Docket #0937 Date Filed: 09/22/2025

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

CERTIFICATION OF COUNSEL REGARDING PROPOSED ORDER APPROVING STIPULATION REGARDING USE OF DIP BENEFICIARY PROCEEDS

I, Jack M. Dougherty, counsel for Edward E. Neiger, as Plan Trustee for the Achaogen Plan Trust (the "Plan Trust") in the above-captioned case, certify as follows:

1. Counsel for the Plan Trust and Silicon Valley Bank, a division of First-Citizens Bank & Trust Company, have entered into the *Stipulation Regarding Use of DIP Beneficiary Proceeds* (the "Stipulation"). A copy of the Stipulation memorializing the agreement of the parties is attached as **Exhibit A** to the Proposed Order.
2. Accordingly, the Plan Trust respectfully requests that the Court enter the Proposed Order attached hereto as **Exhibit 1** at the convenience of the Court.

[*Remainder of this page intentionally left blank.*]

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Dated: September 22, 2025
Wilmington, Delaware

COLE SCHOTZ P.C.

/s/ Jack M. Dougherty

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EXHIBIT 1

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 GRANTING STIPULATION REGARDING
USE OF DIP BENEFICIARY PROCEEDS

This matter coming before the Court on the *Stipulation Regarding Use of DIP Beneficiary Proceeds* (the "Stipulation"), and the Court having reviewed the Stipulation, **IT IS HEREBY ORDERED THAT:**

1. The Stipulation attached hereto as **Exhibit A** is approved.
2. The Parties to the Stipulation are authorized to take all action necessary or appropriate to implement the Stipulation.
3. The Court shall retain jurisdiction to resolve any and all disputes arising from or related to this Order.
4. This Stipulation shall become effective immediately upon entry of this Order.

EXHIBIT A

Stipulation

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

STIPULATION REGARDING USE OF DIP BENEFICIARY PROCEEDS

Edward E. Neiger, solely in his capacity as the Plan Trustee (the "Plan Trustee") of the Achaogen Plan Trust (the "Plan Trust"), and Silicon Valley Bank, a division of First-Citizens Bank & Trust Company (the "DIP Beneficiary" or "Silicon Valley Bank," and together with the Plan Trustee, the "Parties"), hereby stipulate as follows:

RECITALS

A. Background

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

2. On September 24, 2019, the Court entered the *Final Order (I) Authorizing Achaogen, Inc. to Obtain Postpetition Secured Financing, (II) Granting Liens and Providing Superpriority Administrative Expense Claims, (III) Authorizing the Use of Cash Collateral, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, and (VI) Granting Related Relief* (the "Final DIP Order") [D.I. 478], which, among other things, designated Silicon Valley Bank as DIP Lender.

3. On May 29, 2020, the Court entered an order (the "Confirmation Order") [D.I. 697] confirming the *First Amended Plan of Liquidation Jointly Proposed by Achaogen, Inc. and the Official Committee of Unsecured Creditors of Achaogen Inc.* (the "Plan") [D.I. 686].

4. Pursuant to the Plan and the accompanying Plan Trust Agreement (the "Plan Trust Agreement") [D.I. 677-1], Edward E. Neiger was appointed as Plan Trustee. The beneficiaries of the Plan Trust are Silicon Valley Bank, as DIP Beneficiary, and the holders of allowed general unsecured claims, as GUC Beneficiaries.[1] Plan Trust Agreement at § 1.1.1.

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

6. As of the date of this Stipulation, all litigation has been settled, 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 remaining Cipla Royalties as defined herein.

B. The Cipla Royalties and Extension of Plan Trust Term

7. 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* (the "Plazomicin Sale Order") [D.I. 371], providing for the sale of certain of the Debtor's assets to Cipla USA, Inc. ("Cipla") under an agreement between the Debtor and Cipla (the "Plazomicin APA").

8. Pursuant to the Plazomicin Sale Order, 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

[1] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan Trust Agreement.

Royalties are to accrue each year through 2029 and are scheduled to be paid in corresponding annual installments by the Spring of 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).

9. 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 to be administered in accordance with the Plan Trust Agreement.

10. In light of the Plan Trustee's expectation that the bankruptcy case and Plan Trust will remain open for an extended term, the Plan Trustee sought authorization to extend, and on June 16, 2025 the Court entered an order extending, the term of the Plan Trust through and including May 29, 2028 [D.I. 928].

C. Distributions to DIP Beneficiary and GUC Reserve

11. In accordance with § 4.2 of the Plan Trust Agreement, the Plan Trustee is obligated to distribute remaining Plan Trust Assets to the DIP Beneficiary and the GUC Reserve in accordance with the authorized allocations under the Trust Waterfall, which provides for the sharing of proceeds of the Plan Trust Assets between the DIP Beneficiary and GUC Reserve on an 80%/20% basis. *See* Plan Trust Agreement at § 4.2.

12. The Plan Trustee has made distributions to the DIP Beneficiary and GUC Reserve from time to time in accordance with the Plan Trust Agreement, including distributions to general unsecured creditors most recently in July and August of 2025.

13. The Plan Trustee is currently holding $382,710.56 which constitute the DIP Beneficiary's 80% share of proceeds realized during the 2025 calendar year (the "DIP Beneficiary Proceeds").

D. The Continued Operation of the Plan Trust Requires Additional Funding.

14. The Plan and accompanying Plan Trust Agreement provided for a trust budget in the sum of $421,500.00 (the "Trust Budget"). The purpose of the Trust Budget was to fund the wind down of the Debtor's chapter 11 case, including, without limitation, payment of allowed administrative and priority claims, and funding the Plan Trust's expenses, including but not limited to fees (including professional fees), expenses and costs incurred in connection with the maintenance and disposition of Plan Trust Assets, certain U.S. Trustee fees, tax preparation fees for the 2020 tax year, and the administration of general unsecured claims including costs related to making distributions on such claims. Plan Trust Agreement at § 2.5, Ex. A.

15. Over the past five (5) years, the Plan Trust has incurred post-confirmation fees (including professional fees), costs and expenses necessary to administer, maintain, produce reporting, make payments, issue distributions, and otherwise fulfill its obligations under the Plan Trust Agreement, which fees, costs and expenses have now collectively exceeded the amount of the Trust Budget.

16. The Plan Trust has incurred or anticipates incurring $83,976.96 in unpaid fees, costs and expenses through the end of the 2025 calendar year (the "Remaining 2025 Trust Expenses") directly related to the Plan Trust's obligations and responsibilities under the Plan Trust Agreement.[2]

[2] The majority of these expenses are related to the administration and distribution of GUC Reserve proceeds to holders of allowed general unsecured claims.

17. There is less than $20,000 remaining in the Plan Trust's Trust Budget Account.

18. Neither the Plan nor the Plan Trust Agreement provides a mechanism for funding the Plan Trust following the exhaustion of the Trust Budget.

19. Additional funding is necessary to fulfill the purpose of the Plan Trust, including maintaining and administering the Plan Trust and bankruptcy case for the purpose of collecting and distributing the Cipla Royalties to beneficiaries of the Plan Trust.

20. The GUC Representative has reviewed and has no objection to this Stipulation.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated into, and are material terms of, this Stipulation, and the covenants contained herein, the Parties stipulate as follows:

21. Funding 2025 Plan Trust Expenses from DIP Beneficiary Proceeds. The DIP Beneficiary hereby stipulates and agrees for the Plan Trustee to retain $64,669.82 of the DIP Beneficiary Proceeds for the use and payment of the Remaining 2025 Trust Expenses.

22. Distribution of Net DIP Beneficiary Proceeds to DIP Beneficiary. The Plan Trustee hereby stipulates and agrees to distribute the net amount of DIP Beneficiary Proceeds, or $318,040.74, to the DIP Beneficiary on or before the later of (i) September 30, 2025 and (ii) the entry of an order approving this Stipulation.

23. No Adjustment to GUC Reserve Allocation. This stipulation does not reduce or otherwise modify the amount of Plan Trust Assets allocated for distribution to the GUC Beneficiaries under the Trust Waterfall. The DIP Beneficiary agrees that the Remaining 2025 Trust Expenses shall not be paid from the GUC Beneficiaries' share of proceeds of the Plan Trust Assets.

24. Acknowledgment. The Plan Trustee and DIP Beneficiary acknowledge that the amount of the Remaining 2025 Trust Expenses represents a good faith estimate by the Plan Trustee. In the event the Plan Trust's actual fees, expenses, and costs for the remainder of 2025 exceed the amount set aside herein, the Plan Trustee shall immediately notify the DIP Beneficiary, and the Parties shall act in good faith in an effort to resolve issues arising from any budget deficit, provided that no Party shall have any obligation to fund any such deficit absent the future agreement of such Party.

25. Future Funding. The Plan Trustee, DIP Beneficiary, and GUC Representative will meet prior to the end of the 2025 calendar year in an effort to determine the source of funding for the Plan Trust's fees, costs, and expenses for the 2026 calendar year.

26. Amendments. This Stipulation may not be amended or modified other than by a signed writing executed by all of the Parties or by further order of the Court.

27. Effectiveness. This Stipulation is subject to entry of the Proposed Order and shall be effective immediately upon entry of such an order.

28. Jurisdiction. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the construction, performance, enforcement, or implementation of the terms of this Stipulation.

29. Counterparts. The Stipulation may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. An ink or electronic signature transmitted by facsimile or email pdf shall be deemed an original signature for purposes of this Stipulation.

Signatures on Next Page

Dated: September 17, 2025

MORRISON & FOERSTER LLP

/s/ *Alexander G. Rheaume*
By: Alexander G. Rheaume

Counsel to First-Citizens Bank & Trust Company

Dated: September 18, 2025

EDWARD E. NEIGER, SOLELY IN HIS CAPACITY AS PLAN TRUSTEE

/s/ Edward E. Neiger
Edward E. Neiger, Plan Trustee