Docket #0923 Date Filed: 05/29/2025

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
Achaogen, Inc.,	Case No. 19-10844 (BLS)
Debtor.[1]	**Obj. Deadline: June 12, 2025 at 4:00 p.m. (ET)** **Hearing Date: TBD**

PLAN TRUSTEE'S MOTION TO EXTEND THE TERM OF THE ACHAOGEN PLAN TRUST

Edward E. Neiger, the Achaogen Plan Trustee (the "Plan Trustee"), by and through its undersigned counsel, hereby files this motion (the "Motion") pursuant to sections 105(a) of title 11 of the Untied States Code (the "Bankruptcy Code") and Rule 9006(b)(1) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") for an order, substantially in the form attached hereto as **Exhibit A** (the "Proposed Order"), extending the Initial Term of the Achaogen Plan Trust (the "Plan Trust") through and including May 29, 2028. In support of this Motion, the Plan Trustee respectfully represents as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. Pursuant to Rule 9013-1(f) of the Local Rules of the United States Bankruptcy Court for the District of Delaware, the Plan Trustee consents to the entry of final orders or judgments by the Court if it is determined that the Court, absent consent of the parties, cannot enter

[1] The last four digits of Achaogen's federal tax identification number are 3693. The last four digits of the Achaogen Plan Trust's tax identification number are 4172.

final orders or judgments concerning this Motion consistent with Article III of the United States Constitution.

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. On May 29, 2020, the Court entered an Order [D.I. 697] (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. 686] (the "Plan").

5. 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 of the Plan was May 29, 2020 (the "Effective Date").

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

7. Since his appointment, the Plan Trustee has reviewed, reconciled, and filed objections to numerous claims, pursued numerous causes of action including avoidance claims ("Avoidance Claims"), prosecuted litigation against Cipla USA, Inc. (the "Cipla Litigation"), and recovered litigation proceeds and other assets on behalf of the Plan Trust.

8. As of the date of this Notice, all Avoidance Claims have been settled, litigated, dismissed, or otherwise resolved, the Cipla Litigation has been concluded, and the majority of assets have been recovered by the Plan Trust, with the exception of the Cipla Royalties as described herein.

9. The Plan Trustee has made past distributions to certain creditors as summarized in the Plan Trustee's most recent Post-Confirmation Report [D.I. 922]. The Plan Trustee plans to make the next distribution to creditors, including holders of general unsecured claims, on or before July 31, 2025.

10. On July 23, 2019, the Court entered the *Order (I) Approving the Sale of Certain Assets of the Debtor to Cipla USA Inc. Free and Clear of Liens, Encumbrances, Claims and Interests, (II) Approving the Assumption and Assignment of Designated Executory Contracts and Unexpired Leases, and (III) Granting Related Relief* [D.I. 371] (the "Plazomicin Sale Order"), providing for the sale of certain of the Debtor's assets to Cipla USA, Inc. ("Cipla") including certain rights in Plazomicin as set forth in the accompanying asset purchase agreement [D.I. 371-1] (the "Plazomicin APA").

11. Pursuant to the Plazomicin Sale Order and corresponding Plazomicin APA, the Debtor and Cipla, as the purchaser of certain of the Debtor's plazomicin assets, agreed for Cipla to pay a portion of the purchase price in the form of royalties tied to Cipla's annual sales revenues (the "Cipla Royalties"). The Cipla Royalties are to accrue each year through 2029 and are scheduled to be paid in corresponding annual installments by the Spring following each accrual year (the "Royalty Payment Schedule"). *See* Section 2.5(b)(ii) of the Plazomicin APA (providing for the accrual of annual royalties over a 10-year period commencing with the 2020 calendar year and continuing through 2029).

12. As a result of the Royalty Payment Schedule, the Plan Trustee anticipates collecting the Cipla Royalties through the Spring of 2030, and further anticipates that those collections will result in distributable value for creditors.

RELIEF REQUESTED

13. The Plan Trustee respectfully requests that the Court enter the Proposed Order extending the Initial Term for an additional three (3) years, through and including May 29, 2028, for the primary purpose of facilitating collection of the Cipla Royalties consistent with the Royalty Payment Schedule.

BASIS FOR RELIEF

14. Under the terms of the Plan Trust Agreement, the Plan Trust has an initial term of five (5) years following the Effective Date, which term may be extended by request of the Plan Trustee. Specifically, section 3.2 of the Plan Trust Agreement provides in pertinent part:

> The Trust shall have a term of five (5) years from the Effective Date, provided, however, that, the Plan Trustee shall be entitled to extend the terms of the Trust as further set forth in section 10.3 of this Agreement.

Plan Trust Agreement at § 3.2.

15. The initial term of the Plan Trust is set to expire on May 29, 2025 (the "Initial Term").

16. Section 10.3 of the Plan Trust Agreement sets forth the procedures for extending the Initial Term, as follows:

> 10.3 Dissolution of the Plan Trust. The Plan Trustee and the Plan Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the Plan Trustee determines that the pursuit of additional Causes of Action, including Third Party Claims, is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, including Third Party Claims, (b) all objections to Disputed Claims are fully resolved, and (c) all Distributions required to be made by the Plan Trustee under the Governing Documents have been made, but the Plan Trust shall not be dissolved later than five (5) years from the Effective Date; ***provided, however, that, within the six (6) month period prior to the termination of the Plan Trust, the Plan Trustee may file a notice of intent to extend the term of the Plan Trust with the Court and, upon approval of the Court of such extension, the term of the Plan Trust shall be so extended. The Plan Trust may file one or more such extension notices, each notice to be filed within the six (6) month period prior to the termination of the extended term of the Plan Trust*** (all such extensions, collectively, are referred to herein as the "Supplemental Trust Term"). Notwithstanding anything to the contrary in this

> Section 10.3, however, Supplemental Trust Term may not exceed five (5) without an order of the Court finding that the extension of the trust is warranted under the facts and circumstances and that such extension is necessary to the liquidating purpose of the Liquidating Trust, which order may be issued retroactively after the expiration of the Supplemental Trust Term; provided that a failure to file a motion with the Court prior to the 6-month expiration period shall not cause the Trust to terminate, as long as the Trust would otherwise continue to qualify as a liquidating trust. Upon dissolution of the Plan Trust or at such earlier time as determined by the Plan Trustee in his, her or its reasonable discretion, any remaining Plan Trust Assets that exceed the amounts required to be paid under the Governing Documents may be transferred by the Plan Trustee to a charitable organization that the Plan Trustee shall designate.

Plan Trust Agreement at § 10.3 (emphasis added).

17. Bankruptcy Rule 9006(b) also provides for extensions of time for cause. Specifically:

> [W]hen 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 . . . 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). Finally, section 105 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 this title." 11 U.S.C. § 105(a).

18. The Plan Trustee submits that a dissolution of the Plan Trust at this time would be both premature and detrimental to the Plan Trust and creditors, because the Cipla Royalties are scheduled for collection through 2030 and are anticipated to bring no less than $1,500,000 in proceeds over the next five (5) years.

19. An extension of the Initial Term will not result in a delay or prejudice to creditors, because (i) the Royalty Payment Schedule was noticed to creditors and approved by the Court pursuant to the Plazomicin Sale Order; (ii) the extension will not delay the Plan Trustee's next planned distribution to creditors on or before July 31, 2025, (iii) the extension will allow for the collection of the Cipla Royalties with an estimated total value of $1,500,000, and (iv) the Plan

Trustee retains the right under the Plan Trust Agreement to terminate the Plan Trust as soon as he has completed all of his duties, responsibilities, and obligations under the Plan Trust Agreement.

20. Consistent with section 10.3 of the Liquidating Trust Agreement, all material causes of action in this bankruptcy case have been resolved, including but not limited to the Avoidance Claims and the Cipla Litigation, and all anticipated objections to claims have been adjudicated.

21. In addition to prior distributions and those planned on or prior to July 31, 2025, one or more future distributions will be necessary following collection of the Cipla Royalties.

22. Consistent with section 10.3 of the Liquidating Trust Agreement, this Notice is being made within six (6) months prior to expiration of the Initial Term.

23. The Plan Trustee has discussed with Cipla the prospect of expediting its payment schedule to allow for a shortened Plan Trust term; however, no agreement on an expedited schedule has been reached to date.

24. Based on the foregoing, an extension of the Plan Trust's Initial Term for three (3) additional years, through and including May 29, 2028, is necessary to the liquidating purpose of the Plan Trust.[2]

RESERVATION OF RIGHTS

25. The Plan Trustee reserves all rights to seek further extensions of the Initial Term, as necessary or appropriate.

[2] Should the Court not act on the Motion prior to expiration of the current Initial Term of May 29, 2025, the Initial Term shall automatically be extended until the Court acts on the Motion without the necessity of a bridge order pursuant to Local Rule 9006-2.

NOTICE

26. Notice is being given to: (i) the U.S. Trustee; (ii) the Internal Revenue Service; and (iii) all parties entitled to notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Trustee submits that no other or further notice need be given.

CONCLUSION

WHEREFORE, the Plan Trustee respectfully requests that this Court (a) enter the Proposed Order granting the relief requested herein, and (b) grant such other and further relief as the Court deems just and proper.

DATED: May 29, 2025
Wilmington, Delaware

COLE SCHOTZ P.C.

/s/ Jack Dougherty

Justin R. Alberto (No. 5126)
Jack Dougherty (No. 6784)
500 Delaware Ave., Ste. 600
Wilmington Delaware 19801
Telephone: (302) 652-3131
Email: jalberto@coleschotz.com
jdougherty@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: Achaogen, Inc., Debtor.[1]	Chapter 11 Case No. 19-10844 (BLS) **Obj. Deadline: June 12, 2025 at 4:00 p.m. (ET)** **Hearing Date: TBD**

NOTICE OF MOTION OF PLAN TRUSTEE'S MOTION TO EXTEND THE TERM OF THE ACHAOGEN PLAN TRUST

PLEASE TAKE NOTICE that on May 29, 2025, Edward E. Neiger, the Achaogen Plan Trustee (the "Plan Trustee"), filed the *Plan Trustee's Motion to Extend the Term of the Achaogen Plan Trust* (the "Motion") with the United States Bankruptcy Court for the District of Delaware (the "Court").

PLEASE TAKE FURTHER NOTICE that a hearing on the Motion is scheduled for **a date to be determined** before The Honorable Brendan L. Shannon, United States Bankruptcy Court for the District of Delaware, 6th Floor, Courtroom No. 1, 824 North Market Street, Wilmington, Delaware 19801.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the Motion and the entry of an order approving the Motion must be filed on or before **June 12, 2025, at 4:00 p.m. (prevailing Eastern Time)** (the "Objection Deadline") with the Court, 3rd Floor, 824 North Market Street, Wilmington, Delaware 19801. At the same time, you must serve a copy of the response or objection upon the undersigned counsel to the Plan Trustee so as to be received on or before the Objection Deadline.

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

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[1] The last four digits of Achaogen's federal tax identification number are 3693. The last four digits of the Achaogen Plan Trust's tax identification number are 4172.

DATED: May 29, 2025
Wilmington, Delaware

COLE SCHOTZ P.C.

/s/ Jack M. Dougherty

Justin R. Alberto (No. 5126)
Jack Dougherty (No. 6784)
500 Delaware Ave., Ste. 600
Wilmington Delaware 19801
Telephone: (302) 652-3131
Email: jalberto@coleschotz.com
jdougherty@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 A

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.	**Re: Docket No. ___**

ORDER EXTENDING TERM OF ACHAOGEN PLAN TRUST

Upon consideration of the *Plan Trustee's Motion to Extend the Term of the Achaogen Plan Trust* (the "Motion")[1] filed by Edward E. Neiger, Achaogen Plan Trustee (the "Plan Trustee"), seeking approval for an extension of the term of the Achaogen Plan Trust (the "Plan Trust") for three (3) years, pursuant to sections 3.2 and 10.3 of the Plan Trust Agreement; and upon consideration of the Motion; and it appearing that no further notice is required under the circumstances; and after due deliberation and upon the Court's determination that relief set forth in the Motion is in the best interests of the estate, creditors, and parties in interests, is warranted under the facts and circumstances, and is necessary to the liquidating purpose of the Plan Trust; and sufficient cause appearing; it is hereby

ORDERED that the term of the Achaogen Plan Trust is hereby extended through and including May 29, 2028; and it is further

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.

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