

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

In re:

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

Post-Effective-Date Debtors.

Chapter 11

Case No. 23-90295 (MI)

(Jointly Administered)

**STIPULATION BY AND BETWEEN THE LIQUIDATING TRUSTEE  
AND JOHN MCKENZIE REGARDING CLAIM NOS. 10236 & 10238**

This stipulation (the “Agreement”) is made and entered into as of August 15, 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 John McKenzie, in his individual capacity and as court-appointed lead plaintiff on behalf of the proposed class in the Securities Litigation (defined below) (“McKenzie” and, together with the Liquidating Trustee on behalf of the Liquidating Trust, the “Parties”). The Parties hereby stipulate and agree as follows:

---

<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.

**RECITALS**

**WHEREAS**, on January 25, 2022, the Defendants filed a motion to dismiss the Securities Litigation in the District Court for failure to state a claim (the “Motion to Dismiss”); and

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

**WHEREAS**, on May 30, 2023, upon the Debtors’ filing of the cases herein, the District Court entered an order staying the entire Securities Litigation, modified by an order dated September 6, 2023, that allowed the Securities Litigation to proceed as to the Non-Debtor Defendants; and

**WHEREAS**, on September 5, 2023, the Debtors filed the *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 Bankruptcy 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 Combined Plan and Disclosure Statement, 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, McKenzie was appointed lead plaintiff in the securities class action pending before the United States District Court for the Western District of New York (the “District Court”) styled, *In re Athenex, Inc. Securities Litigation*, Case No. 21-cv-00337 (the “Securities Litigation”) against Athenex, Inc. (“Athenex”) and certain of its former officers— Mr. Rudolf Kwan, Mr. Johnson Y.N. Lau, and Mr. Timothy Cook (the “Non-Debtor Defendants” and, collectively with Athenex, the “Defendants”) alleging violations of Sections 10(b) and/or 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder; and

**WHEREAS**, on July 18, 2023, McKenzie filed a proof of claim in his individual capacity against Debtor Athenex, Inc. for an unliquidated amount (Claim No. 10238) (the “Individual Claim”) based on the allegations set forth in the Securities Litigation; and

**WHEREAS**, on July 18, 2023, McKenzie, as the court-appointed lead plaintiff, filed a proof of claim against Debtor Athenex, Inc. (Claim No. 10236) for himself and on behalf of the proposed class based on the allegations set forth in the Securities Litigation (the “Class Claim” and together with the Individual Claim, the “McKenzie Claims”); and

**WHEREAS**, on September 29, 2023, a *Report & Recommendation* was submitted by Magistrate Judge H. Kenneth Schroeder, Jr. (the “Magistrate’s Report”) in the Securities Litigation recommending that Defendants’ Motion to Dismiss as to the Non-Debtor Defendants be granted with prejudice; and

**WHEREAS**, on May 28, 2024, the District Court entered an order granting the Motion to Dismiss for the reasons stated in the Magistrate’s Report (the “Decision”) as to the Non-Debtor Defendants, reserving its decision on the portions of the Motion to Dismiss against Athenex, Inc. until the stay is lifted; and

**WHEREAS**, the Liquidating Trustee has since interposed an informal objection (the “Informal Claim Objection”) to the McKenzie Claims based on the findings of fact and law contained in the Decision; and

**WHEREAS**, the Parties have engaged in good-faith, arm’s-length negotiations to resolve the Informal 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 Parties hereby stipulate that pursuant to 11 U.S.C. § 510(b), the McKenzie Claims shall be subordinated to the Claims of holders of all Allowed Unsecured Claims, as defined under the Combined Plan and Disclosure Statement.
3. For the avoidance of doubt, and notwithstanding paragraph 2 of this Agreement, McKenzie, for himself and as lead plaintiff on behalf of the proposed class in the Securities Litigation, has the right to recover against Athenex, Inc., limited to and solely to the extent of available insurance.
4. The Liquidating Trustee reserves all rights to object to the allowance of the McKenzie Claims on any other basis.
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 or the absence thereof on the part of any Party.
6. This Agreement constitutes the entire agreement between the Parties with respect to the limited 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 and enforceable upon entry by the Bankruptcy Court.

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.

**STIPULATED AND AGREED:**

**LOWENSTEIN SANDLER LLP**

/s/ Michael S. Etkin

Michael S. Etkin  
Nicole Fulfree  
Lindsay H. Sklar  
1251 Avenue of the Americas  
New York, New York 10020  
Telephone: (973) 597-2500  
Facsimile: (973) 597-2400  
[lsklar@lowenstein.com](mailto:lsklar@lowenstein.com)  
[metkin@lowenstein.com](mailto:metkin@lowenstein.com)

*Counsel to John McKenzie*

**MCKOOL SMITH, PC**

/s/ John J. Sparacino

John J. Sparacino (SBN 18873700)  
S. Margie Venus (SBN 20545900)  
600 Travis Street, Suite 7000  
Houston, Texas 77002  
Telephone: (713) 485-7300  
Facsimile: (713) 485-7344  
[jsparacino@mckoolsmith.com](mailto:jsparacino@mckoolsmith.com)  
[mvenus@mckoolsmith.com](mailto:mvenus@mckoolsmith.com)

*and*

**PORZIO, BROMBERG & NEWMAN, P.C.**

Warren J. Martin Jr. (admitted *pro hac vice*)  
Robert M. Schechter (admitted *pro hac vice*)  
Rachel A. Parisi (admitted *pro hac vice*)  
100 Southgate Parkway  
P.O. Box 1997  
Morristown, NJ 07962-1997  
Telephone: (973) 538-4006  
Facsimile: (973) 538-5146  
[WJMartin@pbnlaw.com](mailto:WJMartin@pbnlaw.com)  
[RMSchechter@pbnlaw.com](mailto:RMSchechter@pbnlaw.com)  
[RAParisi@pbnlaw.com](mailto:RAParisi@pbnlaw.com)

*Counsel to the Liquidating Trustee for the  
Liquidating Trust of Athenex, Inc., et al.*