

EXHIBIT 1

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11 **UNITED STATES DISTRICT COURT**
12 **SOUTHERN DISTRICT OF CALIFORNIA**

13 KARIM KHOJA; on behalf of himself)
14 and all others similarly situated,) No. 3:15-cv-00540 JLS (KSC)
15) CLASS ACTION
16 Plaintiffs,)

17 vs.)

18 OREXIGEN THERAPEUTICS, INC.,)
19 JOSEPH P. HAGAN, MICHAEL A.) **STIPULATION OF SETTLEMENT**
20 NARACHI, and PRESTON KLASSEN) **[SUBJECT TO FED. R. EVID. 408]**
21 Defendants.)

22 AND ALL CONSOLIDATED CASES)
23)
24)
25)
26)
27)
28)

1 This Stipulation of Settlement dated February 8, 2021 (the “Stipulation”), is made
2 and entered into by and among the following Settling Parties (as defined further in
3 §IV(1)(1.29)) to the above-captioned litigation (the “Litigation”): (i) Lead Plaintiff
4 Karim Khoja (as defined further in §IV(1)(1.13)) (on behalf of himself and each of the
5 proposed Settlement Class Members (as defined further in §IV(1)(1.27)), by and
6 through his counsel of record in the Litigation; and (ii) Defendants Joseph P. Hagan,
7 Michael A. Narachi, and Preston Klassen (“Individual Defendants”) and the Wind
8 Down Administrator for Orexigen Therapeutics, Inc., the successor-in-identity to
9 Orexigen Therapeutics, Inc. (“Orexigen” or the “Company”) (together with the
10 Individual Defendants, “Defendants” (as defined further in §IV(1)(1.8)) (together with
11 Lead Plaintiff, “the Parties”), by and through their counsel of record in the Litigation.
12 The Stipulation is intended by the Settling Parties to fully, finally, and forever resolve,
13 discharge, release, and settle the Released Claims (as defined further in §IV(1)(1.22)),
14 upon and subject to the terms and conditions hereof and subject to the approval of the
15 United States District Court for the Southern District of California (the “Court”).

16 I. THE LITIGATION

17 On and after March 10, 2015, the following actions were filed in the United States
18 District Court for the Southern District of California as putative class actions on behalf
19 of persons who purchased or otherwise acquired the publicly traded securities of
20 Orexigen: (i) *Colley v. Orexigen Therapeutics, Inc.*, Case No. 3:15-cv-00540-L-KSC
21 (S.D. Cal. March 10, 2015); (ii) *Yantz v. Orexigen Therapeutics, Inc.*, Case No. 3:15-
22 cv-00557-CAB-MDD (S.D. Cal. March 11, 2015); and (iii) *Stefanko v. Orexigen*
23 *Therapeutics, Inc.*, Case No. 3:15-cv-00549-JAH-JLB (S.D. Cal. March 11, 2015). By
24 order of the Court dated June 22, 2015, the three actions were consolidated, Karim
25 Khoja was appointed as Lead Plaintiff, and his choice of counsel was approved by the
26 Court pursuant to the Private Securities Litigation Reform Act of 1995 (“PSLRA”)
27 (ECF No. 43).

1 Lead Plaintiff filed his initial Consolidated Class Action Complaint on August
2 20, 2015 (ECF No. 55). Defendants filed a Motion to Dismiss the Consolidated Class
3 Action Complaint (ECF No. 62), which the Court granted on May 19, 2016 (ECF No.
4 76). Lead Plaintiff timely appealed the May 19, 2016 Order dismissing the Consolidated
5 Class Action Complaint on July 26, 2016 (ECF No. 80).

6 On March 12, 2018, the Company filed a Chapter 11 case in the Bankruptcy
7 Court for the District of Delaware (the “Bankruptcy Court”) and the litigation and the
8 appeal as to the Company were stayed pursuant to 11 U.S.C. § 362 (ECF No. 82).

9 The United States Court of Appeals for the Ninth Circuit affirmed the order
10 granting Defendants’ motion to dismiss in part, reversed in part, as to the Individual
11 Defendants, and remanded to the Court for further proceedings on August 13, 2018
12 (ECF No. 93). The Individual Defendants filed a Petition for Panel Rehearing or
13 Rehearing *En Banc* on August 27, 2018. Lead Plaintiff filed his Answer to the
14 Individual Defendants’ petition for rehearing *en banc* on October 5, 2018. The United
15 States Court of Appeals for the Ninth Circuit thereafter denied Defendants’ Petition for
16 *en banc* review on November 2, 2018.

17 Subsequently, the Individual Defendants filed a Petition for Writ of Certiorari
18 with the United States Supreme Court on January 31, 2019. Lead Plaintiff filed his
19 opposition to the Individual Defendants’ certiorari petition on April 5, 2019. The
20 United States Supreme Court denied the Individual Defendants’ certiorari petition on
21 May 20, 2019.

22 While their certiorari petition was pending, the Individual Defendants filed a
23 Renewed Motion to Dismiss the Consolidated Complaint for Violations of the Federal
24 Securities Laws on February 14, 2019 (ECF No. 98), which the Court granted in part
25 and denied in part on September 23, 2019 (ECF No. 110). Lead Plaintiff thereafter filed
26 the operative Consolidated Amended Class Action Complaint for Violation of the
27 Federal Securities Laws, on October 17, 2019 (the “Complaint”) (ECF No. 111). The

1 Complaint alleges claims against Defendants for violation of Sections 10(b) and 20(a)
2 of the Securities Exchange Act of 1934, and Securities and Exchange Commission Rule
3 10b-5 promulgated thereunder.

4 The Individual Defendants filed a Partial Motion to Dismiss the Complaint on
5 November 15, 2019 (ECF No. 114), which the Court granted on November 2, 2020
6 (ECF No. 139).

7 On April 28, 2020, the Bankruptcy Court lifted the stay as to the Company (ECF
8 No. 125).

9 The Parties conducted a full day mediation with Jed D. Melnick (JAMS) on
10 March 13, 2020. The Parties did not resolve the case on that date but continued to
11 actively discuss settlement with Mr. Melnick's assistance, including exchanging
12 multiple offers and counteroffers after the Court granted Individual Defendants' Partial
13 Motion to Dismiss. On December 7, 2020, the Parties reached an agreement in principle
14 to settle this Litigation in its entirety. On December 9, 2020, the Parties filed a Joint
15 Notice of Settlement and Stipulation with the Court (ECF No. 140), which the Court
16 granted on December 14, 2020 (ECF No. 141).

17 **II. CLAIMS OF THE LEAD PLAINTIFF AND BENEFITS OF**
18 **SETTLEMENT**

19 Lead Plaintiff believes that the claims asserted in the Litigation have merit. Lead
20 Plaintiff and Lead Counsel, however, recognize and acknowledge the expense and
21 duration of continued proceedings necessary to prosecute the Litigation against
22 Defendants through trial and appeals. Lead Counsel also have considered the uncertain
23 outcome and risks in complex actions such as this Litigation, as well as the difficulties
24 and delays inherent in such litigation and the Company's bankruptcy. Lead Counsel
25 also are mindful of the potential problems of proof and possible defenses to the
26 violations asserted in the Litigation. Lead Counsel believe that the Settlement set forth
27 in this Stipulation confers substantial benefits upon the Settlement Class. Based on its

1 evaluation, Lead Counsel has determined that the Settlement set forth in this Stipulation
2 is in the best interests of Lead Plaintiff and the Settlement Class.

3 **III. DEFENDANTS' DENIALS OF WRONGDOING AND LIABILITY**

4 Defendants have denied and continue to deny each and all of the claims and
5 contentions alleged by Plaintiff in the Litigation. Defendants have expressly denied and
6 continue to deny all charges of wrongdoing or liability whatsoever arising out of any of
7 the conduct, statements, acts, or omissions alleged, or that could have been alleged, in
8 the Litigation, and maintain that their conduct was at all times proper and in compliance
9 with applicable provisions of law. Specifically, Defendants deny, *inter alia*, that they
10 made any material misstatements or omissions in Orexigen's public filings, press
11 releases, or other public statements, that Lead Plaintiff or the Settlement Class have
12 suffered any damages, that the prices of Orexigen securities were artificially inflated by
13 reasons of alleged misrepresentations, non-disclosures or otherwise, and that Lead
14 Plaintiff or the Settlement Class were harmed in any way by any conduct alleged in the
15 Litigation or that could have been alleged therein.

16 This Stipulation shall in no event be construed or deemed to be evidence of an
17 admission or concession on the part of any Defendant with respect to any claim or of
18 any fault, liability, wrongdoing, or damage whatsoever, or any infirmity in the defenses
19 that Defendants have asserted or could have asserted in the Litigation. Defendants
20 believe the Lead Plaintiff would not be able to prove his claims or to refute Defendants'
21 defenses, but recognize the burden, inconvenience, expense, and uncertainty inherent
22 in any litigation, and enter into this Stipulation to avoid further expense, inconvenience,
23 and the distraction of burdensome and protracted litigation and secure releases to the
24 fullest extent permitted by law. Defendants' decision to settle the Litigation is based on
25 the conclusion that further conduct of the Litigation would be protracted and expensive,
26 and the determination that it is desirable and beneficial to settle the Litigation in the
27 manner and upon the terms and conditions set forth in this Stipulation and to put the

1 Released Claims to rest finally and forever, without in any way acknowledging any
2 wrongdoing, fault, liability, or damages to Lead Plaintiff and the Settlement Class.

3 **IV. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT**

4 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and
5 among Lead Plaintiff (for himself and the Settlement Class Members) and Defendants,
6 by and through their respective counsel of record, that, without any admission or
7 concession on the part of Lead Plaintiff regarding any lack of merit of the claims in this
8 Litigation, and without any admission or concession on the part of Defendants of any
9 liability or wrongdoing or lack of merit of their defenses in this Litigation, and subject
10 to the approval of the Court, the Litigation and the Released Claims (defined below)
11 shall be finally, fully, and forever compromised, settled, released, discharged, and
12 dismissed with prejudice, as to all Settling Parties and Released Persons, upon and
13 subject to the terms and conditions of this Stipulation, as follows:

14 **1. Definitions**

15 As used in the Stipulation the following terms have the meanings specified
16 below:

17 1.1 “Orexigen” or the “Company” means Orexigen Therapeutics, Inc.

18 1.2 “Authorized Claimant” means any Settlement Class Member whose claim
19 for recovery has been allowed pursuant to the terms of the Stipulation and who submits
20 a valid Proof of Claim and Release form to the Claims Administrator.

21 1.3 “Bankruptcy Case” means the Chapter 11 case commenced by Orexigen
22 in the District of Delaware on March 12, 2018 in the Bankruptcy Court, Case No. 18-
23 10518.

24 1.4 “Bankruptcy Court” means the Bankruptcy Court for the District of
25 Delaware.

26 1.5 “Bankruptcy Proof of Claim” means Proof of Claim No. 140 filed by Lead
27 Plaintiff on behalf of himself and the putative Settlement Class in the Bankruptcy Court.

1 1.6 “Claims Administrator” means the firm of Rust Consulting located in
2 Minneapolis, Minnesota.

3 1.7 “Class Period” means the period commencing on March 3, 2015 and
4 ending on May 12, 2015, inclusive.

5 1.8 “Defendants” means Joseph P. Hagan, Michael A. Narachi, and Preston
6 Klassen and the Wind Down Administrator for Orexigen Therapeutics, Inc., the
7 successor-in-identity to Orexigen Therapeutics, Inc.

8 1.9 “Effective Date” means the first date by which all of the events and
9 conditions specified in ¶8.1 of the Stipulation have been met and have occurred.

10 1.10 “Escrow Agent” means Kahn Swick & Foti, LLC or its successor(s).

11 1.11 “Final” means when the last of the following with respect to the Order and
12 Final Judgment, substantially in the form of Exhibit B attached hereto, has occurred: (i)
13 the expiration of three (3) business days after (a) the time for the filing of any motion
14 to alter or amend the Order and Final Judgment under Federal Rule of Civil Procedure
15 59(e) without any such motion having been filed or, (b) if such a motion is filed, an
16 order denying such motion; (ii) the expiration of three (3) business days after the time
17 for the filing or noticing of any appeal from the Order and Final Judgment without any
18 appeal or notice of appeal having been filed; and (iii) if such an appeal is filed or noticed,
19 then three (3) business days after either (a) the Order and Final Judgment has been
20 finally affirmed, the time for a petition for writ of certiorari to review the Order and
21 Final Judgment has expired or, if certiorari is granted, the judgment following review
22 pursuant to that grant has been finally affirmed; or (b) any appeal from the Order and
23 Final Judgment or any proceeding on certiorari to review the Order and Final Judgment
24 has been finally dismissed. For purposes of this paragraph, an “appeal” shall include
25 any petition for a writ of certiorari or other writ that may be filed in connection with
26 approval or disapproval of this Settlement but shall not include any appeal that concerns
27 only the Fee and Expense Award or the Plan of Allocation of the Settlement Fund. Any

1 proceeding or order, or any appeal or petition for a writ of certiorari pertaining solely
2 to any Fee and Expense Award or Plan of Allocation of the Settlement Fund, shall not
3 in any way delay or preclude the Order and Final Judgment from becoming Final.

4 1.12 “Lead Counsel” means Kahn Swick & Foti, LLC or its successor(s).

5 1.13 “Lead Plaintiff” means the Court-appointed lead plaintiff Karim Khoja.

6 1.14 “Notice Order” means the order described in ¶4.1 hereof.

7 1.15 “Order and Final Judgment” means the judgment to be rendered by the
8 Court, substantially in the form attached hereto as Exhibit B (or in such other form as
9 may be approved in writing by all of the Settling Parties acting by and through their
10 respective counsel of record in the Litigation).

11 1.16 “Person” means an individual, corporation, limited liability corporation,
12 professional corporation, limited liability partnership, partnership, limited partnership,
13 limited liability company, association, joint stock company, joint venture, estate, legal
14 representative, trust, unincorporated association, government or any political
15 subdivision or agency thereof, and any business or legal entity and all of their respective
16 spouses, heirs, beneficiaries, executors, administrators, predecessors, successors,
17 representatives, or assignees.

18 1.17 “Plaintiff’s Counsel” means any counsel who have appeared for Lead
19 Plaintiff in the Litigation.

20 1.18 “Plan of Allocation” means a plan or formula of allocation of the
21 Settlement Fund whereby the Settlement Fund shall be distributed to Authorized
22 Claimants after payment of expenses of notice and administration of the Settlement,
23 Taxes and Tax Expenses, and such Fee and Expense Award as may be awarded by the
24 Court. Any Plan of Allocation is not part of the Stipulation, and Released Defendant
25 Parties shall have no responsibility or liability with respect thereto.

26 1.19 “Released Defendant Parties” means Defendants, and each of their present
27 and former parents, subsidiaries, division, departments, affiliates, officers, directors,

1 partners, principals, employees, contractors, administrators, auditors, agents, attorneys,
2 accountants, advisors, predecessors, successors, assigns, insurers, general or limited
3 partners or partnerships, and limited liability companies; and the spouses, members of
4 the immediate families, representatives, and heirs of any Released Defendant Parties
5 who is an individual, as well as any trust of which any of the Released Defendant Parties
6 is the settlor or which is for the benefit of any of their immediate family members.

7 1.20 “Released Plaintiff Parties” means each and every Settlement Class
8 Member, Lead Plaintiff, Plaintiff’s Counsel, and each of their respective past or present
9 trustees, officers, directors, partners, employees, contractors, auditors, principals,
10 agents, attorneys, accountants, advisors, predecessors, successors, assigns, insurers,
11 parents, divisions, subsidiaries, general or limited partners or partnerships, and limited
12 liability companies; and the spouses, members of the immediate families,
13 representatives, and heirs of any Released Plaintiff Party who is an individual, as well
14 as any trust of which any Released Plaintiff Party is the settlor or which is for the benefit
15 of any of their immediate family members. Released Plaintiff Parties does not include
16 any Person who timely and validly seeks exclusion from the Settlement Class.

17 1.21 “Released Persons” means the Released Defendant Parties and the
18 Released Plaintiff Parties.

19 1.22 “Released Claims” means any and all claims (including “Unknown
20 Claims” as defined in ¶1.30 below), rights, demands, obligations, damages, actions,
21 suits, matters, issues, causes of action, or liabilities whatsoever, in law or in equity,
22 accrued or unaccrued, fixed or contingent, direct, individual or representative, of every
23 nature and description, whether known or unknown, whether arising under federal,
24 state, local, common or foreign law or any other law, rule, or regulation, that arise out
25 of or relate in any way, in whole or in part, directly or indirectly, to (a) the purchase,
26 acquisition, or sale of Orexigen securities during the Class Period and (b) the acts, facts,
27 transactions, events, occurrences, statements, disclosures, representations, filings,

1 publications, disseminations, press releases, presentations, omissions, or failures to act
2 that were, could have been, or could in the future be alleged or asserted by Lead Plaintiff
3 or any member of the Settlement Class (i) in the Litigation or (ii) in any other action in
4 any court or forum, including, but not limited to, the Bankruptcy Proof of Claim.
5 Released Claims do not include claims asserted on Orexigen’s purported behalf in
6 shareholder derivative actions, except that Lead Plaintiff agrees not to bring, or in any
7 way to cause any other person to bring, any derivative claims in connection with, arising
8 out of, related to, and/or based upon, in whole or in part, directly or indirectly, in any
9 way, any acts, facts, wrongdoing, or any other matter alleged or asserted, or which could
10 have been alleged or asserted, in the Litigation.

11 1.23 “Settled Defendants’ Claims” means all claims, demands, losses, rights,
12 and causes of action of any nature whatsoever, that have been or could have been
13 asserted in the Litigation or any forum by the Defendants or any of them or the
14 successors, administrators, and assigns of any of them against the Lead Plaintiff,
15 Settlement Class Members, or Plaintiff’s Counsel, which arise out of or relate in any
16 way to the institution, prosecution, assertion, settlement, or resolution of the Litigation
17 (except for claims to enforce the Settlement or orders issued by the Court in connection
18 with the Settlement); for the avoidance of doubt, “Settled Defendants’ Claims” does not
19 include any rights or claims of Defendants against their insurers, or their insurers’
20 subsidiaries, predecessors, successors, assigns, affiliates, or representatives, under or
21 related to any policies of insurance.

22 1.24 “Settlement” means the settlement of the Litigation as set forth in this
23 Stipulation.

24 1.25 “Settlement Amount” means the principal amount of Four-Million Eight-
25 Hundred-Thousand Dollars (\$4,800,000.00) in cash to be paid pursuant to ¶2.1 of this
26 Stipulation. Defendants and their insurers shall not have any obligation whatsoever to
27 pay any amount over and above the principal amount of Four-Million Eight-Hundred-

1 Thousand Dollars (\$4,800,000.00) in cash.

2 1.26 “Settlement Class” means all Persons who purchased or otherwise
3 acquired Orexigen publicly traded securities between March 3, 2015 and May 12, 2015,
4 inclusive. Excluded from the Settlement Class are Defendants, all directors and officers
5 of Orexigen (whether current or former), each of their respective immediate family
6 members, and entities in which any such excluded person holds a controlling interest.
7 Also excluded from the Settlement Class are those Persons who timely and validly
8 request exclusion from the Settlement Class pursuant to the Notice (as defined in ¶4.1
9 below).

10 1.27 “Settlement Class Member” or “Settlement Class Members” mean any
11 Person who falls within the definition of the Settlement Class as set forth in ¶1.26 of
12 the Stipulation.

13 1.28 “Settlement Fund” means the interest-bearing escrow account into which
14 the Settlement Amount is to be paid. The Settlement Fund shall include the Settlement
15 Amount plus any interest that may accrue thereon as provided for herein.

16 1.29 “Settling Parties” means, collectively, each of the Defendants and the Lead
17 Plaintiff on behalf of himself and each Settlement Class Member.

18 1.30 “Unknown Claims” means any and all Released Claims that Lead Plaintiff
19 or any member of the Settlement Class does not know or suspect to exist in his, her, or
20 its favor at the time of the release of the Released Defendant Parties, which if known
21 by him, her or it might have affected his, her or its settlement with and release of the
22 Released Defendant Parties or might have affected his, her or its decision not to object
23 to the Settlement or not exclude himself, herself, or itself from the Settlement Class.
24 Lead Plaintiff and every Settlement Class Member expressly waive, and by operation
25 of the Order and Final Judgment shall be deemed to have waived and shall have waived,
26 to the fullest extent permitted by law, any and all provisions, rights and benefits
27 conferred by California Civil Code § 1542 (to the extent applicable), and any law of

1 any state or territory of the United States, or principle of common law, or the law of any
2 foreign jurisdiction, that is similar, comparable or equivalent to California Civil Code
3 § 1542, which provides:

4 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH
5 THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS
6 OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,
7 WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY
8 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

8 Lead Plaintiff and each Settlement Class Member may hereafter discover facts in
9 addition to or different from those which he, she, or it now knows or believes to be true
10 with respect to the subject matter of the Released Claims, but Lead Plaintiff shall
11 expressly, fully, finally, and forever settle and release, and each Settlement Class
12 Member shall be deemed to have, and by operation of the Order and Final Judgment
13 shall have, fully, finally, and forever settled and released, any and all Released Claims,
14 known or unknown, suspected or unsuspected, contingent or non-contingent, whether
15 or not concealed or hidden, which now exist, or heretofore have existed, upon any
16 theory of law or equity now existing or coming into existence in the future, including,
17 but not limited to, conduct which is negligent, intentional, with or without malice, or a
18 breach of any duty, law or rule, without regard to the subsequent discovery or existence
19 of such different or additional facts. Lead Plaintiff acknowledges, and every member
20 of the Settlement Class by law and operation of the Order and Final Judgment shall be
21 deemed to have acknowledged, that the inclusion of “Unknown Claims” in the
22 definition of Released Claims was separately bargained for and was a material element
23 of the Settlement.

24 1.31 “Wind Down Administrator” means the Wind Down Administrator for
25 Orexigen Therapeutics, Inc., the successor-in-identity to Orexigen Therapeutics, Inc.
26 For avoidance of doubt and without otherwise limiting any provisions in this
27

1 Stipulation, the Wind Down Administrator is a Released Defendant Party under this
2 Stipulation.

3 **2. The Settlement**

4 **a. The Settlement Fund**

5 2.1 In consideration of the terms of this Settlement and the full and final
6 settlement, resolution, release, and discharge of all Released Claims, the Wind Down
7 Administrator shall cause Defendants’ insurance carrier to pay the Settlement Amount.
8 Lead Counsel shall provide counsel for Defendants with wiring instructions for the
9 Settlement Fund, the payee’s W-9, and any other documents reasonably required by
10 Defendants’ insurance carrier to process the payments as expeditiously as possible and
11 in any event within five (5) business days of the Court’s entry of the Notice Order
12 preliminarily approving the Settlement. The Wind Down Administrator shall cause
13 Defendants’ insurance carrier to deposit the Settlement Amount into the Settlement
14 Fund within twenty (20) business days of the Court’s entry of the Notice Order
15 preliminarily approving the Settlement or within twenty (20) business days of receipt
16 by Defendants’ counsel of the wiring instructions for the Settlement Fund and the
17 payee’s W-9, whichever occurs later.

18 2.2 Other than the obligation of the Wind Down Administrator to cause
19 Defendants’ insurance carrier to deposit the Settlement Amount into the Settlement
20 Fund pursuant to ¶2.1 of the Stipulation, Defendants and their insurance carrier shall
21 have no obligation to make any other payment pursuant to this Stipulation. Nothing
22 herein shall be deemed to be inconsistent with the March 16, 2020 Order entered by the
23 Delaware Bankruptcy Court providing, among other things, that Lead Plaintiff and the
24 Settlement Class are not entitled to any distribution by the Wind Down Administrator,
25 Orexigen, or Orexigen’s bankruptcy estate other than insurance proceeds.

26 **b. The Escrow Agent**

27 2.3 The Escrow Agent shall invest any funds in excess of the \$250,000

1 (advanced pursuant to ¶2.7 below) in short-term United States Agency or Treasury
2 Securities (or a mutual fund invested solely in such instruments) and shall collect and
3 reinvest all interest accrued thereon in the same instruments. Any funds held in escrow
4 in an amount of less than or equal to \$250,000 may be held in an interest-bearing bank
5 account insured by the Federal Deposit Insurance Corporation. The interest from the
6 Settlement Fund will accrue to the benefit of the Settlement Class upon the Effective
7 Date. All risks related to the investment of the Settlement Fund in accordance with the
8 investment guidelines set forth in this paragraph shall be borne by the Settlement Fund,
9 and the Released Defendant Parties shall have no responsibility for, interest in, or
10 liability whatsoever with respect to investment decisions or the actions of the Escrow
11 Agent, or any transactions executed by the Escrow Agent.

12 2.4 The Escrow Agent shall not disburse the Settlement Fund except as
13 provided in the Stipulation, by an order of the Court, or with the prior written agreement
14 among Plaintiff’s Counsel and counsel for Defendants.

15 2.5 Subject to further order and/or direction as may be made by the Court, the
16 Escrow Agent is authorized to execute such transactions on behalf of the Settlement
17 Class Members as are consistent with the terms of the Stipulation.

18 2.6 All funds held by the Escrow Agent shall be deemed and considered to be
19 in *custodia legis* and shall remain subject to the jurisdiction of the Court, until such time
20 as such funds shall be distributed pursuant to the Stipulation and/or further order(s) of
21 the Court.

22 2.7 Escrow Agent shall advance \$250,000 from the Settlement Amount to the
23 Claims Administrator solely for costs in connection with the distribution of the Notice
24 to the Settlement Class Members and the administration of the Settlement Fund
25 pursuant to the Plan of Allocation (“Notice and Administration Component”), as
26 follows. The Escrow Agent shall establish a “Notice and Administration Fund,” and
27 deposit the \$250,000 from the Notice and Administration Component Fund in it. The

1 Notice and Administration Fund may also be invested and earn interest as provided for
2 in ¶2.3 of this Stipulation.

3 2.8 The Notice and Administration Component shall be used, without further
4 approval from Defendants or the Court, for the reasonable costs and expenses associated
5 with identifying Settlement Class Members and effecting mail notice and publication
6 notice to the Settlement Class, and the administration of the Settlement, including,
7 without limitation, the actual costs of publication, printing and mailing the Notice,
8 reimbursements to nominee owners for forwarding notice to their beneficial owners,
9 and the administrative expenses incurred and fees charged by the Claims Administrator
10 in connection with providing notice and processing the submitted claims, provided that
11 the foregoing costs and expenses shall not exceed \$250,000. To the extent the foregoing
12 costs and expenses do exceed \$250,000, prior to the Effective Date, Lead Counsel shall
13 apply to the Court for an order allowing for reimbursement to the Claims Administrator
14 from the Settlement Fund of the foregoing costs and expenses in excess of \$250,000.

15 **c. Taxes**

16 2.9 The Settling Parties and their counsel agree that:

17 (a) the Settlement Fund is intended to be a “qualified settlement fund”
18 within the meaning of Treas. Reg. §1.468B-1. The Settling Parties and their counsel
19 agree that the Settlement Fund should at all times be treated as being a “qualified
20 settlement fund” within the meaning of Treas. Reg. § 1.468B-1. In addition, the Escrow
21 Agent shall timely make such elections as necessary or advisable to carry out the
22 provisions of this ¶2.9, including the “relation-back election” (as defined in Treas. Reg.
23 §1.468B-1(j)(2)) back to the earliest permitted date. Such elections shall be made in
24 compliance with the procedures and requirements contained in such Treasury
25 regulations promulgated under §468B of the Internal Revenue Code of 1986, as
26 amended (the “Code”). It shall be the sole responsibility of the Escrow Agent to timely
27 and properly prepare and deliver the necessary documentation for signature by all

1 necessary parties, and thereafter to cause the appropriate filing to occur.

2 (b) For the purpose of §468B of the Code and the Treasury regulations
3 promulgated thereunder, the Escrow Agent shall be designated as the “administrator”
4 of the Settlement Fund. The Escrow Agent shall timely and properly file all
5 informational and other tax returns necessary or advisable with respect to the Settlement
6 Fund (including, without limitation, the returns described in Treas. Reg. §1.468B-2(k)).
7 Such returns (as well as the election described in ¶2.9(a) hereof) shall be consistent with
8 this ¶2.9 and in all events shall reflect that all Taxes as defined in ¶2.9(c) hereof
9 (including any estimated Taxes, interest, or penalties) on the income earned by the
10 Settlement Fund shall be paid out of the Settlement Fund as provided in ¶2.9(c) hereof.

11 (c) All: (i) taxes (including any estimated taxes, interest, or penalties)
12 arising with respect to the income earned by the Settlement Fund, including any taxes
13 or tax detriments that may be imposed upon Defendants or the Released Defendant
14 Parties with respect to any income earned by the Settlement Fund for any period during
15 which the Settlement Fund does not qualify as a “qualified settlement fund” for federal
16 or state income tax purposes (“Taxes”); and (ii) expenses and costs incurred in
17 connection with the operation and implementation of this ¶2.9 (including, without
18 limitation, expenses of tax attorneys and/or accountants and mailing and distribution
19 costs and expenses relating to filing (or failing to file) the returns described in this ¶2.9)
20 (“Tax Expenses”), shall be paid out of the Settlement Fund. In no event shall
21 Defendants or the Released Defendant Parties have any responsibility for or liability
22 with respect to the Taxes or the Tax Expenses. The Escrow Agent shall indemnify and
23 hold each of the Defendants and the Released Defendant Parties harmless for Taxes and
24 Tax Expenses (including, without limitation, Taxes payable by reason of any such
25 indemnification). Further, Taxes and Tax Expenses shall be treated as, and considered
26 to be, a cost of administration of the Settlement Fund and shall be timely paid by the
27 Escrow Agent out of the Settlement Fund without prior order from the Court, and the

1 Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to
2 withhold from distribution to Authorized Claimants any funds necessary to pay such
3 amount, including the establishment of adequate reserves for any Taxes and Tax
4 Expenses (as well as any amounts that may be required to be withheld under Treas. Reg.
5 §1.468B-2(1)(2)); neither Defendants nor the Released Defendant Parties are
6 responsible therefor nor shall they have any liability with respect thereto. The Settling
7 Parties hereto agree to cooperate with the Escrow Agent, each other, and their tax
8 attorneys and accountants to the extent reasonably necessary to carry out the provisions
9 of this ¶2.9.

10 (d) For the purpose of this ¶2.9, references to the Settlement Fund shall
11 include both the Settlement Fund and the Notice and Administration Component and
12 shall also include any earnings thereon.

13 **3. Termination of Settlement**

14 3.1 In the event that the Stipulation is not approved, or is terminated, canceled,
15 or fails to become effective for any reason, including, without limitation, in the event
16 the Order and Final Judgment is reversed or vacated following any appeal taken
17 therefrom, or is successfully collaterally attacked, the Settlement Fund (including
18 accrued interest), less reasonable expenses actually incurred or due and owing from the
19 Settlement Fund for the notice and administration of the Settlement pursuant to ¶2.8
20 above, shall be refunded to Defendants’ insurance carrier pursuant to written
21 instructions provided by counsel for Defendants to the Escrow Agent in accordance
22 with ¶8.6 herein.

23 **4. Notice Order and Settlement Hearing**

24 4.1 Promptly after execution of the Stipulation, the Settling Parties shall
25 submit the Stipulation together with its Exhibits to the Court, and Lead Counsel shall
26 apply for entry of an order (the “Notice Order”), substantially in the form and content
27 of Exhibit A attached hereto, requesting, *inter alia*, the preliminary approval of the

1 Settlement set forth in the Stipulation, approval for the mailing of the Notice of
2 Pendency and Proposed Settlement of Class Action (the “Notice”), substantially in the
3 form of Exhibit A-1 attached hereto, and approval of the publication of a Summary
4 Notice, substantially in the form of Exhibit A-2 attached hereto. The Notice shall
5 include the general terms of the Settlement set forth in the Stipulation, the proposed
6 Plan of Allocation, the general terms of the Fee and Expense Application as defined in
7 ¶7.1 below, and the date of the Settlement Hearing as defined in ¶4.2 below.

8 4.2 The Settling Parties agree to request that, after Notice is given and not
9 earlier than ninety (90) calendar days after Defendants serve the appropriate Federal
10 official and the appropriate State officials with notice of the proposed Settlement
11 pursuant to the Class Action Fairness Act (“CAFA”), the Court hold a hearing (the
12 “Settlement Hearing”) and finally approve the Settlement of the Litigation as set forth
13 herein. At or after the Settlement Hearing, Lead Counsel also will request that the Court
14 approve the proposed Plan of Allocation and the Fee and Expense Application, and the
15 Settling Parties shall request and obtain from the Court the Order and Final Judgment
16 (or a judgment substantially in the form of Exhibit B attached hereto). The Order and
17 Final Judgment shall contain a bar order substantially in the form set forth in Exhibit B
18 that permanently bars, enjoins, and restrains any Person from commencing, prosecuting,
19 or asserting any Released Claims against any of the Released Persons, whether as
20 claims, cross-claims, counterclaims, third-party claims, or otherwise, and whether
21 asserted in the Litigation or any other proceeding, in this Court, in any federal or state
22 court, or in any other court, arbitration proceeding, administrative agency, or other
23 forum in the United States or elsewhere. The bar order shall be the broadest permitted
24 under the PSLRA but shall not release any claim by Defendants for insurance coverage,
25 nor shall it bar shareholder derivative claims to the extent such derivative claims are
26 permitted under the terms of ¶1.22 of this Stipulation. Pursuant to CAFA, no later than
27 ten (10) calendar days after this Settlement Agreement is filed with the Court,

1 Defendants shall serve proper notice of the proposed Settlement upon those who are
2 entitled to such notice pursuant to CAFA. Defendants shall bear the cost of serving the
3 CAFA notice.

4 4.3 Except for the Wind Down Administrator’s obligation to cause
5 Defendants’ insurance carrier to pay the Settlement Amount into the Settlement Fund
6 as set forth in ¶2.1, and for the Wind Down Administrator for Orexigen Therapeutics,
7 Inc. to use best efforts to provide Lead Plaintiff with information from Orexigen’s
8 shareholder transfer records, if any, with respect to the identification of Settlement Class
9 Members, Defendants and the Released Defendant Parties shall have no involvement,
10 liability, obligation or responsibility for selection of the Claims Administrator, the
11 claims administration process, the Plan of Allocation, or the distribution of the Net
12 Settlement Fund (as defined below in ¶6.2(d) below) after approval.

13 **5. Releases and Covenant Not to Sue**

14 5.1 Upon the Effective Date, as defined in ¶1.9 hereof, the Lead Plaintiff, each
15 and all of the Settlement Class Members and anyone claiming through or on behalf of
16 any of them, and Plaintiff’s Counsel shall be deemed to have, and by operation of the
17 Order and Final Judgment shall have, fully, finally, and forever waived, released,
18 relinquished, discharged, and dismissed with prejudice all Released Claims against all
19 Released Defendant Parties, and shall forever be barred and enjoined from
20 commencing, instituting, intervening in or participating in, prosecuting or continuing to
21 prosecute any action or other proceeding in any court of law or equity, arbitration
22 tribunal, or administrative forum, or other forum of any kind or character (whether
23 brought directly, in a representative capacity, derivatively, or in any other capacity),
24 that asserts any of the Released Claims against any of the Released Defendant Parties,
25 regardless of whether such Settlement Class Member executes and delivers a Proof of
26 Claim and Release form, and whether or not such Settlement Class Member shares in
27 the Settlement Fund.

1 5.2 Upon the Effective Date, as defined in ¶1.9 hereof, each of the Defendants
2 shall be deemed to have, and by operation of the Order and Final Judgment shall have,
3 fully, finally, and forever released, relinquished, and discharged Lead Plaintiff, each
4 and all of the Settlement Class Members, Released Plaintiff Parties and Plaintiff’s
5 Counsel from all Settled Defendants’ Claims, and shall be forever barred and enjoined
6 from commencing, instituting, intervening in or participating in, prosecuting or
7 continuing to prosecute any action or other proceeding in any court of law or equity,
8 arbitration tribunal, or administrative forum, or other forum of any kind or character
9 (whether brought directly, in a representative capacity, derivatively, or in any other
10 capacity), that asserts any of the Settled Defendants’ Claims against Lead Plaintiff, any
11 of the Settlement Class Members, Released Plaintiff Parties, or Plaintiff’s Counsel.

12 5.3 Lead Plaintiff, each and all of the Settlement Class Members, and
13 Plaintiff’s Counsel agree and covenant not to file or pursue any of the Released Claims
14 against any Released Defendant Parties between the date of this Stipulation and the
15 Effective Date. The Settling Parties agree that, if the Settlement does not become Final,
16 the period of time between the date of this Stipulation and the date that Defendants
17 became aware that the Settlement would not become Final shall not be counted for
18 purposes of any defense based on passage of time.

19 **6. Administration and Calculation of Claims, Final Awards, and**
20 **Supervision and Distribution of Settlement Fund**

21 6.1 The Claims Administrator, subject to such supervision and direction of the
22 Court and/or Lead Counsel as may be necessary or as circumstances may require, shall
23 administer and calculate the claims submitted by Settlement Class Members and shall
24 oversee distribution of the Net Settlement Fund (defined below) to Authorized
25 Claimants.

26 6.2 The Settlement Fund shall be applied as follows:

- 27 (a) to pay all the costs and expenses reasonably and actually incurred in

1 connection with providing notice, locating Settlement Class Members, soliciting
2 Settlement Class claims, assisting with the filing of claims, administering and
3 distributing the Net Settlement Fund to Authorized Claimants, processing Proof of
4 Claim and Release forms, and paying escrow fees and costs, if any;

5 (b) to pay the Taxes and Tax Expenses described in ¶2.9 above;

6 (c) to pay Plaintiff’s Counsel’s attorneys’ fees, expenses, and costs with
7 interest thereon (the “Fee and Expense Award”) and Lead Plaintiff’s expenses, if and
8 to the extent allowed by the Court; and

9 (d) to distribute the balance of the Settlement Fund (the “Net Settlement
10 Fund”) to Authorized Claimants as allowed by the Stipulation, the Plan of Allocation,
11 or the Court.

12 6.3 Upon the Effective Date and thereafter, and in accordance with the terms
13 of the Stipulation, the Plan of Allocation, or such further approval and further order(s)
14 of the Court as may be necessary or as circumstances may require, the Net Settlement
15 Fund shall be distributed to Authorized Claimants, subject to and in accordance with
16 the following:

17 (a) Each Settlement Class Member who wishes to participate in the Net
18 Settlement Fund shall be required to submit a Proof of Claim and Release form,
19 substantially in a form approved by the Court, supported by such documents as are
20 designated therein, including proof of the transactions claimed, or such other documents
21 or proof as the Claims Administrator, in its discretion, may deem acceptable. All Proof
22 of Claim and Release forms must be submitted by the date specified in the Notice unless
23 such period is extended by order of the Court, in which case all Proof of Claim and
24 Release forms must be submitted by the later date specified in that order;

25 (b) Any Settlement Class Member who fails to submit a Proof of Claim
26 and Release form by the date specified in the Notice (or by the later date, if any,
27 specified by order of the Court), shall be forever barred from receiving any payment

1 pursuant to this Stipulation (unless, by order of the Court, a later-submitted Proof of
2 Claim and Release form by such Settlement Class Member is approved), but shall in all
3 other respects be bound by all of the terms of this Stipulation and the Settlement,
4 including the terms of the Order and Final Judgment to be entered in the Litigation and
5 the releases provided for herein, and will be barred from bringing any action against the
6 Released Defendant Parties concerning the Released Claims. A Proof of Claim and
7 Release form shall be deemed to have been submitted when posted, if received with a
8 postmark indicated on the envelope and if mailed by first-class mail and addressed in
9 accordance with the instructions thereon. In cases of online submission and all other
10 cases, the Proof of Claim and Release form shall be deemed to have been submitted
11 when actually received by the Claims Administrator. Notwithstanding the foregoing,
12 Lead Counsel may, in its discretion, accept for processing late submitted claims so long
13 as the distribution of the Net Settlement Fund to Authorized Claimants is not materially
14 delayed;

15 (c) Each Proof of Claim and Release form shall be submitted to and
16 reviewed by the Claims Administrator, who shall determine in accordance with this
17 Stipulation and the approved Plan of Allocation the extent, if any, to which each claim
18 shall be allowed, subject to review by the Court pursuant to subparagraph (e) below;

19 (d) Proof of Claim and Release forms that do not meet the submission
20 requirements may be rejected. Prior to rejection of a Proof of Claim and Release form,
21 the Claims Administrator shall communicate with the claimant in order to remedy any
22 curable deficiencies in the Proof of Claim and Release form submitted. The Claims
23 Administrator shall notify, in a timely fashion and in writing, all claimants whose Proof
24 of Claim and Release forms it proposes to reject in whole or in part, setting forth the
25 reasons therefor, and shall indicate in such notice that the claimant whose claim is to be
26 rejected has the right to a review by the Court if the claimant so desires and complies
27 with the requirements of subparagraph (e) below;

1 (e) If any claimant whose claim has been rejected in whole or in part
2 desires to contest such rejection, the claimant must, within twenty (20) calendar days
3 after the date of mailing of the notice required in subparagraph (d) above, serve upon
4 the Claims Administrator a notice and statement of reasons indicating the claimant's
5 grounds for contesting the rejection, along with any supporting documentation, and
6 requesting a review thereof by the Court. If a dispute concerning a claim cannot be
7 otherwise resolved, Lead Counsel shall thereafter present the request for review to the
8 Court; and

9 (f) The Net Settlement Fund shall be distributed to the Authorized
10 Claimants substantially in accordance with the Plan of Allocation described in the
11 Notice and approved by the Court.

12 6.4 Except for the Wind Down Administrator's obligation to cause
13 Defendants' insurance carrier to pay the Settlement Amount into the Settlement Fund
14 as set forth in ¶2.1, and for the Wind Down Administrator for Orexigen Therapeutics,
15 Inc. to cooperate in the production of information with respect to the identification of
16 Settlement Class Members from Orexigen's shareholder transfer records, if any, as
17 provided herein, Defendants and the Released Defendant Parties shall have no
18 responsibility for, interest in, or liability whatsoever with respect to the investment or
19 distribution of the Settlement Fund (except insofar as Defendants' insurance carrier
20 retains the right to a potential refund of the Settlement Amount and accrued interest
21 thereon pursuant to the terms of ¶8.6 hereof), the Plan of Allocation, the determination,
22 administration, or calculation of claims, the payment or withholding of Taxes or Tax
23 Expenses, or any losses incurred in connection therewith. Lead Plaintiff and Lead
24 Counsel shall be solely responsible for formulation of the Plan of Allocation of the
25 Settlement Amount to claimants of the Settlement Fund.

26 6.5 No Person shall have any claim against Lead Plaintiff, the Escrow Agent,
27 Plaintiff's Counsel or any Claims Administrator, or Defendants, the Released

1 Defendant Parties, or counsel for Defendants based on distribution determinations or
2 claim rejections made substantially in accordance with the Stipulation and the
3 Settlement contained herein, the Plan of Allocation, or further order(s) of the Court.

4 6.6 If there is any balance remaining in the Net Settlement Fund after six (6)
5 months from the date of distribution of the Net Settlement Fund (whether by reason of
6 tax refunds, uncashed checks, or otherwise), then, after the Claims Administrator has
7 made reasonable and diligent efforts to have Settlement Class Members who are entitled
8 to participate in the distribution of the Net Settlement Fund cash their distributions, any
9 balance remaining shall be re-distributed among Authorized Claimants in an equitable
10 and economic manner and any remainder donated to an appropriate non-profit 501(c)(3)
11 organization recommended by Lead Counsel and approved by the Court.

12 6.7 It is understood and agreed by the Settling Parties that any proposed Plan
13 of Allocation of the Net Settlement Fund including, but not limited to, any adjustments
14 to an Authorized Claimant’s claim set forth therein, is not a necessary term of the
15 Stipulation and is to be considered by the Court separately from the Court’s
16 consideration of the fairness, reasonableness, and adequacy of the Settlement set forth
17 in the Stipulation, and any order or proceeding relating to the Plan of Allocation shall
18 not operate to terminate or cancel the Stipulation or affect the finality of the Court’s
19 Order and Final Judgment approving the Stipulation and the Settlement set forth therein,
20 or any other orders entered pursuant to the Stipulation.

21 **7. Plaintiff’s Counsel’s Attorneys’ Fees and Expenses**

22 7.1 Lead Counsel may submit an application or applications (the “Fee and
23 Expense Application”) for distributions to it from the Settlement Fund for: (a) an award
24 of attorneys’ fees from the Settlement Fund; (b) payment of expenses and costs incurred
25 in connection with prosecuting the Litigation; (c) any interest on such attorneys’ fees,
26 costs, and expenses at the same rate and for the same periods as earned by the Settlement
27 Fund; and (d) reimbursement for the expenses of Lead Plaintiff, pursuant to 15 U.S.C.

1 §78u-4(a)(4). Lead Counsel reserves the right to make additional applications for fees
2 and expenses incurred to be paid out of the Settlement Fund.

3 7.2 The Fee and Expense Award shall be paid to Lead Counsel from the
4 Settlement Fund five (5) business days after the Court executes an order awarding such
5 Fee and Expense Award. Lead Counsel shall thereafter allocate, subject to the
6 conditions below, the attorneys' fees amongst Plaintiff's Counsel in a manner in which
7 it in good faith believes reflects the contributions of such counsel to the prosecution and
8 settlement of the Litigation. In the event that the Effective Date does not occur, or the
9 Order and Final Judgment or the order making the Fee and Expense Award is reversed
10 or modified, or the Stipulation is canceled or terminated for any other reason, and in the
11 event that the Fee and Expense Award has been paid to any extent, then Plaintiff's
12 Counsel, including their law firms, partners, and/or shareholders, shall within fifteen
13 (15) business days from receiving notice from a court of appropriate jurisdiction, refund
14 to the Settlement Fund the fees, expenses, and costs previously paid to them from the
15 Settlement Fund plus interest thereon at the same rate as earned on the Settlement Fund
16 in an amount consistent with such reversal or modification, and the refunded amount
17 shall thereafter be distributed by the Escrow Agent to Defendants' insurance carrier
18 pursuant to the terms of ¶8.6 hereof. Each such Plaintiff's Counsel's law firm, as a
19 condition of receiving such fees and expenses, on behalf of itself and each partner and/or
20 shareholder of it, agrees that the law firm and its partners and/or shareholders are subject
21 to the jurisdiction of the Court for the purpose of enforcing the provisions of this
22 paragraph.

23 7.3 The procedure for and allowance or disallowance by the Court of any Fee
24 and Expense Application, including the fees and expenses of experts and consultants,
25 to be paid out of the Settlement Fund, are not part of the Settlement set forth in this
26 Stipulation and are to be considered by the Court separately from the Court's
27 consideration of the fairness, reasonableness, and adequacy of the Settlement set forth

1 in this Stipulation. Any order or proceedings relating to the Fee and Expense
2 Application, or any appeal from any order relating thereto or reversal or modification
3 thereof, shall not operate to terminate or cancel the Stipulation, or affect or delay the
4 finality of the Order and Final Judgment approving the Stipulation and the Settlement
5 of the Litigation set forth herein.

6 7.4 Defendants and the Released Defendant Parties shall have no
7 responsibility for, and no liability whatsoever with respect to, any payment to Plaintiff’s
8 Counsel, from the Settlement Fund or otherwise.

9 7.5 Defendants and the Released Defendant Parties shall have no
10 responsibility for, and no liability whatsoever with respect to, the allocation among
11 Plaintiff’s Counsel, and/or any other Person who may assert some claim thereto, of any
12 Fee and Expense Award that the Court may make in the Litigation.

13 **8. Conditions of Settlement, Effect of Disapproval, Cancellation or**
14 **Termination**

15 8.1 The Effective Date of the Stipulation shall be conditioned on the
16 occurrence of all of the following events:

- 17 (a) the Court has entered the Notice Order, as required by ¶4.1 hereof;
- 18 (b) the Settlement Amount has been paid, as required by ¶2.1 above;
- 19 (c) the Court has approved the Settlement, following Notice to the
20 Settlement Class Members and the Settlement Hearing, as prescribed by Rule 23 of the
21 Federal Rules of Civil Procedure;
- 22 (d) the Court has entered the Order and Final Judgment, or a judgment
23 substantially in the form of Exhibit B attached hereto; and
- 24 (e) the Order and Final Judgment has become Final, as defined in ¶1.11
25 hereof.

26 8.2 Upon the occurrence of all of the events referenced in ¶8.1 hereof, any and
27 all remaining interest or right of Defendants in or to the Settlement Fund, if any, shall

1 be absolutely and forever extinguished. If it becomes clear that any of the conditions
2 specified in ¶8.1 hereof cannot or will not be met, then the Stipulation shall be canceled
3 and terminated subject to ¶¶8.6-8.8 hereof unless Lead Counsel and counsel for
4 Defendants mutually agree in writing to otherwise proceed with the Settlement. None
5 of the Settling Parties, or any of them, shall have any obligation whatsoever to proceed
6 under any terms other than provided for and agreed herein. Without limitation of any
7 Settling Party’s other rights or remedies at law or in equity to enforce its rights against
8 any other Settling Party that breaches its obligations under this Stipulation, no breach
9 by any Settling Party of its obligations under this Stipulation shall permit any other
10 Party (i) to terminate this Stipulation, except to the extent that the terms of this
11 Stipulation expressly authorize such termination and termination is undertaken in
12 accordance with such terms, or (ii) after the Effective Date to affect or impair the
13 disposition of the Litigation or release of claims contemplated by ¶¶5.1-5.3 herein.

14 8.3 Any of the Settling Parties may terminate the Settlement and this
15 Stipulation by providing written notice no later than twenty (20) calendar days
16 following (a) a Court order declining to (i) certify the Settlement Class or altering in
17 any material respect the scope or definition of the Settlement Class; (ii) enter the Notice
18 Order preliminarily approving the Settlement in any material respect; (iii) grant final
19 approval to the Settlement in any material respect; or (iv) enter the Order and Final
20 Judgment in any material respect; (b) the Order and Final Judgment being vacated,
21 modified, or reversed in any material respect; (c) the Effective Date (as defined herein)
22 of the Settlement not otherwise occurring; or (d) any material term of the Settlement as
23 set forth in herein not being satisfied.

24 8.4 As set forth in a separate document executed concurrently with this
25 Stipulation (the “Supplemental Agreement”), Defendants shall also have the option, in
26 their sole and absolute discretion, which must be exercised unanimously, to terminate
27 the Settlement and this Stipulation in the event that proposed Settlement Class Members

1 collectively representing more than a certain specified percentage of the total number
2 of Orexigen common shares outstanding on May 1, 2015, as set forth in Orexigen’s first
3 quarter 2015 Form 10-Q filed with the Securities & Exchange Commission on May 8,
4 2015, choose to exclude themselves from the Settlement Class. For avoidance of doubt,
5 the final sentence of the definition of “Settlement Class” provided in ¶1.26 herein shall
6 not apply with respect to calculating the percentage of the total number of Orexigen
7 common shares pursuant to this ¶8.4 or the Supplemental Agreement. The
8 Supplemental Agreement will not be filed with the Court unless requested by the Court
9 or unless a dispute arises among the Settling Parties concerning its interpretation or
10 application. Although the terms of the Supplemental Agreement are not explicitly set
11 forth herein, they are a material and integral part of this Stipulation.

12 8.5 The Settlement Hearing shall be held at a date and time convenient to the
13 Court, at the Edward J. Schwartz United States Courthouse, United States District Court
14 for the Southern District of California, 221 West Broadway San Diego, CA 92101 or at
15 such other location or via telephonic or video appearance as determined by the Court,
16 to determine whether the proposed Settlement of the Litigation on the terms and
17 conditions provided for in this Stipulation is fair, reasonable, and adequate as to the
18 Settlement Class and should be approved by the Court; whether an Order and Final
19 Judgment as provided in ¶1.15 should be entered herein; whether the proposed Plan of
20 Allocation should be approved; and whether the Fee and Expense Application should
21 be approved.

22 8.6 Unless otherwise ordered by the Court, in the event the Stipulation is
23 terminated, or is canceled, or shall not become effective for any reason, within fifteen
24 (15) business days after written notification of such event is sent by counsel for
25 Defendants or Lead Counsel to the Escrow Agent, subject to the terms of ¶3.1 hereof,
26 the Settlement Fund (including accrued interest), less any expenses and any costs which
27 have either been properly disbursed pursuant to ¶2.7 or ¶2.8 hereof or are determined

1 to be chargeable to the Settlement Fund for the notice and administration of the
 2 Settlement pursuant to ¶2.8 herein, shall be refunded by the Escrow Agent to
 3 Defendants' insurance carrier plus accrued interest attributable to that amount by wire
 4 transfer pursuant to written instructions from counsel for Defendants. At the request of
 5 counsel for Defendants, the Escrow Agent or its designee shall apply for any tax refund
 6 owed to the Settlement Fund and pay the proceeds, after deduction of any fees or
 7 expenses reasonably incurred in connection with such application(s) for refund, to
 8 Defendants' insurance carrier.

9 8.7 In the event that the Stipulation is not approved by the Court or the
 10 Settlement set forth in the Stipulation is terminated or fails to become effective in
 11 accordance with its terms, the Settling Parties shall be restored *nunc pro tunc* to their
 12 respective positions in the Litigation as of December 3, 2020. In such event, the terms
 13 and provisions of the Stipulation, with the exception of ¶¶1.1-1.31, 3.1, 7.2-7.5, 8.1-8.8,
 14 9.1, 10.1, and 11.6 hereof, shall have no further force and effect and shall not be used
 15 in the Litigation or in any other proceeding for any purpose, and any judgment or order
 16 entered by the Court in accordance with the terms of the Stipulation shall be treated as
 17 vacated, *nunc pro tunc*. No order of the Court or modification or reversal on appeal of
 18 any order of the Court concerning the Plan of Allocation or the Fee and Expense
 19 Application shall constitute grounds for cancellation or termination of the Stipulation.

20 8.8 If the Effective Date does not occur, or if the Stipulation is terminated
 21 pursuant to its terms, neither Lead Plaintiff nor Plaintiff's Counsel shall have any
 22 obligation to repay any amounts actually and properly disbursed from the Settlement
 23 Fund for the notice and administration of the Settlement pursuant to ¶¶2.7-2.8 hereof.
 24 In addition, any expenses already incurred and properly chargeable to the Settlement
 25 Fund for the notice and administration of the Settlement pursuant to ¶¶2.7-2.8 hereof at
 26 the time of such termination or cancellation, but which have not been paid, shall be paid
 27 by the Escrow Agent in accordance with the terms of the Stipulation prior to the balance

1 being refunded in accordance with ¶8.6 hereof.

2 **9. Class Certification**

3 9.1 For purposes of this Stipulation and Settlement only, and subject to
4 approval of the Court in accordance with Rule 23(e) of the Federal Rules of Civil
5 Procedure, the Settling Parties stipulate to certification of the Settlement Class, as
6 defined herein, and the appointment of Lead Plaintiff as class representative of the
7 Settlement Class. In the event that the Settlement upon the terms and conditions set
8 forth in this Stipulation is not approved by the Court, is terminated, or the Effective
9 Date (see ¶1.9 above) does not occur for any reason, the certification of the Settlement
10 Class automatically shall be revoked without requiring any additional action by the
11 Settling Parties or the Court. In such event, Defendants reserve their right to object for
12 any and all reasons to the certification of any class or sub-class or to the appointment
13 of the Lead Plaintiff as a class representative, and this Stipulation shall not be used or
14 considered in any way in connection with class certification or class representation.

15 **10. No Admission of Wrongdoing**

16 10.1 This Stipulation, whether or not consummated, and any negotiations,
17 discussions, or proceedings in connection herewith shall not be:

18 (a) used, offered or received against any Defendant or Released
19 Defendant Parties as evidence of or construed as or deemed to be evidence of any
20 presumption, concession, or admission by any Defendant or Released Defendant Parties
21 of the truth of any allegations by Lead Plaintiff or the validity of any claim that has been
22 or could have been asserted in the Litigation, or the deficiency of any defense that has
23 been or could have been asserted in the Litigation, or of any liability, negligence, fault,
24 or wrongdoing of the Defendants or Released Defendant Parties;

25 (b) used, offered or received against any Defendant or Released
26 Defendant Parties as evidence of or construed as or deemed to be evidence of any
27 presumption, concession, or admission by any Defendant or Released Defendant Parties

1 that any damages were suffered by Lead Plaintiff, the Settlement Class, or anyone else;

2 (c) used, offered or received against any Defendant or Released
3 Defendant Parties as evidence of or construed as or deemed to be evidence of any
4 presumption, concession, admission of any fault, misrepresentation, or omission with
5 respect to any statement or written document approved or made by any Defendant or
6 Released Defendant Parties, or against Lead Plaintiff or any Settlement Class Member
7 as evidence of any infirmity in the claims of Lead Plaintiff and the Settlement Class;

8 (d) used, offered or received against any Defendant or Released
9 Defendant Parties as evidence of or construed as or deemed to be evidence of any
10 presumption, concession, or admission of any liability, negligence, fault, or
11 wrongdoing, or in any way referred to for any other reason as against any of the parties
12 to this Stipulation, in any other civil, criminal, or administrative action or proceeding in
13 any court, administrative agency, or other forum, other than such proceedings as may
14 be necessary to effectuate the provisions of this Stipulation; provided, however, that if
15 this Stipulation is approved by the Court, Defendants or Released Defendant Parties
16 may refer to the Stipulation to effectuate the releases granted them hereunder; or

17 (e) used, offered or received against any Defendant, Released Person,
18 Lead Plaintiff, or Settlement Class Member as evidence of or construed as or deemed
19 to be evidence of any presumption, concession, or admission that the consideration to
20 be given hereunder represents an amount equal to, less than, or greater than any amount
21 which could have or would have been recovered after trial.

22 **11. Miscellaneous Provisions**

23 11.1 The Settling Parties (a) acknowledge that it is their intent to consummate
24 this agreement; and (b) agree, subject to their fiduciary and other legal obligations, to
25 cooperate to the extent reasonably necessary to effectuate and implement all terms and
26 conditions of the Stipulation and to exercise their reasonable best efforts to accomplish
27 the foregoing terms and conditions of the Stipulation. Lead Counsel and counsel for

1 Defendants shall cooperate with one another in seeking Court approval of the Notice
2 Order and the Stipulation and the Settlement, and to promptly agree upon and execute
3 all such other documentation as may be reasonably required to obtain final approval of
4 the Settlement. The Settling Parties understand that there are no admissions of liability
5 by Defendants, and the Settling Parties shall, in good faith, endeavor to communicate
6 the terms of the Settlement in a manner that is respectful of the fact that no final
7 adjudication of fault was determined by a court or jury.

8 11.2 This Stipulation, the Exhibits attached hereto, and the Supplemental
9 Agreement constitute the entire agreement between the Settling Parties as to the subject
10 matter hereof and supersede any prior or contemporaneous written or oral agreements
11 or understandings between the Settling Parties. No representations, warranties, or
12 inducements have been made to any party concerning the Stipulation, its Exhibits, or
13 the Supplemental Agreement, other than the representations, warranties, and covenants
14 contained and memorialized in such documents.

15 11.3 Except as otherwise provided for herein, each of the Settling Parties shall
16 bear his, her or its own costs.

17 11.4 The Settling Parties intend this Settlement to be a final and complete
18 resolution of all disputes between them with respect to the Litigation, as well as any
19 disputes which could have been raised in the Litigation by Lead Plaintiff, the Settlement
20 Class Members, and each or any of them, against Defendants, the Released Defendant
21 Parties, counsel for Defendants, and each or any of them, on the one hand, and by
22 Defendants, the Released Defendant Parties, and each or any of them, against Lead
23 Plaintiff, Lead Counsel, and each or any of them, on the other hand. The Settlement
24 compromises all claims that were contested and shall not be deemed an admission by
25 any Settling Party as to the merits of any claim or defense. The Order and Final
26 Judgment will contain a statement that, during the course of the Litigation, the Settling
27 Parties and their respective counsel at all times complied fully with the requirements of

1 good faith litigation under the Securities Exchange Act, the Federal Rules of Civil
2 Procedure (including Federal Rule of Civil Procedure 11), and any similar provision of
3 state law. The Settling Parties agree that the Settlement Amount and the other terms of
4 the Settlement were negotiated at arm's length and in good faith by the Settling Parties
5 and reflect a settlement that was reached voluntarily after consultation with competent
6 legal counsel. The Settling Parties shall not take the position that the Litigation was
7 brought or defended in bad faith or in violation of Rule 11 or the PSLRA, and each
8 Settling Party reserves its right to rebut, in a manner that such party determines to be
9 appropriate, any contention made in any public forum that the Litigation was brought
10 or defended in bad faith or without a reasonable basis.

11 11.5 Defendants and/or the Released Defendant Parties may file the Stipulation
12 and/or the Order and Final Judgment in any action that may be brought against them to
13 support a defense, claim, or counterclaim based on principles of *res judicata*, collateral
14 estoppel, release and discharge, good faith settlement, judgment bar or reduction, or any
15 other theory of claim preclusion or issue preclusion or similar defense or counterclaim.
16 Lead Plaintiff understands, acknowledges, and agrees that Defendants have denied and
17 continue to deny all claims of wrongdoing, liability, and damages alleged in the
18 Litigation.

19 11.6 Except as otherwise provided for herein, all agreements made and orders
20 entered during the course of the Litigation relating to the confidentiality of information
21 shall survive this Stipulation.

22 11.7 All of the Exhibits to the Stipulation are material and integral parts hereof
23 and are fully incorporated herein by this reference.

24 11.8 The Stipulation may be amended or modified only by a written instrument
25 signed by or on behalf of all Settling Parties or their respective successors-in-interest.

26 11.9 Lead Counsel, on behalf of the Settlement Class, is expressly authorized
27 by Lead Plaintiff to take all appropriate action required or permitted to be taken by the

1 Settlement Class pursuant to the Stipulation to effectuate its terms and are expressly
2 authorized to enter into any modifications or amendments to the Stipulation on behalf
3 of the Settlement Class which Lead Counsel deems appropriate.

4 11.10 Each counsel or other person executing the Stipulation or any of its
5 Exhibits on behalf of any of the Settling Parties hereby warrants that such person has
6 the full authority to do so and that they have the authority to take appropriate action
7 required or permitted to be taken pursuant to the Stipulation to effectuate its terms.

8 11.11 The Stipulation may be executed in one or more counterparts, including by
9 signature transmitted via an electronically generated or recorded image of the signature
10 in .pdf or .tif file format transmitted via e-mail. All executed counterparts and each of
11 them shall be deemed to be one and the same instrument. A complete set of original
12 executed counterparts shall be filed with the Court.

13 11.12 The Stipulation shall be binding upon, and inure to the benefit of, the
14 successors and assigns of the Settling Parties and the Released Persons.

15 11.13 With the exception of the matters expressly declared subject to mediation
16 in ¶11.14 hereto, the Court shall retain jurisdiction with respect to implementation and
17 enforcement of the terms of the Stipulation, and the Settling Parties submit to the
18 jurisdiction of the Court for purposes of implementing and enforcing the Settlement
19 embodied in the Stipulation.

20 11.14 Any claim or dispute among the Settling Parties arising out of, relating to,
21 or in connection with the interpretation or implementation of the terms of the Stipulation
22 shall be presented initially for mediation before Jed Melnick, Esq. (JAMS), or such
23 other mediator upon whom the parties shall mutually agree, first by way of executed
24 telephonic mediation and if unsuccessful, then by way of final, binding, non-appealable
25 resolution. The Settling Parties participating in a mediation shall pay an equal share of
26 the mediator's fees. If the mediator certifies that the Settling Parties have participated
27 in mediation in good faith but have been unable to resolve their disputes, the Settling

1 Parties then retain all their rights to present any issues to the Court as provided for in
2 the Federal Rules of Civil Procedure.

3 11.15 The waiver by one of the Settling Parties of any breach of this Stipulation
4 by any other of the Settling Parties shall not be deemed a waiver by any other party or
5 a waiver of any other prior or subsequent breach of this Stipulation.

6 11.16 The Stipulation and the Exhibits attached hereto shall be considered to
7 have been negotiated, executed, and delivered, and to be wholly performed, in the State
8 of California, and the rights and obligations of the Settling Parties to this Stipulation
9 shall be construed and enforced in accordance with, and governed by, the internal,
10 substantive laws of the State of California without giving effect to that State’s choice-
11 of-law principles.

12 11.17 The headings herein are used for the purpose of convenience only and are
13 not meant to have legal effect.

14 11.18 This Stipulation shall not be construed more strictly against one party than
15 another merely by virtue of the fact that it, or any part of it, may have been prepared by
16 counsel for one of the Settling Parties, it being recognized that it is the result of arm’s-
17 length negotiations between the Settling Parties and the Settling Parties have
18 contributed substantially and materially to the preparation of this Stipulation.

19 11.19 Whenever this Stipulation requires or contemplates that one party shall or
20 may give notice to another, notice shall be provided by electronic mail or next-day
21 (excluding Saturday and Sunday) express delivery service as follows and shall be
22 deemed effective upon such transmission or delivery, to the email or business address
23 set forth below:

24
25 If to Individual Defendants, then to: Jessica Valenzuela Santamaria
26 **COOLEY LLP**
27 3175 Hanover Street
28 Palo Alto, CA 94304-1130
Telephone: (650) 843-5000

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Facsimile: (650) 849-7400

If to Wind Down Administrator for
Orexigen Therapeutics, Inc.:

Jeffrey M. Reisner
STEPTOE & JOHNSON LLP
633 West Fifth Street, Suite 1900
Los Angeles, CA 90071
Telephone: (213) 439-9400
Facsimile: (213) 439-9599

If to Lead Plaintiff, then to:

Ramzi Abadou
KAHN SWICK & FOTI, LLP
912 Cole Street, # 251
San Francisco, CA 94117
Telephone: (504) 455-1400
Email: Ramzi.Abadou@ksfcounsel.com

11.20 The Settling Parties reserve the right, subject to Court approval, to make any reasonable extensions of time that might be necessary to carry out any of the provisions of this Stipulation.

IN WITNESS WHEREOF, the parties hereto have caused the Stipulation to be executed, by their duly authorized attorneys dated February 8, 2021.

Dated: February 8, 2021

Respectfully submitted,
KAHN SWICK & FOTI, LLP



Ramzi Abadou (SBN 222567)
ramzi.abadou@ksfcounsel.com
912 Cole Street, #251
San Francisco, Ca 94117
Telephone: (415) 231-4313
Facsimile: (504) 455-1498

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Lead Counsel for Lead Plaintiff and the Putative Class

Dated: February 8, 2021

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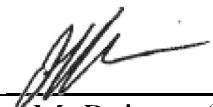
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Attorneys for Individual Defendants

Dated: February 8, 2021

STEPTOE & JOHNSON LLP



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1114 Avenue of the Americas
New York, NY 10036
Telephone: (212) 506-3900

*Attorneys for the Wind Down
Administrator for Orexigen
Therapeutics, Inc.*

SIGNATURE CERTIFICATION

Pursuant to the Electronic Case Filing Administrative Policies and Procedures Manual, I hereby certify that the content of this document is acceptable to counsel for the Individual Defendants and the Wind Down Administrator for Orexigen Therapeutics, Inc., and that I have obtained their authorization to affix their electronic signatures to this document.

By: _____
RAMZI ABADOU

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Attorneys for Individual Defendants

Dated: February 8, 2021

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*Attorneys for the Wind Down
Administrator for Orexigen
Therapeutics, Inc.*

SIGNATURE CERTIFICATION

Pursuant to the Electronic Case Filing Administrative Policies and Procedures Manual, I hereby certify that the content of this document is acceptable to counsel for the Individual Defendants and the Wind Down Administrator for Orexigen Therapeutics, Inc., and that I have obtained their authorization to affix their electronic signatures to this document.

By: s/ Ramzi Abadou

RAMZI ABADOU

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on Friday, February 12, 2021 on all counsel of record by using the CM/ECF system.

s/ Ramzi Abadou
Ramzi Abadou