

**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. 716**

**OBJECTION OF PLAN TRUSTEE TO ORACLE AMERICA, INC.'S REQUEST FOR  
ALLOWANCE AND PAYMENT OF ADMINISTRATIVE EXPENSES**

NOW COMES Edward E. Neiger, Achaogen Plan Trustee, by and through counsel, and submits this Objection to the Request for Allowance and Payment of Administrative Expenses filed by Oracle America, Inc. [D.I. 716], and in support thereof show the Court as follows:

**PROCEDURAL BACKGROUND**

1. The Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code on April 15, 2019 (the "Petition Date").
2. On May 29, 2020, the Court entered an 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. 697] (the "Plan").
3. Pursuant to the Plan and the Plan Trust Agreement, Edward E. Neiger was appointed as Achaogen Plan Trustee ("Plan Trustee").
4. Among the duties of the Plan Trustee are "Pursuing objections to, and estimations and settlements of Administrative Claims (other than Professional Fee Claims) . . ."
5. On June 29, 2020, Oracle America, Inc. ("Oracle") filed its Request for Allowance and Payment of Administrative Expenses (the "Administrative Claim Motion").



BASIS FOR OBJECTION

6. In support of the Administrative Claim Motion, Oracle attached an invoice dated October 22, 2018 (the “October 2018 Invoice”) and purporting to show a service contract for a term commencing on October 22, 2018 and continuing for one year through October 21, 2019.

7. The Plan Trustee objects to treatment of the debt arising from the October 2018 Invoice as an administrative claim because the debt arose prior to the Petition Date.

8. In the alternative, even if Oracle could establish that it provided services after the Petition Date and such services would otherwise be entitled to administrative priority, on information and belief the underlying agreement between the Debtor and Oracle was assumed and assigned to Cipla USA Inc. such that any unpaid debt is the responsibility of Cipla USA Inc. See *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 “Cipla Sale Order”) [D.I. 371, see para. 27 and p. 188 of 204].

9. In support of the Administrative Claim Motion, Oracle attached a second invoice, dated September 12, 2019 (the “September 2019 Invoice”), purporting to be for services provided between September 12, 2019 and October 21, 2019.

10. On information and belief, the September 2019 Invoice arises from an agreement between the Debtor and Oracle dated April 20, 2017.

11. On information and belief, the debt arising from the September 2019 Invoice was assumed and assigned to Cipla pursuant to the Cipla Sale Order, such that any unpaid debt is the responsibility of Cipla USA Inc.

WHEREFORE, Edward E. Neiger, Achaogen Plan Trustee, respectfully requests that the Administrative Claim Motion filed by Oracle be denied, and for such other relief as the Court deems just and proper.

DATED: July 30, 2020

**COLE SCHOTZ P.C.**

/s/ Justin R. Alberto

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