducting Intercompany Transactions in the Ordinary Course.

37. The Debtor's funds move through the Cash Management System as described above. Intercompany Transactions are made between and among the Debtor and Orexigen Ireland in the ordinary course as part of the Cash Management System. The Debtor tracks all fund transfers in its accounting system and can ascertain, trace, and account for all Intercompany Transactions previously described that have not yet been settled. There is minimal risk that trade creditors may be harmed by the requested authorization for the Debtor to transfer amounts between itself and Orexigen Ireland in the ordinary course and at the consent of the DIP Administrative Agent to satisfy operating expenses.

38. As stated above, the Debtor does not anticipate the necessity for any Intercompany Transactions, however, in case an unanticipated Intercompany Transaction arises the Debtor seeks the ability to enter into such Intercompany Transactions in the ordinary course, with the consent of the DIP Administrative Agent, and in an aggregate amount not to exceed \$25,000 on an interim basis. Seeking further court approval to enter into such ordinary course Intercompany Transactions would be disruptive to the Debtor and to its estate's detriment. Accordingly, the Debtor respectfully submits that the continued performance of the Intercompany Transactions is in the best interest of the Debtor's estate and creditors, and, therefore, the Debtor should be permitted to continue such performance.

VI. Cause Exists for Waiving the Deposit and Investment Guidelines of Section 345 of Bankruptcy Code.

39. Section 345(a) of the Bankruptcy Code expressly contemplates and allows a debtor in possession to make "deposit or investment of the money of the estate . . . as will yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment." 11 U.S.C. § 345(a). For deposits or investments that are not "insured or guaranteed by the United States or by a department, agency or instrumentality of the United States or backed by the full faith and credit of the United States," section 345(b) of the Bankruptcy Code requires that the estate secure from the entity with which the money is deposited or invested a bond in favor of the United States secured by the undertaking of an adequate corporate surety, unless the Court orders otherwise. In the alternative, the estate may require that the entity deposit governmental securities pursuant to 31 U.S.C. § 9303.³ 11 U.S.C. § 345(b).

³ This statutory provision provides that where a person is required by law to give a surety bond, that person, in lieu of such surety bond, may provide a governmental obligation. 31 U.S.C. § 9303.

40. It is within the Court's discretion to extend or waive the investment guidelines requirement under section 345(b) of the Bankruptcy Code "for cause." 11 U.S.C. § 345(b); *see also* 140 Cong. Rec. H10752-01 (October 4, 1995) (section 345(b) investment guidelines may be "wise in the case of a smaller debtor with limited funds that cannot afford a risky investment to be lost, [but] can work to needlessly handcuff larger, more sophisticated debtor."). In determining whether "cause" is present, courts consider a "totality of the circumstances" test utilizing the following factors:

- (a) The sophistication of the debtor's business;
- (b) The size of the debtor's business operations;
- (c) The amount of investments involved;
- (d) The bank ratings (Moody's and Standard and Poor's) of the financial institutions where debtor-in-possession funds are held;
- (e) The complexity of the case;
- (f) The safeguards in place within the debtor's own business of insuring the safety of the funds;
- (g) The debtor's ability to reorganize in the face of a failure of one or more of the financial institutions;
- (h) The benefit to the debtor;
- (i) The harm, if any, to the estate; and
- (j) The reasonableness of the debtor's request for relief from § 345(b) requirements in light of the overall circumstances of the case.

In re Serv. Merch. Co., Inc., 240 B.R. 894, 896 (Bankr. M.D. Tenn. 1999) (citations omitted).

41. The Debtor submits that, under the existing circumstances, cause exists to authorize the Debtor to continue to deposit and invest in substantially the same manner as the

Debtor has invested such funds prior to the Petition Date. The Debtor is a sophisticated enterprise that utilizes a coordinated and efficient Cash Management System that allows it to prudently make investments and realize some return on otherwise idle funds in the Bank Accounts. Further, the Debtor's funds are invested in short term U.S. Treasury bonds that do not constitute risky investments.

42. For these reasons, the Debtor respectfully requests that the Court grant interim and final waivers of the deposit and investment guidelines of section 345(b).

THE REQUIREMENTS OF BANKRUPTCY RULE 6003 ARE SATISFIED

43. Pursuant to Bankruptcy Rule 6003, the Court may grant relief regarding a motion to pay all or part of a prepetition claim within 21 days after the Petition Date if the relief is necessary to avoid immediate and irreparable harm. Immediate and irreparable harm exists where the absence of relief would impair a debtor's ability to reorganize or threaten the debtor's future as a going concern. *See In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 36 n.2 (Bankr. S.D.N.Y. 1990) (discussing the elements of "immediate and irreparable harm" in relation to Bankruptcy Rule 4001).

44. The relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtor and all parties in interest. The Cash Management System is vital to reducing risk and preserving the value of the Debtor's assets. Failure to continue the Cash Management System in the ordinary course of business could result in increased cost and risk of loss to the Debtor and its estate and could impede the Debtor's efforts to implement a comprehensive restructuring transaction. Accordingly, the Debtor submits that it has satisfied the requirements of Bankruptcy Rule 6003 to support the relief set forth in the Interim Order on the terms described herein.

WAIVER OF BANKRUPTCY RULE 6004(a) AND 6004(h)

45. To implement the foregoing successfully, the Debtor seeks a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

RESERVATION OF RIGHTS

46. Nothing contained in this Motion or any actions taken by the Debtor pursuant to relief granted in the Order is intended or should be construed as: (a) an admission as to the validity of any particular claim against the Debtor; (b) a waiver of the Debtor's rights to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtor's rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtor that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to this Motion are valid, and the Debtor expressly reserved its rights to contest the extent, validity, or perfection or seek avoidance of all such liens. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtor's rights to subsequently dispute such claim.

NOTICE

47. Notice of this Motion is being provided to: (i) the United States Trustee; (ii) the Debtor's top 30 unsecured creditors as identified in its chapter 11 petition; (iii) counsel to the DIP Administrative Agent, DIP Lenders, Prepetition Indenture Trustee and Secured Noteholders (each as defined in the First Day Declaration) (iv) the Banks identified on **Exhibit C**; (v) the Delaware Secretary of State; (vi) the Delaware State Treasury; (vii) the Internal Revenue Service; (viii) the Securities and Exchange Commission; (ix) any party that has requested notice pursuant to Bankruptcy Rule 2002; and (x) any other party required to be provided notice under Local Rule 9013-1(m). As this Motion is seeking "first day" relief, within two business days after entry of an order on this Motion, the Debtor will serve copies of this Motion and any order entered in respect to this Motion as required by Local Rule 9013-1(m). The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Debtor respectfully requests that the Court enter an order in substantially the form attached as **Exhibit A** granting the relief requested herein on an interim basis and such other relief as is just and proper under the circumstances.

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March 12, 2018
Wilmington, Delaware

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Proposed Counsel for Debtor and Debtor in Possession

Exhibit A

Proposed Interim Order

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

In re

Orexigen Therapeutics, Inc.,

Debtor.¹

Chapter 11

Case No. 18-10518 (___)

Re: D.I. ___

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

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

¹ The last four digits of the Debtor's federal tax identification number are 8822. The Debtor's mailing address for purposes of this Chapter 11 Case is 3344 North Torrey Pines Court, Suite 200, La Jolla, CA, 92037.

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

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

1. The Motion is GRANTED on an interim basis as set forth herein.
2. The Final Hearing, if required, on the Motion will be held on _____, 2018 at _____ (prevailing Eastern time). Objections, if any, that relate to the Motion shall be filed and served so as to be actually received by the Debtor's proposed counsel on or before _____, 2018 at 4:00 p.m. (prevailing Eastern time). Any objection shall set forth in writing and with particularity the factual and legal basis of the objection. If no objections are filed to the Motion, the Court may enter the Final Order without further notice or hearing.

3. The Debtor is authorized, but not directed, to: (a) continue operating the Cash Management System, as described in the Motion; (b) honor its prepetition obligations related thereto; (c) maintain its existing Business Forms; and (d) continue to perform Intercompany Transactions in the ordinary course and with the consent of the DIP Administrative Agent in an aggregate amount not to exceed \$25,000 on an interim basis, in each case subject to the limitations described in the Motion and this Interim Order.

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

Any requirements by the United States Trustee or otherwise to open separate debtor-in-possession accounts are waived, unless otherwise specified herein.

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

6. All Banks at which the Debtor's existing Bank Accounts are maintained are authorized to continue to maintain, service, and administer the Debtor's existing Bank Accounts as accounts of the Debtor as debtor in possession, without interruption and in the ordinary course, and to receive, process, honor, and pay, to the extent of available funds, any and all checks, drafts, wires, credit card payments, and ACH transfers issued and drawn on the Debtor's existing Bank Accounts after the Petition Date by the holders or makers thereof, as the case may be. For Banks at which the Debtor holds Bank Accounts that are party to a Uniform Depository agreement with the Office of the United States Trustee for the District of Delaware, within fifteen (15) days of the date of entry of this Order the Debtor shall (a) contact each Bank, (b) provide the Bank with the Debtor's employer identification number and (c) identify each of

its Bank Accounts held at such Banks as being held by a debtor in possession in a bankruptcy case, and provide the case number.

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

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

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

10. Any Banks are further authorized to (a) honor the Debtor's directions with respect to the opening and closing of any Bank Account and (b) accept and hold, or invest, the Debtor's funds in accordance with the Debtor's instructions; provided, however, that the

Debtor's Banks shall not have any liability to any party for relying on such representations to the extent such reliance otherwise complies with applicable law.

11. The Debtor is authorized to open any new Bank Accounts or close any existing Bank Accounts as it may deem necessary and appropriate in its sole discretion; provided, however, that the Debtor gives notice within fifteen (15) days to the Office of the United States Trustee for the District of Delaware and any statutory committees appointed in the chapter 11 case; provided, further, however, that the Debtor shall open any such new Bank Account at banks that have executed a Uniform Depository Agreement with the Office of the United States Trustee for the District of Delaware, or at such banks that are willing to immediately execute such an agreement.

12. The Debtor's time to comply with section 345(b) of the Bankruptcy Code with respect to any uncovered financial institutions is hereby extended for a period of thirty (30) days from the date of this Interim Order (the "Extension Period"), provided that such extension is without prejudice to the Debtor's right to request a further extension of the Extension Period or the waiver of the requirements of section 345(b) of the Chapter 11 Case, including at the Final Hearing.

13. The Debtor is authorized to continue engaging in Intercompany Transactions in connection with the Cash Management System in the ordinary course of business and with the consent of the DIP Administrative Agent; provided, however, that there shall be no intercompany loans from the Debtor to any non-debtors, absent further order of the Court; and provided further that prior to the final order on this Motion, transfers from the Debtor to non-Debtor affiliates shall not exceed \$25,000.

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

15. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

16. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

17. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order are immediately effective and enforceable upon its entry.

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

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

_____, 2018
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

Exhibit B

Proposed Final Order

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

In re

Orexigen Therapeutics, Inc.,

Debtor.¹

Chapter 11

Case No. 18-10518 (___)

Re: D.I. ___

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

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

¹ The last four digits of the Debtor's federal tax identification number are 8822. The Debtor's mailing address for purposes of this Chapter 11 Case is 3344 North Torrey Pines Court, Suite 200, La Jolla, CA, 92037.

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

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

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

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

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

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

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

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

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

any kind, regardless of whether such items were deposited or transferred prepetition or postpetition and regardless of whether the returned items relate to prepetition or postpetition items or transfers.

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

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

11. The Debtor is authorized to (a) open any new Bank Accounts or close any existing Bank Accounts, and (b) enter into any ancillary agreements, related to the foregoing, as it may deem necessary and appropriate; provided, however, that in the event that the Debtor opens or closes any Bank Accounts, such opening or closing shall be timely indicated on the Debtor's monthly operating reports and notice of such opening or closing shall be provided to the Office of the United States Trustee for the District of Delaware within 15 days.

12. The Debtor shall not be subject to the investment and deposit requirements of section 345(b) of the Bankruptcy Code.

13. The Debtor is authorized to continue engaging in Intercompany Transactions in connection with the Cash Management System in the ordinary course of business

and with the consent of the DIP Administrative Agent; provided, however, that there shall be no intercompany loans from the Debtor to any non-debtors, absent further order of the Court.

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

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

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

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

_____, 2018
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

Exhibit C

Bank Accounts

DEBTOR'S BANK ACCOUNTS

Account Holder	Bank Name	Account Description	Last 4 Digits of Account No.
Orexigen Therapeutics, Inc.	Silicon Valley Bank	AR Lockbox Account	1180
Orexigen Therapeutics, Inc.	Silicon Valley Bank	General Checking Account	6813
Orexigen Therapeutics, Inc.	Silicon Valley Bank	Sweep Account	3036
Orexigen Therapeutics, Inc.	US Bank	Holding Account	4219

Exhibit D

Cash Management System Diagram

