Fill in this information to identify the case:

Debtor Achaogen, Inc.

United States Bankruptcy Court for the: _____ District of Delaware (State)

Case number 19-10844

Official Form 410
Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   ESTEVE QUIMICA, SA
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor _____

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom? _____

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
See summary page	
Contact phone 201-525-6328	Contact phone _____
Contact email jbienstock@coleschotz.com	Contact email _____

   Uniform claim identifier for electronic payments in chapter 13 (if you use one):
   _____

4. **Does this claim amend one already filed?**
   ☑ No
   ☐ Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing? _____

19108441906200135330000039

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**

☑ No

☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ 6,626,679.07 . **Does this amount include interest or other charges?**

☑ No

☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**

Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.

Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).

Limit disclosing information that is entitled to privacy, such as health care information.

Master Services Agreement

9. **Is all or part of the claim secured?**

☑ No

☐ Yes. The claim is secured by a lien on property.

Nature or property:

☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.

☐ Motor vehicle

☐ Other. Describe: _____

Basis for perfection: _____

Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: $_____

Amount of the claim that is secured: $_____

Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: $_____

Annual Interest Rate (when case was filed)_____%

☐ Fixed

☐ Variable

10. **Is this claim based on a lease?**

☑ No

☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**

☑ No

☐ Yes. Identify the property: _____

19108441906200135330000039

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☑ No

☐ Yes. *Check all that apply:*

	Amount entitled to priority
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☑ I am the creditor.

☐ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 07/22/2019
MM / DD / YYYY

/s/Pere Mane Godina
Signature

Print the name of the person who is completing and signing this claim:

Name: Pere Mane Godina
First name Middle name Last name

Title: Managing Director

Company: Esteve Quimica SA
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: Passeig de la Zona Franca, 109, 4 Planta, Barcelona, 08038, Spain

Contact phone: +34 93 446 60 00 Email: pmane@esteve.com

19108441906200135330000039

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (888) 249-2747 | International (310) 751-2606

Debtor:
19-10844 - Achaogen, Inc.
District:
District of Delaware

Creditor:
ESTEVE QUIMICA, SA
c/o Jill B. Bienstock, Esq./Cole Schotz P.C.
Court Plaza North
25 Main Street
Hackensack, NJ, 07601
Phone:
201-525-6328
Phone 2:
Fax:
201-678-6328
Email:
jbienstock@coleschotz.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Creditor

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
Master Services Agreement

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
6,626,679.07

Includes Interest or Charges:
No

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No
Amount of 503(b)(9):
No
Based on Lease:
No
Subject to Right of Setoff:
No

Nature of Secured Amount:
Value of Property:
Annual Interest Rate:
Arrearage Amount:
Basis for Perfection:
Amount Unsecured:

Submitted By:
Pere Mane Godina on 22-Jul-2019 3:46:13 p.m. Eastern Time
Title:
Managing Director
Company:
Esteve Quimica SA

Optional Signature Address:
Pere Mane Godina
Passeig de la Zona Franca, 109, 4 Planta
Barcelona, , 08038
Spain
Telephone Number:
+34 93 446 60 00
Email:
pmane@esteve.com

VN: 363BCAC84BE21A19019C7E274E7E8131

Fill in this information to identify the case:	
Debtor	Achaogen, Inc.
United States Bankruptcy Court for the District of Delaware	
Case number	19-10844

The Debtor has listed your claim on Schedule E/F Part 2 as a General Unsecured claim in the amount of $2,253,501.47. If you agree with this characterization and amount, you do not need to complete and return this form. If you disagree, please complete and return this form accordingly.

Official Form 410
Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Other than a claim under 11 U.S.C. § 503(b)(9), this form should not be used to make a claim for an administrative expense arising after the commencement of the case.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed.

Part 1: Identify the Claim

1. **Who is the current creditor?**
   ESTEVE QUIMICA, SA
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**
   ☒ No
   ☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

   Where should notices to the creditor be sent?
   Cole Schotz, P.C.
   Attn: Jill B. Bienstock, Esq.
   Court Plaza North, 25 Main Street
   Hackensack, New Jersey 07601
   USA

   Address
   Contact phone 201-525-6325
   Contact email jbienstock@coleschotz.com

   Where should payments to the creditor be sent? (if different)
   Name
   Number Street
   City State ZIP Code
   Country
   Contact phone
   Contact email

   Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**
   ☒ No
   ☐ Yes. Claim number on court claims registry (if known) Filed on MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☒ No
   ☐ Yes. Who made the earlier filing?

Part 2: **Give Information About the Claim as of the Date the Case Was Filed**

6. **Do you have any number you use to identify the debtor?**

☒ No

☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?**

$ 6,626,679.07 (see attached). **Does this amount include interest or other charges?**

☒ No

☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**

Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.

Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).

Limit disclosing information that is entitled to privacy, such as health care information.

Master Services Agreement

9. **Is all or part of the claim secured?**

☒ No

☐ Yes. The claim is secured by a lien on property.

Nature of property:

☐ Real estate: If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.

☐ Motor vehicle

☐ Other. Describe: _____

Basis for perfection: _____

Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: $_____

Amount of the claim that is secured: $_____

Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: $_____

Annual Interest Rate (when case was filed)_____%

☐ Fixed

☐ Variable

10. **Is this claim based on a lease?**

☒ No

☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**

☒ No

☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

Amount entitled to priority

☒ No

☐ Yes. *Check all that apply:*

☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☒ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☒ I am the creditor.

☐ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 07/22/2019
MM / DD / YYYY

Signature

Print the name of the person who is completing and signing this claim:

Name: Pere (First name) Mañé (Middle name) Godina (Last name)

Title: Managing Director

Company: Esteve Quimica SA
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: Passeig de la Zona Franca, 109 , 4ª Planta
Number Street

Barcelona — City — State — 08038 ZIP Code — Spain Country

Contact phone: (+34) 93 446 60 00 Email: pmane@esteve.com

RIDER TO PROOF OF CLAIM OF ESTEVE QUIMICA

(Pre-Petition Claim)

Esteve Quimica, SA ("**Esteve**") files this proof of claim ("**Claim**") to assert certain claims that it may have though as of the date hereof, while Esteve is aware the Debtor plans to reject the agreement described here, the Debtor has not yet done so. Accordingly, to the extent the parties' agreement is ultimately rejected, Esteve reserves all of its rights to amend and supplement this Claim.

Esteve is a critical partner in the manufacturing and process development of active pharmaceutical ingredients ("**APIs**"), assisting clients by providing a broad range of services, from API manufacturing to finished product formulation, as well as establishing alliances with strategic manufacturers and partners.

Pre-petition, Achaogen, Inc. (the "**Debtor**") and Esteve entered into that certain Master Services Agreement for Development Activities (the "**MSA**"), with an effective date of January 9, 2018, pursuant to which the Parties agreed that Esteve would undertake certain activities to assist the Debtor in executing potential drug development programs.

The MSA has a term of 5 years, expiring on January 9, 2023. The MSA contemplates that the MSA or an Exhibit entered in connection therewith may be terminated but the MSA continues until all the projects are complete. Although the Debtor has the right to terminate the MSA on 30-days' notice to Esteve, the Debtor remains liable, notwithstanding such termination, for any and all costs, fees and expenses incurred by Esteve for all services performed under the MSA as well as such additional costs, fees and expenses incurred in connection with the wind-down of services.

Pursuant to the MSA, the Parties contemplated they might enter into "Exhibits" (akin to statements of work) from time to time, and they could further specify the nature, details, requirements, specifications, obligations, and fees associated with certain services to be performed. The Parties expressly contemplated and agreed that each Exhibit became an express part of the MSA.

Under the MSA, and for each activity, Esteve would typically make a proposal for a course of action to be accepted by the Debtor, then a purchase order and/or statement of work would be issued, the work would be performed and then ultimately an invoice would be issued for the work performed. The Debtor's liability on account of work performed by Esteve is not contingent upon the issuance of an Exhibit or an invoice.

On April 15, 2019, the Debtor filed a voluntary petition for relief pursuant to chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**"). At the time of the Debtor's bankruptcy filing, although target MSA dates had been pushed back, the MSA remained in place as a valid, enforceable agreement, and Esteve had by that date performed several substantial and critical campaign tasks for which it has still not been paid. As part of and pursuant to the MSA, and documents executed in connection therewith and Debtor's directives to Esteve, the Parties agreed, *inter alia*:

(i) Esteve would purchase unique equipment necessary to carry out the services under the MSA, for which the Debtor expressly agreed to pay half of the costs of acquisition, with the Debtor's share of the cost being $1,011,977.60 (this equipment is not available to Esteve to use on other projects unless the MSA is otherwise terminated or expires);

(ii) Esteve would purchase raw material for the validation campaign, at a cost of $657,553.15, for which the Debtor would reimburse Esteve;

(iii) Esteve would manufacture the first demo batch, including procurement and release of raw materials and spray drying, at a cost to the Debtor of $1,243,124.32;

(iv) Esteve would perform analytical activities in connection with the campaign at a cost to the Debtor of $352,824; and

(v) Esteve undertook additional spray drying familiarization at a cost to the Debtor of $250,000, and Esteve completed stabilization studies at a cost to the Debtor of $11,200, for an aggregate cost for these activities of $261,200.

As of the Petition Date, the resulting total outstanding amount due to Esteve for work that Esteve performed prior to the Petition Date under the MSA and pursuant to the Debtor's written requests totals **$3,526,679.07** (the "**Pre-Petition Claim**").

In addition to the Pre-Petition Claim, Esteve estimates that it has significant lost costs associated with the validation campaign cessation and additional work performed to date totaling **$3,100,000** (raw materials excluded), and prior to including additional, recoverable fees, costs and expenses.

As of the date hereof, and prior to rejection of the MSA, Esteve believes that its claim against the Debtor and its estate is no less than **$6,626,679.07** (the "**Pre-Rejection Claim**"), which includes the Pre-Petition Claim and certain (but not all) additional damages and losses recoverable under the MSA. The rejection (and ultimate termination) of any Exhibits and/or the MSA is expected to further increase Esteve's Pre-Rejection Claim because, *inter alia*, pursuant to the MSA, Esteve is explicitly entitled to recover additional fees, costs and expenses.

All of Esteve's rights to assert additional or amended/supplemented claims are expressly reserved, including because the aforementioned claim amounts do not take into account the rejection damages Esteve will be entitled to assert in the event of the Debtor's rejection of the MSA.

Due to the confidential nature of the agreements and the terms of the MSA, copies of the MSA and relevant invoices and emails have not been attached to this Claim. Copies of such documents are available upon written request to the undersigned counsel.

NOTICES REGARDING THIS CLAIM should be served upon:

Jill B. Bienstock, Esq.
Cole Schotz P.C.
Court Plaza North
Hackensack, NJ 07601
jbienstock@coleschotz.com
201-489-3000
Fax: 201-678-6328

Patrick Reilley, Esq.
Cole Schotz P.C.
500 Delaware Ave., Suite 1410
Wilmington, DE 19801
preilley@coleschotz.com
302-652-2004
Fax: 302-652-2004