Docket #0860 Date Filed: 5/18/2022

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

ACHAOGEN PLAN TRUSTEE'S FOURTH *EX PARTE* MOTION TO EXTEND DEADLINE FOR OBJECTIONS TO CLAIMS

NOW COMES Edward E. Neiger, Achaogen Plan Trustee, by and through counsel, and submits this *Fourth* Ex Parte *Motion to Extend the Deadline for Filing Objections to Claims* (the "Motion"), and in support thereof states as follows:

PROCEDURAL BACKGROUND

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

2. 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").

3. Pursuant to the Plan and the Plan Trust Agreement [D.I. 677-1], Edward E. Neiger was appointed as Achaogen Plan Trustee (the "Plan Trustee").

BASIS FOR RELIEF

4. In accordance with the Plan Trust Agreement, among the duties of the Plan Trustee are "[p]ursuing objections to, and estimations and settlements of Administrative Claims (other than Professional Fee Claims) and Claims in Class 2, Class 3, Class 4 and Equity or Other Interests in

Class 5 . . .” (collectively, the “Claims”); and “Investigating potential causes of action and any objections to claims . . . .”

5. With regard to objections to Claims, the Confirmation Order provides in pertinent part:

> 53. Objection to Claims. Any objections to a proof of claim shall be filed on or before that date that is 180 days after the Effective Date, or such later deadline for objecting to claims as may be fixed by an order of this Court upon a motion (whether filed before or after the expiration of the deadline) filed by the Plan Trustee, which motion may be approved without a hearing and without notice to any party.

6. In accordance with the *Notice of (I) Effective Date of First Amended Chapter 11 Plan of Liquidation of Achaogen, Inc. and the Official Committee of Unsecured Creditors of Achaogen, Inc. and (II) Bar Dates for Certain Claims* [D.I. 708], the Effective Date was May 29, 2020 (the “Effective Date”).

7. On November 19, 2020, May 5, 2021, and December 1, 2021 the Court entered *Orders Extending Deadline for Objections to Claims* [D.I. 751, 813, 841], pursuant to which the deadline for the Plan Trustee to object to Claims has been extended through and including May 19, 2022 (the “Current Claim Objection Deadline”).

8. The Plan and Confirmation Order expressly provide for the ability to extend the Current Claim Objection Deadline upon motion filed by the Plan Trustee. Plan, §§ 1.18, 8.7; Confirmation Order, ¶ 53.

9. Additionally, section 105(a) of the Bankruptcy Code provides that “the court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a). Bankruptcy Rule 9006(b)(1) further provides, in pertinent part, that:

> when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order.

Fed. R. Bankr. P. 9006(b)(1).[1] As discussed below, good and sufficient cause exists to extend the Current Claims Objection Deadline.

10. The claims register in this case lists more than 400 claims with a total sum, exclusive of "unliquidated" claims, in an amount exceeding $63 million.

11. The Plan Trustee has completed his review of Administrative Claims and claims in Class 2 (Priority Tax Claims) and Class 3 (Priority Non-Tax Claims), and is filing objections to certain of those claims.

12. The Plan Trustee is finalizing his review of claims in Class 4 (General Unsecured Claims). The Plan Trustee is filing objections to certain of those claims.

13. To date, the Plan Trustee has filed several omnibus objections to claims. *See, e.g.*, *Achaogen Plan Trustee's First 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 and Modified Claims)* [D.I. 837]; *Achaogen Plan Trustee's Second Omnibus Objection (Non-Substantive) to Certain Claims Pursuant to 11 U.S.C. § 502, Fed. R. Bankr. P. 3007 and Del. L.R. 3007-1 (Equity Interest Claims)* [D.I. 855]; *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)* [D.I. 856]; and *Achaogen Plan Trustee's Third Omnibus Objection (Non-*

[1] Pursuant to Rule 9006-2 of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware, the filing of this Motion prior to the expiration of the Current Claims Objection Deadline shall automatically extend such deadline until the Court acts on this Motion without the necessity for the entry of a bridge order.

Substantive) to Certain Claims Pursuant to 11 U.S.C. § 502, Fed. R. Bankr. P. 3007 and Del. L.R. 3007-1 (Duplicate and Amended Claims) [D.I. 857].

14. The Plan Trustee desires a short extension of time to complete his review, assessment, reconciliation, and objection to administrative claims, priority claims, unsecured claims, equity and other interests, and any other proofs of claim appearing in the claims register or schedules.

15. Additionally, certain of the Plan Trustee's omnibus objections to claims are pending, with a hearing date set for July 6, 2022 (the "Claims Objection Hearing Date"). An extension of the Current Claims Objection Deadline to a date that is two (2) weeks following the Claims Objection Hearing Date will ensure that the Plan Trustee has sufficient time to address any issues that may arise at the hearing.

16. The requested extension will not delay the administration of this case. Among other things, the Plan Trustee has litigation pending in an adversary proceeding, which litigation is still in the pleadings stage. The Plan Trustee anticipates this litigation will continue well past the proposed new claims objection deadline. Nor will the extension delay distributions to holders of allowed claims, as the Plan Trustee anticipates making distributions following the outcome of the hearings taking place on the Claims Objection Hearing Date.

17. Therefore, no party will be prejudiced by this extension of time.

18. Further, the Confirmation Order provides that this Motion "may be approved without a hearing and without notice to any party." Confirmation Order, ¶ 53. This is consistent with Rule 9006(b)(1), which permits extension of time "with or without motion or notice."

WHEREFORE, Edward E. Neiger, Achaogen Plan Trustee, respectfully requests that the deadline for objecting to Claims, including but not limited to administrative claims, priority claims,

unsecured claims, equity and other interests, and any other proofs of claim appearing in the claims register or schedules, be extended by 62 days through and including July 20, 2022, and such other relief as the Court deems just and proper.

DATED: May 18, 2022
Wilmington, Delaware

COLE SCHOTZ P.C.

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

ORDER EXTENDING DEADLINE FOR OBJECTIONS TO CLAIMS

Upon consideration of the (the "Motion")[1] of Edward E. Neiger, Achaogen Plan Trustee (the "Plan Trustee"), for entry of an order, pursuant to section 105(a) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"), Rule 9006(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Code"), sections 1.18 and 8.7 of the Plan, and paragraph 53 of the Confirmation Order, extending the deadline established under the Plan, and the order [D.I. 841] extending the deadline of the Plan Trustee to object to Claims; and it appearing that no further notice is required under the circumstances; and after due deliberation and upon the Court's determination that the relief requested in the Motion is in the best interests of the estate, creditors, and parties in interests; and sufficient cause appearing for the relief requested in the Motion; it is hereby

ORDERED that the Motion is granted as set forth herein; and it is further

ORDERED that the Current Claim Objection Deadline is extended for the Plan Trustee through an including July 20, 2022 (the "Claims Objection Deadline"); and it is further

ORDERED that this Order shall be without prejudice to the Plan Trustee's right to seek additional extensions of the Claims Objection Deadline; and it is further

[1] Capitalized terms used but not defined herein have the meaning provided in the Motion.

ORDERED that this Court shall retain jurisdiction over all affected parties with respect to any matters, claims, or rights arising from or related to the implementation and interpretation of this Order.