

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re

Achaogen, Inc.,

Debtor.¹

Chapter 11

Case No. 19-10844 (BLS)

**DECLARATION OF BLAKE WISE, CHIEF EXECUTIVE OFFICER OF
ACHAOGEN, INC., IN SUPPORT OF THE (I) SALE OF CERTAIN ASSETS OF
THE DEBTOR TO CIPLA USA INC., HERITAGE GLOBAL PARTNERS, INC. AND
UNITY BIOTECHNOLOGY, INC. AND (II) ENTRY OF THE SALE ORDER**

I, Blake Wise, hereby declare and state:

1. I am the Chief Executive Officer of Achaogen, Inc. (the “Debtor” or “Achaogen”) and have served in such capacity since January 2018. Prior to serving as CEO, I was the Chief Operating Officer of Achaogen from October 2015 to December 2017 and was President of Achaogen from February 2017 to December 2017. In such capacities, I am familiar with the Debtor’s assets, liabilities, day-to-day operations, business, employees, and Chapter 11 Case. I hold a Bachelor’s Degree in Business Economics from the University of California, Santa Barbara and a Master of Business Administration from the University of California, Berkeley – Walter A. Haas School of Business.

2. I submit this declaration in support of the entry of an order (the “Sale Order”) approving the sale of certain of the Debtor's assets to (i) Cipla USA Inc. (“Cipla”), (ii) Qilu Antibiotics Pharmaceutical Co., Ltd. (“Qilu”), (iii) Heritage Global Partners, Inc. (“Heritage”), and (iv) Unity Biotechnology, Inc. (“Unity”), as the successful bidders (collectively, the

¹ The last four digits of the 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. Unless otherwise specified, capitalized terms used but not defined herein have the meanings given to such terms in the Motion, Bidding Procedures, or Bidding Procedures Order, as applicable.



“Successful Bidders”) at the Debtor’s two auctions for the assets that are the subject of the Sale Order.

3. Unless otherwise stated in this declaration, I have personal knowledge of the facts herein and, if called as a witness at the Sale Hearing, I would testify competently thereto.

Prepetition Restructuring Efforts

4. Prior to the Petition Date, the Debtor and its professionals undertook an exhaustive process to explore potential strategic alternatives for maximizing the value of the Debtor’s business. In parallel with its cost-reducing efforts detailed in the *Declaration of Blake Wise in Support of First Day Relief* (the “First Day Declaration”) [D.I. 3], prior to the chapter 11 filing, Achaogen explored potential strategic alternatives for maximizing the value of its business. On November 5, 2018, Achaogen announced a review of strategic alternatives to maximize stockholder value, including but not limited to the potential sale or merger of the company or its assets. This strategic review process continued alongside Achaogen’s continued focus on the commercialization of ZEMDRI and other corporate initiatives.

A. The Marketing and Sale Process

5. Achaogen retained Evercore Group LLP (“Evercore”) as its investment banker to assist it with exploring potential strategic alternatives, including assisting Achaogen in any potential restructuring, sale transaction or financing transaction. Following public announcement of the engagement, Achaogen and Evercore identified and then met with numerous potential parties for such a transaction beginning in November 2018. A team of senior executives worked together on this process with Evercore on a daily basis, and I personally and substantially participated in the process of meeting with potential parties, reaching out to various potential parties and providing detailed management presentations. A virtual data room was made available containing extensive information about Achaogen, including documents describing

Achaogen's business and financial results in considerable detail, and potential purchasers had the opportunity to conduct due diligence via the virtual data room, as well as through meetings with Achaogen management.

6. Achaogen and Evercore ran a marketing process that targeted strategic partners, merger-of-equal candidates and peripheral candidates (ex-U.S. buyers, parties without direct complementary assets, lagging parties, etc.). In total, Evercore contacted 75 potential buyers, including financial buyers, privately-held specialty pharmaceutical companies, small publicly-traded infectious disease companies and a number of publicly-traded pharmaceutical companies. Approximately 21 of the parties Evercore contacted received process letters, and 19 executed NDAs. Of the 19 parties that executed NDAs, all parties received management presentations and 15 received access to the virtual data room.

7. Unfortunately, despite Achaogen's significant efforts, the marketing process did not yield an acceptable proposal. Although Achaogen remained positive about its longer-term prospects and its ability to ultimately reach profitability and maximize value, it continued to be concerned with its inability to generate positive free cash flow in the near-term.

B. Fundraising and Structuring Efforts

8. Achaogen recognized that maintaining liquidity would be key to achieving a strategic transaction that would bridge the company to profitability, thereby maximizing value for all stakeholders, including the holders of its equity. Thus, to complement the marketing and cost-cutting efforts described above, in December 2018, Achaogen engaged restructuring professionals at Meru, LLC ("Meru") to assist it in further refining its business strategy and examining the possibility of further cost reductions.

9. At the same time, and throughout this period, Achaogen pursued various funding and financing options, including selling equity and pursuing licensing opportunities outside of the United States. These efforts were all intended to bridge the company to the point of free positive cash flow or consummation of a strategic transaction.

10. Achaogen also pursued discussions with multiple companies to exclusively license the rights to develop and commercialize plazomicin in China and Europe. Several small private companies and large pharmaceutical companies reviewed the opportunity to license plazomicin and five non-binding term sheets were received for Chinese or European rights. Unfortunately, notwithstanding the promising market interest in licensing the drug, Achaogen ultimately concluded that the collective upfront payments that would be provided under these licensing agreements would be insufficient to bridge Achaogen to a strategic transaction. In addition, given Achaogen's reduced staff, Achaogen was concerned that it would be difficult for the company to uphold its contractual obligations in a licensing agreement.

C. The Decision to File Chapter 11

11. Achaogen ultimately concluded that given the significant challenges in achieving positive free cash flows in the near term, the business likely would not be viable on a stand-alone basis absent a strategic transaction or a restructuring of its debt. And given the results of its recent marketing process, Achaogen had low-confidence that it could consummate any strategic transaction out of court given its limited available liquidity.

12. After extensive deliberation, Achaogen decided to prepare for a potential sale process that could be implemented through the filing of a chapter 11 case to maximize the value of the company and its assets. After significant negotiations with its prepetition lender, Silicon Valley Bank, N.A. ("SVB"), SVB agreed to provide the Debtor with DIP Financing in a chapter

11 case under certain terms and conditions. On April 7, 2019, the Debtor engaged Cassel Salpeter & Co., LLC (“Cassel”) as the Debtor’s investment banker to market the assets as part of a 363 sale. The Debtor filed this case on April 15, 2019.

Robust Marketing Process

13. As reflected in the status report prepared by Cassel and attached to the Supplement as Exhibit F [D.I. 113-6], the Debtor and its professionals put forth extensive efforts to market the Debtor’s assets since the Petition Date. From day one, Cassel actively reached out to new potential buyers while simultaneously reengaging parties who had participated in the Debtor’s prepetition marketing process. The Debtor and its professionals identified and connected with a total of 173 potential buyers, including 143 strategic buyers and 30 financial buyers.

14. Throughout the post-petition marketing and sale process, the Debtor, with support from SVB and the Official Committee of Unsecured Creditors (the “Committee”), has been committed to achieving a successful sale of its business and maximizing value and recoveries for creditors. Its management and employees have worked tirelessly to obtain the best possible result for its stakeholders.

Receipt of Competing Bids; Qualification of Bidders and Bids

15. To maximize the value of the Debtor’s assets for the benefit of the Debtor’s estate and stakeholders, the Debtor implemented a competitive bidding process in accordance with the Bidding Procedures and Bidding Procedures Order. The Bidding Procedures and the auction process were designed to realize the highest and best available recovery for the Debtor’s creditors by encouraging all interested entities to put their best bids forward. The bidding procedures provided for a fair, open and competitive process.

16. Ultimately, the Debtor received bids from nine (9) Qualified Bidders, some of which were for substantially all of the Debtor's assets, and others of which were for only certain parts of its assets. The Debtor and its professionals reviewed the competing bids and, in consultation with SVB and the Committee, recognized that certain of the bids received included modifications to the terms of the proposed APA that were problematic in the context of the Debtor's chapter 11 process and liquidity position. At the same time, however, the Debtor did not wish to chill bidding. Thus after consultation with SVB and the Committee, the Debtor spoke with each of the relevant Potential Bidders, and advised each that if its bid was ultimately selected as the highest and best bid after the Auction, the bid would remain subject to documentation satisfactory to the Debtor (in consultation with the Committee and SVB). With the exception of one Potential Bidder who grossly neglected to follow the requirements to be a Qualified Bidder (as set forth in the Bidding Procedures), the Debtor determined all of the Potential Bidders to be Qualified Bidders upon their agreement to this process. The Qualified Bidders bid on a variety of assets (some submitting alternative bids on different asset packages) including the following:

- Substantially all of the Debtor's assets
- C-Scape program assets ("C-Scape")
- The Debtor's global assets other than in China
- The Debtor's assets in the United States, EU, Japan, and Canada
- Licensing rights to develop, commercialize and manufacture the compound and the product of ZEMDRITM (Plazomicin) in the Greater China Region under certain intellectual property and technology controlled by the Debtor
- Certain equipment
- Tie2 antibody program

17. In consultation with SVB and the Committee, the Debtor and its professionals determined that Cipla's bid of \$10,500,000 for all of the Debtor's assets should serve as the

Baseline Bid to begin the Auction.² Having reviewed the Qualified Bid submitted by Cipla, and the other Qualified Bids received, I believe that the Debtor's selection of Cipla's bid as the Baseline Bid was justified and ultimately maximized value for the Debtor's estate.

The Auctions; Choosing the Successful Bids

18. The Debtor, in the exercise of its reasonable discretion, and in consultation with SVB and the Committee, conducted multiple auctions for its assets: (i) first, auctions for all assets other than C-Scape which began on June 3, 2019 and concluded on June 4, 2019 (the "June 3 Auction") and (ii) second, an auction for C-Scape³ which began on June 11, 2019 and concluded on June 13, 2019 (the "June 11 Auction", and together with the June 3 Auction, the "Auctions"). I believe that the Debtor, the Committee, SVB, and their respective agents and representatives complied in all material respects with the Bidding Procedures and Bidding Procedures Order with respect to the Auctions.

19. The June 3 Auction, which was held in Hogan Lovells Silicon Valley office, lasted approximately 17 hours and resulted in sales to four different Qualified Bidders. The Debtor consulted with the Committee and SVB in selecting the Successful Bidder for each asset set. The Successful Bids from the June 3 Auction can be summarized as follows:

<u>Successful Bidder</u>	<u>Assets Awarded</u>	<u>Consideration</u>	<u>Status of Agreement</u>
Cipla USA, Inc.	Debtor's worldwide rights to ZEMDRI™ (Plazomicin) and related assets and liabilities (subject to	\$4,650,000 (and certain cash and non-cash consideration as discussed below)	Plazomicin Asset Purchase Agreement filed on June 21, 2019 (" <u>Plazomicin APA</u> ") at Docket No. 292,

² Cipla's proposed Purchase Price was comprised of \$10,500,000 of cash consideration, as well as certain contingent consideration, as further described in Cipla's proposed asset purchase agreement.

³ Because the Debtor received bids for C-Scape during and after the June 3 Auction, the Debtor and its professionals, in consultation with the Committee and SVB, determined that holding a separate auction for C-Scape would further maximize value of the Debtor's assets for the Debtor's estate.

	the terms and conditions of the License Agreement to be executed between the Debtor and Qilu)		Ex. A.
Qilu Antibiotics Pharmaceutical Co., Ltd.	Licensing rights to develop, commercialize and manufacture the compound and the product of ZEMDRI™ (Plazomicin) in the Greater China Region under certain intellectual property and technology controlled by the Debtor	\$8,500,000	License Agreement is currently being negotiated and the agreement, along with Qilu's bid, is subject to acceptable documentation (" <u>License Agreement</u> ")
Heritage Global Partners, Inc.	Certain equipment	\$225,000	Equipment Purchase Agreement, which will be finalized and filed in advance of the June 24 sale hearing (" <u>Heritage EPA</u> ")
Unity Biotechnology, Inc. ⁴	Tie2 program	\$125,000	Asset Purchase Agreement filed on June 21, 2019 (" <u>Tie2 APA</u> ") at Docket No. 292, Ex. C.

20. The June 11 Auction was held telephonically over the course of three days, and ultimately resulted in the proposed sale of C-Scape to Cipla for a purchase price of \$1,050,000, subject to documentation acceptable to the Debtor. Subsequently, Cipla agreed to purchase certain of the Debtor's unrelated IT equipment for an additional \$150,000 of consideration. To

⁴ Unity was the only Qualified Bidder who submitted a bid for the Tie2 assets. Upon confirmation from the Successful Bidders and Back-Up Bidders for ZEMDRI™ (Plazomicin) that their bids did not include the Tie2 assets, Unity was declared the Successful Bidder for such assets.

minimize cost and complexity, these two transactions were documented together in an asset purchase agreement (“C-Scape APA”), which is filed at D.I. 292-2.

21. The Court is being asked to approve the Plazomicin APA, C-Scape APA, Heritage EPA, and Tie2 APA at the hearing scheduled for June 24, 2019. The Debtor is still negotiating documentation with Qilu, and will seek to hold a separate hearing to approve the License Agreement as soon as practicable after documentation is completed. Additionally, before the closing of the License Agreement, Qilu will be required to obtain certain approvals from the People’s Republic of China. We are informed that this process may take four to six weeks after the agreement is signed and submitted for approvals.

22. In sum, as a result of the Auctions, the Debtor’s estate will receive total aggregate cash proceeds of at least \$17,400,000 (nominal value), consisting of (i) \$14,700,000 in cash payments upon closing and (ii) \$2.7 million⁵ in non-contingent guaranteed royalty payments over the next 10 years (the “Guaranteed Royalty Payments”). Additionally, Cipla (a) will assume certain contractual liabilities and pay certain cure amounts, (b) will pay royalties to the Debtor of ten percent (10%) of net sales of plazomicin greater than \$40 million per year worldwide (other than Greater China) (less any Guaranteed Royalty Payments paid in a given year pursuant to (ii) above) for the period beginning on Closing (as such term is defined in the Plazomicin APA) 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 and (c) will make to the Debtor royalty payments of twelve and a half percent (12.5%), 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

⁵ \$2.7 million is the nominal value of these payments, not the present value of these payments.

(the application for which was submitted on June 21, 2019), provided such contract is actually awarded. In addition, Cipla has agreed to obtain the Hovione Release as defined in the Plazomicin APA, by which Hovione will release significant claims it might otherwise have against the Debtor's estate.

The Auctions; Choosing the Back-Up Bids

23. The Debtor and its professionals, in consultation with SVB and the Committee, determined that (i) Altamont Pharma Fund II, LLC's bid of \$4.4 million (with the same non-cash consideration as Cipla's successful bid) would serve as the Back-Up Bid to Cipla's winning bid for the Debtor's worldwide rights to ZEMDRITM (Plazomicin) and related assets and liabilities (subject to the terms and conditions of the License Agreement to be executed between the Debtor and Qilu), (ii) Cipla's bid of \$8.4 million would serve as the Back-Up Bid to Qilu's winning bid for the licensing rights to develop, commercialize and manufacture the compound and the product of ZEMDRITM (Plazomicin) in the Greater China Region, (iii) American Laboratory Trading Inc.'s bid of \$60,000 would serve as the Back-Up Bid to Heritage's winning bid for the Debtor's equipment, and (iv) Vipragen Biosciences Private Ltd.'s bid of \$1.025 million would serve as the Back-Up Bid to Cipla's winning bid for C-Scape.

Benefits to Estate of Sale to the Successful Bidders

24. The Purchase Price for the Debtor's assets, when taken in the aggregate, represents an increase of \$6,120,000 in cash payments over the collective baseline bids of \$11,280,000, plus (i) additional and potentially valuable contingent consideration and (ii) non-cash consideration, including the assumption of certain liabilities not included in the baseline bids. The Purchase Price will be paid by the Successful Bidders in accordance with each of the Successful Bidders' respective asset purchase agreements or license agreement, as applicable.

25. Throughout the marketing process and leading up to the Sale Hearing, the Debtor engaged in extensive good faith and arms'-length negotiations with SVB, the Committee, and the Successful Bidders. My team and I were engaged in the negotiations with the Successful Bidders at every turn, spending hours negotiating the terms of the transaction documents and working with principals of the various bidders to plan for an efficient and successful transfer of the Debtor's business. Because of such vigorous and extensive negotiations, I believe the work of the Debtor, its professionals, and all parties-in-interest has maximized the value of the Debtor's assets for the Debtor's estate. And while the value we obtained for the Debtor's assets was less than we had hoped, we believe our efforts have ensured that plazomicin will continue to be available to patients—and C-scape will continue in development—in the years to come.

Conclusion

26. In conclusion, I believe that the sale of the Debtor's assets to the Successful Bidders is in the best interests of the Debtor, its estate and its creditors because the winning bids are the highest and best offers available for such assets and will maximize recoveries for creditors.

27. Therefore, I believe that the Court should enter the Sale Order and approve the sale of the Debtor's assets to the Successful Bidders (provided that the Debtor will seek separate approval of the Debtor's anticipated transition with Qilu).

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 22, 2019

/s/ Blake Wise
Blake Wise, Chief Executive Officer
Achaogen, Inc.