

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

In re

Achaogen, Inc.

Debtor.¹

Chapter 11

Case No. 19-10844 (BLS)

Re: D.I. 30, 123

**NOTICE OF COMPLETION OF AUCTION
AND SELECTION OF SUCCESSFUL BIDDERS**

PLEASE TAKE NOTICE that on April 15, 2019, the Debtor filed its *Motion for an Order Pursuant to Sections 105, 363, 364, 365 and 541 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006 and 9007 and Del. Bankr. L.R. 2002-1 and 6004-1 (A) Approving Bidding Procedures for the Sale of Substantially All Assets of Debtor; (B) Approving Procedures for the Assumption and Assignment, Assignment or Rejection of Designated Executory Contracts and Unexpired Leases; (C) Scheduling the Auction and Sale Hearing; (D) Approving Forms and Manner of Notice of Respective Dates, Times, and Places in Connection Therewith; and (E) Granting Related Relief (D.I. 30)* (the “Bidding Procedures Motion”).²

PLEASE TAKE FURTHER NOTICE that on May 1, 2019, the Court entered the *Order Pursuant to Sections 105, 363, 364, 365 and 541 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006 and 9007 and Del. Bankr. L.R. 2002-1 and 6004-1 (A) Approving Bidding Procedures for the Sale of Substantially All Assets of Debtor; (B) Approving Procedures for the Assumption and Assignment, Assignment or Rejection of Designated Executory Contracts and Unexpired Leases; (C) Scheduling the Auction and Sale Hearing; (D) Approving Forms and Manner of Notice of Respective Dates, Times, and Places in Connection Therewith; and (E) Granting Related Relief (D.I. 123)* (the “Bidding Procedures Order”).

PLEASE TAKE FURTHER NOTICE that, in accordance with the Bidding Procedures Order, the Debtor commenced an Auction for substantially all of its assets on June 3, 2019, at 10:00 am (prevailing Pacific Time).

PLEASE TAKE FURTHER NOTICE that most, but not all, of the Debtor’s assets, including, but not limited to, the Debtor’s rights to ZEMDRI (plazomicin) and related assets and liabilities, were presented for bidding in the Auction, which was conducted in three separate parts. The highest and best bids received at the Auction were from (i) Cipla USA, Inc. (“Cipla”), (ii) Qilu Antibiotics Pharmaceutical Co., and (iii) Heritage Global Partners, Inc. (collectively, the “Successful Bidders”). The Successful Bidders’ respective rights in and to the Debtor’s assets

¹ The last four digits of Debtor’s federal tax identification number are (3693). The Debtor’s mailing address for purposes of this chapter 11 case is 1 Tower Place, Suite 400, South San Francisco, CA 94080.

² Capitalized terms used but not defined herein shall have the meanings given to them in the Bidding Procedures Order or Interim DIP Orders, as applicable.



will be as set forth in the asset purchase agreement or the license agreement, as applicable, that each of the Successful Bidders will enter into with the Debtor, subject to approval at the Sale Hearing. As a result of the Auction, the Debtor's estate will receive total aggregate cash proceeds of at least \$16 million (nominal value), consisting of (a) \$13.375 million in cash payments upon closing, (b) the assumption of certain contractual liabilities, and (c) two forms of additional contingent consideration. One form of such contingent consideration, which includes non-contingent guaranteed minimum payments equaling \$2.7 million³ over the next 10 years, consists of 10% of net sales of plazomicin greater than \$40 million per year in all countries (other than Greater China) for the period beginning on Closing (as such term is defined in the Cipla asset purchase agreement) and ending at such time that any Person (other than the Purchaser or its Affiliates) has received FDA approval for an Abbreviated New Drug Application or an FDA AP-rated 505(b)(2) NDA using plazomicin. A second form of contingent consideration relates to royalty payments of 12.5% which the Debtor will be entitled to receive from Cipla, calculated on cash actually received by Cipla, for certain stockpiling sales in 2019, 2020, and 2021 pursuant to a yet-to-be-awarded government contract (the application for which is due June 21, 2019), provided such contract is actually awarded.

PLEASE TAKE FURTHER NOTICE that the Debtor continues to negotiate final documentation with the various Successful Bidders and will file such documentation with the Court at the appropriate time.

PLEASE TAKE FURTHER NOTICE that the Sale Hearing is scheduled for **June 19, 2019, at 11:00 am** (prevailing Eastern Time); provided, however, the Sale Hearing shall be further adjourned to June 24, 2019, at 10:00 a.m. (prevailing Eastern Time) *if* entry of the Sale Order or Final DIP Order is contested among the Debtor, the DIP Lender and/or the Committee; provided, further, that the Debtor reserves all rights to further adjourn the Sale Hearing in consultation with the DIP Lender and the Committee.

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³ \$2.7 million is the nominal value of these payments, not the present value of these payments.

Dated: June 13, 2019
Wilmington, Delaware

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