Docket #0869 Date Filed: 06/09/2022

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re ACHAOGEN, INC., Debtor.	Chapter 11 Case No. 19-10844 (BLS) **Related Docket No. 856**

CERTIFICATION OF COUNSEL REGARDING 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 undersigned, counsel to Edward E. Neiger, Plan Trustee (the "Plan Trustee"), hereby certifies as follows:

On May 18, 2022, the Plan Trustee 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)* [Docket No. 856] (the "Objection"). Attached to the Objection was a proposed form of order, together with the exhibits thereto (the "Original Proposed Order"), granting the Objection.

Pursuant to the Notice of Objection, responses to the Objection were required to have been filed with the Court and served no later than 4:00 p.m. on June 1, 2022 (the "Response Deadline"). The Notice of Objection also provided notice that a hearing on the Objection was scheduled for July 6, 2022 (ET) (the "Hearing").

Prior to the Response Deadline, the Plan Trustee received a response from claimant Mary Rogers (Claim No. 209). The objection to Mary Rogers' Claim No. 209 will proceed at the Hearing unless the parties agree to a continuance.

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There were no other responses to the Objection either filed on the docket or conveyed informally to the Plan Trustee, or any such informal responses have been resolved without need for further action.

A revised proposed order (the "Revised Proposed Order"), attached hereto as **Exhibit A**, removes Mary Rogers' Claim No. 209. A blackline comparing the Revised Proposed Order against the Original Proposed Order is attached hereto as **Exhibit B**.

WHEREFORE, the Plan Trustee respectfully requests the Court enter the Revised Proposed Order at the Court's earliest convenience.

Dated: June 9, 2022
Wilmington, Delaware

COLE SCHOTZ P.C.

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Counsel for Achaogen Plan Trustee

Exhibit A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: Achaogen, Inc., Debtor.	Chapter 11 Case No. 19-10844 (BLS) **Related Docket No. 856**

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.

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	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 B

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: Achaogen, Inc., Debtor.	Chapter 11 Case No. 19-10844 (BLS) **Related Docket No. 856**

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)

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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.

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~~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~~ 2	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.