

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

In re

**Achaogen, Inc.**

Debtor.<sup>1</sup>

Chapter 11

Case No. 19-10844 (BLS)

Re: D.I. 252

**ORDER (A) ESTABLISHING BAR DATE  
FOR FILING PROOFS OF CLAIM, (B) APPROVING THE  
FORM AND MANNER FOR FILING PROOFS OF CLAIM, (C) APPROVING  
NOTICE THEREOF, (D) IMPLEMENTING UNIFORM PROCEDURES  
REGARDING 503(b)(9) CLAIMS, AND (E) GRANTING RELATED RELIEF**

Upon the motion (the "Motion")<sup>2</sup> of the above-captioned debtor and debtor-in-possession (the "Debtor"), for entry of an order (this "Order"), pursuant to section 501 the Bankruptcy Code, Bankruptcy Rules 2002 and 3003(c)(3), and Local Rules 2002-1(e) and 3003-1: (a) establishing the deadline for each person or entity alleging claims against the Debtor with respect to 503(b)(9) Claims to file a proof of claim (the "503(b)(9) Claims Bar Date"); (b) establishing the deadline for each person or entity to file a request to allow unpaid administrative expense claims (the "Administrative Claim") against the Debtor arising on or after the Petition Date and through and including June 30, 2019 (the "First Administrative Claims Period"); (c) establishing the deadline by which creditors, other than governmental units and those asserting a 503(b)(9) Claim or Administrative Claim, must file proofs of claim against the Debtor (the "General Bar Date"); (d) establishing the deadline by which governmental units must file proofs of claim against the Debtor (the "Governmental Bar Date"); (e) establishing the later

<sup>1</sup> 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.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Motion.



of (i) the General Bar Date and (ii) twenty-one (21) days after the effective date of rejection, as provided by an order of this Court or pursuant to a notice under procedures approved by this Court, as the deadline by which a proof of claim relating to the Debtor's rejection of an executory contract or unexpired lease must be filed against the Debtor (the "Rejection Bar Date"); (f) establishing the deadline, if necessary, by which creditors holding claims that have been amended by the Debtor in its Schedules as the later of (i) the General Bar Date and (ii) twenty-one (21) days after the date that notice of the amendment is served on the affected claimant (the "Amended Schedule Bar Date," and together with the 503(b)(9) Claims Bar Date, Administrative Claims Bar Date, General Bar Date, the Governmental Bar Date, and the Rejection Bar Date, the "Bar Dates"); (g) approving the forms of notice to be used to inform potential creditors of the Bar Dates; (h) approving mailing procedures with respect to notice of the Bar Dates; (i) establishing the procedure by which proofs of claim for certain administrative expenses pursuant to section 503(b)(9) of the Bankruptcy Code must be filed; and (j) providing certain supplemental relief; and it appearing that the relief requested in the Motion is in the best interest of the Debtor and its estate and that the establishment of the Bar Dates and the procedures set forth in the Motion are fair and reasonable and will provide good, sufficient, and proper notice to all creditors of their rights and obligations in connection with claims they may have against the Debtor or its property in this Chapter 11 Case; and the Court finding that (k) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated February 29, 2012, and (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and notice of this Motion having been due and sufficient under the circumstances; and after any

hearing and upon the record in this Chapter 11 Case; and after due deliberation; and good and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT:**

1. The Motion is **GRANTED** as set forth herein.
2. Bar Dates. The Bar Dates set forth in the Motion are hereby **APPROVED**.

The relevant Bar Dates are as follows:

503(b)(9) Claims Bar Date	July 22, 2019
Administrative Claims Bar Date	July 22, 2019
General Bar Date	August 5, 2019
Governmental Bar Date	October 14, 2019
Rejection Bar Date	The later of (i) the General Bar Date and (ii) twenty-one (21) days after the effective date of rejection, as provided by an order of this Court or pursuant to a notice under procedures approved by this Court, as the deadline by which a proof of claim relating to the Debtor's rejection of an executory contract or unexpired lease must be filed against the Debtor.
Amended Schedule Bar Date	The later of (i) the General Bar Date and (ii) twenty-one (21) days after the date notice of the amendment is served on the affected claimant.

3. Notices and Forms. The forms of the Claim Form, Bar Date Notice, the Publication Notice, and Notice of Amended Schedules, substantially in the forms attached to the Motion, and the manner of providing notice of the Bar Dates proposed in the Motion, are **APPROVED**. The form and manner of notice of the Bar Dates approved are hereby deemed to

fulfill the notice requirements of the applicable provisions of the Bankruptcy Code, and the Bankruptcy Rules, and the Local Rules.

4. 503(b)(9) Claims Bar Date. The 503(b)(9) Claims Bar Date, for any Entity to assert a claim against the Debtor made by sellers of goods for the value of goods received by the Debtor in the ordinary course of business within 20 days of the Petition Date, is **July 22, 2019.**

5. Administrative Claims Bar Date. The Administrative Claims Bar Date by which entities must file proofs of claim evidencing all Administrative Claims arising during the First Administrative Claims Period, excluding claims for professional fees and expenses in this case, is **July 22, 2019.**

6. The General Bar Date. The General Bar Date by which proofs of claim against the Debtor must be filed is **August 5, 2019.**

7. Service. Within seven (7) calendar days following the entry of this Order, the Debtor will serve, through their claims agent, KCC, the notice of Bar Dates (the "Bar Date Notice") and a Claim Form upon all known entities holding potential 503(b)(9) Claims, Administrative Claims, and Prepetition Claims. The date upon which the Debtor commences service of the Bar Date Notice and Claim Form shall be the Service Date. On the Service Date, the Debtor shall file a notice indicating the exact calendar date of the deadline established as the General Bar Date.

8. The Governmental Bar Date. The Governmental Bar Date by which proofs of claim against the Debtor of Governmental Units must be filed is **October 14, 2019.**

9. Any Entity that asserts a 503(b)(9) Claim, Administrative Claim, and/or Prepetition Claim against the Debtor is required to file a written proof of such 503(b)(9) Claim,

Administrative Claim, and/or Prepetition Claim using the Claim Form or Official Form No. 410 so as to be received on or before the applicable Bar Date by either electronic upload through the Debtor's web portal or hardcopy delivery to:

**Hardcopy (first class mail, overnight, or messenger delivery):**

Achaogen Claims Processing Center  
c/o KCC  
222 N. Pacific Coast Highway, Suite 300  
El Segundo, CA 90245

10. The Debtor will **not** accept Claim Forms sent by e-mail, facsimile, telecopy, but Claim Forms **may** be completed electronically through the Debtor's web portal at <https://epoc.kccllc.net/achaogen>. A proof of claim for a 503(b)(9) Claim, Administrative Claim arising during the First Administrative Claims Period, and/or Prepetition Claim shall be timely filed only if the Claim Form is *actually received* by the Debtor on or before the applicable Bar Date.

11. The following Entities are **not** required to file proofs of claim (collectively, the "**Excluded Claims**") in accordance with the procedures set forth herein:

- a. any Entity that has already properly filed with the Court or submitted to KCC a proof of claim against the Debtor for which no other or additional amounts are sought or claims are asserted;
- b. any Entity whose Prepetition Claim is listed in the Debtor's Schedules, and is not designated as "disputed," "contingent," or "unliquidated," and with respect to which the Entity agrees with the nature, classification, and amount that such Prepetition Claim and/or 503(b)(9) is identified in the Schedules;
- c. any Entity whose Prepetition Claim and/or 503(b)(9) Claim (including any Prepetition Claim listed in the Debtor's Schedules) previously has been allowed by, or paid in full pursuant to, an order of this Court;
- d. any holder of a claim for which a separate deadline to file a proof of claim has been fixed by this Court;
- e. any holder of an equity interest in the Debtor need not submit a proof of interest with respect to the ownership of such equity interest at this time;

*provided, however*, that any holder of an equity interest who wishes to assert a claim against the Debtor other than with respect to ownership of such equity interest, including a claim relating to the purchase or sale of such interest or rescission under section 510 of the Bankruptcy Code, must submit a proof of claim on or before the General Bar Date pursuant to the procedures set forth herein;

- f. any current officer, director or employee of the Debtor that holds a claim based on indemnification, contribution, or reimbursement;
- g. any professionals retained by the Debtor pursuant to orders of this Court who assert administrative claims for fees and expenses subject to this Court's approval pursuant to sections 330, 331 and 503(b) of the Bankruptcy Code;
- h. the DIP Lender on account of any DIP Obligations (each as defined in the First Interim DIP Order);<sup>3</sup> and
- i. the Prepetition Lender on account of any Prepetition Loan Obligations (each as defined in the First Interim DIP Order).

12. Any Entity whose claim is not listed in the Debtor's Schedules or is listed as disputed, contingent, or unliquidated and that desires to participate in or share in any distribution in this Chapter 11 Case, and any Entity that believes its claim is improperly classified in the Schedules or is listed in an incorrect amount or is not listed in the Schedules of the Debtor and that desires to have its claim allowed in a classification or amount other than that set forth in the Schedules, must file a proof of claim on or before the applicable Bar Date.

13. Any Entity that desires to rely on the Schedules will have the responsibility for determining that the claim is accurately listed in the Schedules.

14. Rejection Bar Date. The Rejection Bar Date by which a proof of claim relating to the Debtor's rejection of any executory contract or unexpired lease must be filed is the later of (a) the General Bar Date and (b) twenty-one (21) days after the effective date of rejection

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<sup>3</sup> "First Interim DIP Order" means the *Interim 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, (VI) Scheduling a Final Hearing, and (VII) Granted Related Relief* [D.I. 52], including as the same may be entered on a final basis.

of such executory contract or unexpired lease as provided by an order of this Court or pursuant to a notice under procedures approved by this Court.

15. Entities wishing to assert a Rejection Damages Claim are required to file a proof of such Rejection Damages Claim using the Claim Form so as to be received on or before the Rejection Bar Date by either electronic upload through the Debtor's web portal at <https://epoc.kccllc.net/achaogen> hardcopy delivery to the Court at the address set forth in Paragraph 9 above.

16. The Debtor will **not** accept Claim Forms sent by e-mail, facsimile, telecopy, but Claim Forms **may** be completed electronically through the Debtor's web portal at <https://epoc.kccllc.net/achaogen>. A proof of claim with respect to a Rejection Damages Claim shall be timely filed only if the Claim Form is *actually received* by the Debtor on or before the Rejection Bar Date.

17. The Amended Schedule Bar Date. The Amended Schedule Bar Date for creditors holding claims which have been amended by the Debtor in its Schedules or added by the Debtor to the Schedules is the later of (a) the General Bar Date and (b) twenty-one (21) days after the date that the Notice of Amended Schedules is served on the affected claimant.

18. Entities wishing to file proofs of claim with respect to claims which have been amended by the Debtor in its Schedules or added thereto are required to file a proof of such claim using the Claim Form or Official Form No. 410 so as to be received on or before the Amended Schedule Bar Date by either electronic upload through the Debtor's web portal at <https://epoc.kccllc.net/achaogen> or hardcopy delivery to KCC at the address set forth in Paragraph 6 above.

19. 503(b)(9) Claims. The following procedures shall apply for the filing of 503(b)(9) Claims:

- a. All of the required information shall be sent to KCC, substantially in the form of the Claim Form, so as to be received on or before the 503(b)(9) Claims Bar Date by either mail or delivery by hand, courier, or overnight service at the address identified above for the Claims Processing Center;
- b. Nothing in these 503(b)(9) Claims Procedures shall affect the rights and remedies and/or defenses of the Debtor, claimants, or any other party-in-interest with regard to avoidance of any claim or obligation.

20. Claim Form. Each proof of claim filed for a 503(b)(9) Claim, Administrative Claim, and/or Prepetition Claim must: (a) be written in the English language, (b) conform substantially with the Claim Form or Official Form 410, (c) attach copies of any writings upon which the asserted 503(b)(9) Claim, Administrative Claim, and/or Prepetition Claim is based, (d) be signed by the claimant or by an authorized agent of the claimant, and (e) be denominated in lawful currency of the United States; *provided, however*, that the Debtor reserves the right to convert a claim denominated in non-U.S. currency into U.S. currency using the applicable exchange rate as of the Petition Date.

21. Writings. Upon the advance express written consent of the Debtor, a proof of claim filed for a Prepetition Claim may be filed without the writings upon which the Prepetition Claim is based, as required by Bankruptcy Rules 3001(c) and (d) and this Order; *provided, however*, that, upon request of the Debtor or any other party in interest in this Chapter 11 Case, any creditor that receives such written consent shall be required to transmit promptly such writings to the Debtor and the party in interest making such request as soon as reasonably practicable, but in no event later than ten (10) days from the date of such request.

22. Effect of Failure to File by Applicable Bar Date. Any Entity that is required pursuant to this Order to file a proof of claim for a 503(b)(9) Claim, Administrative



Claim, Prepetition Claim, and/or Rejection Damages Claim in this Chapter 11 Case pursuant to the Bankruptcy Code, the Bankruptcy Rules, or this Order with respect to a particular claim against the Debtor, but that fails to do so on or by the applicable Bar Date, is forever barred, estopped, and enjoined from asserting such 503(b)(9) Claim, Administrative Claim, Prepetition Claim, and/or Rejection Damages Claim against the Debtor (and from filing a proof of claim for 503(b)(9) Claim, Administrative Claim, Prepetition Claim, and/or Rejection Damages Claim with respect thereto), and the Debtor and its property shall be forever discharged from any and all indebtedness or liability with respect to such 503(b)(9) Claim, Administrative Claim, Prepetition Claim, and/or Rejection Damages Claim. Additionally, any holder of any 503(b)(9) Claim, Administrative Claim, Prepetition Claim, and/or Rejection Damages Claim who is required, but fails, to file a proof of such 503(b)(9) Claim, Administrative Claim, Prepetition Claim, and/or Rejection Damages Claim in accordance with this Order on or before the applicable Bar Date shall not be permitted to vote to accept or reject any plan or plans or participate in any distribution in the Debtor's Chapter 11 Case on account of such 503(b)(9) Claim, Administrative Claim, Prepetition Claim, and/or Rejection Damages Claim or to receive further notices regarding such 503(b)(9) Claim, Administrative Claim, Prepetition Claim, and/or Rejection Damages Claim.

23. Mailing of Bar Date Notice Packages. The Debtor shall provide actual notice of the Bar Dates by mailing the Bar Date Notice and the Claim Form (collectively, the "Bar Date Notice Package") by June 26, 2019, wherever located:

- a. the U.S. Trustee;
- b. all holders of Prepetition Claims and/or 503(b)(9) Claims listed on the Schedules at the addresses stated therein;
- c. all counterparties to executory contracts and unexpired leases listed on the Schedules at the addresses stated therein;

- d. all current and former employees of the Debtor;
- e. all taxing authorities for locations in which the Debtor does business, including the IRS;
- f. all regulatory agencies that regulate the Debtor's business;
- g. the Office of the Attorney General for the State of Delaware;
- h. the office of the attorney general for each state in which the Debtor maintains or conducts business;
- i. the Securities and Exchange Commission;
- j. all known lienholders;
- k. all known parties to litigation in which the Debtor is involved;
- l. all providers of utility services to the Debtor, if any;
- m. all insurance providers;
- n. all of the Debtor's ordinary course professionals;
- o. the Debtor's banks;
- p. all Entities requesting notice pursuant to Bankruptcy Rule 2002 as of the date of entry of the Bar Date Order;
- q. all parties that have filed proofs of claim in this Chapter 11 Case as of the date of entry of the Bar Date Order;
- r. all parties included on the creditor matrix filed in this Chapter 11 Case; and
- s. all parties who are owed money according to the Debtor's books and records.

(collectively, the "Bar Date Notice Parties").

24. With regard to those holders of claims listed on the Schedules, the Debtor shall mail one or more proof of claim forms (as appropriate) substantially similar to the Claim Form annexed to the Motion as Exhibit A, indicating on such Claim Form how the Debtor has scheduled such creditor's claim in the Schedules (including the amount and classification of the claim and whether the claim has been scheduled as contingent, unliquidated, or disputed).

25. The Debtor may, in its discretion, but shall not be required to, serve the Bar Date Notice on certain Entities that are not Bar Date Notice Parties with which, prior to the Petition Date, the Debtor had done business or that may have asserted a claim against the Debtor in the recent past.

26. Actual Notice of Amended Schedule Bar Date. If and when the Debtor amends its Schedules to reduce the undisputed, noncontingent, and liquidated amount, to change the nature or classification of a Prepetition Claim, or add a claim to the Schedules, the Debtor shall provide notice of any such amended or added claim, substantially in the form of **Exhibit D** to the Motion (the "Notice of Amended Schedules"), to the affected claimant by serving the affected claimant with the Notice of Amended Schedules by first class mail and thereafter filing with the Court a certificate of such service.

27. Publication Notice. The Debtor shall cause the Publication Notice to be published in a California-based publication with a national circulation within the United States as soon as practicable after entry of this Order but in any event no later than twenty-one (21) days prior to the earliest of the Bar Dates.

28. Reservation of Rights. The Debtor shall retain and hereby reserves the right to: (a) dispute, and/or assert offsets or defenses against, any 503(b)(9) Claim, Administrative Claim, and/or Prepetition Claim; (b) subsequently designate any 503(b)(9) Claim, Administrative Claim, and/or Prepetition Claim as disputed, contingent, and/or unliquidated; and (c) object to any 503(b)(9) Claim, Administrative Claim, and/or Prepetition Claim, whether scheduled or filed, on any grounds.

29. The Debtor is authorized and empowered to take such steps and perform such actions as may be necessary to implement and effectuate the terms of this Order, including

without limitation payment of costs incurred in connection with the process of noticing the Bar Dates.

30. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

31. The Debtor may make non-substantive corrections to the Bar Date Notice Package and Publication Notice.

32. This Court shall retain jurisdiction over all matters arising out of or related to the Motion and this Order.

Dated: June 14, 2019  
Wilmington, Delaware

  
THE HONORABLE BRENDAN L. SHANNON  
UNITED STATES BANKRUPTCY JUDGE