

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CA 21-01025

PRESENT: SMITH, J.P., CENTRA, PERADOTTO, NEMOYER, AND BANNISTER, JJ.

STEPHEN A. PANARO, PH.D., PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

ATHENEX, INC., SUCCESSOR IN INTEREST TO KINEX
PHARMACEUTICALS, INC., FORMERLY KNOWN AS
QUADPHARMA, LLC, DEFENDANT-APPELLANT.

PHILLIPS LYTTLE LLP, BUFFALO (TRISTAN D. HUYER OF COUNSEL), FOR
DEFENDANT-APPELLANT.

Appeal from an order of the Supreme Court, Erie County (Emilio Colaiacovo, J.), entered July 9, 2021. The order, insofar as appealed from, denied in part the motion of defendant for summary judgment.

It is hereby ORDERED that the order so appealed from is unanimously modified on the law by granting that part of the motion seeking summary judgment dismissing the fifth cause of action and as modified the order is affirmed without costs.

Memorandum: Plaintiff commenced this action against defendant, his former employer, and sought monetary damages and declaratory and injunctive relief arising from his termination and related events. Defendant appeals from an order denying in part its motion seeking, inter alia, summary judgment dismissing the amended complaint and summary judgment on certain counterclaims that were asserted in its answer to the amended complaint. We agree with defendant that the fifth cause of action is moot, and that Supreme Court therefore erred in denying the motion insofar as it sought summary judgment dismissing that cause of action (*see generally Hughes v Gates*, 217 AD2d 966, 967 [4th Dept 1995]). We thus modify the order accordingly. Defendant's assertion that the court should have granted judgment in its favor on the third counterclaim is unpreserved for our review inasmuch as defendant never sought such relief in its motion papers. We have considered and rejected defendant's remaining contentions.

Entered: July 1, 2022

Ann Dillon Flynn
Clerk of the Court