Docket #0861 Date Filed: 05/19/2022

**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE DISTRICT OF DELAWARE**

| | |
|---|---|
| In re:<br><br>Achaogen, Inc.,<br><br>Debtor. | Chapter 11<br><br>Case No. 19-10844 (BLS)<br><br>**Response Deadline:**<br>June 2, 2022 at 4:00 p.m. (ET)<br><br>**Hearing Date**:<br>July 6, 2022 at 9:00 a.m. (ET) |

**ACHAOGEN PLAN TRUSTEE'S OBJECTION**
**TO CLAIM NUMBER 61 OF MASSACHUSETTS DEPARTMENT OF REVENUE**

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 sections 502 and 505(a) of title 11 of the United States Code (the "Bankruptcy Code") and Rule 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") to claim number 61 (the "Claim") of the Massachusetts Department of Revenue ("Claimant"). In support of this Objection, the Plan Trustee submits the *Declaration of Edward E. Neiger in Support of the Plan Trustee's Objection to Claim Number 61 of the Massachusetts Department of Revenue* (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 is section 502 of the Bankruptcy Code and Bankruptcy Rule 3007.

1910844220519000000000001

## BACKGROUND

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.

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. On June 24, 2019, Claimant filed the Claim, asserting a priority claim under Section 507(a)(8) of the Bankruptcy Code in the total sum of $6,000.00 based on estimated corporate excise tax due for the period ending December 31, 2018. A copy of the Claim is attached hereto as **Exhibit 2**.

12. 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.

13. The Plan Trustee has reviewed the Books and Records and the Claim, and compared same to determine the validity of the asserted Claim.

14. 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

15. By this Objection, the Plan Trustee objects to the amount of the Claim pursuant to sections 502(b) and 505(a) of the Bankruptcy Code and Bankruptcy Rule 3007.

16. The Plan Trustee has determined that the amount of the claim is $456.00. The Plan Trustee's determination with respect to the amount of the Claim is based on a review of the Debtor's Books and Records, the Claim, and supporting documentation provided by the claimant.

17. Additionally, and based on the Debtor's Books and Records, the Claimant received post-petition payment of the proposed modified amount of the Claim. Therefore, and following entry of an order sustaining this Objection, the Trustee intends to file a notice of satisfaction regarding the Claim.

18. The Plan Trustee respectfully requests entry of the Proposed Order modifying the Claim to reflect a priority claim of $456.00.

**OBJECTION**

19. 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).

20. 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.

21. Further, pursuant to Section 505(a) of the Bankruptcy Code, the Court may determine the amount of tax for which the Debtor is liable.

22. According to the Debtor's Books and Records and the supporting documentation filed with the Claim, the Claim represents an estimated corporate excise tax for the period ending December 31, 2018.

23. According to the Debtor's Books and Records, the Debtor received agency notice ID L1343737728 noting the actual corporate excise tax amount for the period ending December 31, 2018 to be $456.00.

24. According to the Debtor's Books and Records, the Debtor paid the actual corporate excise tax amount of $456.00 to Claimant in November 2019.

25. Therefore, the Plan Trustee requests that the Claim be modified to reflect a priority claim of $456.00. The Plan Trustee further states that, upon entry of an Order sustaining this Objection, the Plan Trustee will file a notice of satisfaction as to the modified claim.

**RESPONSES TO OBJECTION**

26. Filing and Service of Response. To contest this Objection, the Claimant must file and serve a written response (a "Response") so that it is received by **4:00 p.m. (Eastern Time) on June 2, 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.

27. Any 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 2, 2022 at the following address:

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

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

28. Content of the Response. Any 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 KCC, 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 Plan Trustee 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 the 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 3**.

## 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 Claim 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 the Claimant or other party in interest; (b) object further to any claim for which the Claimant provides (or attempts to provide) additional documentation or substantiation; and (c) object further to the 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) the Claimant and its 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.

WHEREFORE, Edward E. Neiger, Achaogen Plan Trustee, respectfully requests that the Court enter an order, substantially in the form attached hereto as **Exhibit 3**, granting the relief requested in the Objection, and for such other relief as the Court deems just and proper.

(*Remainder of page intentionally left blank*)

DATED: May 19, 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
Telephone: (302) 652-3131
Email: jalberto@coleschotz.com
aroth-moore@coleschotz.com

*-and-*

Nicholas C. Brown, NC SBN 038054
(admitted *pro hac vice*)
ASK LLP
2600 Eagan Woods Drive, Suite 400
St. Paul, MN 55121
Telephone: (651) 289-3846
Fax: (651) 406-9676
Email: nbrown@askllp.com

*Counsel for Achaogen Plan Trustee*

**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE DISTRICT OF DELAWARE**

| | |
|---|---|
| In re:<br><br>Achaogen, Inc.,<br><br>Debtor. | Chapter 11<br><br>Case No. 19-10844 (BLS)<br><br>**Response Deadline:**<br>**June 2, 2022 at 4:00 p.m. (ET)**<br><br>**Hearing Date:**<br>**July 6, 2022 at 9:00 a.m. (ET)** |

**NOTICE OF ACHAOGEN PLAN TRUSTEE'S OBJECTION**
**TO CLAIM NUMBER 61 OF MASSACHUSETTS DEPARTMENT OF REVENUE**

PLEASE TAKE NOTICE that today, Edward E. Neiger, Plan Trustee ("Plan Trustee") for the Achaogen Plan Trust, filed the *Achaogen Plan Trustee's Objection to Claim Number 61 of Massachusetts Department of Revenue* (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 2, 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 19, 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
Telephone: (302) 652-3131
Email: jalberto@coleschotz.com
aroth-moore@coleschotz.com

*-and-*

Nicholas C. Brown, NC SBN 038054
(admitted *pro hac vice*)
ASK LLP
2600 Eagan Woods Drive, Suite 400
St. Paul, MN 55121
Telephone: (651) 289-3846
Fax: (651) 406-9676
Email: nbrown@askllp.com

*Counsel for Achaogen Plan Trustee*

# Exhibit 1

## Neiger Declaration

**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE DISTRICT OF DELAWARE**

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

**DECLARATION OF EDWARD NEIGER, PLAN TRUSTEE, IN SUPPORT OF THE ACHAOGEN PLAN TRUSTEE'S OBJECTION TO CLAIM NUMBER 61 OF MASSACHUSETTS DEPARTMENT OF REVENUE**

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 Objection to Claim Number 61 of Massachusetts Department of Revenue* (the "Objection").

4. To the best of my knowledge, information, and belief, the assertions made in the Objection are accurate. According to the Debtor's Books and Records, and the supporting documentation filed with the Claim, the Claim represents an estimated corporate excise tax for the period ending December 31, 2018. The Debtor received agency notice ID L1343737728 noting

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

the actual corporate excise tax amount for the period ending December 31, 2018 to be $456.00. The Debtor paid this sum to Claimant in November 2019.

5. Therefore, I believe that modification of the Claim to reflect the amount of $456.00 is appropriate.

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 19, 2022

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

# Exhibit 2

## Proof of Claim

**Fill in this information to identify the case:**

Debtor 1 ACHAOGEN INC

Debtor 2 (Spouse, if filing)

United States Bankruptcy Court for the: Delaware Bankruptcy Court Wilmington District of

Case number 19-10844 BLS

Official Form 410

# Proof of Claim

04/16

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

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

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

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

## Part 1: Identify the Claim

1. Who is the current creditor?

MASSACHUSETTS DEPARTMENT OF REVENUE

Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor

2. Has this claim been acquired from someone else?

☒ No
☐ Yes. From whom?

3. Where should notices and payments to the creditor be sent?

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

| Where should notices to the creditor be sent? | Where should payments to the creditor be sent? (if different) |
|---|---|
| MASS. DEPT. OF REVENUE ATTN:BANKRUPTCY UNIT | |
| Name | Name |
| PO BOX 9564 | |
| Number Street | Number Street |
| BOSTON MA 02114-9564 | |
| City State ZIP Code | City State ZIP Code |
| Contact phone (617) 626-3875 | Contact phone |
| Contact email yeke@dor.state.ma.us | Contact email |

RECEIVED
JUN 24 2019
KURTZMAN CARSON CONSULTANTS

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

4. Does this claim amend one already filed?

☒ No
☐ Yes. Claim number on court claims registry (if known) Filed on MM / DD / YYYY

5. Do you know if anyone else has filed a proof of claim for this claim?

☒ No
☐ Yes. Who made the earlier filing?

☒ Date Stamped Copy Returned
☐ No self addressed stamped envelope
☐ No copy to return



1910844190624000000000002

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

6. Do you have any number you use to identify the debtor?
☐ No
☒ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____ ____ 3693 ____

7. How much is the claim? $ 6,000.00 . Does this amount include interest or other charges?
☐ No
☒ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim?
Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
Limit disclosing information that is entitled to privacy, such as health care information.
Taxes

9. Is all or part of the claim secured?
☒ No
☐ Yes. The claim is secured by a lien on property.
Nature of property:
☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
☐ Motor vehicle
☐ Other. Describe: _____
Basis for perfection: _____
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)
Value of property: $_____
Amount of the claim that is secured: $ 0.00
Amount of the claim that is unsecured: $ 6,000.00 (The sum of the secured and unsecured amounts should match the amount in line 7.)
Amount necessary to cure any default as of the date of the petition: $_____
Annual Interest Rate (when case was filed)_____%
☐ Fixed
☐ Variable

RECEIVED
JUN 24 2019
KURTZMAN CARSON CONSULTANTS

10. Is this claim based on a lease?
☒ No
☐ Yes. Amount necessary to cure any default as of the date of the petition. $_____

11. Is this claim subject to a right of setoff?
☒ No
☐ Yes. Identify the property: _____

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

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

☐ No

☒ Yes. *Check one:*

| | Amount entitled to priority |
|---|---|
| ☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). | $_____ |
| ☐ Up to $2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7). | $_____ |
| ☐ Wages, salaries, or commissions (up to $12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4). | $_____ |
| ☒ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8). | $ 6,000.00 |
| ☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5). | $_____ |
| ☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies. | $_____ |

* Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment.

## Part 3: Sign Below

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

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

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

*Check the appropriate box:*

☐ I am the creditor.

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

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

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

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

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

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

Executed on date 06/18/2019
MM / DD / YYYY

/s/Kendra Ye
Signature

RECEIVED
JUN 24 2019
KURTZMAN CARSON CONSULTANTS

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

Name: KENDRA YE
First name Middle name Last name

Title: Tax Examiner

Company: Massachusetts Department of Revenue
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: PO BOX 9564
Number Street

BOSTON MA 02114-9564
City State ZIP Code

Contact phone (617) 626-3875 Email yeke@dor.state.ma.us

MICHAEL J. HEFFERNAN
COMMISSIONER

EDWARD W. COYLE, JR.
ACTING BUREAU CHIEF

# *The Commonwealth of Massachusetts*

## *Department of Revenue*

## *Collections Bureau - Bankruptcy Unit*

*Offices: 100 Cambridge Street, 7th Floor*

*Boston, Massachusetts*

***All Mail To: Box 9564, Boston, MA 02114-9564***

*MAIN #617 626-3875 - FAX #617 626-3796*

June 18, 2019

Achaogen Claims Processing Center
c/o KCC
222 N. Pacific Coast Highway, Suite 300
El Segundo, CA 90245

To Whom It May Concern,

Enclosed is the letter for proof of claim filed by the Massachusetts Department of Revenue for the cases below:

**Chapter 11 Bankruptcy Case #19-10844 BLS, Achaogen Inc**
Priority Claim amount: $6,000.00

Please date stamp the copies and send them back with the self-addressed stamped envelope provided for you.

Sincerely,

**Kendra Ye, Tax Examiner III**
**Bankruptcy Unit**
**Tel#: (617) 626-4209**
**Fax#: (617) 660-9886**
**Email: yeke@dor.state.ma.us**

**ACHAOGEN INC**
Federal Employer ID: XX-XXX3693

Chapter 11
Docket Number: 19-10844 BLS
Petition Date: April 15, 2019

1. The Commissioner of the Massachusetts Department of Revenue files this Proof of Claim for unpaid Massachusetts Taxes, including interest and penalties calculated to the petition date or conversion date as applicable.

2. The amounts listed in Paragraphs A, B, C and D below are summaries of the amounts due for each category of claim. A detailed statement of the tax periods and the amounts due is attached. The type of tax is identified by letter codes as shown at the top of the detail pages.

3. Tax periods on attached pages are marked by an asterisk(*) if the amounts for those periods are estimated.

4. To the extent that any pre-petition tax, or post-petition interest and penalties attributable to pre-petition tax, are nondischargable and remain unpaid, they may be collected from the debtor or from any other liable entity.

5. To the extent that a claim is identified as a secured claim and is undersecured pursuant to 11 U.S.C. Sec 506. The unsecured portion consisting of tax and interest is asserted as an unsecured priority claim, and the unsecured portion consisting of penalty is asserted as a general unsecured claim. The Commonwealth of Massachusetts does not waive or intend to waive Eleventh Amendment Sovereign Immunity for itself or any of its officers or agencies including the Department of Revenue by filing this Proof of Claim.

6. Massachusetts claims a setoff of pre-petition tax refunds against this claim.

7. For administrative claims, interest and penalty are due until paid, interest and penalty have been calculated to the filing date of this claim.

Any questions or correspondence concerning this claim should be addressed to Kendra Ye at the above mailing address or by telephone: (617) 626-4209.

A. Secured Claim (Notice of statutory tax lien filed pursuant to M.G.L. c 62C Sec 50): **$0.00**

Post-petition interest is included to the extent allowed by 11 U.S.C. Sec 506(b).

B. Unsecured Priority Claim under 11 U.S.C. Sec 507(a)(8): **$6,000.00**

For Chapter 11 cases, interest accrues after the effective date of the plan. 11 U.S.C. Sec 1129(a)(9)(C).

C. General Unsecured Claim: **$0.00**

D. Subordinated Claim: **$0.00**

**Total:** **$6,000.00**

Isabel Jean, Director, Bankruptcy Unit, Massachusetts Department of Revenue, (617) 626-3820

## *Detailed Information*

**ACHAOGEN INC**
Federal Employer ID: XX-XXX3693
Chapter 11
Docket Number: 19-10844 BLS
Petition Date: April 15, 2019

**Priority**

**1 TOWER PL STE 400**
**SOUTH SAN FRANCISCO CA 94080-1832**

**Corporate Excise**

| Period End Date | Return Type | Assessment Date | Filing Frequency | Tax + | Interest + | Penalty + | Other = | Balance |
|---|---|---|---|---|---|---|---|---|
| 12/31/2018 | | * | Annual | $6,000.00 | $0.00 | $0.00 | $0.00 | $6,000.00 |
| **Account Total** | | | | **$6,000.00** | **$0.00** | **$0.00** | **$0.00** | **$6,000.00** |
| **Grand Total** | | | | **$6,000.00** | **$0.00** | **$0.00** | **$0.00** | **$6,000.00** |

# Exhibit 3

## Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE DISTRICT OF DELAWARE**

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

**ORDER SUSTAINING ACHAOGEN PLAN TRUSTEE'S OBJECTION TO CLAIM NUMBER 61 OF MASSACHUSETTS DEPARTMENT OF REVENUE**

Upon the *Achaogen Plan Trustee's Objection to Claim Number 61 of Massachusetts Department of Revenue* (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") modifying claim number 61 (the "Claim") filed by Massachusetts Department of Revenue ("Claimant"), 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 Objection to Claim Number 61 of Massachusetts Department of Revenue* attached to the Objection as **Exhibit 1**; and upon all other documentation filed in connection with the Objection; 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. The Objection is GRANTED to the extent set forth herein.

2. The Claim is hereby modified to reflect a priority claim of $456.00.

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

3. 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.

4. 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; or (e) 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.

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

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

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