

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: D.I. 13, 138

**FINAL ORDER UNDER SECTION 366 OF  
THE BANKRUPTCY CODE (A) PROHIBITING UTILITY PROVIDERS FROM  
ALTERING, REFUSING OR DISCONTINUING SERVICE, (B) DEEMING UTILITIES  
ADEQUATELY ASSURED OF FUTURE PERFORMANCE, AND (C) ESTABLISHING  
PROCEDURES FOR DETERMINING ADEQUATE ASSURANCE OF PAYMENT**

Upon consideration of the motion (the "Motion")<sup>2</sup> of the above captioned debtor (the "Debtor") styled *Motion of the Debtor for an Order Under Section 366 of the Bankruptcy Code (A) Prohibiting Utility Providers From Altering, Refusing or Discontinuing Service, (B) Deeming Utilities Adequately Assured of Future Performance, and (C) Establishing Procedures for Determining Adequate Assurance of Payment* (the "Motion") and adequate and sufficient notice of the Motion having been given; and the Court having reviewed and considered the Motion, all pleadings related thereto and the arguments of counsel made, and the evidence proffered or adduced, at the interim hearing and the final hearing, it is hereby:

**ORDERED, ADJUDGED AND DECREED THAT:**

1. The Motion is GRANTED on a final basis as set forth herein.
2. Within three (3) business days after entry of this Order, the Debtor shall serve a copy of this Order by first class mail on each of the Utility Providers set forth on **Exhibit A** to the Motion.

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

<sup>2</sup> Capitalized terms not defined herein are defined in the Motion.



3. Each Utility Provider is prohibited from: (a) altering, refusing or discontinuing service to, or discriminating against the Debtor solely on the basis of the commencement of these cases or on account of any unpaid invoice for services provided before the commencement of these cases; and (b) requiring the payment of any additional deposit or other security in connection with the Utility Providers' continued provision of utility services, including the furnishing of gas, electricity, water, sewer, sanitation or telecommunication services, or any other utility service of similar kind to the Debtor other than as provided in this Order.

4. The Debtor shall maintain a segregated account funded with deposit(s) (a "Utility Deposits") in the amounts set forth on Exhibit A to the Motion for the purpose of providing such Utility Provider with adequate assurance of payment of its postpetition services to the Debtor.

5. The following procedures (the "Procedures") by which a Utility Provider may request additional adequate assurance of future payment, in the event that such Utility Provider believes that its Utility Deposit does not provide it with satisfactory adequate assurances are approved on a final basis:

- a. If a Utility Provider is not satisfied with the Utility Deposit provided by the Debtor as adequate assurance, the Utility Provider must serve a written request (the "Request") upon the Debtor within seven (7) days of the date of service of this Final Order upon such Utility (the "Request Deadline") setting forth the location(s) for which Utility Service is provided, the account number(s) for such location(s), the outstanding balance for each account, and an explanation of why the Utility Provider believes it does not have adequate assurance of payment;
- b. The Request must be sent to Debtor's counsel, Hogan Lovells US LLP at 875 Third Avenue, New York, NY 10012 Attn: John D. Beck; and Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street, 16th Floor, Wilmington, DE 19899-1347, Attn: Robert J. Dehney, Andrew R. Remming and Jose F. Bibiloni;

- c. Without further order of the Court, the Debtor may enter into agreements granting additional adequate assurance to a Utility Provider serving a timely Request, if the Debtor, in its discretion, determine that the Request or the additional amount agreed upon is reasonable;
  - d. If the Debtor believes that a Request is unreasonable, then it shall, within fourteen (14) days after the Request Deadline date, file a motion pursuant to section 366(c)(2) of the Bankruptcy Code (a "Determination Motion"), seeking a determination from the Court that the Utility Deposit, plus any additional consideration offered by the Debtor, constitutes adequate assurance of payment. Pending a Court ruling on the Determination Motion, the Utility Provider that is the subject of the unresolved Request may not alter, refuse, or discontinue services to the Debtor nor recover or setoff against a pre-Petition Date deposit; and
  - e. Any Utility that does not timely serve a Request shall not discontinue service to the Debtor.
6. The Debtor may supplement the list of Utility Providers on Exhibit A to the Motion. If the Debtor supplements the list subsequent to the filing of the Motion, the Debtor will serve a copy of the Motion and this Order on any Utility Provider that is added to the list by such a supplement (the "Supplemental Service"). In addition, the Debtor will deposit 50% of the Debtor's average monthly utility charges over the preceding twelve months, as estimated by the Debtor, as a Utility Deposit for the added Utility Provider at each applicable location. Any subsequently added Utility Provider set forth on a supplement to Exhibit A to the Motion will fall within the scope of this Order from the date of the filing of the supplemental Exhibit A.
7. The Debtor may terminate the services of any Utility Provider by providing written notice (a "Termination Notice"). After receipt of a Termination Notice by a Utility Provider and an opportunity for a hearing as to the affected Utility Provider, the Utility Provider shall refund any Utility Deposit to the Debtor, provided that the Utility Provider has been paid for all charges that accrued after the commencement of the case, without giving effect to any rights of setoff or any prepetition claims the Utility Provider may assert against the Debtor.

8. Nothing in this Order shall be deemed to vacate or modify any other restrictions on the termination of service by a Utility Provider as provided by sections 362 and 366 of the Bankruptcy Code or other applicable law and nothing herein or in the Motion shall constitute post-petition assumption or adoption of any agreement pursuant to section 365 of the Bankruptcy Code, nor shall anything herein be deemed a waiver by the Debtor or any other party of any rights with respect to the assumption or rejection of an executory contract.

9. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation or enforcement of this Order.

Dated: April 10, 2018  
Wilmington, Delaware

  
UNITED STATES BANKRUPTCY JUDGE