

**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)

**SUPPLEMENTAL DECLARATION OF NICHOLAS K. CAMPBELL IN SUPPORT
OF DEBTORS' EMERGENCY MOTION FOR ENTRY OF AN ORDER (I)
APPROVING DISPOSITION OF CERTAIN ESTATE INTERCOMPANY
CLAIMS AND EQUITY INTERESTS IN CONNECTION WITH WIND DOWN OF
FOREIGN OPERATIONS; (II) AUTHORIZING THE DEBTORS TO TAKE CERTAIN
ACTIONS OUTSIDE THE ORDINARY COURSE OF BUSINESS TO EFFECT
FOREIGN COMPANY WIND DOWNS; AND (III) GRANTING RELATED RELIEF**

I, Nicholas K. Campbell, pursuant to section 1726 of title 28 of the United States Code, hereby declare that the following is true to the best of my knowledge, information, and belief:²

1. I make this supplemental declaration (this "Supplemental Declaration") in support of (a) the *Debtors' Emergency Motion for Entry of an Order (i) Approving Disposition of Certain Estate Intercompany Claims and Equity Interests in Connection with Wind Down of Foreign Operations; (ii) Authorizing the Debtors to Take Certain Actions Outside the Ordinary Course of Business to Effect Foreign Company Wind Downs; and (iii) Granting Related Relief* [Docket No. 400] (the "Motion") and (b) the *Supplemental Order Re Debtors' Emergency Motion for Entry of an Order (i) Approving Disposition of Certain Estate Intercompany Claims and Equity Interests in Connection with Wind Down of Foreign Operations; (ii) Authorizing the Debtors to Take*

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' 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.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

Certain Actions Outside the Ordinary Course of business to Effect Foreign Company Wind Downs; and (iii) Granting Related Relief. I incorporate by reference my prior declaration filed in support of the Motion [Docket No. 401] (the “Initial Declaration”). Except as may otherwise be noted, I could and would testify to the following based upon my personal knowledge.

2. By Order entered July 26, 2023 [Docket No. 464], the Court previously approved a portion of the Motion relating to the Small Subsidiaries Transfer. The remainder of the Motion was tabled at the request of the Debtors. I make this Supplemental Declaration in further support of the Motion with respect to the relief requested regarding the Shareholder Repurchase Agreement (“SRA”). A true and correct copy of the SRA is attached hereto as **Exhibit 1**.

3. As set forth in my Initial Declaration, Debtor Athenex, Inc. (“Athenex”) is party to a Share Subscription Agreement (the “SSA”) to purchase an ownership interest in Axis Therapeutics Limited (“Axis”), a company jointly owned by Athenex and Xiangxue Life Sciences Limited (“XLifeSc”). Under the SSA, Athenex initially contributed \$30 million for a 55% ownership interest in Axis, and XLifeSc contributed certain intellectual property rights for a 45% ownership interest in Axis.

4. Additionally, XLifeSc and Axis entered into a license for Axis to use XLifeSc’s proprietary TCR-T therapy to develop and commercialize products for oncology applications (“TCR-T Platform”), and Athenex entered into a Service Agreement and an IND Sponsorship Agreement (collectively, the “Service Agreements”) with Axis whereby Athenex was obligated to provide certain services to Axis and sponsor and file all Investigation New Drug applications with the U.S. Food and Drug Administration arising proposed therapies developed using the TCR-T Platform. Axis was to pay a fee to Athenex for these services and reimburses Athenex for costs incurred in connection with the work performed.

5. As of the Petition Date, Axis asserts a receivable (the “Receivable”) in the amount of approximately \$18.7 million on account of Athenex’s outstanding obligations under the SSA. The Receivable arises from the reversal of the unfunded portion of the Debtors’ prior capital commitment that was withdrawn once it became clear that the joint venture was not going to be able to proceed as contemplated.

A. The Terms of the Shareholder Repurchase Agreement³

6. As set forth in the Motion, Athenex proposes to sell its ownership interest to Axis and to settle certain other obligations of Athenex and claims of XLifeSc set forth under the Service Agreements as follows:

- *Share Repurchase* – Axis shall repurchase all Axis shares currently held by Athenex, and such repurchased shares will be cancelled.
- *Purchase Price* – \$18.7 million.
- *Setoff* – The Receivable will be fully set-off against the purchase price. The transaction will be cashless by way of Receivable and sale consideration set-off.
- *Release* – The mutual release of any and all other existing and future claims and obligations, including additional claims for payment of \$3 million by Athenex to XLifeSC for Athenex’s failure to meet certain milestones included in the License Agreement, which claims are disputed by Athenex.

7. I do not believe that the 55% ownership interest in Axis has any value. The purpose of the Axis joint venture was never realized due to the lack of patient enrollment in U.S. clinical trials, a change in market conditions that led to the inability to attract investment from major pharmaceutical companies for the technology, and ongoing disputes between Athenex and XLifeSc. Further, in order to access any residual value in the Axis joint venture, Axis holds a

³ The terms described herein are solely intended to be a summary. The full terms and conditions are set forth in the Shareholder Repurchase Agreement and related documents, which control over any such summary.

setoff claim of \$18.7 million against Athenex for the Receivable. Therefore, I believe the likelihood of any value being recouped by the Debtors is highly unlikely.

8. In connection with the sale of Orascovery assets, which closing occurred on July 7, 2023 (the “Closing”), Athenex, Inc. transferred all of its equity interests in its non-debtor subsidiary, Athenex HK Innovative Limited (“Athenex HK”), to Health Hope Pharma Limited (the “Orascovery Buyer”). Athenex HK was formed by Athenex to hold the 55% interest in Axis. Pursuant to section 6.9 of the Orascovery Purchase Agreement, the Debtors agreed to cause Athenex HK’s interests in Axis to be transferred to another person or entity prior to the Closing. *See* Purchase Agreement at § 6.9 (Ex. 1 to Sale Order at Docket No. 316). However, that transfer did not occur prior to the Closing and accordingly, the parties executed a letter agreement dated July 7, 2023 set forth on **Exhibit 2** hereto.

9. The Orascovery Buyer requires a further side letter from Athenex, Inc. in the form attached as **Exhibit A** to the proposed order (the “Side Letter”) limiting the liability of Athenex HK in connection with signing the SRA (as Athenex HK is now owned by the Orascovery Buyer) and agreeing to the waiver and release contained therein.

10. I believe that the entry into the SRA and Side Letter is a sound exercise of the Debtors’ business judgment for several reasons. First, the relief requested will satisfy the Debtors’ obligations under the Orascovery Purchase Agreement to the Orascovery Buyer and entry of the Side Letter is necessary to provide the Orascovery Buyer the assurances it needs to cause Athenex HK, which is now its subsidiary, to enter into the SRA. Second, the terms of the SRA and related agreements are designed to enable a complete resolution of Athenex’s and XLifeSc’s respective rights and obligations with respect to Athenex’s indirect ownership of the equity interest in Axis and related Service Agreements with Axis, including the release of quantifiable claims including

the \$18.7 million Receivable against Athenex and additional milestone payments of \$3 million and potential contingent claims for breach of contract by Athenex. Finally, orderly disposition of the Athenex's interest in Axis pursuant to the SRA and Side Letter will help minimize any potential indemnification claims or other liabilities stemming from disputes that may be asserted against the Debtors estate by XLifeSc and Orascovery Buyer.

11. Therefore, for all the foregoing reasons, I believe the relief requested in the Motion with respect to the Debtors' entry into the SRA is in the best interests of these estates and should be approved.

Executed this 11th day of September, 2023 at Atlanta, GA.

/s/ Nicholas K. Campbell

Nicholas K. Campbell

Exhibit 1

Shareholder Repurchase Agreement

(Filed Under Seal)

Exhibit 2

Orascovery Purchase Agreement Letter Agreement

Health Hope Pharma Limited

July 7, 2023

Athenex R&D LLC
Conventus Building
1001 Main Street, Suite 600
Buffalo, NY 14203
Attn: Nicholas K. Campbell, Chief Restructuring Officer

Athenex, Inc.
Conventus Building
1001 Main Street, Suite 600
Buffalo, NY 14203
Attn: Nicholas K. Campbell, Chief Restructuring Officer

Re: Post-Closing Matters

Dear Mr. Campbell:

Reference is hereby made to that certain Stalking Horse Asset Purchase Agreement, dated as of June 6, 2023 (the "Purchase Agreement"), by and among Athenex R&D LLC, a Delaware limited liability company ("Seller"), Athenex, Inc., a Delaware corporation ("Athenex"), and Health Hope Pharma Limited, a limited liability company organized under the laws of Hong Kong ("Buyer"), as successor-interest by assignment from C-MER Specialty Group Limited, a limited liability company organized under the laws of Hong Kong. Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Purchase Agreement.

Seller, Athenex, and Buyer have agreed to enter into this letter agreement (this "Agreement") to set forth their agreement relating to certain matters associated with the Closing of the Transaction. Specifically, Seller, Athenex, and Buyer hereby agree as follows:

1. Section 6.9 of the Purchase Agreement provides that, prior to Closing, Seller shall cause Athenex HK Innovative Limited to transfer to another Person (which may include an Affiliate of Athenex) its interests in Atis Science and Technology Company Limited and Axis Therapeutics Limited (collectively, the "JV Entities"). While Seller had been working with Athenex HK Innovative Limited to complete the transfer of its interest in the JV Entities (or, alternatively, the dissolution of the JV Entities), such transfers (or dissolution) were not be completed prior to the Closing (and the Parties agreed to complete the Closing). Following the Closing, at the request of Seller, Buyer shall use commercially reasonable efforts to assist Seller (at no cost to

Buyer) to cause Athenex HK Innovative Limited to transfer the interests in the JV Entities to one or more Persons identified by Seller, or to complete the dissolution of the JV Entities, in each case as directed by Seller. Notwithstanding the foregoing, in no event will Buyer (or, after the Closing, Athenex HK Innovative Limited), be entitled to any distributions of cash or other assets from the JV Entities.

2. The Closing is effective as of July 7, 2023 (the “Closing Date”) for all purposes, and title and risk of loss to the Purchased Assets and the Athenex Orascovey Assets passed to Buyer on the Closing Date. However, Buyer has requested that Seller and Athenex provide Buyer a period of time after the Closing to remove the Purchased Assets and the Athenex Orascovey Assets from the facilities of Seller and Athenex at which Purchased Assets and the Athenex Orascovey Assets are located, as set forth on Schedule 1 to this Agreement (the “Facilities”). During the period beginning on the Closing Date and ending on July 31, 2023 (the “Removal Period”), Seller and Athenex hereby grant Buyer the right to access the Facilities solely for purposes of removing the Purchased Assets and Athenex Orascovey Assets. Neither Seller nor Athenex shall be responsible for any loss or damage to any Purchased Assets or Athenex Orascovey Assets stored at the Facilities after the Closing Date unless caused by the gross negligence or willful misconduct of Seller or Athenex or their respective agents or employees. Buyer shall be responsible for, and shall repair, any damage to the Facilities caused by the performance of the activities conducted at the Facilities by Buyer or its agents or employees.

3. Without limiting the rights granted to Seller and Athenex under Section 6.7 of the Purchase Agreement, during the period beginning on the Closing Date and ending on July 20, 2023, Buyer shall cause the Books and Records to remain at the Facilities (or at applicable third-party storage facilities), and shall permit Seller and Athenex and their Representatives to make copies of the Books and Records.

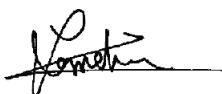
4. This Agreement shall be governed by and interpreted and enforced in accordance with the Laws of the State of Delaware, without giving effect to any choice of Law or conflict of Laws rules or provisions. This Agreement may be executed in counterparts, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. Delivery of this Agreement may be effected by means of an exchange of facsimile signatures or other electronic delivery. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or scanned pages shall be effective as delivery of a manually executed counterpart to this Agreement.

[Remainder of Page Intentionally Left Blank]

Please acknowledge your agreement and acceptance by countersigning this Agreement in the space provided below.

Very Truly Yours,

HEALTH HOPE PHARMA LIMITED

By: 
Name: Dennis Lam Shun Chiu
Title: Director

ACCEPTED AND AGREED
AS OF THE DATE HEREOF:

ATHENEX R&D LLC

By: _____
Name: Nicholas K. Campbell
Title: Chief Restructuring Officer

ATHENEX, INC.

By: _____
Name: Nicholas K. Campbell
Title: Chief Restructuring Officer

Please acknowledge your agreement and acceptance by countersigning this Agreement in the space provided below.

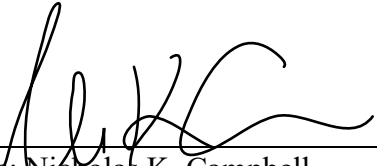
Very Truly Yours,

HEALTH HOPE PHARMA LIMITED

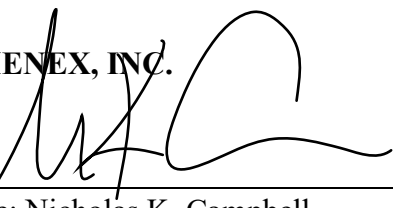
By: _____
Name: Dennis Lam Shun Chiu
Title: Director

ACCEPTED AND AGREED
AS OF THE DATE HEREOF:

ATHENEX R&D LLC

By: 
Name: Nicholas K. Campbell
Title: Chief Restructuring Officer

ATHENEX, INC.

By: 
Name: Nicholas K. Campbell
Title: Chief Restructuring Officer

Schedule 1

Location of Purchase Assets and Athenex Orascovery Assets

Conventus Building
1001 Main Street
Suite 600
Buffalo, New York 14203

11342 Main St
Clarence, NY 14031

20 Commerce Dr.
Cranford NJ 07016