

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

ATHENEX, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 23-90295 (DRJ)

(Jointly Administered)

**LIMITED OBJECTION AND RESERVATION OF RIGHTS OF MAIA
PHARMACEUTICALS, INC. TO NOTICE OF EXECUTORY CONTRACTS AND
UNEXPIRED LEASES WHICH MAY BE ASSUMED AND ASSIGNED, PURSUANT TO
SECTION 365 OF THE BANKRUPTCY CODE, IN CONNECTION WITH THE SALE
OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS AND THE PROPOSED
CURE AMOUNTS WITH RESPECT THERETO**

NOW COMES MAIA Pharmaceuticals, Inc. ("**MAIA**"), by and through its counsel, Orrick, Herrington & Sutcliffe, LLP, and hereby files this limited objection to the *Notice of Executory Contracts and Unexpired Leases Which May Be Assumed and Assigned, Pursuant to Section 365 of the Bankruptcy Code, in Connection with the Sale of Substantially All of the Debtors' Assets and the Proposed Cure Amounts with Respect Thereto* [ECF No. 141] (the "**Assumption Notice**").

1. On May 14, 2023 (the "**Petition Date**"), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**").

2. On May 14, 2023, the Debtors filed the *Debtors' Emergency Motion for (I) Entry of an Order Approving (A) Bid Procedures; (B) the Form and Manner of Notice; (C) the*

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' proposed claims and noticing agent at <https://dm.epiq11.com/athenex>. The location of Athenex, Inc.'s principal place of business and the Debtors' service address in these chapter 11 cases is 1001 Main Street, Suite 600, Buffalo, NY 14203.

Procedures for Determining Cure Amounts for Executory Contracts and Unexpired Leases; and (II) Entry of an Order Approving (A) the Sale of Substantially All of the Debtors' Assets Free and Clear of All Liens, Claims, Encumbrances and Interests; and (B) the Assumption and Assignment of Certain Contracts and Unexpired Leases [ECF No. 17] (the “**Bid Procedures and Sale Motion**”).

3. Pursuant to the Bid Procedures and Sale Motion, the Debtors sought (a) entry of an order (the “**Bid Procedures Order**”) (i) approving the form and notice of assumption and, if necessary, assignment, of executory contracts and expired leases and (ii) establishing procedures for determining cure amounts in connection with the assumption and, if necessary, assignment of executory contracts, and (b) entry of an order (the “**Sale Order**”) authorizing the assumption and assignment of certain executory contracts and unexpired leases.

4. On May 22, 2023, the Court entered the Bid Procedures Order [ECF No. 113], which, among other things, established procedures related to cure amounts in connection with the assumption and, if necessary, assignment of executory contracts.

5. On May 26, 2023, the Debtors filed the Assumption Notice, indicating that they intended to assume and assign the Amended and Restated Exclusive Distribution and Supply Agreement, “License Agreement” (the “**MAIA-APD License Agreement**”)² between MAIA and Athenex Pharmaceutical Division, LLC (“**APD**”) to the Prevailing Purchaser (as defined in the Bid Procedures and Sale Motion) in connection with the sale of the Debtors' assets and in accordance with the procedures set forth in the Bid Procedures Order.

² Capitalized terms used herein and otherwise not defined shall have the meaning ascribed to such term in the MAIA-APD License Agreement. MAIA believes that the Debtors have a copy of the Agreement but, if not, MAIA will furnish the Debtors with a copy upon written request.

6. Before the Debtors can assume and assign the MAIA-APD License Agreement (to the extent the MAIA-APD License Agreement is subject to assumption and assignment), the Debtors must cure the entire arrearages owed to MAIA.

Q2 Quarterly Profit Payments

7. Pursuant to Section 6.3 of the MAIA-APD License Agreement, APD agreed to pay MAIA the Adjusted Gross Profit Share of the Product(s) in the Territory during the Term as set forth in paragraphs 3 and 4 of Exhibit 1.2 thereto. Paragraph 3 of Exhibit 1.2, in turn, provides that, during the Term of the MAIA-APD License Agreement, MAIA shall be paid, on a calendar quarterly basis, (i) fifty percent (50%) of the Adjusted Gross Profits attributable to the Maia ANDA Product (levothyroxine sodium for injection) in the Territory and (ii) fifty-six percent (56%) of the Adjusted Gross Profits attributable to the Maia NDA Product (bivalirudin injection) in the Territory (together, the “*Quarterly Profit Payments*”).

8. The Assumption Notice lists a cure amount of \$1,291,535.00 (the “*Proposed Cure Amount*”) for the MAIA-APD License Agreement. This amount only reflects the Quarterly Profit Payments due to MAIA for Q1 2023, as reflected on the invoice attached hereto as Exhibit A. The Proposed Cure Amount does not include the Quarterly Profit Payments due to MAIA for Q2 2023, which MAIA estimates to be (i) \$825,000.00 for the prepetition period between April 1, 2023 and May 13, 2023, and (ii) an additional \$825,000.00 for the post-petition period between May 14, 2023 and June 30, 2023. The Proposed Cure Amount should therefore be increased by \$1,650,000.00 to reflect the total amount due to MAIA for Q1 and Q2 (\$2,941,535.00).

Indemnification Obligations

9. Pursuant to Section 12.1.2 of the MAIA-APD License Agreement, APD agreed to Indemnify MAIA and its agents, directors, officers and employees, and any of their respective

successors and assigns (the “**MAIA Indemnitees**”), from and against any and all Liabilities resulting from Third-Party Claims against any MAIA Indemnitee arising from or occurring as a result of, *inter alia*, the Commercialization, use, marketing, distribution, offer for sale, sale, promotion, importation or other Commercialization of the Product(s) by or on behalf of APD or its Affiliates.

10. According to Gland Pharma Limited (“**Gland**”), APD owes Gland \$742,140.00 on account of (i) that certain invoice M12317000460 dated January 27, 2023, attached hereto as Exhibit B and (ii) that certain invoice M12317000491 dated February 3, 2023 attached hereto as Exhibit C (together, the “**Gland Overdue Invoices**”).³ It is MAIA’s understanding that the Gland Overdue Invoices relate to Commercialization of the Product.

11. Gland has informed MAIA that, to the extent APD fails to pay the Gland Overdue Invoices, Gland will hold MAIA responsible for the amounts due thereunder. Accordingly, if APD does not increase the cure amount due to Gland by \$742,140.00 to account for the Gland Overdue Invoices, the Proposed Cure Amount due to MAIA should be increased by \$742,140.00 pursuant to the indemnification clause in the MAIA-APD License Agreement.

Reservation of Rights

12. MAIA is filing this limited objection in order to preserve its rights, including its right to assert that all or any portion of its claims constitute administrative expense claims or other priority claims.

³ The \$742,140.00 due to Gland on account of the Gland Overdue Invoices is not included in the \$3,881,428.50 proposed cure amount ascribed to Gland on Exhibit A to the Assumption Notice.

13. MAIA hereby preserves the right to assert additional cures or other amounts against the Debtors, their estates or the Prevailing Purchaser (as defined in the Bid Procedures and Sale Motion), in the event of any post-petition (but pre-assumption) defaults.

WHEREFORE, MAIA respectfully requests that the Court require the amount of cure payments be increased as set forth herein, prior to the assumption and assignment of the MAIA-APD License Agreement.

Dated: June 7, 2023

ORRICK, HERRINGTON & SUTCLIFFE LLP

By: /s/ Laura Metzger

Laura Metzger (admitted pro hac vice)

51 West 52nd Street

New York, N.Y. 10019

Telephone: (212) 506-5000

E-mail: lmetzger@orrick.com

Attorneys for MAIA Pharmaceuticals, Inc.

CERTIFICATION OF SERVICE

The undersigned certifies that on **June 7, 2023**, a true and correct copy of the foregoing document was served on all parties receiving notice via the Court's CM/ECF system and the Objection Notice Parties listed as follows: (a) counsel to the Debtors, Pachulski Stang Ziehl & Jones LLP, 440 Louisiana Ave., Suite 900, Houston, Texas, 77002, Attn: Michael D. Warner (mwarner@pszjlaw.com) and 10100 Santa Monica Blvd., Suite 1300, Los Angeles, California 90067, Attn: Richard M. Pachulski (rpachulski@pszjlaw.com), Debra I. Grassgreen (dgrassgreen@pszjlaw.com), and Shirley S. Cho (scho@pszjlaw.com); (ii) counsel to the Agent, Sullivan & Cromwell LLP, Attn: Ari B. Blaut (blauta@sullcrom.com), Daniel R. Loeser (loeserd@sullcrom.com), Benjamin S. Beller (bellerb@sullcrom.com), Mark E. Dendinger (mark.dendinger@bracewell.com), Jonathan Lozano (jonathan.lozano@bracewell.com); (iii) counsel to the Prevailing Purchaser, if one has been determined;⁴ (iv) proposed counsel to the Committee, (a) McKool Smith PC, 600 Travis Street, Suite 7000, Houston, TX 77002, Attn: John J. Sparacino (jsparacino@mckoolsmith.com) and S. Margie Venus (mvenus@mckoolsmith.com); and (b) Porzio, Bromberg & Newman, P.C., 100 Southgate Parkway, P.O. Box 1997, Morristown, NJ 07962-1997, Attn: Warren J. Martin, Jr. (WJMartin@pbnlaw.com), Robert M. Schechter (RMSchechter@pbnlaw.com) and Rachel A. Parisi (RAParisi@pbnlaw.com); (v) counsel to the Stalking Horse Bidder(s), if any;⁵ and (vi) the United States Trustee at the Office of the United States Trustee, 515 Rusk St, #3516, Houston, Texas, 77002, (Attn: Jana Smith Whitworth (Jana.Whitworth@usdoj.gov) and Ha Nguyen (Ha.Nguyen@usdoj.gov)).

⁴ No Prevailing Purchaser with respect to the MAIA-APD License Agreement at the time of filing.

⁵ No Stalking Horse Bidder(s) with respect to the MAIA-APD License Agreement at the time of filing.

Dated: June 7, 2023

ORRICK, HERRINGTON & SUTCLIFFE LLP

By: /s/ Laura Metzger

Laura Metzger (admitted pro hac vice)

51 West 52nd Street

New York, N.Y. 10019

Telephone: (212) 506-5000

E-mail: lmetzger@orrick.com

EXHIBIT A

Q1 Quarterly Profit Payments Invoice (MAIA)

Profit Share Invoice

MAIA

707 State Road; Suite 104

Princeton, NJ 08540

BIKRAM MALIK

bmalik@maiapharma.com

609-436-9148

ATHENEX

10 N. Martingale Road; Suite 130

Schaumburg, IL 60173

RON IMBORDINO, CPA

rimbordino@athenex.com

847-232-4052

PRODUCTS

Levothyroxine Sodium Injection

100mcg, 200mcg, 500mcg

Bivalirudin Ready-to-Use Injection

250mg/50mL

BANK INFORMATION

Bank of America

1848 Easton Avenue; Somerset, NJ 08873

MAIA Pharmaceuticals, Inc.

A/C: 3810 3457 4661

SWIFT: BOFAUS3N

Q1 2023

Invoice Number:

MA - US - LEV - 17 - Q1 2023

Invoice Date:

April 27, 2023

Due Date:

May 27, 2023

Description	Amount
Adj. Base Gross Profit LEVOTHYROXINE	\$1,155,387
Adj. Base Gross Profit BIVALIRUDIN	\$121,415
Additional Gross Profit LEVOTHYROXINE	\$0
Additional Gross Profit BIVALIRUDIN	\$0
Pharmacovigilance Expenses	\$14,733
Other	
DUE TO MAIA	\$1,291,535

Payment Terms

Net 30 Days

Any "Due to MAIA" payment not received by Due Date is subject to an interest rate of 2% per month
MAIA Pharmaceuticals, Inc. is not responsible for any bank fee associated with Wire / ACH transfers


Bikram Malik

BIKRAM MALIK, MAIA PHARMACEUTICALS, INC.

EXHIBIT B

Invoice M12317000460 – January 27, 2023 (Gland)

COMMERCIAL INVOICE

 Gland Pharma Limited Sy.No.143 to 148,150&151 Near Gandimaisamma X Road, Dommara Pochampally, Qutbullapur Mandal Dundigal Post Hyderabad, 500043 Telangana,India GST Number : 36AAACG8036B1ZZ IEC Number : 0990002110	Invoice No & Date: M12317000460 DT 27.01.2023 Reference : 7000000701 DT 27.01.2023 Buyer Order No & Date: 2100283 DT 16.08.2022 LC No & Date: DT Performa No & Date: Payment terms: Incoming Payment-45 Days Incoterms : Ex Works	Pre-Carriage by : BY ROAD Place of Receipt by Pre-carrier: HYDERABAD-INDIA Country of Origin of Goods : INDIA Country of Final Destination : USA Mode of Shipment : AIR Port of Loading : Hyderabad#Air Cargo Terms of Delivery : EXW Port of Discharge : Chicago#(IL) O'Hare International Airport Final Destination : USA
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CONSIGNEE/SHIP TO Athenex Pharmaceutical Division C/o Eversana Life Science Services 4580 S. Mendenhall Road, Memphis, 38141 Tennessee,USA	BILL TO Athenex Pharmaceutical Division, LLC Conventus Building, 1001 Main St., Suite 600 Buffalo, 14203 New York,USA	Buyer/Notify (if other than consignee) Athenex Pharmaceutical Division, LLC Conventus Building, 1001 Main St., Suite 600 Buffalo, 14203 New York,USA	Total No of Shippers : 147 Total No of Pallets : 04 Total Gross WT : 1365.652 Total Net wt : 1254.667 Total Wt (Pallet + Gross Wt) : 1437.652 Storage / transit Condition: + 2 TO 8 DEGRESS Origin Of Goods : India
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S.NO	Product Particulars	Size of Shipper	Size of Pallet	Shippers	HSN/ SAC Code	Quantity	UOM	Batch Details	Rate in USD	Basic Amount	Freight	Insurance	Other Charges	Total Amount in USD
1	BIVALIRUDIN INJECTION 250MG/50ML (5MG/ML), 50ML VIAL NDC No: 7086040351 ANDA No: 211215 FDA Code: 61 L C P -39	330X270X185MM	1200X1000X1150MM	147	30049099	8810	EA	Batch No: A2310001 MFG dt: 17/12/2022 EXP dt: 16/06/2024	42.0000	370,020.00				370,020.00
Total										370,020.00				370,020.00

Remarks 02 DATA LOGGERS PLACED
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Total Invoice Value in Doc Currency : US DOLLAR THREE HUNDRED SEVENTY THOUSAND TWENTY ONLY

COMMERCIAL INVOICE



 Gland Pharma Limited Sy.No.143 to 148,150&151 Near Gandimaisamma X Road, Dommara Pochampally, Qutbullapur Mandal Dundigal Post Hyderabad, 500043 Telangana,India GST Number : 36AAACG8036B1ZZ IEC Number : 0990002110		Invoice No & Date: M12317000460 DT 27.01.2023 Reference : 7000000701 DT 27.01.2023 Buyer Order No & Date: 2100283 DT 16.08.2022 LC No & Date: DT Performa No & Date: Payment terms: Incoming Payment-45 Days Incoterms : Ex Works		Pre-Carriage by : BY ROAD Place of Receipt by Pre-carrier: HYDERABAD-INDIA Country of Origin of Goods : INDIA Country of Final Destination : USA Mode of Shipment : AIR Port of Loading : Hyderabad#Air Cargo Terms of Delivery : EXW Port of Discharge : Chicago#(IL) O'Hare International Airport Final Destination : USA	
CONSIGNEE/SHIP TO Athenex Pharmaceutical Division C/o Eversana Life Science Services 4580 S. Mendenhall Road, Memphis, 38141 Tennessee,USA		BILL TO Athenex Pharmaceutical Division, LLC Conventus Building, 1001 Main St., Suite 600 Buffalo, 14203 New York,USA		Buyer/Notify (if other than consignee) Athenex Pharmaceutical Division, LLC Conventus Building, 1001 Main St., Suite 600 Buffalo, 14203 New York,USA	
				Total No of Shippers : 147 Total No of Pallets : 04 Total Gross WT : 1365.652 Total Net wt : 1254.667 Total Wt (Pallet + Gross Wt) : 1437.652 Storage / transit Condition: + 2 TO 8 DEGRESS Origin Of Goods : India	
Bank Details: Field 56A- (Intermediary Institution): CHASUS33 ** (J P Morgan Chase Bank NA, New York) Field 57A- (Account with Institution): CNRBINBBBFD (Canara Bank, CPC Forex, Mumbai) Field 59- (Beneficiary/Customer Name): M/s GLAND PHARMA LIMITED Address: Survey No. 143-148, 150 & 151, Near Gandimaisamma 'X' Roads, Hyderabad-500043 Beneficiary Account Number: 30491070000030					
Declaration We declare that this invoice shows the actual price of the goods described and that all particulars are true and correct				FOR GLAND PHARMA LIMITED. AUTHORISED SIGNATORY	

EXHIBIT C

Invoice M12317000491 – February 3, 2023 (Gland)

COMMERCIAL INVOICE

 Gland Pharma Limited Sy.No.143 to 148,150&151 Near Gandimaisamma X Road, Dommara Pochampally, Qutbullapur Mandal Dundigal Post Hyderabad, 500043 Telangana,India GST Number : 36AAACG8036B1ZZ IEC Number : 0990002110	Invoice No & Date: M12317000491 DT 03.02.2023 Reference : 7000000756 DT 03.02.2023 Buyer Order No & Date: 2100302 DT 28.09.2022 LC No & Date: DT Performa No & Date: Payment terms: Incoming Payment-45 Days Incoterms : Ex Works	Pre-Carriage by : BY ROAD Place of Receipt by Pre-carrier: HYDERABAD-INDIA Country of Origin of Goods : INDIA Country of Final Destination : USA Mode of Shipment : AIR Port of Loading : Hyderabad#Air Cargo Terms of Delivery : EXW Port of Discharge : Atlanta#(GA) - Hartsfield Atlanta International Ai
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CONSIGNEE/SHIP TO Athenex Pharmaceutical Division C/o Eversana Life Science Services 4580 S. Mendenhall Road, Memphis, 38141 Tennessee,USA	BILL TO Athenex Pharmaceutical Division, LLC Conventus Building, 1001 Main St., Suite 600 Buffalo, 14203 New York,USA	Buyer/Notify (if other than consignee) Athenex Pharmaceutical Division, LLC Conventus Building, 1001 Main St., Suite 600 Buffalo, 14203 New York,USA	Final Destination : USA Total No of Shippers : 148 Total No of Pallets : 04 Total Gross WT : 1363.70 Total Net wt : 1259.212 Total Wt (Pallet + Gross Wt) : 1435.7 Storage / transit Condition: + 2 TO 8° C Origin Of Goods : India
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S.NO	Product Particulars	Size of Shipper	Size of Pallet	Shippers	HSN/ SAC Code	Quantity	UOM	Batch Details	Rate in USD	Basic Amount	Freight	Insurance	Other Charges	Total Amount in USD
1	BIVALIRUDIN INJECTION 250MG/50ML (5MG/ML), 50ML VIAL NDC No: 7086040351 ANDA No: 211215 FDA Code: 61 L C P -39	330X270X185MM	1200X1000X1150MM	148	30049099	8860	EA	Batch No: A2310002 MFG dt: 27/12/2022 EXP dt: 26/06/2024	42.0000	372,120.00				372,120.00
Total										372,120.00				372,120.00

Remarks 02 DATA LOGGERS PLACED
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Total Invoice Value in Doc Currency : US DOLLAR THREE HUNDRED SEVENTY-TWO THOUSAND ONE HUNDRED TWENTY ONLY

COMMERCIAL INVOICE

 Gland Pharma Limited Sy.No.143 to 148,150&151 Near Gandimaisamma X Road, Dommara Pochampally, Qutbullapur Mandal Dundigal Post Hyderabad, 500043 Telangana,India GST Number : 36AAACG8036B1ZZ IEC Number : 0990002110		Invoice No & Date: M12317000491 DT 03.02.2023 Reference : 7000000756 DT 03.02.2023 Buyer Order No & Date: 2100302 DT 28.09.2022 LC No & Date: DT Performa No & Date: Payment terms: Incoming Payment-45 Days Incoterms : Ex Works		Pre-Carriage by : BY ROAD Place of Receipt by Pre-carrier: HYDERABAD-INDIA Country of Origin of Goods : INDIA Country of Final Destination : USA Mode of Shipment : AIR Port of Loading : Hyderabad#Air Cargo Terms of Delivery : EXW Port of Discharge : Atlanta#(GA) - Hartsfield Atlanta International Ai	
CONSIGNEE/SHIP TO Athenex Pharmaceutical Division C/o Eversana Life Science Services 4580 S. Mendenhall Road, Memphis, 38141 Tennessee,USA		BILL TO Athenex Pharmaceutical Division, LLC Conventus Building, 1001 Main St., Suite 600 Buffalo, 14203 New York,USA		Buyer/Notify (if other than consignee) Athenex Pharmaceutical Division, LLC Conventus Building, 1001 Main St., Suite 600 Buffalo, 14203 New York,USA	
				Final Destination : USA Total No of Shippers : 148 Total No of Pallets : 04 Total Gross WT : 1363.70 Total Net wt : 1259.212 Total Wt (Pallet + Gross Wt) : 1435.7 Storage / transit Condition: + 2 TO 8° C Origin Of Goods : India	
Bank Details: Field 56A- (Intermediary Institution): CHASUS33 ** (J P Morgan Chase Bank NA, New York) Field 57A- (Account with Institution): CNRBINBBBFD (Canara Bank, CPC Forex, Mumbai) Field 59- (Beneficiary/Customer Name): M/s GLAND PHARMA LIMITED Address: Survey No. 143-148, 150 & 151, Near Gandimaisamma 'X' Roads, Hyderabad-500043 Beneficiary Account Number: 30491070000030					
Declaration We declare that this invoice shows the actual price of the goods described and that all particulars are true and correct				FOR GLAND PHARMA LIMITED.  AUTHORISED SIGNATORY	