

FILED

MAY 19 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

KARIM KHOJA, on behalf of himself and
all others similarly situated,

Plaintiff-Appellant,

v.

PROVINCE, INC., as the Wind Down
Administrator for Orexigen Therapeutics,
Inc.; JOSEPH P. HAGAN; MICHAEL A.
NARACHI; PRESTON KLASSEN,

Defendants-Appellees.

No. 16-56069

DC No. 3:15 cv-00540 JLS

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Janis L. Sammartino, District Judge, Presiding

Argued and Submitted November 6, 2017
Pasadena, California
Administratively Closed August 13, 2018
Resubmitted April 28, 2020**

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for resubmission for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: TASHIMA and BERZON, Circuit Judges, and PAYNE,^{***} District Judge.

On August 13, 2018, we filed our opinion in this case, *Khoja v. Orexigen Therapeutics Inc.*, 899 F.3d 988 (9th Cir. 2018), *cert. denied, sub nom. Hagen v. Khoja*, 1395 S. Ct. 2615 (2019). Because, during the pendency of this appeal, Orexigen filed a voluntary Chapter 11 petition, and the automatic stay of 11 U.S.C. § 362(a) came into effect, we noted that that “opinion [did] not address or decide Plaintiff’s appeal as against defendant-appellee Orexigen.” *Id.* at 994 n.1.

Orexigen’s successor in interest, Province, Inc., as the Wind Down Administrator for Orexigen Therapeutics Inc.,¹ has now filed a status report indicating that the bankruptcy court, per the parties’ stipulation, has lifted the § 362 stay with respect to this case. We have therefore resubmitted this appeal for decision with respect to Orexigen.²

^{***} The Honorable Robert E. Payne, United States District Judge for the Eastern District of Virginia, sitting by designation.

¹ For convenience, we refer to Orexigen’s successor, the Wind Down Administrator, as “Orexigen.”

² We note that Orexigen fully participated in the briefing and oral argument on November 6, 2017; the § 362 stay did not come into effect until after oral argument and submission of the case for decision. *See id.*

We have, again, reviewed the parties' briefs and our opinion in *Orexigen*. After such review, we fully adopt our opinion in *Orexigen*, 899 F.3d 988, to resolve Plaintiff's appeal as against Defendant Orexigen.

Therefore, with respect to Plaintiff's appeal as against Defendant-Appellee Province, Inc., as the Wind Down Administrator for Orexigen Therapeutics, Inc., the judgment of the district court is

AFFIRMED in part, REVERSED in part, and REMANDED. No costs.