IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
Greenbelt Division

In re:	)	**Chapter 11**
NEOGENIX ONCOLOGY, INC.,	)	**Case No. 12-23557 (TJC)**
Debtor.	)	

THE DEBTOR'S MOTION FOR THE ENTRY OF AN ORDER AUTHORIZING THE DEBTOR TO INCUR DEBTOR IN POSSESSION AND EXIT FINANCING AND GRANTING RELATED RELIEF[1]

The above-captioned debtor and debtor-in-possession (the "**Debtor**") in the above-captioned Chapter 11 Case hereby moves (the "**Motion**") the Court for the entry an Order substantially in the form of the proposed order attached hereto as **Exhibit A** (the "**Order**") authorizing the Debtor, pursuant to title 11 of the United States Code (the "**Bankruptcy Code**"), including sections 105, 364, 503(b) and 507 thereof, and the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), including Rules 4001 and 9014, to obtain DIP and exit financing in the maximum original principal amount of up to $2,500,000, with such financing being secured by and payable out of certain Litigation Proceeds (as defined below), pursuant to the terms set forth in the agreement attached hereto as **Exhibit B** (the "**DIP and Exit Financing Loan Agreement**") by and among the Debtor as borrower on the one hand, and ALJ Capital Management, LLC, as agent and on behalf of LJR Capital, L.P., ALJ Capital I, L.P. and ALJ Capital II, L.P., (collectively, "**ALJ**" or the "**Lender**") as the lender on the other hand and granting related relief.

[1] All capitalized terms not defined herein shall have the meaning ascribed to them in either Neogenix Oncology, Inc.'s First Amended Disclosure Statement with Respect to Neogenix Oncology, Inc.'s First Amended Plan of Liquidation (the "**Amended Disclosure Statement**") [Docket No. 280], Neogenix Oncology, Inc.'s First Amended Plan of Liquidation (the "**Amended Plan**") [Docket No. 281], or the DIP and Exit Financing Loan Agreement attached hereto as **Exhibit B**.

Concise Statement Pursuant to Bankruptcy Rule 4001(c)

1. Pursuant to Bankruptcy Rule 4001(c), the Debtor submits this concise statement of the material terms of the DIP and Exit Financing Loan Agreement.[2]

Provision	Summary Description
Amount of Borrowing §1	(i) Minimum Loan Amount: $2,000,000.00 (the "**Minimum Loan Amount**") (ii) Maximum Loan Amount: $2,500,000.00 (the "**Maximum Loan Amount**") Upon approval of the DIP and Exit Financing Loan Agreement by the Bankruptcy Court, the Debtor shall request the original principal loan amount from the Lender in writing and the Lender shall wire transfer to the Debtor the original principal loan amount requested within two (2) business days of receiving that request from the Debtor (the "**Original Principal Loan Amount**"). In the event that the Debtor elects to initially borrow from the Lender less than the Maximum Loan Amount, the Debtor shall be entitled to borrow from the Lender in one or more additional borrowings up to the Maximum Loan Amount (an "**Additional Borrowing**" or the "**Additional Borrowings**"). Each Additional Borrowing shall be (1) requested by the Debtor in writing, (2) requested by the Debtor in minimum increments of $50,000 and (3) funded by the Lender by wire transfer to the Debtor within two (2) business days of the Lender receiving such a written request from the Debtor. The Original Principal Loan Amount together with any Additional Borrowings shall hereinafter be collectively referred to as the "**Outstanding Principal Loan Amount**".
Availability Fee §1	In the event that the Debtor elects to initially borrow from the Lender less than the Maximum Loan Amount, the Lender shall be entitled to receive a two and one-half percent (2 1/2%) annual availability fee, compounded annually, on any unfunded amount less than the Maximum Loan Amount. This Availability Fee shall not apply with respect to any principal amounts previously borrowed and subsequently repaid and once repaid funds may not

[2] This concise statement is qualified in its entirety by reference to the provisions of the DIP and Exit Financing Loan Agreement. To the extent of any inconsistency between this concise statement and the provisions of the DIP and Exit Financing Loan Agreement, the DIP and Exit Financing Loan Agreement shall govern.

Provision	Summary Description
	be redrawn.
ALJ Investment Return and Litigation Share **§2**	With respect to both the Original Principal Loan Amount and the amount of any Additional Borrowings, in addition to being entitled to be repaid the Outstanding Principal Loan Amount, the Lender shall also be entitled to receive the greater of either (1) a $500,000 guaranteed minimum investment return (the "**Guaranteed Minimum Investment Return**") or (2) the amount necessary to provide the Lender with an investment rate of return of 40% compounded annually and taking into account the timing of any actual payments to the Lender (the "**ALJ Investment Return**"). Within two (2) business days of the Lender funding the Original Principal Loan Amount or any Additional Borrowings, the Lender shall send to the Debtor and its counsel an Excel spreadsheet calculating the monthly payoff amounts of the Outstanding Principal Loan Amount and the Guaranteed Minimum Investment Return or the ALJ Investment Return, whichever is applicable, for the next twenty four (24) months. In addition to the foregoing, the Lender shall also be entitled to receive five percent (5%) of the net litigation proceeds up to and including $20,000,000 in net litigation proceeds and two and one-half percent (2 1/2%) of the net litigation proceeds in excess of $20,000,000 (the "**Litigation Share**"). The Litigation Share shall be capped at a maximum amount of $2,000,000. For purposes of the calculation of the Litigation Share, the term net litigation proceeds shall mean any proceeds received from either the Third Party Defendants and/or their respective insurers in connection with the Litigation or any similar demands or litigation whether by settlement or judgment less (1) RCT's contingency fees and litigation related expenses, (2) the liquidating trustee's fees and out-of-pocket expenses contemplated by the Debtor's Amended Plan (as further amended), and (3) all amounts due and owing or paid to the Lender in connection with the Outstanding Principal Loan Amount and the Guaranteed Minimum Investment Return or the ALJ Investment Return, whichever is applicable.
Source and Timing of Payments **§3**	Subject to the provisions contained in Paragraph 6 of the DIP and Exit Financing Loan Agreement, all amounts due and payable to the Lender under the DIP and Exit Financing Loan Agreement shall be paid as soon as is reasonably practicable solely from the

Provision	Summary Description
	Litigation Proceeds.
Partial Payments §4	At any time that a payment is made to the Lender with respect to the Outstanding Principal Loan Amount and the Guaranteed Minimum Investment Return or the ALJ Investment Return, whichever is applicable, in an amount less than the Fully Accreted Claim (as defined below) (a "**Partial Payment**"), the calculation of the remaining Fully Accreted Claim shall restart commencing the following calendar day at an initial principal amount equal to the amount of the Fully Accreted Claim on the day of the Partial Payment less the amount of the Partial Payment. For purposes of the DIP and Exit Financing Loan Agreement, the term "**Fully Accreted Claim**" shall mean the amount calculated by adding the following two amounts as of any given day: (1) the Original Principal Loan Amount accreted at 40% per annum commencing on the day that the Debtor receives such funds; plus (2) the amounts of any Additional Borrowings accreted at 40% per annum commencing on the dates that the Debtor receives such funds. Within two (2) business days of the Lender's receipt of any Partial Payment, the Lender shall send to the Debtor and its counsel an Excel spreadsheet calculating the monthly payoff amounts of the remaining Fully Accreted Claim for the next twenty four (24) months.
Collateral §5	All amounts due and payable to the Lender under the DIP and Exit Financing Loan Agreement shall be secured by the Litigation Proceeds and the Lender is granted a first priority security interest in the Litigation Proceeds. The Lender may, but shall not be required to, file a UCC-1 financing statement in order to perfect its security interest in the Litigation Proceeds. Notwithstanding the Lender's security interest in the Litigation Proceeds, once the Lender is paid in full the Outstanding Principal Loan Amount, the Guaranteed Minimum Investment Return or the ALJ Investment Return, whichever is applicable, and the Availability Fee, the Lender's security interest in the Litigation Proceeds shall only be applicable to securing the amount of the Lender's Litigation Share and, notwithstanding such security interest, the Debtor shall be entitled to retain at the time that any such Litigation Proceeds are received by the Debtor those amounts which are in excess of what is required to be paid to the Lender in satisfaction of its Litigation Share in those specific Litigation Proceeds. Immediately after the Lender is paid all amounts to which it is entitled under the DIP and Exit Financing Loan Agreement, the Lender shall promptly take all actions reasonable necessary to release its security interest in the

Provision	Summary Description
	Litigation Proceeds at the Lender's sole cost and expense.
Administrative Priority §6	In the event that the Litigation Proceeds yield insufficient funds to pay the Outstanding Principal Loan Amount, the Guaranteed Minimum Investment Return or the ALJ Investment Return, whichever is applicable, and the Availability Fee, in full (in aggregate, the "**Unpaid Amount**"), the Unpaid Amount shall be entitled to administrative priority pursuant to 11 U.S.C. §§ 503 (b) and 507. Notwithstanding the foregoing, the Lender's entitlement with respect to such an administrative priority claim shall be junior to and subordinate to (1) all amounts then due and owing to the Debtor's professionals and the Official Committee's professionals (the "**Official Committee's Professionals**") with respect to any unpaid accounts receivable, work in process or holdbacks and (2) a $30,000 wind down budget for the benefit of the Debtor's professionals and the Official Committee's Professionals. Notwithstanding the foregoing, the Lender shall not be entitled to be paid the Unpaid Amount from the Debtor's shares of Precision Biologics stock or any proceeds related thereto.
Right of First Refusal §7	In the event that the Debtor requires additional funds above the Maximum Loan Amount, the Lender shall have the option of providing such additional funding. If the Debtor negotiates the terms of such additional funding with any other party, the Lender shall have the right but not the obligation to provide such additional funding on the same terms. The Lender shall have 15 business days from receipt of the complete terms to exercise its right to provide such additional funding. If the Lender does not accept such additional funding terms within 15 business days, the Debtor shall be free to accept the third party's additional funding proposal. If the Debtor does not enter into and close on any such additional funding proposal with a third party on such additional funding terms within 90 days of the Lender refusing to match such additional funding terms, the Debtor must again provide the Lender with the opportunity to match any subsequent additional funding proposal pursuant to the DIP and Exit Financing Loan Agreement.

Preliminary Statement

2. Shortly after the Debtor filed its voluntary petition for bankruptcy protection on July 23, 2012, this Court granted the Debtor's motion to obtain DIP financing in the maximum original principal amount of $3,235,000.00 [Docket No. 137]. Such financing was originally obtained by the Debtor with an eye towards fulfilling two objectives: (i) providing the Debtor with cash to fund the Debtor's ongoing business operations through the completion of a bid and sales process to sell all of the Debtor's operating assets to another entity pursuant to a Section 363 sale, and (ii) providing the Debtor with the cash necessary to (a) fund the Debtor's administrative expenses relating to this Chapter 11 Case, (b) fund a 100% dividend distribution to the Debtor's pre-petition creditors, and (c) enable the Debtor to emerge from bankruptcy in a relatively modest amount of time pursuant to a confirmed plan of liquidation. The first objective was promptly achieved, with the closing of such sale of the Debtor's assets occurring on September 24, 2012. The second objective has not yet been achieved, however, and remains an ongoing objective of both the Debtor and the Official Committee as this Chapter 11 Case has now been pending for more than two years and has been far more litigious, time consuming, and expensive than originally contemplated. As a result, the Debtor has been required to go into the marketplace and seek additional financing to enable it to, (1) bring current and keep current all of the Debtor's already incurred and ongoing administrative expenses, (2) pay all of the Debtor's obligations due on or about the effective date of a confirmed plan of liquidation, and (3) pay certain expenses associated with the Litigation (as defined below), all as further described below.

3. After spending a significant amount of time and effort in the marketplace vetting various potential lenders and various potential DIP and exit financing loan transactions, the Debtor has negotiated with the Lender a DIP and exit financing loan facility in the maximum

original principal amount of up to $2,500,000.00 (the "**DIP and Exit Financing Loan**"), subject to this Court's approval, which will help ensure that the Debtor has sufficient liquidity and the funds necessary to (1) bring current and keep current all of the Debtor's already incurred and ongoing administrative expenses, (2) pay all of the Debtor's obligations due on or about the effective date of a confirmed plan of liquidation, and (3) pay certain expenses associated with the Litigation. Unlike typical DIP financing at the beginning stage of a bankruptcy case that is secured by an operating entity's revenues or assets, and from which a lender generally earns fees and interest, the DIP and Exit Financing Loan is necessarily and appropriately structured to reflect this case's unique posture and characteristics. More specifically, the DIP and Exit Financing Loan would be secured by and payable from a portion of the Litigation Proceeds[3] that the Debtor will receive through its recently filed lawsuit in the United States District Court for the Eastern District of New York against the Debtor's former chief financial officer, its former general counsel, its former professional service firms, and various other individuals (collectively, the "**Third Party Defendants**"), captioned *Neogenix Oncology, Inc. v. Peter Gordon, et al.*, Case No. 2:14-cv-004427-JFB-AKT (the "**Pending Litigation**"), as well as a potential future lawsuit that the Debtor may file against one of the Debtor's former professional service firms that is currently subject to a tolling agreement with the Debtor (the "**Future Litigation**", and together with the Pending Litigation, the **"Litigation**"). To put it another way, under the DIP and Exit Financing Loan Agreement, the Lender bears 100% of the risk of non-payment associated with this lending transaction as the Litigation Proceeds have not yet been monetized.

[3] "**Litigation Proceeds**" is defined as all proceeds received by the Debtor from either the Third Party Defendants and/or their respective insurers and indemnifying parties in connection with the Litigation or any similar demands or litigation whether by settlement or judgment less (1) RCT's (as defined below) contingency fees and litigation related expenses and (2) the liquidating trustee's fees and out-of-pocket expenses contemplated by the Debtor's amended plan of liquidation. *See* DIP and Exit Financing Loan Agreement, Exhibit B, §3.

4. As of September 30, 2014, the Debtor has outstanding administrative obligations of approximately $856,792.20, which amount will continue to increase until the Debtor is able to emerge from bankruptcy pursuant to a confirmed plan of liquidation. The Debtor, however, currently has $142,537.52 in cash remaining in its bank accounts and the use of the Debtor's remaining cash alone would therefore be insufficient to meet the Debtor's current and future liquidity needs. Thus, the approval of the DIP and Exit Financing Loan Agreement is vital to the Debtor's ability to satisfy both its current and future financial obligations and to emerge from bankruptcy pursuant to a confirmed plan of liquidation.

Status of the Case

5. On July 23, 2012 (the "**Petition Date**"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

6. The Debtor is operating and managing its business as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

7. The Official Committee was appointed in this Chapter 11 Case on August 7, 2012.

Jurisdiction, Venue and Statutory Predicates

8. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. § 1408. This matter is core within the meaning of 28 U.S.C. § 157(b)(2).

9. The bases for the relief requested herein are sections 105, 364, 503(b) and 507 of the Bankruptcy Code, Rules 4001 and 9014 of the Bankruptcy Rules and Rule 4001-4 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the District of Maryland (the "**Local Rules**").

Background and History

The Original DIP Loan

10. As of the Petition Date, the Debtor was a clinical stage, pre-revenue generating, biotechnology company focused on diagnostic and therapeutic products for the early detection and treatment of cancer. The Debtor's unique and proprietary therapeutic and diagnostic combination utilized biomarkers to pre-select therapy-specific patients, resulting in better clinical trial design and patient response. The Debtor's antibody drug candidates and diagnostics were designed to detect and target tumors with minimal destruction to healthy cells.

11. Historically, the Debtor's business had principally been funded with the net proceeds from the sale of common stock to various individuals and entities in private placement transactions. Based on the strategy implemented under the direction of the Debtor's prior chief financial officer and the advice of the company's prior counsel and outside advisors, however, Neogenix for years engaged in the practice of paying finder fees to unlicensed brokers in connection with the sale of its stock. Because of this practice, Neogenix had an estimated multi-million dollar contingent liability under the laws of various states for potential rescission liability to shareholders who purchased their shares through unlicensed, compensated finders and the Securities and Exchange Commission (the "**SEC**") initiated an inquiry into this practice (the "**SEC Inquiry**"). As a result of the foregoing, Neogenix was unable to raise sufficient equity capital outside of chapter 11 to ensure the long term viability of the company.

12. In light of the continued deterioration of its cash position and the lack of realistic options for further investment, the Debtor's Board of Directors, in the exercise of its reasonable business judgment, ultimately determined that the most effective way to preserve the Debtor's diagnostic and therapeutic science and maximize the value of the Debtor's assets was to seek

bankruptcy protection in order to sell the Debtor's business and assets through a sale pursuant to section 363 of the Bankruptcy Code to Precision Biologics, Inc. ("**Precision Biologics**"), a corporation funded by a number of the Debtor's shareholders, pursuant to an asset purchase agreement, and subject to higher and better bids at auction.

13. In order to be able to maintain and continue its ongoing business operations, the Debtor entered into a certain bridge loan note, security agreement, and IP security agreement, each dated July 19, 2012, by and between the Debtor, as borrower, and Precision Biologics, as lender, for a prepetition bridge loan in the stated principal amount of $640,697.00 plus interest and fees accruing thereon (the "**Bridge Loan**"). A portion of the funds from the Bridge Loan were used to pay certain outstanding obligations of the Debtor prior to the filing of this Chapter 11 Case.

14. The Debtor borrowed the maximum amount possible under the Bridge Loan but had insufficient cash available to continue to fund its ongoing business operations and its administrative expense obligations through the bankruptcy process without additional financing. Accordingly, as of the Petition Date, an immediate and critical need existed for the Debtor to obtain additional financing in order to continue the ongoing operation of its business and to fund this bankruptcy case.

15. As part of the anticipated sale of the Debtor's operating assets to Precision Biologics, Precision Biologics agreed to provide the Debtor with a DIP loan financing facility pursuant to a certain loan agreement in the maximum original principal amount of up to $3,235,000.00 (the "**Original DIP Loan**"), which was intended to provide the Debtor with the funds necessary to (1) continue its ongoing business operations and to honor its obligations

related to its clinical trials during the sale process and (2) fund the Debtor's bankruptcy case until the bankruptcy process is completed.

16. Accordingly, on July 23, 2012, the Debtor filed a Motion for Interim and Final Orders (A) Authorizing the Debtor to Incur Postpetition Debt on an Emergency Basis; (B) Granting Certain Liens, Security Interests, Superpriority Claims and other Relief to Precision Biologics, Inc. as DIP Lender; and (C) Granting Related Relief (the "**Original DIP Financing Motion**") [Docket No. 13].

17. Following the initial entry of an interim order by the Court on July 30, 2012 [Docket No. 54] granting the majority of the relief sought in the Original DIP Financing Motion on an interim basis, a final order granting the requested relief as amended by agreement with the Official Committee was entered on August 24, 2012 [Docket No. 137] (the "**Original DIP Financing Order**").

The Sale of the Debtor's Operating Assets

18. On July 24, 2012, as anticipated when obtaining the Original DIP Loan from Precision Biologics, the Debtor filed a Motion for Entry of Orders: (A)(I) Approving Bid Procedures Relating to Sale of the Debtor's Assets; (II) Approving Bid Protections; (III) Scheduling a Hearing to Consider the Sale; (IV) Approving the Form and Manner of Notice of Sale by Auction; (V) Establishing Procedures for Noticing and Determining Cure Costs; and (VI) Granting Related Relief and (B)(I) Approving Asset Purchase Agreement and Authorizing the Sale of Certain Assets of Debtor Outside the Ordinary Course of Business; (II) Authorizing the Sale of Assets Free and Clear of All Liens, Claims, Encumbrances and Interests; (III) Authorizing the Assumption, Sale, and Assignment of Certain Executory Contracts and Unexpired Leases; and (IV) Granting Related Relief (the "**Sale Motion**"). [Docket No. 14].

19. On August 21, 2012, the Court approved the bidding procedures as proposed in the Sale Motion (the "**Bidding Procedures Order**") [Docket No. 122]. As a result, Piper Jaffray & Co. ("**PJC**"), the Debtor's financial advisor and investment banker, conducted a marketing campaign to identify potential bidders in an effort to create a spirited bidding environment at a scheduled auction in order to obtain the highest and best offer for the Debtor's operating assets that the market would allow. Despite significant time and effort, however, PJC was not able to locate any additional bidders for the Debtor's assets besides that which had been previously received from Precision Biologics.

20. On September 20, 2012, the Court entered an Order (I) Approving Asset Purchase Agreement and Authorizing the Sale of Certain Assets of Debtor Outside the Ordinary Course of Business, (II) Authorizing the Sale of Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests, (III) Authorizing the Assumption, Sale, and Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief (the "**Sale Order**") [Docket No.176].

21. Pursuant to the Sale Order, the sale of substantially all of the Debtor's operating assets to Precision Biologics closed on September 24, 2012 (the "**Closing**"). The Sale Order permitted Precision Biologics to credit bid the full amount of the Original DIP Loan against the sale price for the sale of substantially all of the Debtor's operating assets to Precision Biologics and, thus, the Original DIP Loan was repaid in full by way of credit bid as part of the sale process.

22. The sale has allowed Precision Biologics to continue focusing on developing Neogenix's diagnostic and therapeutic science without being burdened by the SEC Inquiry and

the contingent rescission liability, and instead provided a revitalized capital structure attractive to new stockholders and investors.

Bar Date and Claims Resolution Process

23. On July 24, 2012, the Clerk of the Court issued a Notice of Chapter 11 Bankruptcy Case, Meeting of Creditors & Deadlines (the "**Initial Notice**") that fixed November 19, 2012 as the deadline for creditors to file proofs of claim and January 22, 2013 for governmental units to do the same. The Initial Notice did not, however, contain a deadline for equity interest holders to file proofs of interest.

24. As this case has always been an equity case, involving a *de minimis* number of creditors, but approximately 950 equity interest holders, on October 10, 2012, the Debtor filed a Motion for an Order (I) Establishing a Deadline for Filing Proofs of Interest, (II) Approving Form and Manner of Notice of the Deadlines to File Proofs of Claim and Proofs of Interest, and (III) Granting Related Relief (the "**Bar Date Motion**") [Docket No. 186].

25. On October 12, 2012, the Court entered an order [Docket No. 192] granting the Bar Date Motion and establishing November 19, 2012 as the date by which all persons and entities holding Claims or Interests that arose prior to the Petition Date had to file proofs of claim and proofs of interest with the Debtor's Noticing and Claims Agent. Accordingly, on October 12, 2012, the Debtor caused the Notice of Deadline for Filing Proofs of Claim and Proofs of Interest [Docket No. 194] to be served on all of the Debtor's creditors and equity interest holders.

26. Various Proofs of Claim and Proofs of Interest were subsequently filed against the Debtor, and on March 22, 2013, the Debtor filed objections against a certain number of such Claims and Interests. More specifically, the Debtor filed a First Omnibus Objection to Claims Pursuant to Sections 105 and 502 of the Bankruptcy Code [Docket No. 285], Objection to the

Proof of Claim Filed by Peter Gordon and the Interests Held by Peter Gordon and Anne Gordon [Docket No. 286], Objection to the Proof of Claim Filed by Daniel J. Scher [Docket No. 287], Objection to the Proof of Claim filed by Eisner Amper LLP [Docket No. 288], Objection to the Proof of Claim filed by Kenneth M. Osborn [Docket No. 289], and Partial Objection to Interests Asserted by Lucca Capital Partners, II, LLC [Docket No. 290].

27. The Court has since sustained all of the foregoing objections except for the Objection to the Proof of Claim Filed by Daniel J. Scher [Docket No. 287] and the Objection to the Proof of Claim Filed by Peter Gordon and the Interests Held by Peter Gordon and Anne Gordon (the "**Gordon Claim and Interest Objection**") [Docket No. 286].

28. The Proof of Claim originally filed by Daniel J. Scher, the Debtor's former general counsel, sought $100,000.00 from the Debtor based upon a claim for severance purportedly due to him under his previous employment agreement with the Debtor [Claim No. 60] (the "**Scher Claim**").

29. The Scher Claim was successfully resolved by the Debtor and Daniel J. Scher through a settlement agreement (the "**Scher Settlement**") through which the Debtor agreed to an allowed general unsecured claim in the amount of Twenty Five Thousand Dollars ($25,000.00) in favor of Daniel J. Scher in full and final satisfaction of the Scher Claim, and that such claim shall be paid through either, (i) Bankruptcy Court approved exit financing obtained by the Debtor or (ii) the monetization of the Causes of Action. The Scher Settlement was presented to this Court by a Motion to Approve Settlement Agreement Between the Debtor and Daniel J. Scher on July 18, 2014 [Docket No. 451], and the Court entered an Order approving the Scher Settlement on August 19, 2014 [Docket No. 458].

30. The Proof of Claim originally filed by Peter Gordon, the Debtor's former chief financial officer, seeks $80,000.00 from the Debtor based upon a claim for services purportedly due to him under his separation agreement with the Debtor [Claim No. 32] (the "**Gordon Claim**"). The Proof of Interest originally filed by Peter Gordon and Ann Gordon pertains to 1 million shares of stock in the Debtor held by Mr. and Mrs. Gordon (the "**Gordons' Interest**").

31. The Gordon Claim and the Gordons' Interest remains unresolved and the Gordon Claim and Interest Objection will be the subject of a later-filed adversary proceeding in this Chapter 11 Case. Accordingly, the Debtor anticipates potentially reserving $80,000.00 from any DIP and exit loan financing that it obtains pending the resolution of the Gordon Claim and Interest Objection.

Disclosure Statement

32. On February 4, 2013, the Debtor filed its Disclosure Statement with Respect to Neogenix Oncology, Inc.'s Plan of Liquidation (as amended, the "**Disclosure Statement**") [Docket No. 258] and its Plan of Liquidation [Docket No. 259]. On February 25, 2013, the U.S. Trustee filed its Limited Objection to Debtor's Disclosure Statement and Plan of Liquidation [Docket No. 273]. On March 6, 2013, the Debtor filed its Response to the U.S. Trustee's Limited Objection to Debtor's Disclosure Statement and Plan of Liquidation [Docket No. 274] and the Official Committee filed its Response to the Limited Objection of the U.S. Trustee to Debtor's Proposed Disclosure Statement with Reservation of Rights [Docket No. 276].

33. On March 7, 2013, the Bankruptcy Court held a hearing on the adequacy of the information contained in the Disclosure Statement and approved the Disclosure Statement with certain amendments and authorized the solicitation of the amended Disclosure Statement and the Amended Plan. Accordingly, on March 11, 2013, the Debtor filed with the Bankruptcy Court its

First Amended Disclosure Statement with Respect to Neogenix Oncology, Inc.'s First Amended Plan of Liquidation [Docket No. 280] and its First Amended Plan of Liquidation [Docket No. 281].

34. On March 12, 2013, the Bankruptcy Court entered an order (the "**Solicitation Procedures Order**") [Docket No. 282] approving the Disclosure Statement, authorizing the Debtor to commence solicitation, and scheduling the hearing on plan confirmation for May 2, 2013 (the "**Confirmation Hearing**"). Pursuant to the Solicitation Procedures Order, the Debtor commenced and completed solicitation of the Amended Plan. Sufficient acceptances of the Amended Plan were timely received to support confirmation of the Amended Plan, with 100% of the members of Class 3 voting to accept the Plan and 99.60% of the voting shares in Class 5 voting to accept the Plan.

35. On April 16, 2013, the Office of the United States Trustee filed an objection to confirmation of the Amended Plan [Docket No. 301]. No other party in interest filed an objection to confirmation of the Amended Plan.

36. On April 30, 2013, the Debtor filed its Memorandum in Support of Confirmation of Neogenix Oncology, Inc.'s First Amended Plan of Liquidation and in Response to the United States Trustee's Supplemental Objection to the Plan [Docket No. 309]. The Official Committee filed its Memorandum in Support of Confirmation of the Debtor's First Amended Plan of Liquidation on May 1, 2013 [Docket No. 310].

37. A contested evidentiary hearing on confirmation of the Amended Plan was held on May 2, 2013 (the "**Confirmation Hearing**"). At the conclusion of the Confirmation Hearing, the Court allowed for supplemental briefs to be filed on certain objections raised by the U.S. Trustee.

38. The U.S. Trustee filed her Post-Trial Memorandum on May 13, 2013 [Docket No. 335]. On May 20, 2013, the Debtor filed its Response to the United States Trustee's Post-Trial Memorandum [Docket No. 344] and the Official Committee filed its Response to the United States Trustee's Post-Trial Memorandum [Docket No. 345].

39. On March 11, 2014, the Court issued its Memorandum of Decision [Docket No. 385] (the "**Memorandum Decision**") and Order Denying Confirmation of First Amended Chapter 11 Plan [Docket No. 386]. In its Memorandum Decision, the Court concluded that the Amended Plan met all of the requirement of 11 U.S.C. § 1129(a), including § 1129(a)(1), with the exception of the third party release provisions contained in the Amended Plan which were not approved by the Court for the reasons set forth therein.

40. In light of the Memorandum Decision, on April 22, 2014, the Debtor and the Official Committee filed a Joint Motion for the Entry of an Order Approving (I) Supplemental Solicitation Including Form of Supplemental Ballot and Notice of Supplemental Confirmation Hearing, (II) Supplemental Hearing Date to Consider Confirmation of the Amended Plan, (III) Supplemental Procedures for Filing Objections to the Amended Plan, (IV) Deadlines Related to Supplemental Solicitation and Confirmation of the Amended Plan, and (V) Supplemental Solicitation Procedures for Confirmation of the Amended Plan (the "**Joint Motion**"). [Docket No. 393]. The purpose of the Joint Motion was to address the Court's concerns regarding the Third Party Releases contained in the Amended Plan, while preserving crucial value for the Debtor's interest holders in the form of providing for the prompt distribution of the PB Stock to the Debtor's interest holders.

41. The SEC filed a Limited Objection to the Joint Motion on May 13, 2014 [Docket No. 416] and the U.S. Trustee filed an Objection to the Joint Motion on May 14, 2014 [Docket No. 418].

42. Following the filing of the foregoing objections, and in a good faith effort to promptly resolve the parties' dispute and move this case forward towards the confirmation of a plan of liquidation while preserving scarce estate resources, the Debtor and the Official Committee proposed meeting with the U.S. Trustee and the SEC. Accordingly, the Debtor, the Official Committee, the U.S. Trustee, and the SEC engaged in substantive discussions and negotiations regarding the Joint Motion, and more specifically, a manner in which the Third Party Releases could be provided to the Debtor's Directors and Officers such that the PB Stock in the Debtor's possession could be promptly distributed to the Debtor's interest holders rather than held in escrow in the anticipated Liquidating Trust to be available to the Liquidating Trustee in the first instance to satisfy any potential remaining indemnification obligations that may arise with respect to the Class 3 Directors and Officers as a result of their having received either incomplete releases or no releases under the Amended Plan (as further amended) until all potential statutes of limitation for possible pre-petition claims against the Debtor's Class 3 Directors and Officers have run with no such claims having been filed or, in the event that any such claims are timely filed, after those claims have been fully and finally adjudicated.

43. In light of the foregoing, the Debtor and the Official Committee formulated a modified proposal (the "**Modified Proposal**") in their Omnibus Joint Response to the Objections Filed to the Joint Motion [Docket No. 435]. The U.S. Trustee and the SEC did not consent to the Modified Proposal and instead maintained their objections. A contested hearing on the Joint Motion, the various objections thereto, and the Modified Proposal, was held by the Court on

July 1, 2014. At the conclusion of such hearing, the Court took the Joint Motion and the Modified Proposal under advisement.

The Litigation

44. On May 2, 2013, the Debtor filed its "Amended Supplement to Neogenix Oncology, Inc.'s First Amended Plan of Liquidation" [Docket No. 327], which set forth the "Amended Non-Exclusive list of Potential Causes of Action" against the Debtor's former chief financial officer, its former general counsel, its former professional service firms, and various other individuals (the "**Causes of Action**"). The Debtor had always intended and anticipated that the Causes of Action would be assigned and conveyed to a liquidating trust and that the pursuit of such Causes of Action would be handled and administered by a liquidating trustee that would be appointed by, and serve in accordance with, the provisions of a confirmed plan of liquidation.

45. As a plan of liquidation has not yet been confirmed for the Debtor, however, the duties and responsibilities inherent in pursuing the Causes of Action have instead fallen to the Debtor. The Debtor, with the assistance of its current counsel, therefore engaged in a lengthy process to identify and retain contingency fee counsel that would pursue certain of the Causes of Action on behalf of the Debtor.

46. Accordingly, on August 8, 2014, the Debtor filed its Application for the Entry of an Order Authorizing the Retention and Employment of Reid Collins & Tsai LLP ("**RCT**") as Special Counsel to the Debtor [Docket No. 455]. The scope of RCT's employment includes, without limitation, the following:

> investigating and, if appropriate, pursuing claims against certain of the Debtor's former officers, directors, professionals, and unlicensed compensated finders, related to the payment of finder fees to unlicensed finders raising capital for the Debtor, the SEC Inquiry and the damages

suffered by the Debtor as a result of these issues against the following persons:

i. Peter Gordon, Neogenix's former CFO;

ii. Daniel Scher, Neogenix's former Chief Legal Officer;

iii. Thomas Lytle, Neogenix's former COO;

iv. Kenneth Osborn, Neogenix's former comptroller;

v. Mintz, Levin, Cohn, Ferris, Glovsky, and Popeo, P.C. and potentially some of its current or former attorneys, including Sam Feigin and Mark Kass;

vi. Nixon Peabody LLP and potentially some of its current or former attorneys, including Sam Feigin and Mark Kass; and

vii. The Debtor's former auditing firm.

47. On September 8, 2014, the Court entered an Order authorizing the Debtor's Retention of RCT as Special Counsel [Docket No. 460].

48. As special counsel to the Debtor, on July 22, 2014, RCT commenced the Litigation through which the Debtor is pursuing certain of the Causes of Action.

49. Although RCT is pursuing the Litigation on a contingency fee basis, the Debtor and RCT have agreed, and the Court has approved, that the Debtor will be responsible for advancing and/or paying all out-of-pocket costs and expenses in connection with pursuing the Litigation, subject to a cap of $250,000.

50. However, because the Debtor currently does not have the funds available to advance or pay these first $250,000 in expenses, RCT has agreed to advance all expenses until the earlier of (i) the Debtor obtaining financing sufficient to pay $250,000 in expenses or (ii) Net Litigation Recoveries are sufficient to pay $250,000 in expenses, at which time the Debtor will reimburse RCT for any expenses paid subject to the $250,000 cap. RCT will be responsible for advancing any out-of-pocket costs and expenses necessary to pursue the Litigation in excess of

$250,000 and RCT will be reimbursed for such expenses solely out of any Net Litigation Recoveries. Absent Net Litigation Recoveries, RCT will not be reimbursed for costs and expenses advanced in excess of the initial $250,000 to be advanced and/or paid by the Debtor.

The Debtor's Liquidity Needs

51. The Debtor borrowed the maximum amount possible under the Original DIP Loan. Due to the complex, litigious and lengthy nature of this case, however, the proceeds from the Original DIP Loan have been largely exhausted and the Debtor now has insufficient cash remaining to (1) bring current and keep current all of the Debtor's already incurred and ongoing administrative expenses, (2) pay all of the Debtor's obligations due on or about the effective date of a confirmed plan of liquidation, and (3) pay certain expenses associated with the Litigation. As a result, the Debtor now needs to obtain additional DIP and exit loan financing in order to fulfill its foregoing financial obligations. The Debtor has spent a significant amount of time and effort in the marketplace vetting various potential lenders and various potential DIP and exit financing loan transactions and has determined in the exercise of its reasonable business judgment that the financing terms offered by the Lender are commercially reasonable and provide the Debtor with the maximum benefit and value for its bankruptcy estate available in the marketplace.

52. The Debtor's current outstanding administrative expenses as of September 30, 2014 are approximately as follows:

Entity	Role	Amount
Greenberg Traurig, LLP	Counsel to the Debtor	$721,535.30
Sands Anderson, PC	Counsel to the Official Committee	$115,747.50
Kurtzman Carson Consultants	The Debtor's Noticing Agent	$18,541.78
United States Trustee		$967.62
	TOTAL:	**$856,792.20**

53. In addition to the foregoing, and as previously noted above, the Debtor and RCT have agreed, and the Court has approved, that the Debtor will be responsible for advancing and/or paying all out-of-pocket costs and expenses in connection with pursuing the Litigation, subject to a cap of $250,000.

54. Moreover, the Debtor has various general unsecured claims that will need to be paid on or about the effective date of a confirmed plan of liquidation, including without limitation, approximately $50,000 in trade payables and $25,000 to Daniel J. Scher pursuant to the Scher Settlement. The Debtor may also need to reserve $80,000 pending the resolution of the Gordon Claim and the Gordon Claim and Interest Objection.

55. The Debtor has requested that the Lender make a loan to the Debtor pursuant to the terms of the DIP and Exit Financing Loan Agreement. The ability of the Debtor to (1) bring current and keep current all of the Debtor's already incurred and ongoing administrative expenses, (2) pay all of the Debtor's obligations due on or about the effective date of a confirmed plan of liquidation, and (3) pay certain expenses associated with the Litigation, depends upon the Debtor obtaining such financing.

56. The Lender is willing to make such a loan, secured by and payable from the Litigation Proceeds, as more particularly described herein, pursuant to the terms and conditions of the DIP and Exit Financing Loan Agreement. Importantly, the Lender is willing to make such a loan before a single dollar of the Litigation Proceeds has been monetized.

57. The terms of the DIP and Exit Financing Loan Agreement are the result of significant negotiations between the Debtor and the Lender which negotiations have been conducted at arms' length and in "good faith," as that term is used in section 364(e) of the Bankruptcy Code, and are in the best interests of the Debtor, its creditors, and its interest holders. The Lender is extending financing to the Debtor in good faith and the Lender is entitled to the benefits of the provisions of section 364(e) of the Bankruptcy Code.

58. The relief requested in this Motion is necessary, essential and appropriate for the continued administration of this Chapter 11 Case, the satisfaction of all regulatory requirements, and is in the best interests of the Debtor, its creditors and its interest holders. The terms of the DIP and Exit Financing Loan Agreement are fair and reasonable, reflect the Debtor's exercise of reasonable business judgment consistent with its fiduciary duties, and constitute reasonably equivalent value and fair consideration.

Relief Requested

59. By this motion, the Debtor requests the entry of the Order substantially in the form of the Order attached hereto as Exhibit A, authorizing the Debtor to enter into and consummate the terms of the DIP and Exit Financing Loan Agreement.

Supporting Authority

A. Financing Under Section 364 of the Bankruptcy Code

60. Pursuant to section 364(c) of the Bankruptcy Code, a court may authorize a debtor to incur debt that is: (a) entitled to a superpriority administrative expense status; (b) secured by a

lien on otherwise unencumbered property; or (c) secured by a junior lien on encumbered property if the debtor cannot obtain postpetition credit on either an unsecured basis or based on an administrative expense priority. *See* 11 U.S.C. § 364(c).

61. The Debtor submits that it is unable to borrow any DIP and exit loan financing on either an unsecured basis or based on an administrative expense priority claim. The Debtor further submits that entry into the DIP and Exit Financing Loan Agreement is in the best interests of the Debtor, its creditors, and its interest holders and is necessary to allow the Debtor to (1) bring current and keep current all of the Debtor's already incurred and ongoing administrative expenses, (2) pay all of the Debtor's obligations due on or about the effective date of a confirmed plan of liquidation, and (3) pay certain expenses associated with the Litigation, and is an exercise of the Debtor's sound and reasonable business judgment.

i. Entry into the DIP and Exit Financing Loan Agreement is in the Best Interests of the Debtor, its Creditors, and its Interest Holders and is an Exercise of the Debtor's Sound and Reasonable Business Judgment

62. A debtor's decision to enter into a postpetition lending facility under section 364 of the Bankruptcy Code is governed by the business judgment standard. *See In re AMR Corporation*, 485 B.R. 279, 288 (Bankr. S.D.N.Y. 2013); *see also* (*Trans World Airlines, Inc. v. Travelers Int'l AG* (*In re Trans World Airlines, Inc.*), 163 B.R. 964, 974 (Bankr. D. Del. 1994) (approving postpetition loan and receivables facility because such facility "reflect[ed] sound and prudent business judgment"); *In re Ames Dep't Stores*, 115 B.R. 34, 38 (Bankr. S.D.N.Y. 1990) (noting that financing decisions under section 364 of the Bankruptcy Code must reflect a debtor's business judgment); *In re Barbara K Enters.*, No. 08-11474 (MG), 2008 WL 2439649, at *14 (Bankr. S.D.N.Y. June 16, 2008) (explaining that courts defer to a Debtor's business judgment "so long as a request for financing does not 'leverage the bankruptcy process' and unfairly cede control of the reorganization to one party in interest."); *Bray v. Shenandoah Fed.*

Sav. & Loan Ass'n (In re Snowshoe Co., Inc.), 789 F.2d 1085, 1088 (4th Cir. 1986); *In re Curlew Valley Assocs*., 14 B.R. 506, 513-14 (Bankr. D. Utah 1981); *In re Simasko Prod. Co*., 47 B.R. 444, 449 (D. Colo. 1985).

63. Generally, the business judgment standard requires that, absent evidence to the contrary, a debtor-in-possession is afforded discretion to act with regard to business decision-making. *See Simasko Prod. Co.*, 47 B.R. at 449 ("[D]iscretion to act with regard to business planning activities is at the heart of the debtor's power.") (citations omitted); *see also In re Mastercraft Interiors, Ltd.*, Nos. 06–12769, 06–12770 (PM), 2006 WL 4595946 (Bankr. Md. Aug. 10, 2006) (holding that terms of proposed financing reflected the debtors' exercise of business judgment).

64. Specifically, to determine whether the business judgment standard is met, a court is "required to examine whether a reasonable business person would make a similar decision under similar circumstances." *In re Exide Techs.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006); *see also Ryan Inc. v. Circuit City Stores, Inc.*, No. 3:10CV496-HEH, 2010 WL 4735821 (Bankr. E.D.Va. Nov. 15, 2010) ("Courts should not interfere with a debtor's decision unless that decision 'is so manifestly unreasonable that it could not be based upon sound business judgment, but only on bad faith, or whim or caprice.'"); *see also Curlew Valley Assocs.*, 14 B.R. at 513-14 (noting that courts should not second guess a debtor's business decision when that decision involves "a business judgment made in good faith, upon a reasonable basis, and within the scope of [the debtor's] authority under the [Bankruptcy] Code") (citation omitted).

65. The Debtor's business decision to enter into and consummate the proposed DIP and Exit Financing Loan Agreement is reasonable and satisfies the foregoing business judgment standard for the following reasons, amongst others:

(1) The Debtor currently has an insufficient amount of cash remaining to (a) bring current and keep current all of the Debtor's already incurred and ongoing administrative expenses, (b) pay all of the Debtor's obligations due on or about the effective date of a confirmed plan of liquidation, and (c) pay certain expenses associated with the Litigation;

(2) The financing contemplated by the proposed DIP and Exit Financing Loan Agreement is likely to provide the Debtor with a sufficient amount of cash to (a) bring current and keep current all of the Debtor's already incurred and ongoing administrative expenses, (b) pay all of the Debtor's obligations due on or about the effective date of a confirmed plan of liquidation, and (c) pay certain expenses associated with the Litigation;

(3) The Debtor has spent a significant amount of time and effort in the marketplace vetting various potential lenders and various potential DIP and exit financing loan transactions and the Debtor has determined that the financing terms offered by the Lender and contained in the DIP and Exit Financing Loan Agreement are commercially reasonable and provide the Debtor with the maximum benefit and value for its bankruptcy estate available in the marketplace;

(4) If the proposed financing terms offered by the Lender and contained in the DIP and Exit Financing Loan Agreement are not approved by the Court, the Debtor would likely have to liquidate a significant portion of its PB Stock in order to (a) bring current and keep current all of the Debtor's already incurred and ongoing administrative expenses, (b) pay all of the

Debtor's obligations due on or about the effective date of a confirmed plan of liquidation, and (c) pay certain expenses associated with the Litigation. In the event that that the Debtor were forced to take the foregoing course of action to satisfy its current and future financial obligations, the anticipated and desired distribution of PB Stock to the Debtor's interest holders would be significantly diminished; and

(5) Given (a) the Debtor's significantly constrained liquidity position, (b) the Debtor's current and future financial obligations, and (c) the strong desire of the Debtor, the Official Committee and the Debtor's interest holders to ensure a distribution of the PB Stock to the Debtor's interest holders, the Debtor's desire to enter into and consummate the proposed DIP and Exit Financing Loan Agreement is a reasonable exercise of the Debtor's business judgment.

ii. The Terms of the DIP and Exit Financing Loan Agreement are Fair, Reasonable and Appropriate in Light of the Debtor's Needs and the Current Market Environment

66. Courts have long recognized that the appropriateness of a proposed postpetition financing facility and a Debtor's search for alternatives must be considered in light of current market conditions. *See, e.g.*, *In re Snowshoe Co. Inc.*, 789 F.2d 1085, 1088 (4th Cir. 1986) (noting that a debtor is not required to seek credit from every possible lender before determining such credit is unavailable); *see also SunTrust Bank v. Den-Mark Const., Inc.*, 406 B.R. 683 (Bankr. N.C. 2009) (stating that a debtor must only show that it made a "reasonable effort" to obtain post-petition financing from other potential lenders on less onerous terms and that such financing was unavailable) (citing *In re Ames Dept. Stores*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990). Indeed, courts often recognize that where there are few lenders likely, willing, and able to

extend the necessary credit to a debtor, "it would be unrealistic and unnecessary to require [a debtor] to conduct such an exhaustive search for financing." *In re Sky Valley, Inc.,* 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff'd,* 99 B.R. 117 (N.D. Ga. 1989).

67. The Debtor has now been in Chapter 11 for approximately 27 months and it sold its operating assets to Precision Biologics approximately two (2) years ago. The Debtor's remaining assets consist of primarily its PB Stock and certain Litigation against various third parties. Inasmuch as the Debtor's PB Stock is intended to be distributed to the Debtor's interest holders pursuant to the terms of the Debtor's plan of liquidation, the only source of collateral for and the repayment of a new DIP and exit loan financing facility is the net proceeds resulting from the successful monetization of the Litigation. As a result, the Debtor's success in obtaining this type of financing is wholly dependent upon the Debtor's ability to identify a lender that is willing to make this type of loan secured by and payable out of net litigation proceeds and made on commercially reasonable terms.

68. Given that there exists no operational cash flow from which to make a single loan service payment, it is, to say the least, both difficult and challenging to find a lender that is willing to make this type of loan on commercially reasonable terms. The Debtor, through counsel, contacted approximately twenty (20) potential lenders involved in this specialized type of financing. Over a two (2) month period, the Debtor, through counsel, engaged in a substantial number of discussions with such lenders regarding this potential financing opportunity and entered into a non-disclosure agreement with several potential lenders as part of their respective due diligence associated with such potential financing. In light of the fact that the only potential source of repayment for such financing is an asset that is inchoate and wholly contingent, the Debtor was forced to identify a lender that is willing to take on the significant risk inherent in the

uncertain and unpredictable nature of commercial litigation. Such a lender is not easy to come by. The DIP and Exit Financing Loan Agreement represents the only available financing that satisfied all of the Debtor's specific needs and contained commercially reasonable repayment terms. Accordingly, the Debtor submits that the terms of the DIP and Exit Financing Loan Agreement are commercially reasonable and represent the best source of financing available to the Debtor in the marketplace under the circumstances and that such financing provides the Debtor with the maximum benefit and value to its bankruptcy estate.

B. The DIP and Exit Financing Loan Agreement was Negotiated at Arms' Length and in Good Faith and Should be Afforded the Protections of Bankruptcy Code § 364(e)

69. Pursuant to Bankruptcy Code § 364(e), any reversal or modification on appeal of an authorization to obtain credit or incur debt or a grant of priority or a lien under Bankruptcy Code § 364 shall not affect the validity of that debt incurred or priority or lien granted as long as the entity that extended credit "extended such credit in good faith."

See 11 U.S.C. § 364(e).

70. The terms of the DIP and Exit Financing Loan Agreement are the result of significant negotiations between the Debtor and the Lender which negotiations have been conducted at arms' length and in good faith, and the financing provided to the Debtor pursuant to the DIP and Exit Financing Loan Agreement will be extended by the Lender in good faith (as such term is used in Bankruptcy Code § 364(e)). No consideration is being provided to any party in connection with the DIP and Exit Financing Loan Agreement other than as set forth herein. Moreover, the DIP and Exit Financing Loan has been extended in reliance upon the protections afforded by Bankruptcy Code § 364(e) and the Lender should be entitled to the full protection of Bankruptcy Code § 364(e) in the event that any Order authorizing such credit, or any provision thereof is vacated, reversed or modified on appeal or otherwise. *See* 11 U.S.C. § 363(e).

Request For Hearing

71. Pursuant to Local Bankruptcy Rule 4001-4, the Debtor requests that the Court set a date for hearing that is as soon as practicable, but in no event later than November 10, 2014.

Notice

72. Notice of this Motion has been given to the following parties or, in lieu thereof, to their counsel, if known: (a) the Office of the United States Trustee for the District of Maryland; (b) counsel to Precision Biologics, Inc.; (c) counsel to the Official Committee; (d) all other parties identified on the List of 20 Largest Unsecured Creditors; (e) those parties requesting notice pursuant to Rule 2002; and (f) the Securities and Exchange Commission. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

Statement Pursuant to Local Bankruptcy Rule 9013-2

73. Pursuant to Rule 9013-2 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the District of Maryland, the Debtor states that, in lieu of submitting a memorandum in support of this motion, it will rely solely upon the grounds and authorities set forth herein.

No Prior Request

74. No prior request for the relief sought in this Motion has been made to this or any other court.

Conclusion

WHEREFORE, for the reasons set forth herein, the Debtor respectfully requests the entry of an Order: authorizing the Debtor to enter into and consummate the DIP and Exit Financing Loan Agreement attached hereto as **Exhibit B** and granting such other and further relief as may be just and proper.

Dated: October 14, 2014

GREENBERG TRAURIG, LLP

By: /s/ Thomas J. McKee, Jr.

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Counsel for Debtor and Debtor-in-Possession

Exhibit A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
Greenbelt Division

In re:	)	**Chapter 11**
NEOGENIX ONCOLOGY, INC.,	)	**Case No. 12-23557 (TJC)**
Debtor.	)	

ORDER APPROVING THE DEBTOR'S MOTION FOR THE ENTRY OF AN ORDER AUTHORIZING THE DEBTOR TO INCUR DEBTOR IN POSSESSION AND EXIT FINANCING AND GRANTING RELATED RELIEF

This matter came before this Court on the motion [Docket No. 469] (the "**Motion**")[1] of the above-captioned debtor and debtor-in-possession (the "**Debtor**") requesting that this Court enter an order authorizing the Debtor, pursuant to title 11 of the United States Code (the "**Bankruptcy Code**"), including Bankruptcy Code Sections 105, 364, 503(b) and 507, and the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), including Bankruptcy Rules 4001 and 9014, to: (i) obtain postpetition financing in the maximum original principal amount of up to $2,500,000.00 and enter into and consummate the terms of the DIP and Exit Financing

[1] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion and the DIP and Exit Financing Loan Agreement.

Loan Agreement attached to the Motion as **Exhibit B**, by and among the Debtor, as borrower, on the one hand, and ALJ Capital Management, LLC, as agent and on behalf of LJR Capital, L.P., ALJ Capital I, L.P. and ALJ Capital II, L.P., as lender, on the other hand (collectively, "**ALJ**" or the "**Lender**"), (ii) grant a security interests for the benefit of the Lender in the Litigation Proceeds, as set forth in the DIP and Exit Financing Loan Agreement, and (iii) granting related relief.

This Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be fully enforceable as of the date of the Motion.

Having examined the Motion, being fully advised of the facts and circumstances surrounding the Motion and having completed a hearing pursuant to Bankruptcy Code § 364 and Bankruptcy Rule 4001, and objections, if any, having been withdrawn or resolved or overruled by the Court,

THE MOTION IS HEREBY GRANTED, AND THE COURT HEREBY FINDS THAT:

A. The Court has jurisdiction over the Chapter 11 Case and this proceeding pursuant to 28 U.S.C. §§ 1334. Determination of the Motion constitutes a core proceeding as defined in 28 U.S.C. § 157(b)(2). Venue over this Motion is proper under 28 U.S.C. § 1409(a).

B. The Debtor previously borrowed the maximum amount possible under the Original DIP Loan. The proceeds from the Original DIP Loan have been largely exhausted and the Debtor now has insufficient cash remaining and available to continue to satisfy either its current or ongoing administrative expense obligations or to eventually emerge from bankruptcy upon the approval of a confirmed plan of liquidation.

C. The Debtor has spent a significant amount of time and effort in the marketplace vetting various potential lenders and various potential DIP and exit financing loan transactions and has determined in the exercise of its reasonable business judgment that the terms offered by the Lender in the DIP and Exit Financing Loan Agreement are commercially reasonable and provide the Debtor with the maximum benefit and value for its bankruptcy estate available in the marketplace.

D. The Debtor is unable to obtain unsecured credit allowable under Bankruptcy Code § 503(b)(1) as an administrative expense sufficient to fund its current and future financial obligations. The Debtor is unable to obtain credit allowable under Bankruptcy Code §§ 364(c)(1), (c)(2) or (c)(3) on terms more favorable than those offered by the Lender.

E. An immediate and critical need exists for the Debtor to obtain funds in order to, (1) bring current and keep current all of the Debtor's already incurred and ongoing administrative expenses, (2) pay all of the Debtor's obligations due on or about the effective date of a confirmed plan of liquidation, and (3) pay certain expenses associated with the Litigation.

F. The Lender has indicated a willingness to extend the DIP and Exit Financing Loan to the Debtor, but only on the terms and conditions set forth in the DIP and Exit Financing Loan Agreement.

G. The terms and conditions of the DIP and Exit Financing Loan Agreement have been negotiated at arms' length and in good faith, and the DIP and Exit Financing Loan is being extended in good faith, as that term is used in Bankruptcy Code § 364(e). Under the facts and circumstances of the Chapter 11 Case, the terms and conditions of this Order are a fair and reasonable response to the Debtor's request to incur the DIP and Exit Financing Loan, and the entry of this Order is in the best interests of the Debtor, its creditors, and its interest holders.

H. The notice provided by the Debtor of the Motion and the hearing on the Motion satisfy the requirements of Bankruptcy Rules 4001 and 9014, Local Bankruptcy Rule 4001-4, and Bankruptcy Code § 364 and were otherwise sufficient and appropriate under the circumstances.

WHEREFORE, IT IS HEREBY ORDERED THAT:

1. Approval of the DIP and Exit Financing Loan Agreement. The DIP and Exit Financing Loan Agreement attached as **Exhibit B** to the Motion is hereby approved. The Debtor is hereby authorized and directed to perform each of its obligations under and comply with all of the terms and provisions of the DIP and Exit Financing Loan Agreement and of this Order. The Lender is also hereby authorized and directed to perform each of its obligations under and comply with all of the terms and provisions of the DIP and Exit Financing Loan Agreement and this Order. The DIP and Exit Financing Loan Agreement shall constitute valid and binding obligations of the Debtor and the Lender, enforceable in accordance with its terms.

2. Uses of the DIP and Exit Financing Loan Proceeds. The Debtor is hereby authorized to incur obligations and use the DIP and Exit Financing Loan proceeds in accordance with and pursuant to the terms and provisions of this Order and the DIP and Exit Financing Loan Agreement, including without limitation, to (1) bring current and keep current all of the Debtor's already incurred and ongoing administrative expenses, (2) pay all of the Debtor's obligations due on or about the effective date of a confirmed plan of liquidation, and (3) pay certain expenses associated with the Litigation.

3. Security. Subject to the terms of the DIP and Exit Financing Loan Agreement, the Lender is hereby granted a first priority security interest in the Litigation Proceeds. The

Lender may, but shall not be required to, file a UCC-1 financing statement in order to perfect its security interest in the Litigation Proceeds.

4. Good Faith Protections. The Lender is hereby granted the protections provided in Bankruptcy Code § 364(e).

5. Survival. The provisions of this Order, and any actions taken pursuant to or in reliance upon the terms hereof, shall survive the entry of, and govern in the event of any conflict with, any order which may be entered in the Chapter 11 Case: (1) confirming any chapter 11 plan; (2) converting the Chapter 11 Case to a case under chapter 7; or (3) dismissing the Chapter 11 Case.

cc: Attached Service List

End of Order

Service List

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Exhibit B

DIP AND EXIT FINANCING LOAN AGREEMENT

This DIP and Exit Financing Loan Agreement (the "**Agreement**") is made and entered into as of this ___ day of October 2014 by and between ALJ Capital Management, LLC, as agent and on behalf of LJR Capital, L.P., ALJ Capital I, L.P. and ALJ Capital II, L.P. ("**ALJ**" or the "**Lender**") and Neogenix Oncology, Inc. and its successors, including but not limited to, any liquidation trust created pursuant to a plan of liquidation. ("**Neogenix**" or the "**Borrower**" and, together with ALJ or the Lender, the "**Parties**").

RECITALS:

R-1. On July 23, 2012, Neogenix filed a voluntary chapter 11 bankruptcy petition in The United States Bankruptcy Court for the District of Maryland (Greenbelt Division) (the "**Bankruptcy Court**") which bankruptcy case is designated as Case No. 12-23557 (TJC) (the "**Bankruptcy Case**").

R-2. On July 10, 2014, Neogenix entered into a certain engagement agreement (the "**Engagement Agreement**") by and between Neogenix and Reid Collins Tsai LLP ("**RCT**") which Engagement Agreement was approved by the Bankruptcy Court on September 8, 2014. Pursuant to the terms of the Engagement Agreement, Neogenix engaged RCT on a contingency fee basis as special litigation counsel to represent Neogenix in connection with certain third party causes of action against Neogenix's former chief financial officer, former general counsel, and former professional service firms as well as certain others (collectively, the "**Third Party Defendants**").

R-3. On July 18, 2014, Neogenix and one of Neogenix's former professional services firms (the "**Unnamed Firm**") entered into a tolling agreement tolling the statute of limitations related to the filing of a complaint against that professional service firm (the "**Tolling Agreement**").

R-4. On July 22, 2014, Neogenix filed a complaint against certain of the Third Party Defendants, excluding the Unnamed Firm, in the United States District Court for the Eastern District of New York, which complaint is captioned as Neogenix Oncology, Inc. vs. Peter Gordon et. al., Case Number 14-cv-4427 (the "**Pending Litigation**"). In the event that Neogenix and the Unnamed Firm cannot amicably resolve Neogenix's claims against the Unnamed Firm, Neogenix intends to file a complaint against the Unnamed Firm (the "**Future Litigation**", and together with the Pending Litigation, the "**Litigation**").

R-5. The Parties now desire to enter into this Agreement in order to provide Neogenix with sufficient liquidity to (1) bring current and keep current all of Neogenix's already incurred and on-going administrative expenses related to the Bankruptcy Case, (2) pay all of Neogenix's obligations due on or about the effective date of a confirmed plan of liquidation, and (3) pay certain hard costs and expenses associated with the Litigation.

AGREEMENT:

For and in consideration of the mutual obligations contained in this Agreement set forth below, the sufficiency of which is hereby acknowledged by the Parties, the Parties hereby agree as follows:

1. THE DIP AND EXIT LOAN FINANCING FACILITY

ALJ hereby agrees to lend to Neogenix and Neogenix hereby agrees to borrow from ALJ at Neogenix's election, a minimum principal amount of $2,000,000 (the "**Minimum Loan Amount**") and a

maximum principal amount of $2,500,000 (the "**Maximum Loan Amount**"). Upon approval of this Agreement by the Bankruptcy Court, Neogenix shall request the original principal loan amount from ALJ in writing and ALJ shall wire transfer to Neogenix the original principal loan amount requested within two (2) business days of receiving that request from Neogenix (the "**Original Principal Loan Amount**"). In the event that Neogenix elects to initially borrow from ALJ less than the Maximum Loan Amount, Neogenix shall be entitled to borrow from ALJ in one or more additional borrowings up to the Maximum Loan Amount (an "**Additional Borrowing**" or the "**Additional Borrowings**"). Each Additional Borrowing shall be (1) requested by Neogenix in writing, (2) requested by Neogenix in minimum increments of $50,000 and (3) funded by ALJ by wire transfer to Neogenix within two (2) business days of ALJ's receiving such a written request from Neogenix. The Original Principal Loan Amount together with any Additional Borrowings shall hereinafter be collectively referred to as the "**Outstanding Principal Loan Amount**". In the event that Neogenix elects to initially borrow from ALJ less than the Maximum Loan Amount, ALJ shall be entitled to receive a two and one-half percent (2 1/2%) annual availability fee, compounded annually, on any unfunded amount less than the Maximum Loan Amount (the "**Availability Fee**"). The Availability Fee shall not apply with respect to any principal amounts previously borrowed and subsequently repaid and once repaid funds may not be redrawn.

2. ALJ INVESTMENT RETURN AND LITIGATION SHARE

With respect to both the Original Principal Loan Amount and the amount of any Additional Borrowings, in addition to being entitled to be repaid the Outstanding Principal Loan Amount, ALJ shall also be entitled to receive the greater of either (1) a $500,000 guaranteed minimum investment return (the "**Guaranteed Minimum Investment Return**") or (2) the amount necessary to provide ALJ with an investment rate of return of 40% compounded annually and taking into account the timing of any actual payments to ALJ (the "**ALJ Investment Return**"). Within two (2) business days of ALJ funding the Original Principal Loan Amount or any Additional Borrowings, ALJ shall send to Neogenix and its counsel an Excel spreadsheet calculating the monthly payoff amounts of the Outstanding Principal Loan Amount and the Guaranteed Minimum Investment Return or the ALJ Investment Return, whichever is applicable, for the next twenty four (24) months. In addition to the foregoing, ALJ shall also be entitled to receive five percent (5%) of the net litigation proceeds up to and including $20,000,000 in net litigation proceeds and two and one-half percent (2 1/2%) of the net litigation proceeds in excess of $20,000,000 (the "**Litigation Share**"). The Litigation Share shall be capped at a maximum amount of $2,000,000. For purposes of the calculation of the Litigation Share, the term net litigation proceeds shall mean any proceeds received from either the Third Party Defendants and/or their respective insurers in connection with the Litigation or any similar demands or litigation whether by settlement or judgment less (1) RCT's contingency fees and litigation related expenses, (2) the liquidating trustee's fees and out-of-pocket expenses contemplated by Neogenix's amended plan of liquidation, and (3) all amounts due and owing or paid to ALJ in connection with the Outstanding Principal Loan Amount and the Guaranteed Minimum Investment Return or the ALJ Investment Return, whichever is applicable.

3. SOURCE AND TIMING OF PAYMENTS

Subject to the provisions contained in Paragraph 6 below, all amounts due and payable to ALJ under this Agreement shall be paid as soon as is reasonably practicable solely from the litigation proceeds received by Neogenix from either the Third Party Defendants and/or their respective insurers and indemnifying parties in connection with the Litigation or any similar demands or litigation whether by settlement or judgment less (1) RCT's contingency fees and litigation related expenses and (2) the liquidating trustee's fees and out-of-pocket expenses contemplated by Neogenix's amended plan of liquidation (the "**Litigation Proceeds**").

4. PARTIAL PAYMENTS

At any time that a payment is made to ALJ with respect to the Outstanding Principal Loan Amount and the Guaranteed Minimum Investment Return or the ALJ Investment Return, whichever is applicable, in an amount less than the Fully Accreted Claim (as defined below) (a "**Partial Payment**"), the calculation of the remaining Fully Accreted Claim shall restart commencing the following calendar day at an initial principal amount equal to the amount of the Fully Accreted Claim on the day of the Partial Payment less the amount of the Partial Payment. For purposes of this Agreement, the term "**Fully Accreted Claim**" shall mean the amount calculated by adding the following two amounts as of any given day: (1) the Original Principal Loan Amount accreted at 40% per annum commencing on the day that Neogenix receives such funds; plus (2) the amounts of any Additional Borrowings accreted at 40% per annum commencing on the dates that Neogenix receives such funds. Within two (2) business days of ALJ's receipt of any Partial Payment, ALJ shall send to Neogenix and its counsel an Excel spreadsheet calculating the monthly payoff amounts of the remaining Fully Accreted Claim for the next twenty four (24) months.

5. COLLATERAL

All amounts due and payable to ALJ under this Agreement shall be secured by the Litigation Proceeds as defined in Paragraph 3 above and ALJ is hereby granted a first priority security interest in the Litigation Proceeds. ALJ may, but shall not be required to, file a UCC-1 financing statement in order to perfect its security interest in the Litigation Proceeds. Notwithstanding ALJ's security interest in the Litigation Proceeds, once ALJ is paid in full the Outstanding Principal Loan Amount, the Guaranteed Minimum Investment Return or the ALJ Investment Return, whichever is applicable, and the Availability Fee, ALJ's security interest in the Litigation Proceeds shall only be applicable to securing the amount of ALJ's Litigation Share and, notwithstanding such security interest, Neogenix shall be entitled to retain at the time any such Litigation Proceeds are received by Neogenix those amounts which are in excess of what is required to be paid to ALJ in satisfaction of its Litigation Share in those specific Litigation Proceeds. Immediately after ALJ is paid all amounts to which it is entitled under this Agreement, ALJ shall promptly take all actions reasonable necessary to release its security interest in the Litigation Proceeds at ALJ's sole cost and expense.

6. ADMINISTRATIVE PRIORITY

In the event that the Litigation Proceeds yield insufficient funds to pay the Outstanding Principal Loan Amount and the Guaranteed Minimum Investment Return or the ALJ Investment Return, whichever is applicable, and the Availability Fee, in full (in aggregate, the "**Unpaid Amount**"), the Unpaid Amount shall be entitled to administrative priority pursuant to 11 U.S.C. §§ 503 (b) and 507. Notwithstanding the foregoing, ALJ's entitlement with respect to such an administrative priority claim shall be junior to and subordinate to (1) all amounts then due and owing to Neogenix's professionals and the Official Committee of Equity Interest Holders' professionals (the "**Committee's Professionals**") with respect to any unpaid accounts receivable, work in process or holdbacks and (2) a $30,000 wind down budget for the benefit of Neogenix's professionals and the Committee's Professionals. Notwithstanding the foregoing, ALJ shall not be entitled to be paid the Unpaid Amount from Neogenix's shares of Precision Biologics stock or any proceeds related thereto. Finally, nothing in either this Paragraph 6 or this Agreement shall preclude Neogenix from using the proceeds of the loans contemplated by this Agreement for the purposes described in Recital R-5 above.

7. RIGHT OF FIRST REFUSAL

In the event that Neogenix requires additional funds above the Maximum Loan Amount, ALJ shall have the option of providing such additional funding. If Neogenix negotiates the terms of such additional funding with any other party, ALJ shall have the right but not the obligation to provide such additional funding on the same terms. ALJ shall have 15 business days from receipt of the complete terms to exercise its right to provide such additional funding. If ALJ does not accept such additional funding terms within 15 business days, Neogenix shall be free to accept the third party's additional funding proposal. If Neogenix does not enter into and close on any such additional funding proposal with a third party on such additional funding terms within 90 days of ALJ refusing to match such additional funding terms, Neogenix must again provide ALJ with the opportunity to match any subsequent additional funding proposal pursuant to this section of the Agreement.

8. BANKRUPTCY COURT APPROVAL

The Parties' rights and obligations set forth in this Agreement shall be subject to Bankruptcy Court approval. Neogenix shall use its best good faith efforts to promptly obtain Bankruptcy Court approval of this Agreement.

9. CHOICE OF LAW

This Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of New York, without regard to principles of conflict of laws.

10. SUBMISSION TO JURISDICTION AND VENUE

Each Party hereby submits to the exclusive jurisdiction and exclusive venue of the United States Bankruptcy Court for the District of Maryland, Greenbelt Division, in any action to enforce, interpret or construe any provision of this Agreement, or in any action otherwise arising from or related to this Agreement.

11. ATTORNEYS' FEES

If any Party institutes legal proceedings over the enforcement of this Agreement or any provision of it, the prevailing Party shall be entitled to recover from the losing Party its costs, including reasonable attorneys' fees, at both the trial and appellate levels.

12. CONSTRUCTION OF THIS AGREEMENT

This Agreement was negotiated at arm's length by the Parties. This Agreement, and any terms herein, shall not be construed against either Party as the drafter of the agreement or any particular provision.

13. EXECUTION IN COUNTERPARTS

This Agreement may be executed in counterparts each of which shall be an original and both of which taken together shall constitute one and the same instrument. Transmission by email or other form of electronic transmission of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart.

14. ENTIRE AGREEMENT

This Agreement embodies the entire understanding and agreement between the Parties and supersedes all prior understandings and agreements relating thereto. No amendments or modifications may be made to this Agreement without the express written consent of the Parties.

15. SEVERABILITY

The illegality, invalidity or unenforceability of any provision of this Agreement under the law of any jurisdiction shall not affect its legality, validity or enforceability under the law of any other jurisdiction nor the legality, validity or enforceability of any other provision.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed and delivered by their respective authorized signatories as of the date first written above.

ALJ CAPITAL MANAGEMENT, LLC

By: _____

Name: Lawrence B. Gill

Title: Authorized Signatory

Date: 10-8-14

NEOGENIX ONCOLOGY, INC.

By: _____

Name: Philip M Arlen

Title: President + CEO

Date: 10-9-14