

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

In re:

ATHENEX INC., *al.*,<sup>1</sup>

Post-Effective-Date Debtors.

Chapter 11

Case No. 23-90295 (MI)

(Jointly Administered)

**STIPULATION OF SETTLEMENT BY AND BETWEEN THE LIQUIDATING  
TRUSTEE AND GLAND PHARMA LIMITED REGARDING CLAIM NO. 102**

This stipulation of settlement (the “Agreement”) is made and entered into as of July 19, 2024, by and between Emerald Capital Advisors, in its capacity as liquidating trustee (the “Liquidating Trustee”) of the Liquidating Trust of Athenex, Inc., *et al.* (the “Liquidating Trust”), established by the *Debtors’ Combined Disclosure Statement and Plan of Liquidation of Athenex, Inc. and Its Affiliated Debtors Under Chapter 11 of the Bankruptcy Code* [Docket No. 501] (the “Combined Plan and Disclosure Statement”),<sup>2</sup> confirmed by an order of the United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”) entered on September 12, 2023 [Docket No. 595], in the above-captioned chapter 11 bankruptcy proceedings of the above-captioned post-effective date debtors and debtors-in-possession (the “Debtors”), and Gland Pharma Limited (“Gland Pharma” and, together with the Liquidating Trustee on behalf of the Liquidating Trust, the “Parties”). The Parties hereby stipulate and agree as follows:

**RECITALS**

**WHEREAS**, on May 14, 2023 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*

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<sup>1</sup> A complete list of each of the Post-Effective-Date Debtors may be obtained on the website of the Debtors’ claims and noticing agent at <https://dm.epiq11.com/athenex>

<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Combined Plan and Disclosure Statement.

(the “Bankruptcy Code”) in the Bankruptcy Court; and

**WHEREAS**, on September 5, 2023, the Debtors filed that certain *Notice of Filing Amended Plan Supplement for the Combined Disclosure Statement and Plan of Liquidation of Athenex, Inc. and Its Affiliated Debtors Under Chapter 11 of the Bankruptcy Code* [Docket No. 573], to which the Liquidating Trust Agreement was attached as Exhibit C; and

**WHEREAS**, on September 12, 2023, the Court entered the *Order Granting Final Approval of Disclosure Statement and Confirming Plan of Liquidation of Athenex, Inc. and Its Affiliated Debtors Under Chapter 11 of the Bankruptcy Code* [Docket No. 595] (the “Confirmation Order”), confirming the Plan; and

**WHEREAS**, pursuant to the Plan, the Confirmation Order, and the Liquidating Trust Agreement, the Liquidating Trustee has exclusive authority to settle or compromise any disputed general unsecured claim and to pursue, settle, or abandon causes of action belonging to the Liquidating Trust. *See* Plan §§ XII(C), XIV(F–G); Confirmation Order ¶¶ 5, 12–13; Liquidating Trust Agreement § 3.1; and

**WHEREAS**, prior to the Petition Date, Gland Pharma and Athenex Pharmaceutical Division, LLC, entered into: (i) that certain Binding Term Sheet for License dated August 1, 2016 (the “Term Sheet 1”); (ii) that certain Binding Term Sheet for License dated August 26, 2016 (the “Term Sheet 2”); (iii) that certain Binding Term Sheet for License dated February 22, 2017 (the “Term Sheet 3”); (iv) that certain Binding Term Sheet for License dated April 21, 2017 (the “Term Sheet 4”); (v) that certain Binding Term Sheet for License dated May 5, 2017 (the “Term Sheet 5” and together with Term Sheet 1, Term Sheet 2, Term Sheet 3, and Term Sheet 4, the “Generic Injectables Term Sheets”); (vi) that certain Binding Term Sheet dated August 31, 2017 (the “Prochlorperazine Term Sheet”); and (vii) that certain Binding Term Sheet

for License dated June 16, 2022 (the “Vasopressin Term Sheet” and, together with the Generic Injectables Term Sheets and the Prochlorperazine Term Sheet, the “Gland Pharma Contracts”); and

**WHEREAS**, on May 26, 2023, the Debtors filed 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* [Docket No. 141] (the “Initial Assumption Notice”), listing the Gland Pharma Contracts as executory contracts that may be assumed and assigned in connection with a potential sale of the Debtors’ assets, with respective proposed cure amounts (the “Proposed Cure Amounts”);<sup>3</sup> and

**WHEREAS**, on June 12, 2023, Gland Pharma filed an objection to the Initial Assumption Notice [Docket No. 235] (the “Cure Objection”) asserting its position with respect to the Proposed Cure Amounts; and

**WHEREAS**, on June 26, 2023, the Debtors filed their *Omnibus Reply to Cure and Sale Objections in Connection with the Sale of Debtor Athenex Pharmaceutical Division, LLC’s Assets and Proposed Cure Amounts With Respect Thereto* [Docket No. 337]; and

**WHEREAS**, on June 27, 2023, the Court entered the *Order (I) Authorizing (A) The Sale of Certain Assets of Debtor Athenex Pharmaceutical Division, LLC to Sagent Pharmaceuticals Free and Clear of Liens, Claims, and Encumbrances and (B) The Debtors to Enter Into and Perform Under the Purchase Agreement and (II) Granting Related Relief* [Docket No. 351] (the “Sale Order”), which, among other things, approved the sale of the Debtors’ rights and

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<sup>3</sup> For the avoidance of doubt, in the Initial Assumption Notice, the Generic Injectables Term Sheets were identified as the “Binding Term Sheet for License (2x),” the Prochlorperazine Term Sheet was identified as the “Binding Term Sheet,” and the Vasopressin Term Sheet was identified as the “License, Supply, and Marketing Agreement.”

interests to the Generic Injectables Term Sheets and Prochlorperazine Term Sheet (collectively, the “Assigned Contracts”)—but, for the avoidance of doubt, not the Vasopressin Term Sheet—to Sagent Pharmaceuticals (“Sagent”); and

**WHEREAS**, on July 20, 2023, Gland Pharma filed its amended proof of claim in the amount of \$1,600,000 [Claim No. 102] (the “Vasopressin Claim”) on account of the Vasopressin Term Sheet; and

**WHEREAS**, the Liquidating Trustee interposed an informal objection (the “Claim Objection”) to the Vasopressin Claim; and

**WHEREAS**, the Parties have engaged in good-faith, arm’s-length negotiations to resolve the Claim Objection, and the Parties desire to memorialize their agreement with respect thereto.

**NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED**, by and among the Parties, through their undersigned counsel, as follows:

1. The above recitals are incorporated into this Agreement for all purposes.
2. The Vasopressin Claim shall be an Allowed Unsecured Claim, as defined under the Plan, in the amount of \$800,000.
3. The Liquidating Trustee waives its right to further object to the Vasopressin Claim.
4. Gland Pharma waives its right to amend the Vasopressin Claim.
5. The Parties agree that this Agreement is a compromise and settlement and shall not be construed as an admission of liability, wrongdoing, or responsibility on the part of any Party.
6. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes any prior discussions, agreements, and understandings, both written and oral, among the Parties with respect thereto.
7. This Agreement may be executed by the Parties in separate counterparts, each of

which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument. This Agreement may be executed by exchange of facsimile or electronic signatures (in PDF or comparable format), which shall be deemed original signatures.

8. The Claims Agent is authorized and directed to update the Claims Register maintained in the chapter 11 cases to reflect the terms of this Agreement.

9. The terms and conditions of this Agreement shall be immediately effective.

10. The Parties intend for this Agreement to be binding upon their successors, agents, assigns, including bankruptcy trustees and estate representatives, and any parent, subsidiary, or affiliated entity of any of the Parties.

11. The undersigned hereby represent and warrant that they have full authority to execute this Agreement on behalf of the respective Parties and that the respective Parties have full knowledge of, and have consented to, this Agreement.

12. The Parties agree that each of them has had a full opportunity to participate in the drafting of this Agreement and any claimed ambiguity shall be construed neither for or against either of the Parties.

13. This Agreement shall not be modified, altered, amended, or supplemented except by a writing executed by the Parties or their authorized representatives.

14. The Bankruptcy Court shall have exclusive jurisdiction with respect to all disputes or controversies arising from or related to this Agreement.

*[signature page follows]*

**STIPULATED AND AGREED:**

**SIDLEY AUSTIN LLP**

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