

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

In re:

Achaogen, Inc.,

Debtor.

Chapter 11

Case No. 19-10844 (BLS)

Re: Docket No. 863

**CERTIFICATION OF COUNSEL REGARDING PLAN TRUSTEE'S OBJECTION TO
CLAIM NUMBER 271 OF AP3-SF2 CT SOUTH LLC**

I, Andrew Roth-Moore, Esq., counsel for Edward E. Neiger, Plan Trustee ("Trustee") for the Achaogen Plan Trust in the above-captioned bankruptcy case (the "Bankruptcy Case"), hereby certify as follows:

1. On July 22, 2019, AP3-SF2 CT South LLC (the "AP3") filed proof of claim 271 against the Debtor, Achaogen, Inc., asserting, among other things, a general unsecured claim in the amount of \$15,823,911.60 (the "Claim") in relation to amounts allegedly owed under a lease for commercial real property, including but not limited to lease rejection damages and prepetition unpaid rent. A Notice of Transfer of Claim Other than as Security was filed with the Bankruptcy Court on June 27, 2022, transferring the claim to Phase 3 Real Estate Partners, Inc. ("Phase 3").

2. On May 23, 2022, the Trustee filed the *Achaogen Plan Trustee's Objection to Claim Number 271 of AP3-SF2 CT South LLC* (the "Claim Objection") [D.I. 863], in which the Trustee objected to the amount of the Claim, and sought to reduce the Claim to \$8,506,486.22 on the grounds set forth therein.

3. The deadline to respond to the Claim Objection was June 6, 2022 (the "General Response Deadline"). By agreement among counsel, the response deadline was extended.



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4. Phase 3 submitted a timely, informal response to the Claim Objection. No other party responded formally or informally.

5. Following discussions and negotiations, the Trustee and Phase 3 have reached a resolution of the Claim Objection as memorialized in the revised proposed *Order Regarding Achaogen Plan Trustee's Objection to Claim Number 271 of AP3-SF2 CT South LLC*, attached hereto as Exhibit A (the "Revised Order").

6. A blackline showing the changes between the original proposed order filed with the Claim Objection and the Revised Order is attached hereto as Exhibit B.

WHEREFORE, the Trustee respectfully requests entry of the Revised Order.

Dated: June 29, 2022

COLE SCHOTZ P.C.

/s/ Justin R. Alberto
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Counsel for Achaogen Plan Trustee

Exhibit A

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

In re:

Achaogen, Inc.,

Debtor.

Chapter 11

Case No. 19-10844 (BLS)

Re: Docket No. 863

**ORDER REGARDING ACHAOPEN PLAN TRUSTEE'S
OBJECTION TO CLAIM NUMBER 271 OF
AP3-SF2 CT SOUTH LLC**

Upon the *Achaogen Plan Trustee's Objection to Claim Number 271 of AP3-SF2 CT South LLC* (the "Objection")¹ filed by Edward E. Neiger, Plan Trustee ("Plan Trustee") of the Achaogen Plan Trust ("Trust") seeking entry of an order (this "Order") modifying claim number 271 (the "Claim") originally filed by AP3-SF2 CT South LLC ("AP3"), as more fully set forth in the Objection; and upon the *Declaration of Edward Neiger, Plan Trustee, in Support of the Achaogen Plan Trustee's Objection to Claim Number 271 of AP3-SF2 CT South LLC* attached to the Objection as **Exhibit 1**; and upon all other documentation filed in connection with the Objection; and adequate notice of the Objection having been given as set forth in the Objection; and it appearing that no other or further notice is required; and sufficient cause appearing therefor;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The Objection is GRANTED in part to the extent set forth herein.
2. The Claim is hereby modified and fully and finally allowed as a general unsecured

¹ Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Objection.

claim in the amount of \$12,000,000.00.² Upon entry of this Order, the Plan Trustee, the Trust, the Debtor and the Debtor's estate shall be deemed to have released and discharged AP3 and Phase 3 (defined below) from any and all further objections, claims, debts, demands, offsets, and other causes of action that in any way relate to the Claim and shall be further be deemed to have waived any rights to seek reconsideration of the Claim pursuant to section 502(j) of the Bankruptcy Code.

3. Following AP3's filing of the Claim, AP3 assigned the Claim to Phase 3 Real Estate Partners, Inc. ("Phase 3"). A Transfer of Claim other than for Security from was filed with the Bankruptcy Court on June 27, 2022 [Docket No. 880]. Consistent with the transfer of the Claim, upon entry of this Order, Phase 3 shall be substituted for AP3 on the claims register with respect to the Claim and the Plan Trustee, KCC, and the Clerk of this Court shall be authorized to take all actions necessary to reflect that Phase 3 is the current holder of the Claim. The notice address and address where payments should be sent with respect to Phase 3 and the Claim shall be amended as follows:

Phase 3 Real Estate Partners, Inc.
P.O. Box 927729
San Diego, CA 92912

4. The Plan Trustee, KCC, and the Clerk of this Court are authorized to take all actions necessary and appropriate to give effect to this Order.

5. The Plan Trustee is authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Objection.

6. Notwithstanding any applicable Bankruptcy Rules or Local Rules, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

² Claim Number 271 also included an administrative portion in the sum of \$128,447.12. That administrative portion was paid and satisfied in full as memorialized in the Trustee's *First Notice of Satisfaction of Certain Fully Satisfied Claims* [D.I. 852]. The Objection related only to the general unsecured claim.

7. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Exhibit B

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

Achaogen, Inc.,

Debtor.

Chapter 11

Case No. 19-10844 (BLS)

[Re: Docket No. 863](#)

ORDER ~~SUSTAINING~~REGARDING ACHAOPEN PLAN TRUSTEE'S
OBJECTION TO CLAIM NUMBER 271 OF
AP3-SF2 CT SOUTH LLC

Upon the *Achaogen Plan Trustee's Objection to Claim Number 271 of AP3-SF2 CT South LLC* (the "Objection")¹ filed by Edward E. Neiger, Plan Trustee ("Plan Trustee") of the Achaogen Plan Trust ("Trust") seeking entry of an order (this "Order") modifying claim number 271 (the "Claim") originally filed by AP3-SF2 CT South LLC ("~~Claimant~~AP3"), as more fully set forth in the Objection; and upon the *Declaration of Edward Neiger, Plan Trustee, in Support of the Achaogen Plan Trustee's Objection to Claim Number 271 of AP3-SF2 CT South LLC* attached to the Objection as Exhibit 1; and upon all other documentation filed in connection with the Objection; and adequate notice of the Objection having been given as set forth in the Objection; and it appearing that no other or further notice is required; and sufficient cause appearing therefor;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The Objection is GRANTED in part to the extent set forth herein.
2. The Claim is hereby modified ~~to reflect~~ and fully and finally allowed as a general

¹ Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Objection.

unsecured claim in the amount of \$8,506,486.22~~12,000,000.00~~.² Upon entry of this Order, the Plan Trustee, the Trust, the Debtor and the Debtor's estate shall be deemed to have released and discharged AP3 and Phase 3 (defined below) from any and all further objections, claims, debts, demands, offsets, and other causes of action that in any way relate to the Claim and shall be further be deemed to have waived any rights to seek reconsideration of the Claim pursuant to section 502(j) of the Bankruptcy Code.

~~3. The~~, Following AP3's filing of the Claim, AP3 assigned the Claim to Phase 3 Real Estate Partners, Inc. ("Phase 3"). A Transfer of Claim other than for Security from was filed with the Bankruptcy Court on June 27, 2022 [Docket No. 880]. Consistent with the transfer of the Claim, upon entry of this Order, Phase 3 shall be substituted for AP3 on the claims register with respect to the Claim and the Plan Trustee, KCC, and the Clerk of this Court ~~are~~ shall be authorized to take all actions necessary ~~and appropriate to give effect to this Order~~ to reflect that Phase 3 is the current holder of the Claim. The notice address and address where payments should be sent with respect to Phase 3 and the Claim shall be amended as follows:

~~4. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable law; (b) an allowance of any claim or a waiver of the Plan Trustee's or any other party in interest's right to dispute or object to any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Objection or any order granting the relief requested by this Objection or a finding that any~~

² Claim Number 271 also included an administrative portion in the sum of \$128,447.12. That administrative portion was paid and satisfied in full as memorialized in the Trustee's *First Notice of Satisfaction of Certain Fully Satisfied Claims* [D.I. 852]. The Objection related only to the general unsecured claim.

~~particular claim is a secured, administrative expense or other priority claim; or (e) a waiver or limitation of the Plan Trustee's, or any other party in interest's, rights under the Bankruptcy Code or any other applicable law~~

Phase 3 Real Estate Partners, Inc.
P.O. Box 927729
San Diego, CA 92912

4. The Plan Trustee, KCC, and the Clerk of this Court are authorized to take all actions necessary and appropriate to give effect to this Order.

5. The Plan Trustee is authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Objection.

6. Notwithstanding any applicable Bankruptcy Rules or Local Rules, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

7. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Document comparison by Workshare 10.0 on Wednesday, June 29, 2022 1:16:44 PM

Input:	
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Description	Ex 3 - proposed order
Document 2 ID	file://C:\Users\lsm\Downloads\proposed order (final - clean).docx
Description	proposed order (final - clean)
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
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Deletions	8
Moved from	1
Moved to	1
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Format changed	0
Total changes	31