Docket #0856 Date Filed: 05/18/2022

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: Achaogen, Inc., Debtor.	Chapter 11 Case No. 19-10844 (BLS) **Response Deadline:** June 1, 2022 at 4:00 p.m. (ET) **Hearing Date**: July 6, 2022 at 9:00 a.m. (ET)

ACHAOGEN PLAN TRUSTEE'S SECOND OMNIBUS OBJECTION (SUBSTANTIVE) TO CERTAIN CLAIMS PURSUANT TO 11 U.S.C. § 502, FED R. BANKR. P. 3007 AND DEL. L.R. 3007-1 (RECLASSIFIED CLAIMS)

TO THE CLAIMANTS LISTED IN EXHIBIT A ATTACHED TO THE PROPOSED ORDER (AS DEFINED HEREIN):

- **YOUR SUBSTANTIVE RIGHTS MAY BE AFFECTED BY THIS OBJECTION AND BY ANY FURTHER OBJECTION(S) THAT MAY BE FILED BY THE DEBTOR OR ANY OTHER PARTY.**
- **THE RELIEF SOUGHT HEREIN IS WITHOUT PREJUDICE TO THE RIGHTS OF THE PLAN TRUSTEE OR ANY OTHER PARTY TO PURSUE FURTHER SUBSTANTIVE OR NON-SUBSTANTIVE OBJECTIONS AGAINST THE CLAIMS LISTED IN EXHIBIT A.**
- **CLAIMANTS RECEIVING THIS OBJECTION SHOULD LOCATE THEIR NAMES AND CLAIMS IN EXHIBIT A.**

Edward E. Neiger, Plan Trustee ("Plan Trustee") of the Achaogen Plan Trust (the "Plan Trust"), by and through counsel, hereby objects (the "Objection") pursuant to section 502 of title 11 of the United States Code (the "Bankruptcy Code"), Rule 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Local Rule 3007-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules") to those certain claims listed on Exhibit A, which is attached to the

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proposed form of order (the "Proposed Order") attached hereto as **Exhibit 2**, and incorporated by reference. In support of this Objection, the Plan Trustee submits the *Declaration of Edward E. Neiger in Support of the Plan Trustee's Second Omnibus Objection (Substantive) to Certain Claims (Reclassified Claims)* (the "Neiger Declaration"), attached hereto as **Exhibit 1** and incorporated by reference, and respectfully states as follows:

JURISDICTION

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The Plan Trustee consents to the entry of a final order by the Court in connection with the Objection.

2. The statutory bases for the relief requested herein are sections 502 and 503 of the Bankruptcy Code, Bankruptcy Rule 3007, and Local Rule 3007-1.

BACKGROUND

A. The Chapter 11 Case and Creation of Plan Trust

3. Achaogen, Inc. (the "Debtor") filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code on April 15, 2019 (the "Petition Date").

4. Between the Petition Date and May 29, 2020, Achaogen operated its business as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. An official committee of unsecured creditors (the "Committee") was formed and was appointed in the Chapter 11 Case on April 23, 2019.

5. On May 29, 2020, the Court entered an Order [D.I. 656] (the "Confirmation Order") confirming the First Amended Plan of Liquidation Jointly Proposed by Achaogen, Inc. and the Official Committee of Unsecured Creditors of Achaogen Inc. [D.I. 697] (the "Plan").

6. Pursuant to the Plan, Confirmation Order and the Plan Trust Agreement [D.I. 677-1], on May 29, 2020 the assets of the Debtor were vested in the Achaogen Plan Trust and Edward E. Neiger was appointed as Plan Trustee of the Plan Trust.

B. The Claims Resolution Process in the Chapter 11 Case

7. On April 16, 2019, the Court entered an order [D.I. 48] appointing Kurtzman Carson Consultants LLC ("KCC") as claims and noticing agent in this Chapter 11 Case. KCC was designated as the authorized repository for proofs of claim in this Chapter 11 Case, and was authorized to maintain the official claims register (the "Claims Register") for the Debtor, to provide public access to every proof of claim unless otherwise ordered by the Court, and to provide the Clerk with a certified duplicate thereof upon request of the Court.

8. On May 30, 2019, the Debtor filed its schedules of assets and liabilities (the "Schedules") and statement of financial affairs [D.I. 235-236].

9. On June 14, 2019, the Court entered the *Order (A) Establishing Bar Date for Filing Proofs of Claim, (B) Approving the Form and Manner for Filing Proofs of Claim, (C) Approving Notice Thereof, (D) Implementing Uniform Procedures Regarding 503(b)(9) Claims, and (E) Granting Related Relief* [D.I. 272] which established, among other things, the bar dates for administrative and general claims as July 22, 2019, and August 5, 2019, respectively.

10. On June 18, 2019, KCC duly served the *Notice of Deadlines to File Proofs of Claim for 503(b)(9) Claims, Administrative Claims, and Prepetition Claims* [D.I. 284] (the "Bar Date Notice"). *See Affidavit of Service* [D.I. 322].

11. The Debtor maintained books and records (the "Books and Records") that reflected, among other things, the Debtor's liabilities and the amounts thereof owed to its creditors.

12. The Claims Register, prepared and maintained by KCC, reflects that approximately 380 proofs of claim (collectively, the "Proofs of Claim") have been filed in this Chapter 11 Case asserting claims against the estate of Achaogen, Inc.

13. The Plan Trustee is reviewing the Books and Records and the Proofs of Claim, and comparing same to determine the validity of the asserted Proofs of Claim.

14. This reconciliation process includes identifying particular categories of claims that the Plan Trustee believes should be reclassified, modified and/or disallowed. To avoid an improper recovery by claimants, the Plan Trustee intends to file omnibus objections to such categories of claims if and where warranted. This objection is one such omnibus objection.

15. This Objection is timely as the deadline for the Plan Trustee to object to claims is currently May 19, 2022. *See Order Extending Deadline for Objections to Claims* [D.I. 841].

RELIEF REQUESTED

16. By this Objection, the Plan Trustee objects to the priority and/or administrative claims set forth on Exhibit A to the Proposed Order pursuant to section 502(b) of the Bankruptcy Code, Bankruptcy Rule 3007 and Local Rule 3007-1.

17. Specifically, the Plan Trustee seeks entry of an order, substantially in the form of the Proposed Order, reclassifying each proof of claim listed in Exhibit A to the Proposed Order (the "Reclassified Claims"), that the Plan Trustee has determined should be reclassified in whole or in part to a general unsecured claim

18. The Plan Trustee's determination with respect to the Reclassified Claims is based on a review of the Debtor's Books and Records, the Claims Register, the relevant proofs of claim, and supporting documentation, if any, provided by each claimant. The Plan Trustee does not believe the Reclassified Claims are subject to treatment as priority or administrative claims in the

amounts asserted. As such, the Reclassified Claims should be reclassified and/or modified, as applicable.

19. The Plan Trustee respectfully requests entry of the Proposed Order reclassifying and/or modifying the Reclassified Claims.

OBJECTION

20. When asserting a proof of claim against the bankruptcy estate, a claimant must allege facts that, if true, would support a finding that the debtor is legally liable for that claim. *See In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173 (3d Cir. 1992). Where the claimant alleges sufficient facts to support its claim, that claim is entitled to *prima facie* validity. *Id.*; Fed. R. Bankr. P. 3001(f). Thus, a party wishing to dispute such claim must then produce evidence to negate the claim's *prima facie* validity. *Id.*; 11 U.S.C. § 502(a); Fed. R. Bankr. P. 3001(f).

21. A claim should not be allowed if it is unenforceable against the debtor and property of the debtor under any agreement or applicable law. 11 U.S.C. § 502(b)(1). If an objection to a proof of claim is made, the claimant has the ultimate burden of persuasion as to both the validity and amount of the claim. *In re Allegheny Int'l, Inc.*, 954 F.2d at 172.

22. Federal Bankruptcy Rule 3007(d) provides certain grounds upon which "objections to more than one claim may be joined in an omnibus objection." In addition, Local Rule 3007-1 permits the filing of omnibus objections to claims on such bases as reclassification and modification of amount. L.R. 3007-1(e)(iii)(E)-(G); 3007-1(f).

23. As identified in Exhibit A to the Proposed Order, certain claimants have asserted that all or a portion of their claims are entitled to administrative or priority status.

24. For the reasons set forth below and in Exhibit A to the Proposed Order, the Plan Trustee submits that all or a portion of the Reclassified Claims should be reclassified to general unsecured status.

A. Section 507(a)(4) Imposes a Ceiling on Wage-Related Priority Claims

25. Section 507(a)(4) of the Bankruptcy Code affords priority status to certain claims held by employees for wages, salaries and commissions, including vacation, severance and sick leave pay, earned within 180 days before the petition date. *See* 11 U.S.C. § 507(a)(4). The priority status of such claims is capped at $13,650.00.

26. In Claim Number 8, Jonathan Peterson asserts a claim in the amount of $116,250.00 for unpaid severance such that Section 507(a)(4) is applicable. Pursuant to Section 507(a)(4), Claim Number 8 is entitled to priority status in an amount no greater than $13,650.00. The balance of this claim is a general unsecured claim.

27. In Claim Number 209, Mary Rogers asserts a claim in the amount of $7,144.83 for unpaid paid time off ("PTO") such that Section 507(a)(4) is applicable. Moreover, and according to the Debtor's books and records, the claimant already received $13,650.00 in postpetition payment of PTO claims. Therefore, no portion of this claim is entitled to treatment as a priority claim. Furthermore, in accordance with the Debtor's key employee retention plan ("KERP") which was approved by the Court, this claim constitutes a "Retained Employment Claim" and is subordinated to general unsecured claims. *See* KERP Order, para. 10 [Dkt. No. 163].

B. Section 503(b) Does Not Provide Administrative Priority for Pre-Petition Services

28. Section 503(b) authorizes administrative expense claims for, among other things, "the actual, necessary costs and expenses of preserving the estate including wages, salaries, and commissions for services rendered ***after the commencement of the case***." 11 U.S.C. §

503(b)(1)(A). Claim Number 207 of SteepRock, Inc. consists of a claim in the amount of $36,300.00 for services provided during both the pre- and post-petition periods. The pro-rated portion of the claim for post-petition work is $4,986.50.[1] The balance of the claim consists of pre-petition services and is a general unsecured claim.

29. In summary, the Plan Trustee requests that the Reclassified Claims appearing in Exhibit A to the Proposed Order be reclassified and/or modified as set forth in the "Modified Claim Classification Status" column of Exhibit A.

RESPONSES TO OBJECTION

30. Filing and Service of Responses. To contest this Objection, a claimant must file and serve a written response to the Objection (a "Response") so that it is received by **4:00 p.m. (Eastern Time) on June 1, 2022.** A claimant who has filed a timely Response and wishes to oppose the Objection must attend or make other plans to participate in the hearing on the Objection, which is scheduled to be held on **July 6, 2022 at 9:00 a.m. (Eastern Time)** before the Honorable Brendan L. Shannon, United States Bankruptcy Judge, United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 5th Floor, Courtroom No. 6, Wilmington, Delaware 19801.

31. Every Response should be filed with the Office of the Clerk, United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801, and served on counsel for the Plan Trustee, so that the Response is received no later than June 1, 2022 at the following address:

Cole Schotz P.C.
500 Delaware Ave., Ste. 1410
Wilmington, DE 19801
Attn: Justin R. Alberto

[1] The Debtor paid this sum on or about October 31, 2019.

jalberto@coleschotz.com

ASK LLP
2600 Eagan Woods Dr., Ste. 400
St. Paul, MN 55121
Attn: Nicholas C. Brown
nbrown@askllp.com

32. Content of the Response. Every Response must contain, at a minimum, the following:

a) a caption setting forth the name of the Court, the name of the Debtor, the case number, and the title of the Objection to which the Response is directed;

b) the name of the claimant and a description of the basis for the amount of the claim subject to the Objection;

c) a concise statement setting forth the reasons why the relief requested in the Objection should not be granted, including the specific factual and legal bases on which the claimant relies in opposing the Objection;

d) all documentation and other evidence supporting the claim subject to the Objection not previously filed with the Court or Stretto, the claims agent in the Chapter 11 Cases, upon which the claimant relies in opposing the Objection; and

e) the name, address, telephone number and facsimile number of the person(s),which may be the claimant or an attorney or other legal representative thereof, to whom counsel for the Reorganized Debtors should serve a reply, if any, to the Response and who has the authority to reconcile, settle or otherwise resolve the Objection on the claimant's behalf.

35. Timely Response Required. If a claimant fails to file and serve a timely Response, then, without further notice to the claimant or a hearing on the Objection, the Plan Trustee will present the Court with an order, substantially in the form attached hereto as **Exhibit 2**.

RESERVATION OF RIGHTS

36. The Plan Trustee hereby reserves his rights and those of the Debtor, the estate, and any successors thereto, to object further to the Reclassified Claims on any additional factual or legal grounds. Without limiting the generality of the foregoing, the Plan Trustee specifically

reserves the right to amend the Objection, file additional papers in support hereof or take other appropriate actions, including to: (a) respond to any allegation or defense that may be raised in a Response by or on behalf of any claimant or other party in interest; (b) object further to any claim for which a claimant provides (or attempts to provide) additional documentation or substantiation; and (c) object further to any claim based on additional information that may be discovered on further review by the Plan Trustee, any successors thereto or through discovery.

NOTICE

37. Notice of this Motion will be given to: (i) the U.S. Trustee; (ii) claimants whose claims are subject to this Objection and their counsel, if known, and (iii) all parties entitled to notice pursuant to Bankruptcy Rule 2002. The Plan Trustee submits that, under the circumstances, no other or further notice is required.

NO PRIOR REQUEST

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

COMPLIANCE WITH LOCAL RULE 3007-1

39. To the best of the Plan Trustee's knowledge and belief, the Objection, including its exhibits, substantially complies with Local Rule 3007-1. To the extent that the Objection does not comply with the requirements of Local Rule 3007-1, the Plan Trustee submits that the deviations are not material and respectfully request that those requirements be waived.

WHEREFORE, Edward E. Neiger, Achaogen Plan Trustee, respectfully requests that the Court enter an order, substantially in the form attached hereto as **Exhibit 2**, granting the relief requested in the Objection, and for such other relief as the Court deems just and proper.

DATED: May 18, 2022
Wilmington, Delaware

COLE SCHOTZ P.C.

/s/ Andrew J. Roth-Moore
Justin R. Alberto (No. 5126)
Andrew John Roth-Moore (No. 5988)
500 Delaware Ave., Ste. 1410
Wilmington Delaware 19801
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Email: jalberto@coleschotz.com
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-and-

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Counsel for Achaogen Plan Trustee

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: Achaogen, Inc., Debtor.	Chapter 11 Case No. 19-10844 (BLS) **Response Deadline:** **June 1, 2022 at 4:00 p.m. (ET)** **Hearing Date:** **July 6, 2022 at 9:00 a.m. (ET)**

NOTICE OF ACHAOGEN PLAN TRUSTEE'S SECOND OMNIBUS OBJECTION (SUBSTANTIVE) TO CERTAIN CLAIMS PURSUANT TO 11 U.S.C. § 502, FED. R. BANKR. P. 3007 AND DEL. L.R. 3007-1 (RECLASSIFIED CLAIMS)

PLEASE TAKE NOTICE that today, Edward E. Neiger, Plan Trustee ("Plan Trustee") for the Achaogen Plan Trust, filed the *Achaogen Plan Trustee's Second Omnibus Objection (Substantive) to Certain Claims Pursuant to 11 U.S.C. § 502, Fed. R. Bankr. P. 3007 and Del. L.R. 3007-1 (Reclassified Claims)* (the "Objection").

PLEASE TAKE FURTHER NOTICE that responses, if any, to the Objection must (a) be in writing; (b) be filed with the Clerk of the Bankruptcy Court, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801, on or before **June 1, 2022 at 4:00 p.m. (ET)** (the "Response Deadline"); and (c) served so as to be received on or before the Response Deadline.

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

PLEASE TAKE FURTHER NOTICE THAT A HEARING ON THE OBJECTION WILL BE HELD ON **July 6, 2022 AT 9:00 A.M. (ET)** 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 OBJECTION WITHOUT FURTHER NOTICE OR HEARING.

DATED: May 18, 2022
Wilmington, Delaware

COLE SCHOTZ P.C.

/s/ Andrew J. Roth-Moore
Justin R. Alberto (No. 5126)
Andrew John Roth-Moore (No. 5988)
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-and-

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Counsel for Achaogen Plan Trustee

Exhibit A: Reclassified Claims

Seq. #	Claimant	Claim #	Claim Amount	Claim Classification Status	Modified Claim Classification Status	Reason for Reclassification
1	Peterson, Jonathan	8	$ 116,250.00	Priority	Priority: $13,650; General Unsecured: $102,600	This claim is for unpaid severance. Section 507(a)(4) provides for priority treatment for "wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual". However, Section 507(a)(4) imposes a cap for such claims in the amount of $13,650.00. Claimant's claim should be modified to reflect $13,650.00 priority, with the balance reclassified to general unsecured status.
2	Rogers, Mary	209	$ 7,144.83	Priority	General Unsecured (subordinated)	This claim is for unpaid PTO. According to the Debtor's books and records, claimant was a "participant" under the Debtor's key employee retention plan ("KERP"). The claim qualifies as a "Retained Employment Claim" under paragraph 10 of the KERP Order (Dkt. No. 163) and is subordinated to general unsecured claims pursuant to the KERP Order. Alternatively, claimant's claim should be reclassified to general unsecured status because this claim exceeds the maximum amount available for priority under Section 507(a)(4), as claimant already received payment of $13,650.
3	SteepRock, Inc.	207	$ 36,300.00	Administrative	Administrative: $4,986.50; General Unsecured: $31,313.50	The claim relates to an annual license. The prorated amount due on a post-petition administrative basis is $4,986.50. This sum was paid on 10/31/2019. The balance consists of pre-petition debt and is reclassified to general unsecured status.

Exhibit 1

Neiger Declaration

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

DECLARATION OF EDWARD NEIGER, PLAN TRUSTEE, IN SUPPORT OF THE ACHAOGEN PLAN TRUSTEE'S SECOND OMNIBUS OBJECTION (SUBSTANTIVE) TO CERTAIN CLAIMS PURSUANT TO 11 U.S.C. § 502, FED R. BANKR. P. 3007 AND DEL. L.R. 3007-1 (RECLASSIFIED CLAIMS)

I, Edward E. Neiger, hereby declare under penalty of perjury:

1. I am the Plan Trustee ("Plan Trustee") for the Achaogen Plan Trust, pursuant to the Plan, Confirmation Order and Plan Trust Agreement entered in the above-captioned Chapter 11 Case.[1]

2. In my capacity as Plan Trustee, I am generally familiar with the Debtors' books and records which reflect, among other things, the Debtor's liabilities and the amount thereof owed to its creditors both as of and subsequent to the Petition Date. I have also reviewed and am familiar with the Claims Register in the Chapter 11 Case.

3. I have read the *Achaogen Plan Trustee's Second Omnibus Objection (Substantive) to Certain Claims Pursuant to 11 U.S.C. § 502, Fed. R. Bankr. P. 3007 and Del. L.R. 3007-1 (Reclassified Claims)* (the "Objection").

4. To the best of my knowledge, information, and belief, the assertions made in the Objection are accurate. In evaluating the Reclassified Claims, my law firm, together with

[1] All capitalized, undefined terms herein shall have the meanings assigned to them in the Objection.

Kurtzman Carson Consultants, LLC ("KCC"), the claims and noticing agent in this Chapter 11 Case, thoroughly reviewed the claims register, the relevant proofs of claim, the Debtor's books and records, and the supporting documentation provided by each claimant, if any. Based on our review, we determined that each of the Reclassified Claims should be reclassified and/or modified because they either (i) seek priority treatment in an amount that exceeds the maximum allowed under Section 507(a)(4), (ii) are subordinated in accordance with the KERP Order, or (iii) seek administrative treatment for services some of which are allocable to the pre-petition period. Therefore, I believe that reclassification and/or modification of the Reclassified Claims on the terms set forth in the Objection and the "Modified Claim Classification Status" column in Exhibit A to the Proposed Order is appropriate.

5. I have reviewed Local Rule 3007-1 and hereby state that, to the best of my knowledge and belief, the Objection is in compliance with such rule.

6. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the facts set forth in the foregoing declaration are true and correct to the best of my knowledge, information, and belief as of the date hereof.

Dated: May 18, 2022

/s/ *Edward E. Neiger*
Edward E. Neiger
Achaogen Plan Trustee

Exhibit 2

Proposed Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

ORDER SUSTAINING LIQUIDATING TRUSTEE'S SECOND OMNIBUS OBJECTION (SUBSTANTIVE) TO CERTAIN CLAIMS PURSUANT TO 11 U.S.C. § 502, FED R. BANKR. P. 3007 AND DEL. L.R. 3007-1 (RECLASSIFIED CLAIMS)

Upon the *Achaogen Plan Trustee's Second Omnibus Objection (Substantive) to Certain Claims Pursuant to 11 U.S.C. § 502, Fed. R. Bankr. P. 3007 and Del. L.R. 3007-1 (Reclassified Claims)* (the "Objection")[1] filed by Edward E. Neiger, Plan Trustee ("Plan Trustee") of the Achaogen Plan Trust ("Trust") seeking entry of an order (this "Order") reclassifying and/or modifying the claims identified in **Exhibit A** attached hereto, all as more fully set forth in the Objection; and upon the *Declaration of Edward Neiger, Plan Trustee, in Support of the Achaogen Plan Trustee's Second Omnibus Objection (Substantive) to Certain Claims Pursuant to 11 U.S.C. § 502, Fed. R. Bankr. P. 3007 and Del. L.R. 3007-1 (Reclassified Claims)* attached to the Objection as **Exhibit 1**; and upon all other documentation filed in connection with the Objection and the Claims identified on **Exhibit A**; and adequate notice of the Objection having been given as set forth in the Objection; and it appearing that no other or further notice is required; and sufficient cause appearing therefor;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

[1] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Objection.

1. The Objection is GRANTED to the extent set forth herein with respect to each of the claims identified on **Exhibit A** attached hereto.

2. The Reclassified Claims listed on **Exhibit A** attached hereto are hereby reclassified and/or modified as set forth in the "Modified Claim Classification Status" column of **Exhibit A**.

3. This Order shall be deemed a separate Order with respect to each of the claims identified on **Exhibit A**. Any stay of this Order pending appeal by any claimants whose claims are subject to this Order shall only apply to the contested matter which involves such claimant and shall not act to stay the applicability and/or finality of this Order with respect to the other contested matters listed in the Objection or this Order.

4. The Plan Trustee, KCC, and the Clerk of this Court are authorized to take all actions necessary and appropriate to give effect to this Order.

5. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable law; (b) an allowance of any claim or a waiver of the Plan Trustee's or any other party in interest's right to dispute or object to any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Objection or any order granting the relief requested by this Objection or a finding that any particular claim is a secured, administrative expense or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtor's estate; or (g) a waiver or limitation of the Plan Trustee's, or any other party in interest's, rights under the

Bankruptcy Code or any other applicable law.

6. The Plan Trustee is authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Objection.

7 Notwithstanding any applicable Bankruptcy Rules or Local Rules, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

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