Docket #0637 Date Filed: 03/30/2020

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
Achaogen, Inc.,	)	Case No. 19-10844 (BLS)
Debtor.[1]	)	**Re: D.I. 635 & 636**

PLAN PROPONENTS' MOTION FOR ENTRY OF AN ORDER (I) APPROVING THE DISCLOSURE STATEMENT ON AN INTERIM BASIS; (II) APPROVING THE SOLICITATION AND NOTICE PROCEDURES WITH RESPECT TO CONFIRMATION OF THE CHAPTER 11 PLAN OF LIQUIDATION; (III) APPROVING THE FORMS OF BALLOTS AND NOTICES IN CONNECTION THEREWITH; (IV) SCHEDULING CERTAIN DATES WITH RESPECT THERETO; AND (V) GRANTING RELATED RELIEF

The above-captioned debtor and debtor in possession (the "Debtor") in the above-captioned chapter 11 case and the Official Committee of Unsecured Creditors (the "Committee," and together with the Debtor, the "Plan Proponents") respectfully state as follows in support of this motion (the "Motion"):[2]

Relief Requested

1. The Debtor seeks entry of an order, substantially in the form attached hereto as **Exhibit A** (the "Interim Approval and Procedures Order"), granting the following relief and such other relief as is just and proper:

[1] The last four digits of the Debtor's federal tax identification number are 3693. The Debtor's mailing address for purposes of this Chapter 11 Case is 548 Market Street, #70987, San Francisco, CA 94104-5401.

[2] A detailed description of the Debtor and its business, and the facts and circumstances supporting the Debtor's chapter 11 case, is set forth in greater detail in the *Declaration of Blake Wise in Support of First Day Relief* [Docket No. 3] the "First Day Declaration") filed contemporaneously with the Debtor's voluntary petition for relief filed under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") on April 15, 2019 (the "Petition Date").

a. ***Disclosure Statement.*** Approving the Disclosure Statement[3] on an interim basis, and for solicitation purposes only, as containing "adequate information" pursuant to section 1125 of the Bankruptcy Code;

b. ***Solicitation and Voting Procedures.*** Approving the procedures for (i) soliciting, receiving, and tabulating votes to accept or reject the Plan, (ii) voting to accept or reject the Plan, and (iii) filing objections to the Plan (the "Solicitation and Voting Procedures"), substantially in the form attached to the Interim Approval and Procedures Order as Exhibit 1;

c. ***Hearing Notice for Final Approval of Disclosure Statement and Plan Confirmation.*** Approving the manner and form of notice of the hearing to consider final approval of the Disclosure Statement and confirmation of the Plan (the "Combined Hearing" and the notice thereof, the "Confirmation Hearing Notice"), substantially in the form attached to the Interim Approval and Procedures Order as Exhibit 2;

d. ***Ballots.*** Approving the Class 1 ballot and the Class 4 ballot (collectively, the "Ballots"), substantially in the forms attached to the Interim Approval and Procedures Order as Exhibits 3A and 3B respectively;

e. ***Non-Voting Status Notices.*** Approving (i) the form of notice applicable to holders of Claims and Interests that are Impaired under the Plan and who are, pursuant to section 1126(g) of the Bankruptcy Code, conclusively deemed to reject the Plan; and (ii) the form of notice applicable to holders of Claims and Interests that are Unimpaired under the Plan and who are, pursuant to section 1126(f) of the Bankruptcy Code, deemed to accept the Plan (each, a "Non-Voting Status Notices"), substantially in the forms attached to the Interim Approval and Procedures Order as Exhibit 4 and Exhibit 5, respectively;

f. ***Solicitation Packages.*** Finding that the solicitation materials and documents (the "Solicitation Packages") that will be sent to, among others, holders of Claims entitled to vote to accept or reject the Plan, comply with rules 3017(d) and 2002(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules");

g. ***Cover Letter.*** Approving the form of letter (the "Cover Letter") that the Plan Proponents will send to holders of Claims entitled to vote to accept or reject the Plan urging such parties to vote in favor of the Plan,

[3] The "Disclosure Statement" shall mean that *Disclosure Statement for Chapter 11 Plan of Liquidation Jointly Proposed by Achaogen, Inc. and the Official Committee of Unsecured Creditors of Achaogen, Inc.*, as may be amended from time to time. Capitalized terms used but not otherwise defined in this Motion have the meanings given to them in the *Chapter 11 Plan of Liquidation Jointly Proposed by Achaogen, Inc. and the Official Committee of Unsecured Creditors* (as may be amended, supplemented, or modified from time to time, the "Plan"), each filed contemporaneously herewith.

substantially in the form attached to the Interim Approval and Procedures Order as Exhibit 6; and

h. ***Confirmation Timeline.*** Establishing the following dates and deadlines, subject to modification as necessary:

i. ***Voting Record Date.*** **April 1, 2020** as the date for determining (i) which holders of Claims in the Voting Classes are entitled to vote to accept or reject the Plan and receive Solicitation Packages in connection therewith and (ii) whether Claims have been properly assigned or transferred to an assignee pursuant to Bankruptcy Rule 3001(e) such that the assignee can vote as the holder of the respective Claim (the "Voting Record Date");

ii. ***Solicitation Deadline.*** The date that is five (5) business days from the entry of the Interim Approval and Procedures Order as the deadline for distributing Solicitation Packages, including Ballots, to holders of Claims entitled to vote to accept or reject the Plan (the "Solicitation Deadline");

iii. ***Publication Deadline.*** The date that is five (5) business days from the entry of the Interim Approval and Procedures Order as the last date by which the Debtor will submit the Confirmation Hearing Notice for publication in a format modified for publication (the "Publication Notice");

iv. ***Plan Supplement Filing Date***. **May 14, 2020** (the "Plan Supplement Filing Date");

v. ***3018(a) Motion Deadline***. Any party wishing to file a motion under Bankruptcy Rule 3018(a) to temporarily allow a Claim or Interest for purposes of voting to accept or reject the Plan shall have until ten (10) days from the later of (a) the mailing of the Confirmation Hearing Notice and (b) the filing of a claim objection to file such a motion.

vi. ***Voting Deadline.*** **May 21, 2020, at 4:00 p.m.** prevailing Eastern Time as the deadline by which **all** Ballots must be properly executed, completed, and delivered so that they are **actually received** (the "Voting Deadline") by Kurtzman Carson Consultants LLC (the "Solicitation Agent");

vii. ***Objection Deadline.*** **May 21, 2020, at 4:00 p.m.** prevailing Eastern Time as the deadline by which objections to the Plan and Disclosure Statement must be filed with the Court and served so as to be **actually received** by the appropriate notice parties (the "Plan Objection Deadline");

viii. ***Deadline to File Voting Report.*** **May 26, 2020, at 4:00 p.m.** prevailing Eastern Time as the date by which the report tabulating the voting on the Plan (the "Voting Report") shall be filed with the Court;

ix. ***Confirmation Brief and Plan Objection Reply Deadline***. **May 25, 2020, at 4:00 p.m.**, prevailing Eastern Time as the deadline by which the Plan Proponents shall file their brief in support of Confirmation of the Plan (the "Confirmation Brief Deadline") and deadline by which replies to objections to the Plan must be filed with the Court (the "Plan Objection Reply Deadline"); and

x. ***Combined Confirmation Hearing Date.*** **May 28, 2020 at 10:00 a.m.**, prevailing Eastern Time as the date for the hearing at which the Court will consider Final Approval of the Disclosure Statement and Confirmation of the Plan (the "Confirmation Hearing Date").

Jurisdiction and Venue

2. The United States Bankruptcy Court for the District of Delaware (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012. The Debtor confirms its consent, pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), to the entry of a final order by the Court in connection with this motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The statutory bases for the relief requested herein are sections 105, 1125, 1126, and 1128 of the Bankruptcy Code, Bankruptcy Rules 2002, 3016, 3017, 3018, and 3020, Local Rules 2002-1 and 3017-2.

Background

5. On April 15, 2019 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. Since the Petition Date, the Debtor has continued in possession of its property and has continued to operate and manage its business as a debtor in possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

6. On April 23, 2019, pursuant to Bankruptcy Code section 1102, the United States Trustee for the District of Delaware (the "U.S. Trustee") filed a notice with the Court appointing the Committee. Following the filing of the Notice, the Committee selected Akin Gump to serve as lead co-counsel to the Committee and Klehr Harrison Harvey Branzburg LLP to serve as Delaware co-counsel.

7. The Debtor commenced this chapter 11 case to facilitate the sale of substantially all of its assets that would maximize creditor recoveries for the Debtor's stakeholders via cash proceeds and revenue streams from royalties. The Debtor believes that the Plan maximizes stakeholder recoveries in this chapter 11 case, and therefore intends to solicit acceptances of the Plan. In connection with this solicitation, the Debtor will provide its creditors with a copy of the Disclosure Statement, as approved by the Court.

8. The Plan classifies holders of Claims and Interests into certain Classes of Claims and Interests for all purposes, including with respect to voting on the Plan, pursuant to section 1126 of the Bankruptcy Code. The following chart represents the Classes of Claims and Interests under the Plan:

Class	Claim / Interest	Status	Voting Rights
1	DIP Facility Claim/ Prepetition Term Loan Secured Claim	Impaired	Entitled to Vote
2	Priority Tax Claims	Unimpaired	Not Entitled to Vote (Presumed to Accept)
3	Priority Non-Tax Claims	Unimpaired	Not Entitled to Vote (Presumed to Accept)
4	General Unsecured Claims	Impaired	Entitled to Vote
5	Equity and Other Interests	Impaired	Not Entitled to Vote (Deemed to Reject)

9. Based on the foregoing, and as described in greater detail in the Disclosure Statement, holders of Claims in Classes 1 and 4 may be impaired under the Plan, depending on the outcome of the final stages of the Debtor's sale process. Accordingly, the Debtor is proposing to solicit votes to accept or reject the Plan from holders of Claims in such Classes (collectively, the "Voting Classes").[4] The Debtor is not proposing to solicit votes from holders of Claims and Interests in Classes 2, 3 or 5 (collectively, the "Non-Voting Classes").

The Plan and Disclosure Statement

10. The Plan and Disclosure Statement are the result of extensive, arms' length, good faith negotiations between the Plan Proponents. The Plan and Disclosure Statement create the framework for the payment of administrative, priority and general unsecured claims and establish a Plan Trust that will liquidate estate causes of action, reconcile claims and make distributions to holders of allowed claims.

[4] If the Debtor amends the Plan prior to the hearing to consider approval of the Disclosure Statement such that any Voting Class is no longer Impaired, the Debtor does not intend to solicit votes from holders of Claims in such Class, and instead intends to include such Class as a Non-Voting Class.

11. Section 2 of the Disclosure Statement provides a detailed description of, among other things, the Debtor's organizational structure, prepetition capital structure, historical business operations, and summaries of certain material events that have occurred during the case.

12. The Plan and Disclosure Statement are being jointly proposed by the Plan Proponents because it provides the most efficient means to maximize value of the Debtor's remaining assets, distribute proceeds thereof to holders of allowed claims, and otherwise wind-down and conclude the case. This methodology also maintains the productive momentum of the case and saves meaningful estate resources by responsibly streamlining a chapter 11 plan process. The Plan is a liquidating plan within the purview of Local Rule 3017-2. In general, the Plan provides for, among other things, the establishment of a Plan Trust for the purpose of administering the Debtor's remaining assets and making distributions to holders of allowed claims.

13. The Plan Proponents submit that Local Rule 3017-2 applies here because (a) the Debtor's remaining assets are proposed to be liquidated under the Plan and Disclosure Statement, (b) the Plan and Disclosure Statement comply with section 1129(a)(9) of the Bankruptcy Code, (c) the Plan and Disclosure Statement do not seek nonconsensual releases/injunctions with respect to claims creditors may hold against non-debtor parties, and (d) the Debtor's combined assets to be distributed under the Plan are estimated, in good faith, to be worth less than $25 million (excluding Causes of Action). See Local Rule 3017-2(a).

Highlighted Provisions Under Local Rule 3017-2

14. Local Rule 3017-2(c)(ii) requires the Plan Proponents to highlight certain provisions included in the Plan and/or the Order as follows:

(a) Local Rule 3017-2(c)(ii)(A) requires the disclosure of provisions that seek consensual releases/injunctions with respect to claims creditors may hold against non-debtor parties. Section 9.4 of the Plan provides for consensual releases with respect to claims creditors may hold against non-debtor parties.

(b) Local Rule 3017-2(c)(ii)(B) requires the disclosure of provisions that seek to release any claims the debtors may have against non-debtor parties who are insiders of a debtor. The Plan does not provide for the release of any claims the Debtor may have against non-debtor parties who are insiders of the Debtor.

(c) Local Rule 3017-2(c)(ii)(C) requires the disclosure of any provision that seeks an exemption under section 1146 of the Bankruptcy Code. The Plan does not provide for any exemptions.

Basis for Relief

I. The Court Should Approve the Disclosure Statement on an Interim Basis for Solicitation Purposes.

A. The Standard of Approval for a Disclosure Statement.

15. Pursuant to section 1125 of the Bankruptcy Code, the proponent of a proposed chapter 11 plan must provide "adequate information" regarding that plan to holders of impaired claims and interests entitled to vote on the plan. 11 U.S.C. § 1125. Specifically, section 1125(a)(1) of the Bankruptcy Code states, in relevant part, as follows:

> "[A]dequate information" means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan.

11 U.S.C. § 1125(a)(1).

16. The primary purpose of a disclosure statement is to provide all material information that creditors and interest holders affected by a proposed plan need to make an informed decision regarding whether or not to vote for the plan. *See, e.g.*, *Century Glove, Inc. v. First Am. Bank of N.Y.*, 860 F.2d 94, 100 (3d Cir. 1988) ("[Section] 1125 seeks to guarantee a minimum amount of information to the creditor asked for its vote."); *In re Phoenix Petroleum, Co.*, 278 B.R. 385, 392 (Bankr. E.D. Pa. 2001) ("[T]he general purpose of the disclosure statement is to provide 'adequate information' to enable 'impaired' classes of creditors and interest holders to make an informed judgment about the proposed plan and determine whether to vote in favor of or against that plan."). Congress intended that such informed judgments would be needed to both negotiate the terms of, and vote on, a plan of reorganization. *Century Glove, Inc.*, 860 F.2d at 100.

17. "Adequate information" is a flexible standard, based on the facts and circumstances of each case. 11 U.S.C. § 1125(a)(1); *see also Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988) ("From the legislative history of § 1125 we discern that adequate information will be determined by the facts and circumstances of each case."); *First Am. Bank of N.Y. v. Century Glove, Inc.*, 81 B.R. 274, 279 (D. Del. 1988) (noting that adequacy of disclosure for a particular debtor will be determined based on how much information is available from outside sources); S. Rep. No. 95-989, at 121 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 5907 ("The information required will necessarily be governed by the circumstances of the case.").

18. Courts in the Third Circuit and elsewhere acknowledge that determining what constitutes "adequate information" for the purpose of satisfying section 1125 of the Bankruptcy Code resides within the broad discretion of the court. *See, e.g.*, *In re River Village Assoc.*,

181 B.R. 795, 804 (E.D. Pa. 1995) ("[T]he Bankruptcy Court is thus given substantial discretion in considering the adequacy of a disclosure statement."); *In re Phoenix Petroleum Co.*, 278 B.R. 385, 393 (Bankr. E.D. Pa. 2001) (same); *Tex. Extrusion Corp. v. Lockheed Corp. (In re Tex. Extrusion Corp.)*, 844 F.2d 1142, 1157 (5th Cir. 1988) ("The determination of what is adequate information is subjective and made on a case by case basis. This determination is largely within the discretion of the bankruptcy court."); *In re PC Liquidation Corp.*, 383 B.R. 856, 865 (E.D.N.Y. 2008) ("The standard for disclosure is, thus, flexible and what constitutes 'adequate disclosure' in any particular situation is determined on a case-by-case basis, with the determination being largely within the discretion of the bankruptcy court.") (internal citations omitted); *In re Lisanti Foods, Inc.*, 329 B.R. 491, 507 (Bankr. D. N.J. 2005) ("The information required will necessarily be governed by the circumstances of the case.").

19. In making a determination as to whether a disclosure statement contains adequate information as required by section 1125 of the Bankruptcy Code, courts typically look for disclosures related to topics such as:

a. the events that led to the filing of a bankruptcy petition;

b. the relationship of the debtor with its affiliates;

c. a description of the available assets and their value;

d. the company's anticipated future;

e. the source of information stated in the disclosure statement;

f. the debtor's condition while in chapter 11;

g. claims asserted against the debtor;

h. the estimated return to creditors under a chapter 7 liquidation;

i. the future management of the debtor;

j. the chapter 11 plan or a summary thereof;

k. financial information, valuations, and projections relevant to a creditor's decision to accept or reject the chapter 11 plan;

l. information relevant to the risks posed to creditors under the plan;

m. the actual or projected realizable value from recovery of preferential or otherwise avoidable transfers;

n. litigation likely to arise in a nonbankruptcy context; and

o. tax attributes of the debtor.

See In re U.S. Brass Corp., 194 B.R. 420, 424–25 (Bankr. E.D. Tex. 1996); *see also In re Scioto Valley Mortg. Co.*, 88 B.R. 168, 170–71 (Bankr. S.D. Ohio 1988) (listing the factors courts have considered in determining the adequacy of information provided in a disclosure statement); *In re Metrocraft Pub. Serv., Inc.*, 39 B.R. 567, 568 (Bankr. N.D. Ga. 1984) (same). Disclosure regarding all topics is not necessary in every case. *See In re U.S. Brass Corp.*, 194 B.R. at 424; *see also In re Phoenix Petroleum Co.*, 278 B.R. 385, 393 (Bankr. E.D. Pa. 2001) ("[C]ertain categories of information which may be necessary in one case may be omitted in another; no one list of categories will apply in every case.").

B. The Disclosure Statement Contains Adequate Information in Accordance with Section 1125 of the Bankruptcy Code.

20. The Disclosure Statement provides "adequate information" to allow holders of Claims in the Voting Classes to make informed decisions about whether to vote to accept or reject the Plan. Specifically, the Disclosure Statement contains a number of categories of information that courts consider "adequate information," including:

a. ***The Debtor's Corporate History, Structure, and Business Overview.*** An overview of the Debtor's corporate history, business operations, organizational structure, and capital structure, which are described in detail in Section 2 of the Disclosure Statement;

b. ***Events Leading to the Chapter 11 Filing.*** An overview of the events leading to the commencement of the Debtor's chapter 11 case, which are described in detail in Section 2.2.3 of the Disclosure Statement;

c. ***Financial Information***. The Disclosure Statement contains certain projected financial information concerning outstanding claims and the result of the Debtor's sale of assets;

d. ***Risk Factors.*** Certain risks associated with the Debtor's business, as well as certain risks associated with forward-looking statements and an overall disclaimer as to the information provided by and set forth in the Disclosure Statement, which are described in Section 6.2 of the Disclosure Statement;

e. ***Solicitation and Voting Procedures.*** A description of the procedures for soliciting votes to accept or reject the Plan and voting on the Plan including a copy of the order once entered, which are described in Section 1.4 of the Disclosure Statement;

f. ***Confirmation of the Plan.*** Confirmation procedures and statutory requirements for Confirmation and Consummation of the Plan, which are described in Section 1.3 of the Disclosure Statement;

g. ***Certain United States Federal Income Tax Consequences of the Plan.*** A description of certain U.S. federal income tax law consequences of the Plan, which are described in Section 3.13 of the Disclosure Statement; and

h. ***Recommendation.*** A recommendation by the Plan Proponents that holders of Claims in the Voting Classes should vote to accept the Plan, stated in Section 6.3 of the Disclosure Statement.

21. Based on the foregoing, the Plan Proponents submit that the Disclosure Statement complies with all aspects of section 1125 of the Bankruptcy Code and addresses the information set forth above in a manner that provides adequate information to holders of Claims entitled to vote to accept or reject the Plan. Accordingly, the Plan Proponents submit that the Disclosure Statement contains "adequate information" and therefore should be approved. However, at the hearing on this Motion, the Plan Proponents seek only interim approval of the Disclosure Statement for solicitation purposes. At the Combined Hearing, the Plan Proponents will demonstrate on a final basis that the information set forth therein contains adequate information within the meaning of section 1125 of the Bankruptcy Code.

Limited Notice

22. Bankruptcy Rule 3017(a) requires "notice to the debtor, creditors, equity security holders and other parties in interest to consider the disclosure statement and any objections or modifications thereto." Fed. R. Bankr. P. 3017(a). The Plan Proponents submit that it is in the best interests of its estate to limit the notice required under Bankruptcy Rule 3017(a). On the date hereof, the Debtor will serve this Motion (and, once entered, the Interim Approval and Procedures Order) and a copy of the Disclosure Statement and Plan on the parties set forth in paragraph [45] of this Motion. Further, limited notice is consistent with Local Rule 3017-2(c)(i), which provides that a motion for interim approval of a disclosure statement provide notice to the U.S. Trustee, the Committee and all parties that request notices under Bankruptcy Rule 2002.

23. Local Rule 3017-2 also provides that (a) the Combined Hearing may not be less than 45 days following the date of the entry of the Interim Approval and Procedures Order, (b) the deadline to object to the Plan and Disclosure Statement may not be less than 38 days from the date of the entry of the Interim Approval and Procedures Order, and (c) any plan supplement must be filed sooner than seven days prior to the earlier of (i) the deadline for the submission of ballots and (ii) the deadline to object to confirmation of the Plan and Disclosure Statement. Del. Bankr. L.R. 3017-2(e)-(g). To the extent necessary, the Debtor submits that it is in the best interests of its estate to shorten the timeline set by Local Rule 3017-2 because, as detailed below, the Debtor wishes to maximize the limited funds available for distribution to stakeholders. Accordingly, the Debtor respectfully requests that the Bankruptcy Court enter the Interim Approval and Procedures Order approving, among other things, the Disclosure Statement and Plan on an interim basis and for solicitation purposes only.

24. Moreover, the Plan Proponents filed the Motion and are seeking approval of the procedures and timeline requested herein because, among other reasons, the Debtor has limited assets remaining in its estate and wishes to maximize the funds available for distribution to stakeholders. Thus, the Plan Proponents believe that limiting notice is in the best interests of the estate and the Debtor's stakeholders because doing so will reduce administrative expenses. Additionally, the Plan Proponents submit that no creditor or party in interest will be prejudiced if the Bankruptcy Court limits notice of the Motion because all creditors and parties in interest will receive notice of the Combined Hearing and, in connection with that hearing, will have the right to object to the adequacy of the information contained in the Disclosure Statement and confirmation of the Plan.

II. The Court Should Approve the Confirmation Hearing Notice, Objection Deadline, and Hearing Date.

25. Bankruptcy Rule 3017(c) provides that, on or before the approval of a disclosure statement, a court "may fix the date for the hearing on confirmation." Section 105 of the Bankruptcy Code expressly authorizes the Bankruptcy Court to "issue an order . . . that . . . provides that the hearing on approval of the disclosure statement may be combined with the hearing on confirmation of the plan" where the Bankruptcy Court deems a combined hearing to be "appropriate to ensure that the case is handled expeditiously and economically." See 11 U.S.C. § 105(d)(2)(B)(vi); *see also In re Gulf Coast Oil Corp.*, 404 B.R. 407, 425 (Bankr. S.D.Tex. 2009) ("Section 1125(f) authorizes combined plans and disclosure statements in small business cases and § 105(d) authorizes the court to combine them in other cases."); *In re Luminent Mortgage Capital Inc.*, Case No. 08-21389 (Bankr. D. Md. May 15, 2009). Local Rule 3017-2(a) sets forth the conditions under which a combined hearing is ordinarily permissible, all of which are met here (as described above).

26. Pursuant to this authority, courts in this jurisdiction have held combined hearings for approval of disclosure statements and confirmation of plans in chapter 11 cases that were neither small business cases nor prepackaged cases.

27. Accordingly, the Plan Proponents respectfully request that a combined hearing on final approval of the Disclosure Statement, including final approval of the adequacy of the disclosures contained therein, and confirmation of the Plan be set for **May 28, 2020 at 10:00 a.m. (prevailing Eastern Time).** The Plan Proponents submit that a combined hearing will streamline and expedite the confirmation process, which will inure directly to benefit all stakeholders by hastening the implementation of the Disclosure Statement and Plan and limiting the amount of time the Debtor remains in chapter 11. A combined hearing will spare the Debtor from additional administrative expenses associated with a two-stage process, promote judicial efficiency and economy and provide an increase in the funds available for distribution to holders of Allowed Claims.

28. In the interests of orderly procedure, the Plan Proponents further request that objections to final approval of the Disclosure Statement and confirmation of the Plan, if any, shall (a) be in writing, (b) comply with the Bankruptcy Rules and the Local Rules, and (c) be filed with the Bankruptcy Court and served upon the Notice Parties, in each case, so that they are received by no later than **May 21, 2020 at 4:00 p.m. (prevailing Eastern Time)**. The Plan Proponents and any party supporting final approval of the Disclosure Statement and confirmation of the Plan may, in their discretion, file a reply to any such objections and/or declaration in support of the Disclosure Statement and Plan no later than **May 25, 2020 at 4:00 p.m. (prevailing Eastern Time)**.

29. Bankruptcy Rule 2002(b) requires that the Plan Proponents provide notice to all Creditors and parties in interest at least 28 days prior to the deadline for filing objections to final approval of the Disclosure Statement and confirmation of the Plan and the Combined Hearing. Bankruptcy Rule 2002(d), in turn, requires that equity security holders be given notice of these matters in the manner and form directed by the Bankruptcy Court.

30. All holders of Claims will be served with a copy of the Confirmation Hearing Notice, attached to the Interim Approval and Procedures Order as Exhibit 2. In addition, the Voting Classes will receive a Solicitation Package (including an appropriate Ballot), and the Non-Voting Classes will receive a Notice of Non-Voting Status. Publication Notice will be made in the *Los Angeles Times* (or another national newspaper of like circulation). Further, the Plan Proponents propose that the Debtor will also serve the Confirmation Hearing Notice on (a) the U.S. Trustee, (b) all entities that are party to executory contracts and unexpired leases with the Debtor, (c) all entities that are party to litigation with the Debtor, (d) all current and former employees, directors and officers (to the extent that contact information for former employees, directors and officers is available in the Debtor's records), (e) all regulatory authorities that regulate the Debtor's businesses, (f) the Office of the Attorney General for the State of Delaware, (g) the office of the attorney general for each state in which the Debtor maintained or conducted business, (h) the taxing authorities for the jurisdictions in which the Debtor maintained or conducted business, and (i) all parties who filed a request for service of notices under Bankruptcy Rule 2002. The Debtor will use its best efforts to serve or caused to be served a copy of the Confirmation Hearing Notice upon such parties no later than five Business Days after the entry of the Interim Approval and Procedures Order and, as stated above, to publish the

Publication Notice no later than 5 Business Days after the entry of the Interim Approval and Procedures Order.

III. The Court Should Approve the Materials and Timeline for Soliciting Votes on the Plan.

A. The Court Should Approve the Voting Record Date and Voting Deadline.

31. Bankruptcy Rule 3017(d) provides that, for the purposes of soliciting votes in connection with the confirmation of a plan, "creditors and equity security holders shall include holders of stocks, bonds, debentures, notes, and other securities of record on the date the order approving the disclosure statement is entered or another date fixed by the court, for cause, after notice and a hearing." Fed. R. Bankr. P. 3017(d). Bankruptcy Rule 3018(a) contains a similar provision regarding determination of the record date for voting purposes. Fed. R. Bankr. P. 3018(a). Additionally, Bankruptcy Rule 3017(c) provides that before approving the disclosure statement, the Court must fix a time within which the holders of claims and interests may accept or reject a plan and may fix a date for the hearing on confirmation of a plan. *See* Fed. R. Bankr. P. 3017(c).

32. The Plan Proponents request that the Court exercise its authority under Bankruptcy Rules 3017(d) and 3018(a) and Local Rule 3017-1(c) to establish **April 1, 2020** as the Voting Record Date and **May 21, 2020** as the Voting Deadline. Moreover, the Plan Proponents propose that, with respect to any transferred Claim, if the holder of such Claim is entitled to vote with respect to the Plan, the transferee shall be entitled to receive a Solicitation Package and cast a Ballot on account of such Claim only if: (a) all actions necessary to effectuate the transfer of the Claim pursuant to Bankruptcy Rule 3001(e) have been completed by the Voting Record Date or (b) the transferee files by the Voting Record Date (i) the documentation required by Bankruptcy Rule 3001(e) to evidence the transfer and (ii) a sworn

statement of the transferor supporting the validity of the transfer. In the event a Claim is transferred after the Voting Record Date, the transferee of such Claim shall be bound by any vote on the Plan made by the holder of such Claim as of the Voting Record Date.

33. The Plan Proponents request that, after the Debtor distributes Solicitation Packages to holders of Claims entitled to vote on the Plan by the Solicitation Deadline, the Court require that all holders of Claims entitled to vote on the Plan complete, execute, and return their Ballots so that they are **actually received** by the Solicitation Agent, on or before the Voting Deadline. Nonetheless, the Plan Proponents request authority to extend the Voting Deadline in their sole discretion and without further order of the court.

34. The foregoing timing and materials will afford holders of Claims entitled to vote on the Plan approximately 38 days within which to review and analyze such materials and subsequently make an informed decision as to whether to vote to accept or reject the Plan before the Voting Deadline consistent with the requirements of the applicable Bankruptcy Rules and Local Rules. *See* Fed. R. Bankr. P. 3017(d); Del. Bankr. L.R. 2017-2. Accordingly, the Plan Proponents request that the Court approve the Voting Record Date and Voting Deadline.

B. The Court Should Approve the Forms of the Ballots.

35. In accordance with Bankruptcy Rule 3018(c), the Plan Proponents have prepared and customized the Ballots. Although based on Official Form No. 314, the Ballots have been modified to (a) address the particular circumstances of this chapter 11 case and (b) include certain additional information that is relevant and appropriate for Claims in certain of the Voting Classes. The proposed Ballots for each Voting Class are annexed as Exhibits 3A and 3B to the Interim Approval and Procedures Order, respectively. The Plan Proponents respectfully submit that the forms of the Ballots comply with Bankruptcy Rule 3018(c) and, therefore, should be approved.

C. The Court Should Approve the Form and Distribution of Solicitation Packages to Parties Entitled to Vote on the Plan.

36. Bankruptcy Rule 3017(d) specifies the materials to be distributed to holders of allowed claims and/or equity interests upon approval of a disclosure statement, including the court-approved plan and disclosure statement and notice of the time within which acceptances and rejections of the plan may be filed. Fed. R. Bankr. P. 3017(d).

37. In accordance with this requirement, the Plan Proponents propose to send the Solicitation Packages to provide holders of Claims in the Voting Classes with the information they need to be able to make informed decisions with respect to how to vote on the Plan. Specifically, on or before the Solicitation Deadline, the Debtor will cause the Solicitation Packages to be distributed through their Solicitation Agent to those holders of Claims in the Voting Classes. Each Solicitation Package will include the following materials:

a. a copy of the Solicitation and Voting Procedures;

b. a Ballot, together with detailed voting instructions and a pre-addressed, postage pre-paid return envelope;

c. the Cover Letter;

d. the Disclosure Statement (and exhibits thereto, including the Plan);

e. the Interim Approval and Procedures Order (without exhibits, except the Solicitation and Voting Procedures);

f. the Confirmation Hearing Notice; and

g. such other materials as the Court may direct.

38. The Plan Proponents request authority to distribute the Plan, the Disclosure Statement, and the Interim Approval and Procedures Order (without exhibits except the Solicitation and Voting Procedures) to holders of Claims entitled to vote on the Plan via electronic mail. Only the Ballots, the Cover Letter, and the Confirmation Hearing Notice will be provided in paper format. Given the volume of the Plan, the Disclosure Statement, and the

proposed Interim Approval and Procedures Order, distribution in this manner will translate into significant monetary savings for the Debtor's estate. Bankruptcy courts in this district have permitted debtors to transmit solicitation documents in electronic format in other chapter 11 cases in the interest of saving printing and mailing costs. *See, e.g.*, *In re ATD Corporation*, No. 18-12221 (KJC) (Bankr. D. Del. Nov. 14, 2018) (authorizing the debtors to transmit solicitation documents in electronic format); *In re VER Techs. Holdco LLC,* No. 18-10834 (KG) (Bankr. D. Del. June 4, 2018) (same); *In re Charming Charlie Holdings Inc.*, No. 17-12906 (CSS) (Bankr. D. Del. Feb 13, 2018), (same); *In re Lily Robotics, Inc.*, No. 17-10426 (KJC)(Bankr. D. Del. Aug. 1, 2017); *In re Orexigen Therapeutics, Inc.*, 18-10518 (JTD) (Bankr. D. Del. March 27, 2019).

39. Additionally, the Plan Proponents will provide Solicitation Packages (excluding the Ballots) to the U.S. Trustee and all parties on the 2002 List via electronic mail as of the Voting Record Date. Any party that receives the material in electronic format but would prefer paper format may contact the Solicitation Agent and request paper copies of the corresponding materials previously received in electronic format (to be provided at the Debtor's expense). The Plan Proponents will not mail Solicitation Packages or other solicitation materials to holders of Claims that have already been paid in full during this chapter 11 case or that are authorized to be paid in full in the ordinary course of business pursuant to an order previously entered by this Court.

40. The Plan Proponents respectfully request that the Solicitation Agent be authorized (to the extent not authorized by another order of the Court) to assist the Debtor in: (a) distributing the Solicitation Package; (b) receiving, tabulating, and reporting on Ballots cast to accept or reject the Plan by holders of Claims against the Debtor; (c) responding to inquiries

from holders of Claims and Interests and other parties in interest relating to the Disclosure Statement, the Plan, the Ballots, the Solicitation Packages, and all other related documents and matters related thereto, including the procedures and requirements for voting to accept or reject the Plan and for objecting to the Plan; (d) soliciting votes on the Plan; and (e) if necessary, contacting creditors regarding the Plan.

41. In addition to accepting hard copy Ballots via first class mail, overnight courier, and hand delivery, the Plan Proponents request authorization to accept Ballots via electronic, online transmissions, solely through a customized online balloting portal on the Solicitation Agent's case website. Parties entitled to vote may cast an electronic Ballot and electronically sign and submit a Ballot instantly by utilizing the online balloting portal (which allows a holder to submit an electronic signature). Instructions for electronic, online transmission of Ballots are set forth on the forms of Ballots. The encrypted ballot data and audit trail created by such electronic submission shall become part of the record of any Ballot submitted in this manner and the creditor's electronic signature will be deemed to be immediately legally valid and effective. For the avoidance of doubt, Ballots submitted via the customized online balloting portal shall be deemed to contain an original signature.

42. All votes to accept or reject the Plan must be cast by using the appropriate Ballot. All Ballots must be properly executed, completed, and delivered according to their applicable voting instructions by: (a) first-class mail, in the return envelope provided with each Ballot; (b) overnight delivery; (c) personal delivery; or (d) electronic submission through the Solicitation Agent's portal at http://www.kccllc.net/achaogen, so that the Ballots are **actually received** by the Solicitation Agent no later than the Voting Deadline.

D. The Court Should Approve the Publication Notice.

43. Bankruptcy Rule 2002(l) permits the Court to "order notice by publication if it finds that notice by mail is impracticable or that it is desirable to supplement the notice." Fed. R. Bankr. P.2002(l). Therefore, in addition to the foregoing distribution of the Confirmation Hearing Notice, the Debtor will publish the Publication Notice one time within seven days of the Solicitation Deadline in the national edition the *Los Angeles Times*. The Plan Proponents believe that the Publication Notice will provide sufficient notice of, among other things, the entry of the Interim Approval and Procedures Order, the Voting Deadline, the Plan Objection Deadline, and the Confirmation Hearing to parties who did not otherwise receive notice thereof by mail. Additionally, service and publication of the Confirmation Hearing Notice comports with the requirements of Bankruptcy Rule 2002 and should be approved.

E. The Court Should Approve the Form of Notices to Non-Voting Classes.

44. As discussed above, the Non-Voting Classes are not entitled to vote on the Plan. As a result, those claimholders will receive a Non-Voting Status Notice in lieu of a Solicitation Package. Specifically, the Plan Proponents propose to provide the following to holders of Claims and Interests in Non-Voting Classes:

a. ***Other Interests and Claims—Deemed to Reject***. Holders of Equity Claims and Other Interests in Class 5 are receiving no distribution under the Plan and, therefore, are deemed to reject the Plan and will receive a notice, via electronic mail to each interest holders' agent, substantially in the form attached hereto as Exhibit 4, in lieu of a Solicitation Package.

b. ***Other Interests and Claims—Deemed to Accept***. Holders of Priority Tax Claims and Priority Non-Tax Claims in Classes 2 and 3 are unimpaired under the Plan and, therefore, are deemed to accept the Plan and will receive a notice, substantially in the form attached hereto as Exhibit 5, in lieu of a Solicitation Package.

45. Each of the Non-Voting Status Notices will include, among other things: (a) instructions as to how to view or obtain copies of the Disclosure Statement

(including the Plan and the other exhibits thereto), the Interim Approval and Procedures Order, and all other materials in the Solicitation Package (excluding Ballots) from the Solicitation Agent and/or the Court's website via PACER; (b) a disclosure regarding the settlement, release, exculpation, injunction and third-party release language set forth in Article IX of the Plan; (c) notice of the Plan Objection Deadline; and (d) notice of the Confirmation Hearing Date and information related thereto.

46. The Plan Proponents believe that the mailing of Non-Voting Status Notices in lieu of Solicitation Packages satisfies the requirements of Bankruptcy Rule 3017(d). Accordingly, unless the Court orders otherwise, the Debtor does not intend to distribute Solicitation Packages to holders of Claims and Interests in the Non-Voting Classes.

IV. The Court Should Approve the Solicitation and Voting Procedures.

A. The Standard for Approval of Solicitation and Voting Procedures.

47. Section 1126(c) of the Bankruptcy Code provides that:

> A class of claims has accepted a plan if such plan has been accepted by creditors, other than any entity designated under section (e) of this section, that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors, other than any entity designed under subsection (e) of this section, that have accepted or rejected the plan.

11 U.S.C. § 1126(c).

48. Additionally, Bankruptcy Rule 3018(c) provides, in part, that "[a]n acceptance or rejection [of a plan] shall be in writing, identify the plan or plans accepted or rejected, be signed by the creditor or equity security holder or an authorized agent and conform to the appropriate Official Form." Fed. R. Bankr. P. 3018(c). Consistent with these requirements, the Plan Proponents propose the following Solicitation and Voting Procedures.

B. Completion of Ballots.

49. To ease and clarify the process of tabulating all votes received, the Plan Proponents propose that a Ballot be counted in determining the acceptance or rejection of the Plan only if it satisfies certain criteria. Specifically, the Solicitation and Voting Procedures provide that the Debtor not count a Ballot if it is, among other things, illegible, submitted by a holder of a Claim that is not entitled to vote on the Plan, unsigned, or not clearly marked. Further, the Debtor, subject to a contrary order of the Court, may waive any defects or irregularities as to any particular Ballot at any time, either before or after the close of voting, and any such waivers shall be documented in the Voting Report.

C. General Ballot Tabulation and Voting Procedures.

50. The proposed Solicitation and Voting Procedures set forth specific criteria with respect to the general tabulation of Ballots, voting procedures applicable to holders of Claims, and tabulation of such votes. The Plan Proponents believe that the proposed Solicitation and Voting Procedures will facilitate the Plan confirmation process. Specifically, the procedures will clarify any obligations of holders of Claims entitled to vote to accept or reject the Plan and will create a straightforward process by which the Debtor can determine whether they have satisfied the numerosity requirements of section 1126(c) of the Bankruptcy Code. Accordingly, the Plan Proponents submit that the Solicitation and Voting Procedures are in the best interests of the estate, holders of Claims, and other parties in interest, and that good cause supports the relief requested herein.

Non-Substantive Modifications

51. The Plan Proponents requests authorization to make non-substantive changes to the Disclosure Statement, Plan, Confirmation Hearing Notice, Solicitation Packages, Non-Voting Status Notices, Ballots, Publication Notice, Cover Letter, Solicitation and Voting Procedures,

Voting and Tabulation Procedures, and related documents without further order of the Court, including changes to correct typographical and grammatical errors, if any, changes to reflect ongoing negotiations that do not materially reduce the recoveries to creditors, and to make conforming changes to the Disclosure Statement, the Plan, and any other materials in the Solicitation Packages before distribution.

Notice

52. The Plan Proponents will provide notice of this Motion to: (a) the Office of the U.S. Trustee for the District of Delaware; (b) the Debtor's prepetition lender and DIP lender; (c) the United States Attorney's Office for the District of Delaware; (d) the Internal Revenue Service; (e) the United States Securities and Exchange Commission; (f) the state attorneys general for all states in which the Debtor conducts business; and (g) any party that requests service pursuant to Bankruptcy Rule 2002. The Plan Proponents submit that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

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

WHEREFORE, the Plan Proponents respectfully request entry of an order, substantially in the form attached hereto as **Exhibit A**, (a) granting the relief requested herein and (b) granting such other relief as is just and proper.

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Dated: March 30, 2020
Wilmington, Delaware

/s/ Paige N. Topper

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Counsel for the Official Committee of Unsecured Creditors

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
Achaogen, Inc.,	Case No. 19-10844 (BLS)
Debtor.[1]	**Hearing Date**: To be determined **Objection Deadline:** April 13, 2020 at 4:00 p.m. (ET)

NOTICE OF PLAN PROPONENTS' MOTION FOR ENTRY OF AN ORDER (I) APPROVING THE DISCLOSURE STATEMENT ON AN INTERIM BASIS; (II) APPROVING THE SOLICITATION AND NOTICE PROCEDURES WITH RESPECT TO CONFIRMATION OF THE CHAPTER 11 PLAN OF LIQUIDATION; (III) APPROVING THE FORMS OF BALLOTS AND NOTICES IN CONNECTION THEREWITH; (IV) SCHEDULING CERTAIN DATES WITH RESPECT THERETO; AND (V) GRANTING RELATED RELIEF

PLEASE TAKE NOTICE that today, the above-captioned debtors and debtors-in-possession (the "Debtors") and the Official Committee of Unsecured Creditors (the "Committee," and together with the Debtors, the "Plan Proponents") filed the Motion for Entry of an Order (I) Approving the Disclosure Statement on an Interim Basis; (II) Approving the Solicitation and Notice Procedures with Respect to Confirmation of the Chapter 11 Plan of Liquidation; (III) Approving the Forms of Ballots and Notices in Connection Therewith; (IV) Scheduling Certain Dates with Respect Thereto; and (V) Granting Related Relief (the "Motion").

PLEASE TAKE FURTHER NOTICE that objections, if any, to the Motion must be (a) in writing and served on or before **April 13, 2020, at 4:00 p.m. (EDT)** (the "Objection Deadline"); (b) filed with the Clerk of the Bankruptcy Court, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801; and (c) served so as to be received on or before the Objection Deadline by the Plan Proponents.

PLEASE TAKE FURTHER NOTICE THAT only objections made in writing and received in accordance with the procedures above will be considered by the Bankruptcy Court at such hearing.

[1] The last four digits of the Debtor's federal tax identification number are 3693. The Debtor's mailing address for purposes of this Chapter 11 Case is 548 Market Street, #70987, San Francisco, CA 94104-5401.

PLEASE TAKE FURTHER NOTICE THAT PURSUANT TO THE MOTION TO SHORTEN, THE PLAN PROPONENTS HAVE REQUESTED THAT A HEARING ON THE MOTION BE HELD ON **ON A DATE TO BE DETERMINED** BEFORE THE HONORABLE BRENDAN L. SHANNON, AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 MARKET STREET, 6TH FLOOR, COURTROOM #1, WILMINGTON, DELAWARE 19801.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: March 30, 2020
Wilmington, Delaware

/s/ Paige N. Topper

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Counsel for the Debtor and Debtor in Possession

EXHIBIT A

Interim Approval and Procedures Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
Achaogen, Inc.,	)	Case No. 19-10844 (BLS)
Debtor.[1]	)	**Re: Docket No. _____**

ORDER (I) APPROVING THE ADEQUACY OF THE DISCLOSURE STATEMENT ON AN INTERIM BASIS; (II) APPROVING THE SOLICITATION AND NOTICE PROCEDURES WITH RESPECT TO CONFIRMATION OF THE CHAPTER 11 PLAN OF LIQUIDATION; (III) APPROVING THE FORMS OF BALLOTS AND NOTICES IN CONNECTION THEREWITH; (IV) SCHEDULING CERTAIN DATES WITH RESPECT THERETO; AND (V) GRANTING RELATED RELIEF

Upon the motion (the "Motion")[2] of the Plan Proponents for entry of an order pursuant to sections 105, 1125, 1126, and 1128 of the Bankruptcy Code, Bankruptcy Rules 2002, 3016, 3017, 3018, 3020, and Local Rules 3017-1, 3018-1, and 3020-1 approving: (i) the adequacy *Disclosure Statement for the Chapter 11 Plan of Liquidation Jointly Proposed by Achaogen, Inc. and the Official Committee of Unsecured Creditors of Achaogen, Inc.* (the "Disclosure Statement") on an interim basis; (ii) the solicitation and notice procedures with respect to confirmation of the Chapter 11 Plan of Liquidation; (iii) the forms of ballots and notices in connection therewith; (iv) scheduling certain dates with respect thereto; and (v) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of*

[1] The last four digits of the Debtor's federal tax identification number are 3693. The Debtor's mailing address for purposes of this Chapter 11 Case is 548 Market Street, #70987, San Francisco, CA 94104-5401.

[2] Capitalized terms used and not defined have the meanings given to them in the Motion.

Delaware, dated February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtor's estate, its creditors, and other parties in interest; and this Court having found that the Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"), if necessary; and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing, if applicable, establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted as provided herein.

I. Approval of the Disclosure Statement.

2. The Disclosure Statement is hereby approved on an interim basis as providing holders of Claims entitled to vote on the Plan with adequate information to make an informed decision as to whether to vote to accept or reject the Plan in accordance with section 1125(a)(1) of the Bankruptcy Code.

3. The Disclosure Statement (including all applicable exhibits thereto) provides holders of Claims, holders of Interests, and other parties in interest with sufficient notice of the injunction, exculpation, and release provisions contained in Article IX of the Plan, in satisfaction of the requirements of Bankruptcy Rule 3016(c).

II. Approval of the Solicitation and Voting Procedures.

4. The Plan Proponents are authorized to solicit, receive, and tabulate votes to accept the Plan in accordance with the Solicitation and Voting Procedures attached hereto as **Exhibit 1**, which are hereby approved in their entirety.

5. Any party wishing to file a motion under Bankruptcy Rule 3018(a) to temporarily allow a Claim or Interest for purposes of voting to accept or reject the Plan shall have until ten (10) days from the later of (a) the mailing of the Confirmation Hearing Notice and (b) the filing of a claim objection to file such a motion. The Plan Proponents and other parties in interest shall have until the date that is ten (10) days prior to the Voting Deadline as the deadline to file objections to any motion filed pursuant to Bankruptcy Rule 3018(a).

III. Approval of the Confirmation Hearing Notice.

6. The Confirmation Hearing Notice, the form of which is attached hereto as **Exhibit 2**, filed by the Debtor and served upon parties in interest in this chapter 11 case, constitutes adequate and sufficient notice of the hearing to consider final approval of the Disclosure Statement and confirmation of the Plan, the manner in which a copy of the Disclosure Statement and Plan could be obtained, and the time fixed for filing objections thereto, in satisfaction of the requirements of the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules. The Plan Proponents shall publish the Confirmation Hearing Notice (in a format modified for publication) one time on or before the date that is five (5) business days from the entry of the Order in the national edition of the *Los Angeles Times.*

IV. Approval of the Materials and Timeline for Soliciting Votes.

A. Approval of Key Dates and Deadlines with Respect to the Plan and Disclosure Statement.

7. The following dates are hereby established (subject to modification as necessary) with respect to the solicitation of votes to accept, and voting on, the Plan:

a. **April 1, 2020** as the date for determining (i) which holders of Claims in the Voting Classes are entitled to vote to accept or reject the Plan and receive Solicitation Packages in connection therewith and (ii) whether Claims have been properly assigned or transferred to an assignee pursuant to Bankruptcy Rule 3001(e) such that the assignee can vote as the holder of the respective Claim (the "Voting Record Date");

b. the Debtor shall distribute Solicitation Packages to holders of Claims entitled to vote on the Plan by the date that is five (5) business days from the entry of this Interim Approval and Procedures Order (the "Solicitation Deadline"); and

c. all holders of Claims entitled to vote on the Plan must complete, execute, and return their Ballots so that they are **actually received** by the Solicitation Agent pursuant to the Solicitation and Voting Procedures, on or before **May 21, 2020, at 4:00 p.m.** prevailing Eastern Time (the "Voting Deadline").

B. Approval of the Form of, and Distribution of, Solicitation Packages to Parties Entitled to Vote on the Plan.

8. In addition to the Disclosure Statement and exhibits thereto, the Solicitation Packages to be transmitted on or before the Solicitation Deadline to those holders of Claims in the Voting Classes entitled to vote on the Plan as of the Voting Record Date, shall include the following, the form of each of which is hereby approved:

a. the Confirmation Hearing Notice attached hereto as **Exhibit 2**

b. an appropriate form of Ballot attached hereto as **Exhibits 3A** and **3B**, respectively;[3] and

[3] The Debtor will use commercially reasonable efforts to ensure that any holder of a Claim who has filed duplicate Claims against the Debtor that are classified under the Plan in the same Voting Class, receives no more than one Solicitation Package (and, therefore, one Ballot) on account of such Claim and with respect to that Class.

c. the Cover Letter attached hereto as **Exhibit 6**.

9. The Solicitation Packages provide the holders of Claims entitled to vote on the Plan with adequate information to make informed decisions with respect to voting on the Plan in accordance with Bankruptcy Rules 2002(b) and 3017(d), the Bankruptcy Code, and the Local Rules.

10. The Debtor is authorized, but not directed or required, to distribute the Plan, the Disclosure Statement, and this Interim Approval and Procedures Order to holders of Claims entitled to vote on the Plan via electronic mail. On or before the Solicitation Deadline, the Debtor (through its Solicitation Agent) shall provide complete Solicitation Packages (other than Ballots) to the U.S. Trustee and to all parties on the 2002 List as of the Voting Record Date.

11. Any party that receives the materials in electronic format but would prefer to receive materials in paper format, may contact the Solicitation Agent and request paper copies of the corresponding materials previously received in electronic format (to be provided at the Debtor's expense).

12. The Solicitation Agent is authorized to assist the Debtor in: (a) distributing the Solicitation Package; (b) receiving, tabulating, and reporting on Ballots cast to accept or reject the Plan by holders of Claims against the Debtor; (c) responding to inquiries from holders of Claims and Interests and other parties in interest relating to the Disclosure Statement, the Plan, the Ballots, the Solicitation Packages, and all other related documents and matters related thereto, including the procedures and requirements for voting to accept or reject the Plan and for objecting to the Plan; (d) soliciting votes on the Plan; and (e) if necessary, contacting creditors regarding the Plan.

13. The Solicitation Agent is also authorized to accept Ballots via electronic online transmission solely through a customized online balloting portal on the Solicitation Agent's case

website. The encrypted ballot data and audit trail created by such electronic submission shall become part of the record of any Ballot submitted in this manner and the creditor's electronic signature will be deemed to be immediately legally valid and effective. Ballots submitted via the customized online balloting portal shall be deemed to contain an original signature.

14. All votes to accept or reject the Plan must be cast by using the appropriate Ballot. All Ballots must be properly executed, completed, and delivered according to their applicable voting instructions by: (a) first-class mail, in the return envelope provided with each Ballot; (b) overnight delivery; or (c) personal delivery, so that the Ballots are **actually received** by the Solicitation Agent no later than the Voting Deadline at the return address set forth in the applicable Ballot. Alternatively, Ballots may be submitted via an electronic Ballot through the Solicitation Agent's on-line electronic Ballot submission portal at http://www.kccllc.net/achaogen by no later than the Voting Deadline. The Debtor is authorized to extend the Voting Deadline in its sole discretion and without further order of the Court.

C. Approval of the Form of Notices to Non-Voting Classes.

15. Except to the extent the Plan Proponents determines otherwise, the Plan Proponents are not required to provide Solicitation Packages to holders of Claims or Interests in Non-Voting Classes, as such holders are not entitled to vote on the Plan. Instead, on or before the Solicitation Deadline, the Solicitation Agent shall send a Non-Voting Status Notice via electronic mail in lieu of Solicitation Packages, the form of each of which is hereby approved, to those parties, outlined below, who are not entitled to vote on the Plan:

a. ***Other Interests and Claims—Deemed to Reject.*** Holders of Equity Claims and Other Interests in Class 5 are receiving no distribution under the Plan and, therefore, are deemed to reject the Plan and will receive a notice, via electronic mail to each interest holders' agent, substantially in the form attached hereto as **Exhibit 4**, in lieu of a Solicitation Package.

b. ***Other Interests and Claims—Deemed to Accept.*** Holders of Priority Tax Claims and Priority Non-Tax Claims in Classes 2 and 3 are unimpaired under the Plan and, therefore, are deemed to accept the Plan and will receive a notice, substantially in the form attached hereto as **Exhibit 5**, in lieu of a Solicitation Package.

16. The Plan Proponents are not required to mail Solicitation Packages or other solicitation materials to holders of Claims that have already been paid in full during this chapter 11 case or that are authorized to be paid in full in the ordinary course of business pursuant to an order previously entered by this Court.

V. Approval of Procedures for Confirming the Plan.

A. Approval of the Timeline for Filing Objections to the Plan and Confirming the Plan.

17. The following dates are hereby established (subject to modification as needed) with respect to filing objections to the Plan and confirming the Plan:

a. **May 21, 2020, at 4:00 p.m.** prevailing Eastern Time shall be date by which objections to the Plan must be filed with the Court and served on the appropriate notice parties (as identified below) (the "Plan Objection Deadline");

b. **May 26, 2020** shall be the date by which the voting certification must be filed with the Court; and

c. the Court shall consider final approval of the Disclosure Statement and Confirmation of the Plan at the hearing to be held on **May 28, 2020, at 10:00 a.m.** prevailing Eastern Time (the "Combined Hearing Date").

B. Approval of the Procedures for Filing Objections to the Plan.

18. Objections to the Plan will not be considered by the Court unless such objections are timely filed and properly served in accordance with this Interim Approval and Procedures Order. Specifically, all objections to confirmation of the Plan or requests for modifications to the Plan, if any, **must**: (a) be in writing; (b) conform to the Bankruptcy Rules and the Local Rules; (c) state, with particularity, the legal and factual basis for the objection and, if practicable,

a proposed modification to the Plan (or related materials) that would resolve such objection; and (d) be filed with the Court (contemporaneously with a proof of service) and served upon the notice parties identified in the Confirmation Hearing Notice on or before **May 21, 2020, at 4:00 p.m.** prevailing Eastern Time.

VI. Miscellaneous.

19. The Plan Proponents reserve the right to modify the Plan in accordance with Article XIII thereof, including the right to withdraw the Plan at any time before the Confirmation Date.

20. Nothing in this Interim Approval and Procedures Order shall be construed as a waiver of the right of the Debtor or any other party in interest, as applicable, to object to a proof of claim after the Voting Record Date.

21. All time periods set forth in this Interim Approval and Procedures Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

22. The Plan Proponents are authorized to take all actions necessary to effectuate the relief granted in this Interim Approval and Procedures Order in accordance with the Motion.

23. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Interim Approval and Procedures Order.

Exhibit 1

Solicitation and Voting Procedures

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
Achaogen, Inc.,	)	Case No. 19-10844 (BLS)
Debtor.[1]	)	

SOLICITATION AND VOTING PROCEDURES

PLEASE TAKE NOTICE THAT on April [●], 2020, the United States Bankruptcy Court for the District of Delaware (the "Court") entered an order (the "Interim Approval and Procedures Order"), (a) authorizing Achaogen, Inc. (the "Debtor") and the Official Committee of Unsecured Creditors (the "Committee," and together with the Debtor, the "Plan Proponents"), to solicit acceptances for the *Chapter 11 Plan of Liquidation Jointly Proposed by Achaogen, Inc. and the Official Committee of Unsecured Creditors of Achaogen, Inc.* (as modified, amended, or supplemented from time to time, the "Plan");[2] (b) approving the *Disclosure Statement for the Chapter 11 Plan of Liquidation Jointly Proposed by Achaogen, Inc. and the Official Committee of Unsecured Creditors of Achaogen, Inc.* (the "Disclosure Statement") on an interim basis as containing "adequate information" pursuant to section 1125 of the Bankruptcy Code; (c) approving the solicitation materials and documents to be included in the solicitation packages (the "Solicitation Packages"); and (d) approving procedures for soliciting, receiving, and tabulating votes on the Plan and for filing objections to the Plan.

A. The Voting Record Date.

The Court has approved **April 1, 2020**, as the record date for purposes of determining which holders of Claims in Class 1 (DIP Facility Claim/Prepetition Term Loan Secured Claim), and Class 4 (General Unsecured Claims) are entitled to vote on the Plan (the "Voting Record Date").

B. The Voting Deadline.

The Court has approved **May 21, 2020, at 4:00 p.m.** prevailing Eastern Time as the voting deadline (the "Voting Deadline") for the Plan. The Debtor may extend the Voting Deadline, in its discretion, without further order of the Court. To be counted as votes to accept or reject the Plan, all ballots sent to registered holders of Claims ("Ballots") must be properly executed, completed, and returned in the pre-paid, pre-addressed return envelope included in the

[1] The last four digits of the Debtor's federal tax identification number are 3693. The Debtor's mailing address for purposes of this Chapter 11 Case is 548 Market Street, #70987, San Francisco, CA 94104-5401.

[2] Capitalized terms used and not defined have the meanings given to them in the Disclosure Statement and Plan, as applicable.

Solicitation Package or delivered by: (1) first class mail; (2) overnight courier; (3) personal delivery; or (4) electronic submission, so that they are **actually received**, in any case, no later than the Voting Deadline by Kurtzman Carson Consultants LLC (the "Solicitation Agent"). All Ballots should be sent to: (a) Achaogen, Inc. Balloting Center c/o Kurtzman Carson Consultants LLC, 222 N. Pacific Coast Highway, Suite 300, El Segundo, CA 90245; or (b) submitted electronically at http://www.kccllc.net/achaogen. Delivery of a Ballot to the Solicitation Agent by facsimile or electronic mail shall not be valid.

C. Form, Content, and Manner of Notices.

1. The Solicitation Package.

The following materials shall constitute the solicitation package (the "Solicitation Package"):

a. a copy of these Solicitation and Voting Procedures;

b. the *Notice of Hearing to Consider Confirmation of the Chapter 11 Plan Jointly Proposed by Achaogen, Inc. and the Official Committee of Unsecured Creditors of Achaogen, Inc.*, in substantially the form annexed as Exhibit 2 to the Interim Approval and Procedures Order (the "Confirmation Hearing Notice");

c. a cover letter, in substantially the form annexed as Exhibit 6 to the Interim Approval and Procedures Order describing the contents of the Solicitation Package and urging the holders of Claims in each of the Voting Classes to vote to accept the Plan;

d. the applicable form of Ballot, in substantially the forms annexed as Exhibit 3A and 3B to the Interim Approval and Procedures Order, as applicable including a pre-paid, pre-addressed return envelope;

e. the Disclosure Statement approved on an interim basis (and exhibits thereto, including the Plan);

f. the Interim Approval and Procedures Order (without exhibits); and

g. any additional documents that the Court has ordered to be made available.

2. Distribution of the Solicitation Package.

The Solicitation Package shall provide the Plan, the Disclosure Statement, and the Interim Approval and Procedures Order (without exhibits, except the Solicitation and Voting Procedures) via electronic mail including the contents of the Solicitation Package and Ballots. Any party that receives the materials in electronic format but would prefer paper format may contact the Solicitation Agent by: (a) calling (888) 249-2747; (b) visiting the Solicitation Agent's website at: http://www.kccllc.net/achaogen; and/or (c) writing to Achaogen, Inc. Balloting Center c/o Kurtzman Carson Consultants LLC, 222 N. Pacific Coast Highway, Suite

300, El Segundo, California 90245 or to AchaogenInfo@kccllc.com; and request paper copies of the corresponding materials previously received in electronic format (to be provided at the Debtor's expense).

The Debtor shall serve, or cause to be served, all of the materials in the Solicitation Package on the U.S. Trustee and all parties who have requested service of papers in this case pursuant to Bankruptcy Rule 2002 as of the Voting Record Date. In addition, the Debtor shall mail, or cause to be mailed, the Solicitation Package to all holders of Claims in the Voting Classes five (5) business days from the entry of the Interim Approval and Procedures Order, as described in section D below.

To avoid duplication and reduce expenses, the Debtor will use commercially reasonable efforts to ensure that any holder of a Claim who has filed duplicative Claims against the Debtor that are classified under the Plan in the same Voting Class receives no more than one Solicitation Package (and, therefore, one Ballot) on account of such Claim and with respect to that Class as against the Debtor.

3. Non-Voting Status Notices for Unimpaired Classes and Classes Deemed to Reject the Plan.

Certain Holders of Claims and Interests that are not classified in accordance with section 1123(a)(1) of the Bankruptcy Code or who are not entitled to vote because they are Unimpaired or otherwise presumed to accept the Plan under section 1126(f) of the Bankruptcy Code will receive only the *Notice of Non-Voting Status to Holders of Unimpaired Claims Conclusively Presumed to Accept the Plan*, substantially in the form annexed as Exhibit 5 to the Interim Approval and Procedures Order. Certain holders of Claims and Interests who are not entitled to vote because they are deemed to reject the Plan under section 1126(g) of the Bankruptcy Code will receive the *Notice of Non-Voting Status to Holders of Impaired Claims and Equity Interests Deemed to Reject the Plan*, substantially in the form annexed as Exhibit 4 to the Interim Approval and Procedures Order. Such notices will instruct these holders as to how they may obtain copies of the documents contained in the Solicitation Package (excluding Ballots).

D. Voting and Tabulation Procedures.

1. Holders of Claims Entitled to Vote.

Only the following holders of Claims in the Voting Classes shall be entitled to vote with regard to such Claims:

a. holders of Claims who, on or before the Voting Record Date, have timely filed a Proof of Claim (or an untimely Proof of Claim that has been Allowed as timely by the Court under applicable law on or before the Voting Record Date) that: (i) has not been expunged, disallowed, disqualified, withdrawn, or superseded prior to the Voting Record Date; and (ii) is not the subject of a pending objection filed with the Court by the Debtor at least seven days prior to the Voting Deadline, pending a Resolution Event as provided herein; *provided* that a holder of a Claim

that is the subject of a pending objection on a "reduce and allow" basis shall receive a Solicitation Package and be entitled to vote such Claim in the reduced amount contained in such objection absent a further order of the Court;

b. holders of Claims that are listed in the Schedules, *provided* that if the applicable Claims Bar Date has not expired prior to the Voting Record Date, a Claim listed in the Schedules as contingent, disputed, or unliquidated shall be allowed to vote only in the amount of $1.00; *provided further* that if the applicable Claims Bar Date has expired prior to the Voting Record Date, a Claim listed in the Schedules as contingent, disputed, or unliquidated, for which a Proof of Claim was neither filed by the applicable bar date nor deemed timely filed by an order of the Court prior to the Voting Deadline, shall be disallowed for voting purposes;

c. holders whose Claims arise: (i) pursuant to an agreement or settlement with the Debtor, as reflected in a document filed with the Court, (ii) in an order entered by the Court, or (iii) in a document executed by the Debtor pursuant to authority granted by the Court, in each case regardless of whether a Proof of Claim has been filed; and

d. with respect to any Entity described in subparagraphs (a) through (c) above, who, on or before the Voting Record Date, has transferred such Entity's Claim to another Entity, the assignee of such Claim; provided that such transfer or assignment has been fully effectuated pursuant to the procedures set forth in Bankruptcy Rule 3001(e) and such transfer is reflected on the Claims Register on the Voting Record Date.

2. Establishing Claim Amounts for Voting Purposes.

Class 1 Claims. The Claim amount of Class 1 Claims for voting purposes only will be established based on the amount of the applicable positions held by the Class 1 Claim holder, as of the Voting Record Date, as evidenced by the Debtor's applicable books and records.

Class 4 Claims. The Claim amount of Class 4 Claims for voting purposes only will be established based on the amount of the applicable positions held by such Class 4 Claim holders as of the Voting Record Date, as evidenced by (a) the Schedules and (b) the claims register maintained in this chapter 11 case.

If a Proof of Claim is amended, the last filed claim shall be subject to these rules and will supersede any earlier filed claim, and any earlier filed claim will be disallowed for voting purposes.

File/Scheduled Claims. The Claim amount established herein shall control for voting purposes only and shall not constitute the Allowed amount of any Claim. Moreover, any amounts filled in on Ballots by the Debtor through the Solicitation Agent, as applicable, are not binding for purposes of allowance and distribution. In tabulating votes, the following hierarchy shall be used to determine the amount of the Claim associated with each claimant's vote:

a. the Claim amount: (i) settled and/or agreed upon by the Debtor, as reflected in a document filed with the Court, (ii) set forth in an order of the Court, or (iii) set forth in a document executed by the Debtor pursuant to authority granted by the Court;

b. the Claim amount Allowed (temporarily or otherwise) pursuant to a Resolution Event under the procedures set forth in the Solicitation and Voting Procedures;

c. the Claim amount contained in a Proof of Claim that has been timely filed (or deemed timely filed by the Court under applicable law), except for any amounts asserted on account of any interest accrued after the Petition Date; *provided*, *however*, that Ballots cast by holders of Claims who timely file a Proof of Claim in respect of a contingent Claim or in a wholly-unliquidated or unknown amount that is not the subject of an objection will count for satisfying the numerosity requirement of section 1126(c) of the Bankruptcy Code and will count as Ballots for Claims in the amount of $1.00 solely for the purposes of satisfying the dollar amount provisions of section 1126(c) of the Bankruptcy Code, and, if a Proof of Claim is filed as partially liquidated and partially unliquidated, such Claim will be Allowed for voting purposes only in the liquidated amount; *provided, further,* that to the extent the Claim amount contained in the Proof of Claim is different from the Claim amount set forth in a document filed with the Court as referenced in subparagraph (a) above, the Claim amount in the document filed with the Court shall supersede the Claim amount set forth on the respective Proof of Claim;

d. the Claim amount listed in the Schedules, *provided* that such Claim is not scheduled as contingent, disputed, or unliquidated and/or has not been paid; *provided*, *further*, that if the applicable Claims Bar Date has not expired prior to the Voting Record Date, a Claim listed in the Schedules as contingent, disputed, or unliquidated shall be allowed to vote only in the amount of $1.00; and

e. in the absence of any of the foregoing, such Claim shall be disallowed for voting purposes unless otherwise ordered by the Court.

3. Voting and Ballot Tabulation Procedures.

The following voting procedures and standard assumptions shall be used in tabulating Ballots, subject to the Debtor's right to waive any of the below specified requirements for completion and submission of Ballots so long as such requirement is not otherwise required by the Bankruptcy Code, Bankruptcy Rules, or Local Rules:

a. except as otherwise provided in the Solicitation and Voting Procedures, unless the Ballot being furnished is timely submitted on or prior to the Voting Deadline (as the same may be extended by the Debtor or by order

of the Court), the Debtor shall reject such Ballot as invalid and, therefore, shall not count it in connection with Confirmation of the Plan;

b. the Solicitation Agent will date-stamp all Ballots when received. The Solicitation Agent shall retain the original Ballots and an electronic copy of the same for a period of one year after the Effective Date of the Plan, unless otherwise ordered by the Court. The Solicitation Agent shall tabulate Ballots;

c. the Debtor will file with the Court, not later than **May 21, 2020**, a certification of votes (the "Voting Report"). The Voting Report shall, among other things, certify to the Court in writing the amount and number of allowed claims or allowed interests of each class accepting or rejecting the Plan, and delineate every Ballot that does not conform to the voting instructions or that contains any form of irregularity including, but not limited to, those Ballots that are late or (in whole or in material part) illegible, unidentifiable, lacking signatures or lacking necessary information, received via facsimile, or damaged ("Irregular Ballots"). The Voting Report shall indicate the Debtor's intentions with regard to each such Irregular Ballot. The Voting Report shall be served upon the Committee and the U.S. Trustee;

d. the method of delivery of Ballots to be sent to the Solicitation Agent is at the election and risk of each holder, and except as otherwise provided, a Ballot will be deemed delivered only when the Solicitation Agent actually receives the executed Ballot;

e. an executed Ballot is required to be submitted by the entity submitting such Ballot. Subject to the other procedures and requirements herein, completed, executed Ballots submitted via facsimile or electronic mail will not be valid;

f. no Ballot should be sent to the Debtor, the Debtor's agents (other than the Solicitation Agent), the Debtor's financial or legal advisors, and if so sent will not be counted;

g. if multiple Ballots are received from the same holder with respect to the same Claim prior to the Voting Deadline, the last properly executed Ballot timely received will be deemed to reflect that voter's intent and will supersede and revoke any prior Ballot;

h. holders must vote all of their Claims within a particular Class either to accept or reject the Plan and may not split any votes. Accordingly, a Ballot that partially rejects and partially accepts the Plan will not be counted. Further, to the extent there are multiple Claims within the same Class, the Debtor may, in its discretion, aggregate the Claims of any particular holder within a Class for the purpose of counting votes;

i. a person signing a Ballot in its capacity as a trustee, executor, administrator, guardian, attorney in fact, officer of a corporation, or otherwise acting in a fiduciary or representative capacity of a holder of Claims must indicate such capacity when signing;

j. the Debtor, subject to a contrary order of the Court, may waive any defects or irregularities as to any particular Irregular Ballot at any time, either before or after the close of voting, and any such waivers will be documented in the Voting Report;

k. neither the Debtor, nor any other entity, will be under any duty to provide notification of defects or irregularities with respect to delivered Ballots other than as provided in the Voting Report, nor will any of them incur any liability for failure to provide such notification;

l. unless waived or as ordered by the Court, any defects or irregularities in connection with deliveries of Ballots must be cured prior to the Voting Deadline or such Ballots will not be counted;

m. in the event a designation of lack of good faith is requested by a party in interest under section 1126(e) of the Bankruptcy Code, the Court will determine whether any vote to accept and/or reject the Plan cast with respect to that Claim will be counted for purposes of determining whether the Plan has been accepted and/or rejected;

n. if a Claim has been estimated or otherwise Allowed for voting purposes only by order of the Court, such Claim shall be temporarily Allowed in the amount so estimated or Allowed by the Court for voting purposes only, and not for purposes of allowance or distribution;

o. if an objection to a Claim is filed, such Claim shall be treated in accordance with the procedures set forth herein;

p. the following Ballots shall not be counted in determining the acceptance or rejection of the Plan: (i) any Ballot that is illegible or contains insufficient information to permit the identification of the holder of such Claim; (ii) any Ballot cast by any entity that does not hold a Claim in a Voting Class; (iii) any Ballot cast for a Claim scheduled as unliquidated, contingent, or disputed for which no Proof of Claim was timely filed, *provided* that if the applicable Claims Bar Date has not expired prior to the Voting Record Date, a Claim listed in the Schedules as contingent, disputed, or unliquidated shall be allowed to vote only in the amount of $1.00; (iv) any unsigned Ballot or Ballot lacking an original signature (for the avoidance of doubt, a Ballot cast via electronic mail will be deemed to be an original signature); (v) any Ballot not marked to accept or reject the Plan or marked both to accept and reject the Plan; and (vi) any Ballot

submitted by any entity not entitled to vote pursuant to the procedures described herein;

q. after the Voting Deadline, no Ballot may be withdrawn or modified without the prior written consent of the Plan Proponents;

r. the Debtor is authorized to enter into stipulations with the holder of any Claim agreeing to the amount of a Claim for voting purposes; and

s. where any portion of a single Claim has been transferred to a transferee, all holders of any portion of such single Claim will be: (i) treated as a single creditor for purposes of the numerosity requirements in section 1126(c) of the Bankruptcy Code (and for the other voting and solicitation procedures set forth herein), and (ii) required to vote every portion of such Claim collectively to accept or reject the Plan. In the event that: (x) a Ballot, (y) a group of Ballots within a Voting Class received from a single creditor, or (z) a group of Ballots received from the various holders of multiple portions of a single Claim partially reject and partially accept the Plan, such Ballots shall not be counted.

E. Amendments to the Plan and Solicitation and Voting Procedures

The Plan Proponents reserve the right to make non-substantive or immaterial changes to the Disclosure Statement, Plan, Confirmation Hearing Notice, Solicitation Packages, Non-Voting Status Notices, Ballots, Publication Notice, Cover Letter, Solicitation and Voting Procedures, Voting and Tabulation Procedures, and related documents without further order of the Court, including changes to correct typographical and grammatical errors, if any, and to make conforming changes to the Disclosure Statement, the Plan, and any other materials in the Solicitation Packages before distribution.

Exhibit 2

Confirmation Hearing Notice

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
Achaogen, Inc.,	)	Case No. 19-10844 (BLS)
Debtor.[1]	)	

NOTICE OF HEARING TO CONSIDER FINAL APPROVAL OF THE DISCLOSURE STATEMENT AND CONFIRMATION OF THE CHAPTER 11 PLAN OF LIQUIDATION JOINTLY PROPOSED BY THE PLAN PROPONENTS AND RELATED VOTING AND OBJECTION DEADLINES

PLEASE TAKE NOTICE THAT on April [●], 2020, the United States Bankruptcy Court for the District of Delaware (the "Court") entered an order (the "Interim Approval and Procedures Order"), (a) authorizing Achaogen, Inc., the debtor and debtor in possession (the "Debtor") and the Official Committee of Unsecured Creditors (the "Committee," and together with the Debtor, the "Plan Proponents"), to solicit acceptances for the *Chapter 11 Plan of Liquidation Jointly Proposed by Achaogen, Inc. and the Official Committee of Unsecured Creditors of Achaogen, Inc.* (as modified, amended, or supplemented from time to time, the "Plan");[2] (b) approving the *Disclosure Statement for the Chapter 11 Plan of Liquidation Jointly Proposed by Achaogen, Inc. and the Official Committee of Unsecured Creditors of Achaogen, Inc.* (the "Disclosure Statement") on an interim basis as containing "adequate information" pursuant to section 1125 of the Bankruptcy Code; (c) approving the solicitation materials and documents to be included in the solicitation packages; and (d) approving procedures for soliciting, receiving, and tabulating votes on the Plan and for filing objections to the Plan.

PLEASE TAKE FURTHER NOTICE THAT the hearing at which the Court will consider approval of the Disclosure Statement on a final basis and confirmation of the Plan (the "Confirmation Hearing") will commence on **May 28, 2020 at 10:00 a.m.** prevailing Eastern Time, before the Honorable Brendan L. Shannon, in the United States Bankruptcy Court for the District of Delaware, located at located at 824 Market Street, 6th Floor, Courtroom 1, Wilmington, Delaware 19801.

[1] The last four digits of the Debtor's federal tax identification number are 3693. The Debtor's mailing address for purposes of this Chapter 11 Case is 548 Market Street, #70987, San Francisco, CA 94104-5401.

[2] Capitalized terms used and not defined have the meanings given to them in the Disclosure Statement and Plan, as applicable.

Please be Advised: The Confirmation Hearing may be continued from time to time by the Court or the Debtor without further notice other than by such adjournment being announced in open court or by a Notice of Adjournment filed with the Court and served on all parties entitled to notice.

CRITICAL INFORMATION REGARDING VOTING ON THE PLAN

Voting Record Date. The voting record date is **April 1, 2020** (the "Voting Record Date"), which is the date for determining which holders of Claims in Classes 1 and 4 are entitled to vote on the Plan.

Voting Deadline. The deadline for voting on the Plan is **May 21, 2020, at 4:00 p.m.** prevailing Eastern Time (the "Voting Deadline"). If you received a Solicitation Package, including a Ballot and intend to vote on the Plan you **must**: (a) follow the instructions carefully; (b) complete **all** of the required information on the ballot; and (c) execute and return your completed Ballot according to and as set forth in detail in the voting instructions so that it is **actually received** by the Debtor's Solicitation Agent, Kurtzman Carson Consultants LLC (the "Solicitation Agent") on or before the Voting Deadline. **A failure to follow such instructions may disqualify your vote**.

CRITICAL INFORMATION REGARDING OBJECTING TO THE PLAN

PLEASE TAKE FURTHER NOTICE THAT the deadline for filing objections to the Plan is **May 21, 2020, at 4:00 p.m.** prevailing Eastern Time (the "Plan Objection Deadline"). Any objection to the Plan **must**: (a) be in writing; (b) conform to the Bankruptcy Rules, the Local Rules, and any orders of the Court; (c) state, with particularity, the basis and nature of any objection to the Plan and, if practicable, a proposed modification to the Plan that would resolve such objection; and (d) be filed with the Court (contemporaneously with a proof of service) and served upon the following parties so as to be **actually received** on or before **May 21, 2020, at 4:00 p.m.** prevailing Eastern Time:

Debtor	Counsel to the Debtor
Achaogen, Inc. 548 Market Street, #70987 San Francisco, California 94104-5401	Hogan Lovells US LLP 1999 Avenue of the Stars, Suite 1400 Los Angeles, CA 90067 Attn: Erin N. Brady -and- Morris, Nichols, Arsht & Tunnell LLP 1201 North Market Street, Suite 1600 Wilmington, Delaware 19801 Attn.: Derek C. Abbott

Counsel to Prepetition Term Lender / DIP Agent	Counsel to the Committee
Morrison & Foerster LLP John Hancock Tower 200 Clarendon Street, Floor 20 Boston, Massachusetts 02116 Attn: Alexander G. Rheaume -and- Ashby & Geddes, P.A. 500 Delaware Avenue, 8th Floor P.O. Box 1150 Wilmington, Delaware 19899-1888 Attn.: Gregory A. Taylor	Akin Gump Strauss Hauer & Feld LLP One Bryant Park, Bank of America Tower New York, New York 10036-6745 Attn.: Arik Preis - and - Klehr Harrison Harvey Branzburg LLP 919 N. Market Street, Suite 1000 Wilmington, Delaware 19801 Attn: Sally E. Veghte - and - Klehr Harrison Harvey Branzburg LLP 1835 Market Street Philadelphia, Pennsylvania 19103 Attn: Morton R. Branzburg
United States Trustee	
Office of the U.S. Trustee – District of Delaware 844 King Street, Suite 2207, Lockbox 35 Wilmington, Delaware 19801 Attn.: Tim Fox, Esq.	

Article IX of the Plan contains Release, Exculpation, Injunction provisions and a Third-Party Release. Thus, you are advised to review and consider the Plan carefully because your rights might be affected thereunder.

ADDITIONAL INFORMATION

Obtaining Solicitation Materials. The materials in the Solicitation Package are intended to be self-explanatory. If you should have any questions or if you would like to obtain additional solicitation materials or paper copies of solicitation materials, please feel free to contact the Debtor's Solicitation Agent, by: (a) calling (888) 249-2747; (b) visiting the Solicitation Agent's website at: http://www.kccllc.net/achaogen; and/or (c) writing to Achaogen, Inc. Balloting Center c/o Kurtzman Carson Consultants LLC, 222 N. Pacific Coast Highway, Suite 300, El Segundo, California 90245 or to AchaogenInfo@kccllc.com. You may also obtain copies of any pleadings filed in this chapter 11 case for a fee via PACER at: http://www.deb.uscourts.gov. Please be advised that the Solicitation Agent is authorized to answer questions about, and provide additional copies of, solicitation materials, but may **not** advise you as to whether you should vote to accept or reject the Plan.

Binding Nature of the Plan:

If confirmed, the Plan will bind all Holders of Claims and Interests to the maximum extent permitted by applicable law, whether or not such Holder will receive or retain any property or interest in property under the Plan, has filed a Proof of Claim in this Chapter 11 Case, or failed to vote to accept or reject the Plan or voted to reject the Plan.

Dated: March 30, 2020
Wilmington, Delaware

/s/

Derek C. Abbott (DE Bar No. 3376)
Andrew R. Remming (DE Bar No. 5120)
Matthew O. Talmo (DE Bar No. 6333)
Paige N. Topper (DE Bar No. 6470)
MORRIS, NICHOLS, ARSHT & TUNNELL LLP
1201 Market Street, 16th Floor
Wilmington, Delaware 19801
Telephone: (302) 658-9200
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-and-

Richard L. Wynne (CA 120349) admitted *pro hac vice*
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Counsel for the Debtor and Debtor in Possession

-and-

KLEHR HARRISON HARVEY BRANZBURG LLP

/s/ Sally E. Veghte

Domenic E. Pacitti (DE Bar No. 3989)
Sally Veghte (DE Bar No. 3989)
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Wilmington, Delaware 19801-3062
Telephone: (302)552-5503

-and-

Morton Branzburg (admitted *pro hac vice*)
KLEHR HARRISON HARVEY BRANZBURG LLP
1835 Market Street, Suite 1400
Philadelphia, Pennsylvania 19103
Counsel for the Official Committee of Unsecured Creditors

Exhibit 3A

Class 1 Ballot

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
Achaogen, Inc.,	)	Case No. 19-10844 (BLS)
Debtor.[1]	)	

BALLOT FOR VOTING TO ACCEPT OR REJECT THE CHAPTER 11 PLAN OF LIQUIDATION JOINTLY PROPOSED BY ACHAOGEN, INC. AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF ACHAOGEN, INC.

CLASS 1 BALLOT FOR HOLDER OF DIP FACILITY/PREPETITION TERM LOAN SECURED CLAIM

PLEASE READ AND FOLLOW THE ENCLOSED INSTRUCTIONS FOR COMPLETING BALLOTS CAREFULLY *BEFORE* COMPLETING THIS BALLOT.

FOR YOUR VOTE TO BE COUNTED, THIS BALLOT MUST BE COMPLETED, EXECUTED, AND RETURNED SO AS TO BE *ACTUALLY RECEIVED* BY THE SOLICITATION AGENT BY MAY 21, 2020, AT 4:00 P.M., PREVAILING EASTERN TIME (THE "VOTING DEADLINE") IN ACCORDANCE WITH THE FOLLOWING:

The above-captioned debtor and debtor in possession (the "Debtor") and the Official Committee of Unsecured Creditors (the "Committee," and together with the Debtor, the "Plan Proponents"), are soliciting votes with respect to the *Chapter 11 Plan of Liquidation Jointly Proposed by Achaogen, Inc. and the Official Committee of Unsecured Creditors of Achaogen, Inc.* (as modified, amended, or supplemented from time to time, the "Plan") as set forth in the *Disclosure Statement Related to the Chapter 11 Plan of Liquidation Jointly Proposed by Achaogen, Inc. and the Official Committee of Unsecured Creditors of Achaogen, Inc* (the "Disclosure Statement"). The Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") has approved the Disclosure Statement as containing adequate information on an interim basis pursuant to section 1125 of the Bankruptcy Code, by entry of an order on April [●], 2020 (the "Interim Approval and Procedures Order"). Bankruptcy Court approval of the Disclosure Statement on an interim basis does not indicate approval of the Plan by the Bankruptcy Court. Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Plan.

You are receiving this Class 1 ballot (this "Class 1 Ballot") because you are a holder of a Prepetition Term Secured Claim in Class 1 as of April 1, 2020 (the "Voting Record Date"). Accordingly, you have a right to vote to accept or reject the Plan.

Your rights are described in the Disclosure Statement, which was included in the package (the "Solicitation Package") you are receiving with this Class 1 Ballot (as well as the Plan, Interim Approval and Procedures Order, and certain other materials). You received Solicitation Package materials in electronic format. If you desire paper copies, or if you need to obtain additional Solicitation Packages, you may obtain them from (a) Kurtzman Carson Consultants LLC (the "Solicitation Agent") at no charge by: (i) calling the Solicitation Agent at (888) 249-2747; (b) visiting the Solicitation Agent's website at: http://www.kccllc.net/achaogen; and/or (c) writing to Achaogen, Inc. Balloting Center c/o Kurtzman Carson Consultants LCC, 222 N. Pacific Coast Highway,

[1] The last four digits of the Debtor's federal tax identification number are 3693. The Debtor's mailing address for purposes of this Chapter 11 Case is 548 Market Street, #70987, San Francisco, CA 94104-5401.

Suite 300, El Segundo, California 90245 or to AchaogenInfo@kccllc.com or (b) for a fee via PACER at http://www.deb.uscourts.gov.

This Class 1 Ballot may not be used for any purpose other than for casting votes to accept or reject the Plan and making certain certifications with respect to the Plan. If you believe you have received this Class 1 Ballot in error, or if you believe that you have received the wrong ballot, please contact the Solicitation Agent ***immediately*** at the address or telephone number set forth above.

You should review the Disclosure Statement and the Plan before you vote. You may wish to seek legal advice concerning the Plan and the Plan's classification and treatment of your Claim. Your Claim has been placed in Class 1, Prepetition Term Secured Claim, under the Plan. If you hold Claims in more than one Class, you will receive a ballot for each Class in which you are entitled to vote.

Item 1. Amount of Claim.

The undersigned hereby certifies that as of the Voting Record Date, the undersigned was the holder of Prepetition Term Secured Claim in the following aggregate unpaid amount (insert amount in box below):

$_____

Item 2. Vote on Plan.

The holder of the Class 1 DIP Facility Claim / Prepetition Term Loan Secured Claim against the Debtor set forth in Item 1 votes to (please check one):

☐	**ACCEPT** (vote FOR) the Plan	☐	**REJECT** (vote AGAINST) the Plan

Your vote on the Plan will be applied to the Debtor in the same manner and in the same amount as indicated in Item 1 and Item 2 above.

Item 3. Important information regarding the Third Party Release.

If you vote to accept the Plan, you shall be deemed to have consented to the Plan's Third Party Release described in this Item 3 Below. If (i) you do not vote either to accept or reject the Plan, or (ii) if you vote to reject the plan, and you do not check the box in item 3 below, you shall be deemed to have consented to the Plan's Third Party Release provision described in this Item 3 below and be bound by it.

Regardless of whether you elect to opt out of the Plan's Third Party Release provisions, your recovery under the Plan remains unaffected.

The Holder of the Class 1 Prepetition Term Secured Claim set forth in Item 1 elects to (optional):

☐	The undersigned has (i) elected not to vote on the Plan or (ii) vote to reject the Plan in Item 2, and elects to **Opt Out** of the Below Third Party Release (note that opting out of the release will result in you not being included in the definition of "Released Party" under the Plan).

Article IX of the Plan contains the following provision:

EFFECTIVE AS OF THE EFFECTIVE DATE OF THE PLAN, PURSUANT TO SECTION 1123(b) OF THE BANKRUPTCY CODE, FOR GOOD AND VALUABLE CONSIDERATION, THE ADEQUACY OF

WHICH IS HEREBY CONFIRMED, ON AND AFTER THE EFFECTIVE DATE, EACH RELEASED PARTY IS DEEMED CONCLUSIVELY, ABSOLUTELY, EXPRESSLY, UNCONDITIONALLY, IRREVOCABLY, GENERALLY AND INDIVIDUALLY AND COLLECTIVELY RELEASED AND ACQUITTED BY THE DEBTOR AND THE DEBTOR'S ESTATE FROM ANY AND ALL ACTIONS, CLAIMS, INTERESTS, OBLIGATIONS, RIGHTS, SUITS, DAMAGES, CAUSES OF ACTION, REMEDIES AND LIABILITIES WHATSOEVER, INCLUDING ANY DERIVATIVE CLAIMS ASSERTED OR ASSERTABLE ON BEHALF OF THE DEBTOR OR THE DEBTOR'S ESTATE, AS APPLICABLE, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, MATURED OR UNMATURED, EXISTING OR HEREINAFTER ARISING, IN LAW, EQUITY, CONTRACT, TORT OR OTHERWISE, BY STATUTE OR OTHERWISE, THAT THE DEBTOR OR THE DEBTOR'S ESTATE OR ON BEHALF OF THE HOLDER OF ANY CLAIM OR INTEREST OR OTHER ENTITY, EVER HAD, NOW HAS OR HEREAFTER CAN, SHALL OR MAY HAVE, BASED ON OR RELATING TO, OR IN ANY MANNER ARISING FROM, IN WHOLE OR IN PART, THE DEBTOR, THE DEBTOR'S LIQUIDATION, THE CHAPTER 11 CASE, THE SUBJECT MATTER OF, OR THE TRANSACTIONS OR EVENTS GIVING RISE TO, ANY CLAIM OR INTEREST THAT IS TREATED IN THE PLAN, THE BUSINESS OR CONTRACTUAL ARRANGEMENTS BETWEEN THE DEBTOR AND ANY RELEASED PARTY, THE RESTRUCTURING OF CLAIMS AND INTERESTS BEFORE OR DURING THE CHAPTER 11 CASES, INCLUDING THE NEGOTIATION, FORMULATION, PREPARATION, OR PERFORMANCE OF THE DIP FACILITY, THE ASSET SALES, THE PLAN, THE DISCLOSURE STATEMENT OR RELATED AGREEMENTS, INSTRUMENTS OR OTHER DOCUMENTS OR ANY OTHER ACT OR OMISSION, TRANSACTION, AGREEMENT, EVENT OR OTHER OCCURRENCE TAKING PLACE ON OR BEFORE THE EFFECTIVE DATE OF THE PLAN RELATING TO THE DEBTOR OR THE DEBTOR'S ESTATE, EXCEPT FOR ANY CLAIMS AND CAUSES OF ACTION FOR ACTUAL FRAUD, WILLFUL MISCONDUCT OR GROSS NEGLIGENCE.

* * * *

UNDER THE PLAN, "RELEASING PARTY" MEANS, COLLECTIVELY, THE FOLLOWING ENTITIES, EACH IN THEIR CAPACITY AS SUCH (A) THE PREPETITION LENDER; (B) THE DIP LENDER; (C) THE CREDITORS' COMMITTEE; (D) PLAN TRUSTEE; (E) ALL HOLDERS OF CLAIMS THAT VOTE TO ACCEPT OR ARE DEEMED TO ACCEPT THE PLAN; (F) ALL HOLDERS OF CLAIMS THAT ABSTAIN FROM VOTING ON THE PLAN; (G) ALL HOLDERS OF CLAIMS THAT VOTE TO REJECT THE PLAN AND WHO DO NOT AFFIRMATIVELY OPT OUT OF THE RELEASES PROVIDED BY THE PLAN BY CHECKING THE BOX ON THE APPLICABLE BALLOT INDICATING THAT THEY OPT NOT TO GRANT THE RELEASES PROVIDED IN THE PLAN; (H) ALL RELEASED PARTIES; AND (I) WITH RESPECT TO THE DEBTOR, AND EACH OF THE FOREGOING ENTITIES IN CLAUSES (A) THROUGH (H), SUCH ENTITY AND THE RELATED PARTIES.

"RELEASED PARTIES" UNDER THE PLAN MEANS, COLLECTIVELY, THE FOLLOWING ENTITIES, EACH IN THEIR CAPACITY AS SUCH (A) THE DEBTOR; (B) THE DEBTOR'S ESTATE; (C) THE CREDITORS' COMMITTEE; (D) EACH MEMBER OF THE CREDITORS' COMMITTEE; (E) THE PREPETITION LENDER; (F) THE DIP LENDER; AND (G) THE RELATED PARTIES OF EACH OF THE FOREGOING. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, NONE OF CIPLA USA INC., VIPRAGEN BIOSCIENCES PRIVATE LTD., OR ANY OF THE FOREGOING ENTITIES' AFFILIATES OR SUBSIDIARIES SHALL BE RELEASED PARTIES, AND ALL CLAIMS THE DEBTOR AND ITS ESTATE MAY HAVE AGAINST THESE ENTITIES ARE EXPRESSLY PRESERVED.

AS A "RELEASING PARTY" UNDER THE PLAN, YOU ARE DEEMED TO PROVIDE THE RELEASES CONTAINED IN ARTICLE IX OF THE PLAN, AS SET FORTH ABOVE "RELEASED PARTIES" UNDER THE PLAN MEANS, COLLECTIVELY, THE FOLLOWING ENTITIES, EACH IN THEIR CAPACITY AS SUCH (A) THE DEBTOR; (B) THE DEBTOR'S ESTATE; (C) THE CREDITORS' COMMITTEE; (D) EACH MEMBER OF THE CREDITORS' COMMITTEE; (E) THE PREPETITION LENDER; (F) THE DIP LENDER; AND (G) THE RELATED PARTIES OF EACH OF THE FOREGOING. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, NONE OF CIPLA USA INC., VIPRAGEN BIOSCIENCES PRIVATE LTD., OR ANY OF THE FOREGOING ENTITIES' AFFILIATES OR SUBSIDIARIES SHALL BE RELEASED PARTIES,

AND ALL CLAIMS THE DEBTOR AND ITS ESTATE MAY HAVE AGAINST THESE ENTITIES ARE EXPRESSLY PRESERVED.
AS A "RELEASING PARTY" UNDER THE PLAN, YOU ARE DEEMED TO PROVIDE THE RELEASES CONTAINED IN ARTICLE IX OF THE PLAN, AS SET FORTH ABOVE.

Item 4. Certifications.

By signing this Class 1 Ballot, the undersigned certifies to the Bankruptcy Court and the Debtor:

(a) that, as of the Voting Record Date, either: (i) the Entity is the holder of the DIP Facility / Prepetition Term Loan Secured Claim voted; or (ii) the Entity is an authorized signatory for an Entity that is a holder of the Prepetition Term Secured Claim being voted;

(b) that the Entity (or in the case of an authorized signatory, the holder) has received a copy of the Disclosure Statement and the Solicitation Package and acknowledges that the solicitation is being made pursuant to the terms and conditions set forth therein;

(c) that the Entity has cast the same vote with respect to the DIP Facility / Prepetition Term Loan Secured Claim in a single Class; and

(d) that no other Class 1 Ballots with respect to the amount of the DIP Facility / Prepetition Term Loan Secured Claim identified in Item 1 have been cast or, if any other Class 1 Ballots have been cast with respect to such DIP Facility / Prepetition Term Loan Secured Claim, then any such earlier Class 1 Ballots are hereby revoked.

Name of Holder:	_____ (Print or Type)
Signature:	_____
Name of Signatory:	_____ (If other than holder)
Title:	_____
Address:	_____
	_____
	_____
Telephone Number:	_____
Email:	_____
Date Completed:	_____

PLEASE COMPLETE, SIGN, AND DATE THIS BALLOT AND RETURN IT (WITH AN ORIGINAL SIGNATURE) *PROMPTLY* VIA FIRST CLASS MAIL (OR THE ENCLOSED REPLY ENVELOPE PROVIDED), OVERNIGHT COURIER, OR HAND DELIVERY TO:

Achaogen, Inc. Balloting Center
c/o Kurtzman Carson Consultants LCC
222 N. Pacific Coast Highway, Suite 300
El Segundo, California 90245

OR

COMPLETE, SIGN, AND DATE THIS BALLOT AND RETURN IT *PROMPTLY* VIA ELECTRONIC SUBMISSION.

HOW TO COMPLETE YOUR BALLOT ONLINE.

1. Please visit http://www.kccllc.net/achaogen.

2. Click on the "Submit eBallot" section of KCC's website.

3. Follow the directions to submit your Ballot and Opt-Out Form. If you choose to submit your Ballot and Opt-Out Form via the Solicitation Agent's eBallot system, you should not return a hard copy of your Ballot and Opt-Out Form.

BALLOTS CAST BY FACSIMILE AND/OR ELECTRONIC MAIL TRANSMISSION WILL NOT BE COUNTED.

IF THE SOLICITATION AGENT DOES NOT ***ACTUALLY RECEIVE*** THIS CLASS 1 BALLOT **ON OR BEFORE MAY 21, 2020**, **AT 4:00 P.M.,** PREVAILING EASTERN TIME, (AND IF THE VOTING DEADLINE IS NOT EXTENDED), YOUR VOTE TRANSMITTED BY THIS CLASS 1 BALLOT MAY BE COUNTED TOWARD CONFIRMATION OF THE PLAN ONLY AT THE DISCRETION OF THE DEBTOR.

Class 1 — DIP Facility / Prepetition Term Loan Secured Claim

INSTRUCTIONS FOR COMPLETING THIS CLASS 1 BALLOT

1. The Plan Proponents are soliciting the votes of holders of Claims with respect to the Plan attached as Exhibit A to the Disclosure Statement. Capitalized terms used in the Class 1 Ballot or in these instructions (the "Ballot Instructions") but not otherwise defined therein or herein shall have the meaning set forth in the Disclosure Statement, a copy of which also accompanies the Class 1 Ballot. **PLEASE READ THE PLAN AND DISCLOSURE STATEMENT CAREFULLY BEFORE COMPLETING THIS BALLOT.**

2. The Plan can be confirmed by the Court and thereby made binding upon you if it is accepted by the holders of at least two-thirds in amount and more than one-half in number of Claims or Interests in at least one class of creditors that votes on the Plan and if the Plan otherwise satisfies the requirements for confirmation provided by section 1129(a) of the Bankruptcy Code. Please review the Disclosure Statement for more information.

3. To ensure that your Class 1 Ballot is counted, you must: (a) complete your Class 1 Ballot in accordance with these instructions; (b) clearly indicate your decision either to accept or reject the Plan in the boxes provided in Item 2 of the Class 1 Ballot; and (c) clearly sign and submit your Class 1 Ballot as instructed herein.

4. Your Class 1 Ballot ***must*** be returned to the Solicitation Agent so as to be ***actually received*** by the Solicitation Agent on or before the Voting Deadline. **The Voting Deadline is May 21, 2020 at 4:00 p.m.** prevailing Eastern Time. For any ballot cast via electronic mail, the received date and time in the Solicitation Agent's inbox will be used as a timestamp for receipt.

5. If a Class 1 Ballot is received after the Voting Deadline and if the Voting Deadline is not extended, it may be counted only in the sole and absolute discretion of the Debtor. Additionally, **the following Class 1 Ballots will *not* be counted**:

   (a) any Class 1 Ballot that partially rejects and partially accepts the Plan;
   (b) Class 1 Ballots sent to the Debtor, the Debtor's agents (other than the Solicitation Agent), or the Debtor's financial or legal advisors;
   (c) Class 1 Ballots sent by facsimile;
   (d) any Class 1 Ballot that is illegible or contains insufficient information to permit the identification of the holder of the Claim;
   (e) any Class 1 Ballot cast by an Entity that does not hold a Claim in Class 1;
   (f) any Class 1 Ballot submitted by a holder not entitled to vote pursuant to the Plan;
   (g) any unsigned Class 1 Ballot;
   (h) any non-original Class 1 Ballot; and/or
   (i) any Class 1 Ballot not marked to accept or reject the Plan or any Class 1 Ballot marked both to accept and reject the Plan.

6. The method of delivery of Class 1 Ballots to the Solicitation Agent is at the election and risk of each holder of a Prepetition Term Secured Claim. Except as otherwise provided herein, such delivery will be deemed made only when the Solicitation Agent ***actually receives*** the originally executed Class 1 Ballot. In all cases, holders should allow sufficient time to assure timely delivery.

7. If multiple Class 1 Ballots are received from the same holder of a Prepetition Term Secured Claim with respect to the same Prepetition Term Secured Claim prior to the Voting Deadline, the latest, timely received, and properly completed Class 1 Ballot will supersede and revoke any earlier received Class 1 Ballots.

8. You must vote all of your Prepetition Term Secured Claims within Class 1 either to accept or reject the Plan and may **not** split your vote. Further, if a holder has multiple Prepetition Term Secured Claims within Class 1, the Debtor may, in its discretion, aggregate the Claims of any particular holder with multiple Prepetition Term Secured Claims within Class 1 for the purpose of counting votes.

9. This Class 1 Ballot does ***not*** constitute, and shall not be deemed to be, (a) a Proof of Claim or (b) an assertion or admission of a Claim.

10. **Please be sure to sign and date your Class 1 Ballot**. If you are signing a Class 1 Ballot in your capacity as a trustee, executor, administrator, guardian, attorney in fact, officer of a corporation, or otherwise acting in a fiduciary or representative capacity, you must indicate such capacity when signing and, if required or requested by the Solicitation Agent, the Debtor, or the Bankruptcy Court, must submit proper evidence to the requesting party to so act on behalf of such holder. In addition, please provide your name and mailing address if it is different from that set forth on the attached mailing label or if no such mailing label is attached to the Class 1 Ballot.

11. If you hold Claims or Interests in more than one Class under the Plan you may receive more than one ballot coded for each different Class. Each ballot votes ***only*** your Claims or Interests indicated on that ballot, so please complete and return each ballot that you received.

PLEASE SUBMIT YOUR CLASS 1 BALLOT PROMPTLY

IF YOU HAVE ANY QUESTIONS REGARDING THIS CLASS 1 BALLOT, THESE VOTING INSTRUCTIONS OR THE PROCEDURES FOR VOTING, PLEASE CALL THE SOLICITATION AGENT AT: (888) 249-2747.

IF THE SOLICITATION AGENT DOES NOT *ACTUALLY RECEIVE* THIS CLASS 1 BALLOT ON OR BEFORE THE VOTING DEADLINE, WHICH IS ON MAY 21, 2020 AT 4:00 P.M., PREVAILING EASTERN TIME, (AND IF THE VOTING DEADLINE IS NOT EXTENDED), YOUR VOTE TRANSMITTED HEREBY MAY BE COUNTED ONLY AT THE DISCRETION OF THE DEBTOR.

Exhibit 3B

Class 4 Ballot

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
Achaogen, Inc.,	)	Case No. 19-10844 (BLS)
Debtor.[1]	)	

BALLOT FOR VOTING TO ACCEPT OR REJECT THE PLAN OF LIQUIDATION JOINTLY PROPOSED BY ACHAOGEN, INC. PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE

CLASS 4 BALLOT FOR HOLDERS OF GENERAL UNSECURED CLAIMS

PLEASE READ AND FOLLOW THE ENCLOSED INSTRUCTIONS FOR COMPLETING BALLOTS CAREFULLY *BEFORE* COMPLETING THIS BALLOT.

FOR YOUR VOTE TO BE COUNTED, THIS BALLOT MUST BE COMPLETED, EXECUTED, AND RETURNED SO AS TO BE *ACTUALLY RECEIVED* BY THE SOLICITATION AGENT BY MAY 21, 2020, AT 4:00 P.M., PREVAILING EASTERN TIME (THE "VOTING DEADLINE") IN ACCORDANCE WITH THE FOLLOWING:

The above-captioned debtor and debtor in possession (the "Debtor") and the Official Committee of Unsecured Creditors (the "Committee," and together with the Debtor, the "Plan Proponents"), are soliciting votes with respect to the *Chapter 11 Plan of Liquidation Jointly Proposed by Achaogen, Inc. and the Official Committee of Unsecured Creditors of Achaogen, Inc.* (as modified, amended, or supplemented from time to time, the "Plan") as set forth in the *Disclosure Statement Related to the Chapter 11 Plan of Liquidation Jointly Proposed by Achaogen, Inc. and the Official Committee of Unsecured Creditors of Achaogen, Inc* (the "Disclosure Statement"). The Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") has approved the Disclosure Statement as containing adequate information on an interim basis pursuant to section 1125 of the Bankruptcy Code, by entry of an order on April [●], 2020 (the "Interim Approval and Procedures Order"). Bankruptcy Court approval of the Disclosure Statement on an interim basis does not indicate approval of the Plan by the Bankruptcy Court. Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Plan.

You are receiving this Class 4 ballot (this "Class 4 Ballot") because you are a holder of a General Unsecured Claim in Class 4 as of April 1, 2020 (the "Voting Record Date"). Accordingly, you have a right to vote to accept or reject the Plan.

Your rights are described in the Disclosure Statement, which was included in the package (the "Solicitation Package") you are receiving with this Class 4 Ballot (as well as the Plan, Interim Approval and Procedures Order, and certain other materials). If you received Solicitation Package materials in electronic format and desire paper copies, or if you need to obtain additional Solicitation Packages, you may obtain them from (a) Kurtzman Carson Consultants LLC (the "Solicitation Agent") at no charge by: (i) calling the Solicitation Agent at (888) 249-2747; (b) visiting the Solicitation Agent's website at: http://www.kccllc.net/achaogen; and/or (c) writing to Achaogen, Inc. Balloting Center c/o Kurtzman Carson Consultants LLC, 222 N. Pacific Coast Highway,

[1] The last four digits of the Debtor's federal tax identification number are 3693. The Debtor's mailing address for purposes of this Chapter 11 Case is 548 Market Street, #70987, San Francisco, CA 94104-5401.

Suite 300, El Segundo, California 90245 or to AchaogenInfo@kccllc.com or (b) for a fee via PACER at http://www.deb.uscourts.gov.

This Class 4 Ballot may not be used for any purpose other than for casting votes to accept or reject the Plan and making certain certifications with respect to the Plan. If you believe you have received this Class 4 Ballot in error, or if you believe that you have received the wrong ballot, please contact the Solicitation Agent ***immediately*** at the address, telephone number, or email address set forth above.

You should review the Disclosure Statement and the Plan before you vote. You may wish to seek legal advice concerning the Plan and the Plan's classification and treatment of your Claim. Your Claim has been placed in Class 4, General Unsecured Claims, under the Plan. If you hold Claims in more than one Class, you will receive a ballot for each Class in which you are entitled to vote.

Item 1. Amount of Claim.

The undersigned hereby certifies that as of the Voting Record Date, the undersigned was the holder of General Unsecured Claims in the following aggregate unpaid amount (insert amount in box below):

$_____

Item 2. Vote on Plan.

The holder of the Class 4 General Unsecured Claim against the Debtor set forth in Item 1 votes to (please check one):

☐ **ACCEPT** (vote FOR) the Plan	☐ **REJECT** (vote AGAINST) the Plan

Your vote on the Plan will be applied to the Debtor in the same manner and in the same amount as indicated in Item 1 and Item 2 above.

Item 3. Important information regarding the Third Party Release.

If you vote to accept the Plan, you shall be deemed to have consented to the Plan's Third Party Release described in this Item 3 Below. If (i) you do not vote either to accept or reject the Plan, or (ii) if you vote to reject the plan, and you do not check the box in item 3 below, you shall be deemed to have consented to the Plan's Third Party Release provision described in this Item 3 below and be bound by it.

Regardless of whether you elect to opt out of the Plan's Third Party Release provisions, your recovery under the Plan remains unaffected.

The Holder of the Class 4 General Unsecured Claims set forth in Item 1 elects to (optional):

☐ The undersigned has (i) elected not to vote on the Plan or (ii) vote to reject the Plan in Item 2, and elects to **Opt Out** of the Below Third Party Release (note that opting out of the release will result in you not being included in the definition of "Released Party" under the Plan).

Article IX of the Plan contains the following provision:

EFFECTIVE AS OF THE EFFECTIVE DATE OF THE PLAN, PURSUANT TO SECTION 1123(b) OF THE BANKRUPTCY CODE, FOR GOOD AND VALUABLE CONSIDERATION, THE ADEQUACY OF WHICH IS HEREBY CONFIRMED, ON AND AFTER THE EFFECTIVE DATE, EACH RELEASED PARTY IS DEEMED CONCLUSIVELY, ABSOLUTELY, EXPRESSLY, UNCONDITIONALLY, IRREVOCABLY, GENERALLY AND INDIVIDUALLY AND COLLECTIVELY RELEASED AND ACQUITTED BY THE DEBTOR AND THE DEBTOR'S ESTATE FROM ANY AND ALL ACTIONS, CLAIMS, INTERESTS, OBLIGATIONS, RIGHTS, SUITS, DAMAGES, CAUSES OF ACTION, REMEDIES AND LIABILITIES WHATSOEVER, INCLUDING ANY DERIVATIVE CLAIMS ASSERTED OR ASSERTABLE ON BEHALF OF THE DEBTOR OR THE DEBTOR'S ESTATE, AS APPLICABLE, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, MATURED OR UNMATURED, EXISTING OR HEREINAFTER ARISING, IN LAW, EQUITY, CONTRACT, TORT OR OTHERWISE, BY STATUTE OR OTHERWISE, THAT THE DEBTOR OR THE DEBTOR'S ESTATE OR ON BEHALF OF THE HOLDER OF ANY CLAIM OR INTEREST OR OTHER ENTITY, EVER HAD, NOW HAS OR HEREAFTER CAN, SHALL OR MAY HAVE, BASED ON OR RELATING TO, OR IN ANY MANNER ARISING FROM, IN WHOLE OR IN PART, THE DEBTOR, THE DEBTOR'S LIQUIDATION, THE CHAPTER 11 CASE, THE SUBJECT MATTER OF, OR THE TRANSACTIONS OR EVENTS GIVING RISE TO, ANY CLAIM OR INTEREST THAT IS TREATED IN THE PLAN, THE BUSINESS OR CONTRACTUAL ARRANGEMENTS BETWEEN THE DEBTOR AND ANY RELEASED PARTY, THE RESTRUCTURING OF CLAIMS AND INTERESTS BEFORE OR DURING THE CHAPTER 11 CASES, INCLUDING THE NEGOTIATION, FORMULATION, PREPARATION, OR PERFORMANCE OF THE DIP FACILITY, THE ASSET SALES, THE PLAN, THE DISCLOSURE STATEMENT OR RELATED AGREEMENTS, INSTRUMENTS OR OTHER DOCUMENTS OR ANY OTHER ACT OR OMISSION, TRANSACTION, AGREEMENT, EVENT OR OTHER OCCURRENCE TAKING PLACE ON OR BEFORE THE EFFECTIVE DATE OF THE PLAN RELATING TO THE DEBTOR OR THE DEBTOR'S ESTATE, EXCEPT FOR ANY CLAIMS AND CAUSES OF ACTION FOR ACTUAL FRAUD, WILLFUL MISCONDUCT OR GROSS NEGLIGENCE.

* * * *

UNDER THE PLAN, "RELEASING PARTY" MEANS, COLLECTIVELY, THE FOLLOWING ENTITIES, EACH IN THEIR CAPACITY AS SUCH (A) THE PREPETITION LENDER; (B) THE DIP LENDER; (C) THE CREDITORS' COMMITTEE; (D) PLAN TRUSTEE; (E) ALL HOLDERS OF CLAIMS THAT VOTE TO ACCEPT OR ARE DEEMED TO ACCEPT THE PLAN; (F) ALL HOLDERS OF CLAIMS THAT ABSTAIN FROM VOTING ON THE PLAN; (G) ALL HOLDERS OF CLAIMS THAT VOTE TO REJECT THE PLAN AND WHO DO NOT AFFIRMATIVELY OPT OUT OF THE RELEASES PROVIDED BY THE PLAN BY CHECKING THE BOX ON THE APPLICABLE BALLOT INDICATING THAT THEY OPT NOT TO GRANT THE RELEASES PROVIDED IN THE PLAN; (H) ALL RELEASED PARTIES; AND (I) WITH RESPECT TO THE DEBTOR, AND EACH OF THE FOREGOING ENTITIES IN CLAUSES (A) THROUGH (H), SUCH ENTITY AND THE RELATED PARTIES.

"RELEASED PARTIES" UNDER THE PLAN MEANS, COLLECTIVELY, THE FOLLOWING ENTITIES, EACH IN THEIR CAPACITY AS SUCH (A) THE DEBTOR; (B) THE DEBTOR'S ESTATE; (C) THE CREDITORS' COMMITTEE; (D) EACH MEMBER OF THE CREDITORS' COMMITTEE; (E) THE PREPETITION LENDER; (F) THE DIP LENDER; AND (G) THE RELATED PARTIES OF EACH OF THE FOREGOING. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, NONE OF CIPLA USA INC., VIPRAGEN BIOSCIENCES PRIVATE LTD., OR ANY OF THE FOREGOING ENTITIES' AFFILIATES OR SUBSIDIARIES SHALL BE RELEASED PARTIES, AND ALL CLAIMS THE DEBTOR AND ITS ESTATE MAY HAVE AGAINST THESE ENTITIES ARE EXPRESSLY PRESERVED.

AS A "RELEASING PARTY" UNDER THE PLAN, YOU ARE DEEMED TO PROVIDE THE RELEASES CONTAINED IN ARTICLE IX OF THE PLAN, AS SET FORTH ABOVE.

Item 4. Certifications.

By signing this Class 4 Ballot, the undersigned certifies to the Bankruptcy Court and the Debtor:

(a) that, as of the Voting Record Date, either: (i) the Entity is the holder of the General Unsecured Claim being voted; or (ii) the Entity is an authorized signatory for an Entity that is a holder of the General Unsecured Claim being voted;

(b) that the Entity (or in the case of an authorized signatory, the holder) has received a copy of the Disclosure Statement and the Solicitation Package and acknowledges that the solicitation is being made pursuant to the terms and conditions set forth therein;

(c) that the Entity has cast the same vote with respect to all General Unsecured Claims in a single Class; and

(d) that no other Class 4 Ballots with respect to the amount of the General Unsecured Claims identified in Item 1 have been cast or, if any other Class 4 Ballots have been cast with respect to such General Unsecured Claims, then any such earlier Class 4 Ballots are hereby revoked.

Name of Holder: _____
(Print or Type)

Signature: _____

Name of Signatory: _____
(If other than holder)

Title: _____

Address: _____

_____

_____

Telephone Number: _____

Email: _____

Date Completed: _____

PLEASE COMPLETE, SIGN, AND DATE THIS BALLOT AND RETURN IT (WITH AN ORIGINAL SIGNATURE) *PROMPTLY* VIA FIRST CLASS MAIL (OR THE ENCLOSED REPLY ENVELOPE PROVIDED), OVERNIGHT COURIER, OR HAND DELIVERY TO:

Achaogen, Inc. Balloting Center
c/o Kurtzman Carson Consultants LLC
222 N. Pacific Coast Highway, Suite 300
El Segundo, California 90245

OR

COMPLETE, SIGN, AND DATE THIS BALLOT AND RETURN IT *PROMPTLY* VIA ELECTRONIC SUBMISSION.

HOW TO COMPLETE YOUR BALLOT ONLINE.

1. Please visit http://www.kccllc.net/achaogen.

2. Click on the "Submit eBallot" section of KCC's website.

3. Follow the directions to submit your Ballot and Opt-Out Form. If you choose to submit your Ballot and Opt-Out Form via the Solicitation Agent's eBallot system, you should not return a hard copy of your Ballot and Opt-Out Form.

BALLOTS CAST BY FACSIMILE AND/OR ELECTRONIC MAIL TRANSMISSION WILL NOT BE COUNTED.

IF THE SOLICITATION AGENT DOES NOT ***ACTUALLY RECEIVE*** THIS CLASS 4 BALLOT **ON OR BEFORE MAY 21, 2020**, **AT 4:00 P.M.,** PREVAILING EASTERN TIME, (AND IF THE VOTING DEADLINE IS NOT EXTENDED), YOUR VOTE TRANSMITTED BY THIS CLASS 4 BALLOT MAY BE COUNTED TOWARD CONFIRMATION OF THE PLAN ONLY AT THE DISCRETION OF THE DEBTOR.

Class 4 — General Unsecured Claims

INSTRUCTIONS FOR COMPLETING THIS CLASS 4 BALLOT

1. The Debtor is soliciting the votes of holders of Claims with respect to the Plan attached as Exhibit A to the Disclosure Statement. Capitalized terms used in the Class 4 Ballot or in these instructions (the "Ballot Instructions") but not otherwise defined therein or herein shall have the meaning set forth in the Disclosure Statement, a copy of which also accompanies the Class 4 Ballot. **PLEASE READ THE PLAN AND DISCLOSURE STATEMENT CAREFULLY BEFORE COMPLETING THIS BALLOT.**

2. The Plan can be confirmed by the Court and thereby made binding upon you if it is accepted by the holders of at least two-thirds in amount and more than one-half in number of Claims or Interests in at least one class of creditors that votes on the Plan and if the Plan otherwise satisfies the requirements for confirmation provided by section 1129(a) of the Bankruptcy Code. Please review the Disclosure Statement for more information.

3. To ensure that your Class 4 Ballot is counted, you must: (a) complete your Class 4 Ballot in accordance with these instructions; (b) clearly indicate your decision either to accept or reject the Plan in the boxes provided in Item 2 of the Class 4 Ballot; and (c) clearly sign and submit your Class 4 Ballot as instructed herein.

4. Your Class 4 Ballot ***must*** be returned to the Solicitation Agent so as to be ***actually received*** by the Solicitation Agent on or before the Voting Deadline. **The Voting Deadline is May 21, 2020, at 4:00 p.m.**, prevailing Eastern Time. For any ballot cast via electronic mail, the received date and time in the Solicitation Agent's inbox will be used as a timestamp for receipt.

5. If a Class 4 Ballot is received after the Voting Deadline and if the Voting Deadline is not extended, it may be counted only in the sole and absolute discretion of the Debtor. Additionally, **the following Class 4 Ballots will *not* be counted**:

   (a) any Class 4 Ballot that partially rejects and partially accepts the Plan;
   (b) Class 4 Ballots sent to the Debtor, the Debtor's agents (other than the Solicitation Agent), or the Debtor's financial or legal advisors;
   (c) Class 4 Ballots sent by facsimile;
   (d) any Class 4 Ballot that is illegible or contains insufficient information to permit the identification of the holder of the Claim;
   (e) any Class 4 Ballot cast by an Entity that does not hold a Claim in Class 4;
   (f) any Class 4 Ballot submitted by a holder not entitled to vote pursuant to the Plan;
   (g) any unsigned Class 4 Ballot;
   (h) any non-original Class 4 Ballot; and/or
   (i) any Class 4 Ballot not marked to accept or reject the Plan or any Class 4 Ballot marked both to accept and reject the Plan.

6. The method of delivery of Class 4 Ballots to the Solicitation Agent is at the election and risk of each holder of a General Unsecured Claim. Except as otherwise provided herein, such delivery will be deemed made only when the Solicitation Agent ***actually receives*** the originally executed Class 4 Ballot. In all cases, holders should allow sufficient time to assure timely delivery.

7. If multiple Class 4 Ballots are received from the same holder of a General Unsecured Claim with respect to the same General Unsecured Claim prior to the Voting Deadline, the latest, timely received, and properly completed Class 4 Ballot will supersede and revoke any earlier received Class 4 Ballots.

8. You must vote all of your General Unsecured Claims within Class 4 either to accept or reject the Plan and may **not** split your vote. Further, if a holder has multiple General Unsecured Claims within Class 4, the Debtor may, in its discretion, aggregate the Claims of any particular holder with multiple General Unsecured Claims within Class 4 for the purpose of counting votes.

9. This Class 4 Ballot does ***not*** constitute, and shall not be deemed to be, (a) a Proof of Claim or (b) an assertion or admission of a Claim.

10. **Please be sure to sign and date your Class 4 Ballot**. If you are signing a Class 4 Ballot in your capacity as a trustee, executor, administrator, guardian, attorney in fact, officer of a corporation, or otherwise acting in a fiduciary or representative capacity, you must indicate such capacity when signing and, if required or requested by the Solicitation Agent, the Debtor, or the Bankruptcy Court, must submit proper evidence to the requesting party to so act on behalf of such holder. In addition, please provide your name and mailing address if it is different from that set forth on the attached mailing label or if no such mailing label is attached to the Class 4 Ballot.

11. If you hold Claims or Interests in more than one Class under the Plan you may receive more than one ballot coded for each different Class. Each ballot votes ***only*** your Claims or Interests indicated on that ballot, so please complete and return each ballot that you received.

PLEASE SUBMIT YOUR CLASS 4 BALLOT PROMPTLY

IF YOU HAVE ANY QUESTIONS REGARDING THIS CLASS 4 BALLOT, THESE VOTING INSTRUCTIONS OR THE PROCEDURES FOR VOTING, PLEASE CALL THE SOLICITATION AGENT AT: (888) 249-2747.

IF THE SOLICITATION AGENT DOES NOT *ACTUALLY RECEIVE* THIS CLASS 4 BALLOT ON OR BEFORE THE VOTING DEADLINE, WHICH IS ON MAY 21, 2020, AT 4:00 P.M., PREVAILING EASTERN TIME, (AND IF THE VOTING DEADLINE IS NOT EXTENDED), YOUR VOTE TRANSMITTED HEREBY MAY BE COUNTED ONLY IN THE DISCRETION OF THE DEBTOR.

Exhibit 4

Impaired Non-Voting Status Notice

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
Achaogen, Inc.,	)	Case No. 19-10844 (BLS)
Debtor.[1]	)	

NOTICE OF NON-VOTING STATUS TO HOLDERS OF IMPAIRED EQUITY AND OTHER INTERESTS DEEMED TO REJECT THE PLAN

PLEASE TAKE NOTICE THAT on April [●], 2020, the United States Bankruptcy Court for the District of Delaware (the "Court") entered an order (the "Interim Approval and Procedures Order"), (a) authorizing Achaogen, Inc. as debtor and debtor in possession (the "Debtor") and the Official Committee of Unsecured Creditors (the "Committee," and together with the Debtor, the "Plan Proponents"), to solicit acceptances for the *Chapter 11 Plan of Liquidation Jointly Proposed by Achaogen, Inc. and the Official Committee of Unsecured Creditors of Achaogen, Inc.* (as modified, amended, or supplemented from time to time, the "Plan");[2] (b) approving the *Disclosure Statement for the Chapter 11 Plan of Liquidation Jointly Proposed by Achaogen, Inc. and the Official Committee of Unsecured Creditors of Achaogen, Inc.* (the "Disclosure Statement") on an interim basis as containing "adequate information" pursuant to section 1125 of the Bankruptcy Code; (c) approving the solicitation materials and documents to be included in the solicitation packages; and (d) approving procedures for soliciting, receiving, and tabulating votes on the Plan and for filing objections to the Plan.

PLEASE TAKE FURTHER NOTICE THAT because of the nature and treatment of your Claim or Interest under the Plan, **you are not entitled to vote on the Plan**. Specifically, under the terms of the Plan, as a holder of a Claim or Interest (as currently asserted against the Debtor) that is receiving no distribution under the Plan, you are deemed to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code and are not entitled to vote on the Plan.

PLEASE TAKE FURTHER NOTICE THAT the hearing at which the Court will consider approval of the Disclosure Statement on a final basis and confirmation of the Plan (the "Confirmation Hearing") will commence on **May 28, 2020 at 10:00 a.m.** prevailing Eastern Time, before the Honorable Brendan L. Shannon, in the United States Bankruptcy Court for the District of Delaware, located at 824 Market Street, 6th Floor, Courtroom No. 1, Wilmington, Delaware 19801.

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[1] The last four digits of the Debtor's federal tax identification number are 3693. The Debtor's mailing address for purposes of this Chapter 11 Case is 548 Market Street, #70987, San Francisco, CA 94104-5401.

[2] Capitalized terms used and not defined have the meanings given to them in the Disclosure Statement and Plan, as applicable.

PLEASE TAKE FURTHER NOTICE THAT the deadline for filing objections to the Plan is **May 21, 2020, at 4:00 p.m.** prevailing Eastern Time (the "Plan Objection Deadline"). Any objection to the Plan **must**: (a) be in writing; (b) conform to the Bankruptcy Rules, the Local Rules, and any orders of the Court; (c) state, with particularity, the basis and nature of any objection to the Plan and, if practicable, a proposed modification to the Plan that would resolve such objection; and (d) be filed with the Court (contemporaneously with a proof of service) and served upon the following parties so as to be **actually received** on or before **May 21, 2020, at 4:00 p.m.** prevailing Eastern Time:

Debtor	**Counsel to the Debtor**
Achaogen, Inc. 548 Market Street, #70987 San Francisco, California 94104-5401	Hogan Lovells US LLP 1999 Avenue of the Stars, Suite 1400 Los Angeles, CA 90067 Attn: Erin N. Brady -and- Morris, Nichols, Arsht & Tunnell LLP 1201 North Market Street, Suite 1600 Wilmington, Delaware 19801 Attn.: Derek C. Abbott
Counsel to Prepetition Term Lender / DIP Agent	**Counsel to the Committee**
Morrison & Foerster LLP John Hancock Tower 200 Clarendon Street, Floor 20 Boston, Massachusetts 02116 Attn: Alexander G. Rheaume -and- Ashby & Geddes, P.A. 500 Delaware Avenue, 8th Floor P.O. Box 1150 Wilmington, Delaware 19899-1888 Attn.: Gregory A. Taylor	Akin Gump Strauss Hauer & Feld LLP One Bryant Park, Bank of America Tower New York, New York 10036-6745 Attn.: Arik Preis - and - Klehr Harrison Harvey Branzburg LLP 919 N. Market Street, Suite 1000 Wilmington, Delaware 19801 Attn: Domenic E. Pacitti - and - Klehr Harrison Harvey Branzburg LLP 1835 Market Street Philadelphia, Pennsylvania 19103 Attn: Morton R. Branzburg

United States Trustee	
Office of the United States Trustee for the District of Delaware 844 King Street, Suite 2207, Lockbox 35 Wilmington, Delaware 19801 Attn.: Tim Fox, Esq.	

Plan Confirmation Objections that are not timely filed shall not be considered by the Bankruptcy Court and shall be overruled.

PLEASE TAKE FURTHER NOTICE THAT if you would like to obtain a copy of the Disclosure Statement, the Plan, or related documents, you should contact (the "Solicitation Agent") at no charge by: (i) accessing the Solicitation Agent's website at http://www.kccllc.net/achaogen; (ii) writing to Achaogen, Inc. Balloting Center c/o Kurtzman Carson Consultants LLC, 222 N. Pacific Coast Highway, Suite 300, El Segundo, California 90245 or at AchaogenInfo@kccllc.com; and/or (iii) calling the Solicitation Agent at (888) 249-2747. You may also obtain copies of any pleadings filed in this chapter 11 case for a fee via PACER at http://www.deb.uscourts.gov.

PLEASE TAKE FURTHER NOTICE THAT Article IX of the Plan contains Release, Exculpation, Injunction Provisions, and a Third-Party Release.

You are advised to review and consider the Plan, including the release, injunction, and exculpation provisions carefully, as your rights might be affected thereunder.

This Notice is being sent to you for informational purposes only. If you have questions with respect to your rights under the Plan or about anything stated herein or if you would like to obtain additional information, contact the Solicitation Agent.

Dated: March 30, 2020
Wilmington, Delaware

/s/

Derek C. Abbott (DE Bar No. 3376)
Andrew R. Remming (DE Bar No. 5120)
Matthew O. Talmo (DE Bar No. 6333)
Paige N. Topper (DE Bar No. 6470)
MORRIS, NICHOLS, ARSHT & TUNNELL LLP
1201 Market Street, 16th Floor
Wilmington, Delaware 19801
Telephone: (302) 658-9200
Facsimile: (302) 658-3989

-and-

Richard L. Wynne (CA 120349) admitted *pro hac vice*
Erin N. Brady (CA 215038) admitted *pro hac vice*
HOGAN LOVELLS US LLP
1999 Avenue of the Stars, Suite 1400
Los Angeles, California 90067
Telephone: (310) 785-4600
Facsimile: (310) 785-4601

-and-

Christopher R. Bryant (NY 3934973) admitted *pro hac vice*
HOGAN LOVELLS US LLP
390 Madison Avenue
New York, New York 10017
Telephone: (212) 918-3000
Facsimile: (212) 918-3100
Counsel for the Debtor and Debtor in Possession

-and-

KLEHR HARRISON HARVEY BRANZBURG LLP

/s/

Domenic E. Pacitti (DE Bar No. 3989)
Sally Veghte (DE Bar No. 3989)
919 Market Street, Suite 1000
Wilmington, Delaware 19801-3062
Telephone: (302)552-5503

-and-

Morton Branzburg (admitted *pro hac vice*)
KLEHR HARRISON HARVEY BRANZBURG LLP
1835 Market Street, Suite 1400
Philadelphia, Pennsylvania 19103
Counsel for the Official Committee of Unsecured Creditors

Exhibit 5

Notice of Non-Voting Status with Respect to Unimpaired Classes

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
Achaogen, Inc.,	)	Case No. 19-10844 (BLS)
Debtor.[1]	)	

NOTICE OF NON-VOTING STATUS WITH RESPECT TO UNIMPAIRED CLASSES

PLEASE TAKE NOTICE THAT on April [●], 2020, the United States Bankruptcy Court for the District of Delaware (the "Court") entered an order (the "Interim Approval and Procedures Order"), (a) authorizing Achaogen, Inc. as debtor and debtor in possession (the "Debtor") and the Official Committee of Unsecured Creditors (the "Committee," and together with the Debtor, the "Plan Proponents") to solicit acceptances for the *Chapter 11 Plan of Liquidation Jointly Proposed by Achaogen, Inc. and the Official Committee of Unsecured Creditors of Achaogen, Inc.* (as modified, amended, or supplemented from time to time, the "Plan");[2] (b) approving the *Disclosure Statement for the Chapter 11 Plan of Liquidation Jointly Proposed by Achaogen, Inc. and the Official Committee of Unsecured Creditors of Achaogen, Inc.* (the "Disclosure Statement") on an interim basis as containing "adequate information" pursuant to section 1125 of the Bankruptcy Code; (c) approving the solicitation materials and documents to be included in the solicitation packages; and (d) approving procedures for soliciting, receiving, and tabulating votes on the Plan and for filing objections to the Plan.

UNDER THE TERMS OF THE PLAN, YOUR CLAIM(S) AGAINST THE DEBTOR IS/ARE NOT IMPAIRED AND, THEREFORE, PURSUANT TO SECTION 1126(f) OF THE UNITED STATES BANKRUPTCY CODE, YOU (I) ARE DEEMED TO HAVE ACCEPTED THE PLAN, AND (II) ARE NOT ENTITLED TO VOTE ON THE PLAN.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Solicitation Procedures Order, a hearing (the "Confirmation Hearing") will be held before the Honorable Brendan L. Shannon, U.S. Bankruptcy Court for the District of Delaware, 824 N. Market St., 6th Fl., Courtroom No. 1, Wilmington, Delaware 19801, on **May 28, 2020 at 10:00 a.m. (Eastern Time)** or as soon thereafter as counsel can be heard, to consider the entry of an order approving the Disclosure Statement on a final basis and confirming the Plan within the meaning of section 1129 of the

[1] The last four digits of the Debtor's federal tax identification number are 3693. The Debtor's mailing address for purposes of this Chapter 11 Case is 548 Market Street, #70987, San Francisco, CA 94104-5401.

[2] Capitalized terms used and not defined have the meanings given to them in the Disclosure Statement and Plan, as applicable.

Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"). The Confirmation Hearing may be continued from time to time by way of announcement of such continuance in open court, without further notice to parties in interest.

PLEASE TAKE FURTHER NOTICE that, although you are deemed to have accepted the Plan for voting purposes, you may nonetheless file an objection to the Plan. Responses and objections, if any, to confirmation of the Plan (each, a "Plan Confirmation Objection") must (i) be made in writing; (ii) comply with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware; (iii) state the name and address of the objecting party and the nature and amount of any claim or interest asserted by such party against the Debtor, its estate or property; (iv) state with particularity the legal and factual bases and nature of any objection to the Plan; and (v) be filed with the Bankruptcy Court, and served on the following, so as to be received **on or before 4:00 p.m. (Eastern Time) on May 21, 2020** by the following:

Debtor	**Counsel to the Debtor**
Achaogen, Inc. 548 Market Street, #70987 San Francisco, California 94104-5401	Hogan Lovells US LLP 1999 Avenue of the Stars, Suite 1400 Los Angeles, CA 90067 Attn: Erin N. Brady -and- Morris, Nichols, Arsht & Tunnell LLP 1201 North Market Street, Suite 1600 Wilmington, Delaware 19801 Attn.: Derek C. Abbott
Counsel to Prepetition Term Lender / DIP Agent	**Counsel to the Committee**

Morrison & Foerster LLP John Hancock Tower 200 Clarendon Street, Floor 20 Boston, Massachusetts 02116 Attn: Alexander G. Rheaume -and- Ashby & Geddes, P.A. 500 Delaware Avenue, 8th Floor P.O. Box 1150 Wilmington, Delaware 19899-1888 Attn.: Gregory A. Taylor	Akin Gump Strauss Hauer & Feld LLP One Bryant Park, Bank of America Tower New York, New York 10036-6745 Attn.: Arik Preis - and - Klehr Harrison Harvey Branzburg LLP 919 N. Market Street, Suite 1000 Wilmington, Delaware 19801 Attn: Domenic E. Pacitti - and - Klehr Harrison Harvey Branzburg LLP 1835 Market Street Philadelphia, Pennsylvania 19103 Attn: Morton R. Branzburg
United States Trustee	
Office of the United States Trustee for the District of Delaware 844 King Street, Suite 2207, Lockbox 35 Wilmington, Delaware 19801 Attn.: Tim Fox, Esq.	

Plan Confirmation Objections that are not timely filed shall not be considered by the Bankruptcy Court and shall be overruled.

PLEASE TAKE FURTHER NOTICE THAT Article IX of the Plan contains Release, Exculpation, Injunction Provisions, and a Third Party Release. You are advised to review and consider the Plan, including the release, injunction, and exculpation provisions carefully, as your rights might be affected thereunder. This Notice is being sent to you for informational purposes only. If you have questions with respect to your rights under the Plan or about anything stated herein or if you would like to obtain additional information, contact the Solicitation Agent.

PLEASE TAKE FURTHER NOTICE THAT the Disclosure Statement, Interim Approval and Procedures Order, the Plan, and other documents and materials included in the Solicitation Package, except ballots, may be obtained at no charge from Kurtzman Carson Consultants LLC (the "Solicitation Agent") at no charge by: (i) accessing the Solicitation Agent's website at http://www.kccllc.net/achaogen; (ii) writing to Achaogen, Inc. Balloting Center c/o Kurtzman Carson Consultants LLC, 222 N. Pacific Coast Highway, Suite 300, El Segundo, California 90245 or AchaogenInfor@kccllc.com; and/or (iii) calling the Solicitation Agent at (888) 249-2747. You may also obtain copies of any pleadings filed in this chapter 11 case for a fee via PACER at http://www.deb.uscourts.gov.

Dated: March 30, 2020
Wilmington, Delaware

/s/

Derek C. Abbott (DE Bar No. 3376)
Andrew R. Remming (DE Bar No. 5120)
Matthew O. Talmo (DE Bar No. 6333)
Paige N. Topper (DE Bar No. 6470)
MORRIS, NICHOLS, ARSHT & TUNNELL LLP
1201 Market Street, 16th Floor
Wilmington, Delaware 19801
Telephone: (302) 658-9200
Facsimile: (302) 658-3989

-and-

Richard L. Wynne (CA 120349) admitted *pro hac vice*
Erin N. Brady (CA 215038) admitted *pro hac vice*
HOGAN LOVELLS US LLP
1999 Avenue of the Stars, Suite 1400
Los Angeles, California 90067
Telephone: (310) 785-4600
Facsimile: (310) 785-4601

-and-

Christopher R. Bryant (NY 3934973) admitted *pro hac vice*
HOGAN LOVELLS US LLP
390 Madison Avenue
New York, New York 10017
Telephone: (212) 918-3000
Facsimile: (212) 918-3100
Counsel for the Debtor and Debtor in Possession

-and-

KLEHR HARRISON HARVEY BRANZBURG LLP

/s/

Domenic E. Pacitti (DE Bar No. 3989)
Sally Veghte (DE Bar No. 3989)
919 Market Street, Suite 1000
Wilmington, Delaware 19801-3062
Telephone: (302)552-5503

-and-

Morton Branzburg (admitted *pro hac vice*)
KLEHR HARRISON HARVEY BRANZBURG LLP
1835 Market Street, Suite 1400
Philadelphia, Pennsylvania 19103
Counsel for the Official Committee of Unsecured Creditors

Exhibit 6

Cover Letter

[LETTERHEAD]

[DATE]

Via First Class Mail

RE: In re Achaogen, Inc.,
Chapter 11 Case No. 19-10844 (BLS)

TO ALL HOLDERS OF CLAIMS ENTITLED TO VOTE ON THE PLAN:

Achaogen, Inc. (the "Debtor")[1] filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "Court") on April 15, 2019.

You have received this letter and the enclosed materials because you are entitled to vote on the *Chapter 11 Plan of Liquidation Jointly Proposed by Achaogen, Inc. and the Official Committee of Unsecured Creditors of Achaogen, Inc.* (as modified, amended, or supplemented from time to time, the "Plan").[2] On April [●], 2020 the Court entered an order (the "Interim Approval and Procedures Order"), (a) authorizing the Debtor and the Official Committee of Unsecured Creditors (the "Committee," and together with the Debtor, the "Plan Proponents") to solicit acceptances for the Plan; (b) approving the *Disclosure Statement for the Chapter 11 Plan of Liquidation Jointly Proposed by Achaogen, Inc. and the Official Committee of Unsecured Creditors of Achaogen, Inc.* (the "Disclosure Statement") on an interim basis as containing "adequate information" pursuant to section 1125 of the Bankruptcy Code; (c) approving the solicitation materials and documents to be included in the solicitation packages (the "Solicitation Package"); and (d) approving procedures for soliciting, receiving, and tabulating votes on the Plan, and for filing objections to the Plan.

You are receiving this letter because you are entitled to vote on the Plan. Therefore, you should read this letter carefully and discuss it with your attorney. If you do not have an attorney, you may wish to consult one.

In addition to this cover letter, the enclosed materials comprise your Solicitation Package, and were approved by the Court for distribution to holders of Claims in connection with the solicitation of votes to accept the Plan. The Solicitation Package consists of the following:

a. a copy of the Solicitation and Voting Procedures;

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[1] The last four digits of the Debtor's federal tax identification number are 3693. The Debtor's mailing address for purposes of this Chapter 11 Case is 548 Market Street, #70987, San Francisco, CA 94104-5401.

[2] Capitalized terms used and not defined have the meanings given to them in the Disclosure Statement and Plan, as applicable.

b. a Ballot, together with detailed voting instructions and a pre-addressed, postage pre-paid return envelope;

c. this letter;

d. the Disclosure Statement (and exhibits thereto, including the Plan);

e. the Interim Approval and Procedures Order (without exhibits, except the Solicitation and Voting Procedures);

f. the Confirmation Hearing Notice; and

g. such other materials as the Court may direct.

The Plan Proponents have approved the filing of the Plan and the solicitation of votes to accept the Plan. The Plan Proponents believe that the acceptance of the Plan is in the best interests of the Debtor's estate, holders of Claims, and all other parties in interest. Moreover, the Plan Proponents believe that any alternative other than Confirmation of the Plan could result in extensive delays and increased administrative expenses, which, in turn, likely would result in smaller distributions (or no distributions) on account of Claims asserted in this chapter 11 case.

The Plan Proponents strongly urge you to properly and timely submit your Ballot casting a vote to accept the Plan in accordance with the instructions in your Ballot.

Voting Deadline is May 21, 2020, at 4:00 P.M. Prevailing Eastern Time.

The materials in the Solicitation Package are intended to be self-explanatory. If you should have any questions, however, please feel free to contact Kurtman Carson Consultants LLC (the "Solicitation Agent") at no charge by: (i) accessing the Solicitation Agent's website at http://www.kccllc.net/achaogen; (ii) writing to Achaogen, Inc. Balloting Center c/o Kurtzman Carson Consultants LLC, 222 N. Pacific Coast Highway, Suite 300, El Segundo, California 90245 or to AchaogenInfo@kccllc.om; and/or (iii) calling the Solicitation Agent at (888) 249-2747. You may also obtain copies of any pleadings filed in this chapter 11 case for a fee via PACER at: http://www.deb.uscourts.gov. Please be advised that the Solicitation Agent is authorized to answer questions about, and provide additional copies of solicitation materials, but may **not** advise you as to whether you should vote to accept or reject the Plan.

Sincerely,

_____

Achaogen, Inc.

_____

Official Committee of Unsecured Creditors