

**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. 123, 194 & 223

**NOTICE OF SECOND SUPPLEMENTAL PROPOSED ASSUMPTION AND
ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

PLEASE TAKE NOTICE OF THE FOLLOWING:

On April 15, 2019, Achaogen, Inc. (the “Debtor”) filed a motion (the “Sale Motion”) with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) seeking entry of two orders, in stages: (i) first, an order (the “Bidding Procedures Order”)² (a) approving Bidding Procedures for the sale of all or substantially all of the Debtor’s assets (collectively, the “Purchased Assets”) and the assumption of certain Assumed Liabilities, (b) approving procedures for the assumption and assignment of designated executory contracts and unexpired leases (collectively, the “Transferred Contracts”), or rejection of designated executory contracts and unexpired leases, and the sale and transfer of other designated contracts, (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 (collectively, the “Bidding Procedures Relief”), and (ii) second, an order (the “Sale Order”) (a) authorizing the Sale of the Purchased Assets free and clear of all liens, claims, interests and other encumbrances (collectively, “Encumbrances”), other than Assumed Liabilities, to the Successful Bidder submitting the highest or otherwise best bid, (b) authorizing (i) the assumption and assignment of the Transferred Contracts designated by the Successful Bidder, (ii) the sale and transfer of other designated contracts, (iii) the rejection of certain other designated executory contracts and unexpired leases and (c) granting certain related relief. On May 1, 2019, the Bankruptcy Court entered the Bidding Procedures Order [Dkt. No.123], thereby approving the Bidding Procedures Relief. The hearing to consider entry of the Sale Order is scheduled for June 19, 2019.

On May 17, 2019, the Debtor filed the Notice of Proposed Assumption and Assignment of Executory Contracts and Unexpired Leases [Dkt. No. 194] (the “Original Notice”). Subsequently, on May 28, 2019, the Debtor filed the Supplemental Notice of Proposed Assumption and Assignment of Executory Contracts and Unexpired Leases [Dkt. No. 223] (the “Supplemental Notice”).

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

² Capitalized terms used but not defined herein shall have such meanings ascribed to them in the Bidding Procedures and Bidding Procedures Order, as applicable.



YOU ARE RECEIVING THIS NOTICE BECAUSE YOU ARE A PARTY TO ONE OR MORE OF THE TRANSFERRED CONTRACTS REFERRED TO HEREIN.

TRANSFERRED CONTRACTS

Attached as **Schedule 1** is a schedule of Transferred Contracts that supplements, amends and modifies the Original Notice and Supplemental Notice, and lists the counterparties to such Transferred Contracts and the amount, if any, proposed to be paid to cure any monetary defaults under the Transferred Contracts pursuant to section 365 of the Bankruptcy Code (the “Cure Amounts”). The Successful Bidders reserve the right to revise their respective schedules in accordance with their Qualified Bidder Purchase Agreements, as applicable, and the Bidding Procedures at any time prior to the closing on the Purchased Assets.

To the extent that any Transferred Contract is determined by an order of the Bankruptcy Court, or as between the Debtor and the applicable counterparties, not to be an executory contract under and for purposes of section 365 of the Bankruptcy Code, the Debtor shall instead sell, assign and transfer to the applicable Successful Bidder all of the Debtor’s right, title and interest in, to and under such Transferred Contract pursuant to section 363 of the Bankruptcy Code. Prior to any such sale and transfer of a Transferred Contract pursuant to section 363 of the Bankruptcy Code, the applicable Successful Bidder shall cure any monetary defaults or pay other amounts due under such Transferred Contract which are capable of being cured or paid as if such Transferred Contract had been subject to section 365 of the Bankruptcy Code.

IF YOU AGREE WITH THE PROPOSED CURE AMOUNT(S) LISTED IN SCHEDULE 1 WITH RESPECT TO YOUR TRANSFERRED CONTRACT(S), YOU ARE NOT REQUIRED TO TAKE ANY FURTHER ACTION.

IF YOU DISAGREE WITH THE PROPOSED CURE AMOUNT(S) LISTED IN SCHEDULE 1 WITH RESPECT TO YOUR CONTRACT(S), YOU MAY OBJECT TO THE PROPOSED CURE AMOUNT(S). YOUR OBJECTION TO THE PROPOSED CURE AMOUNT(S) MUST BE FILED AND SERVED IN ACCORDANCE WITH THE INSTRUCTIONS SET FORTH BELOW BY NO LATER THAN **JUNE 18, 2019.**

Objections to the assumption and assignment of any of the Transferred Contracts listed on **Schedule 1** and objections to the applicable Successful Bidder’s ability to provide adequate assurance of future performance (each an “Objection”) must: (i) be made in writing and filed on the docket for the Case no later than **June 18, 2019, at 5:00 p.m. (prevailing Eastern Time)** (the “Objection Deadline”); (ii) state the basis of such objection with specificity, including, if applicable, the Cure Amount asserted by such counterparty, (iii) include complete contact information for such counterparty (including address, telephone number and email address); (iv) comply with the Bankruptcy Code, the Bankruptcy Rules and the Local Rules; and (v) be served on the following, so as to be actually received by them on or before the Objection Deadline:

- Counsel to the Debtor: (i) Hogan Lovells US LLP, 1999 Avenue of the Stars, Suite 1400, Los Angeles, California 90067, Attn: Richard L. Wynne and Erin N. Brady, and (ii) Morris, Nichols, Arsht & Tunnell LLP, 1201

North Market Street, P.O. Box 1347, Wilmington, Delaware 19899, Attn: Derek C. Abbott and Andrew R. Remming;

- The Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, DE 19801, Attn: Timothy J. Fox, Esq.;
- Counsel to the Committee: (i) Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, New York 10024, Attn: Arik Preis and Allison Miller, (ii) Klehr Harrison Harvey Branzburg LLP, 919 N. Market Street, Suite 1000, Wilmington, DE 19801, Attn: Domenic E. Pacitti, and (iii) Klehr Harrison Harvey Branzburg LLP, 1835 Market Street, Suite 1400, Philadelphia, PA 19103, Attn: Morton R. Branzburg;
- Counsel to Silicon Valley Bank, N.A., in its capacity as a prepetition lender and DIP lender: (i) Morrison & Foerster LLP, 200 Clarendon Street, Boston, Massachusetts 02116, Attn: Alexander Rheume, (ii) Morrison & Foerster LLP, 250 West 55th St., New York, New York 10019, Attn: Todd M. Goren and Benjamin W. Butterfield, and (iii) Ashby & Geddes, P.A., 500 Delaware Avenue, 8th Floor, Wilmington, DE 19801, Attn: Gregory A. Taylor;

If you file an Objection satisfying the requirements herein, the Debtor and the applicable Successful Bidder will confer with you in good faith to attempt to resolve such Objection without Bankruptcy Court intervention. If the applicable parties determine that the Objection cannot be resolved without judicial intervention in a timely manner, the Bankruptcy Court shall resolve such Objection at a hearing to be held (i) on June 24, 2019, or (ii) such other date designated by the Bankruptcy Court.

If a Successful Bidder, in accordance with the Bidding Procedures, identifies additional executory contracts or unexpired leases that it may want to take an assignment of from the Debtor and add to the Transferred Contracts and Cure Schedule attached to its asset purchase agreement with the Debtor (each an “Additional Contract”) (or wishes to remove a Transferred Contract from the Transferred Contracts and Cure Schedule), the Debtor shall, within two (2) calendar days of the Successful Bidder making such a determination, send a supplemental Assignment and Rejection Notice to the applicable counterparties to such executory contracts or unexpired leases added to or removed from the Transferred Contracts and Cure Schedule; provided, however, after the Sale Hearing, a Successful Bidder may only remove (a) an individual Transferred Contract with a Cure Amount of \$250,000 or more, or (b) two or more Transferred Contracts with Cure Amounts in the aggregate of \$500,000 or more, from the Transferred Contracts and Cure Schedule with the consent of the Debtor, DIP Lender, and the Committee; provided further, however, that the rights of each Successful Bidder regarding the assumption and assignment of Transferred Contracts and Additional Contracts shall be governed and controlled by the Qualified Bidder Purchase Agreement of such Successful Bidder.

To the extent an executory contract or unexpired lease is not assumed and assigned to a Successful Bidder, the Debtor may, in its sole discretion, reject such an unassigned, executory contract or unexpired lease to the extent permitted by law. In no event will any of the Successful Bidders be responsible for any unassigned executory contracts or unexpired leases.

Objections from any counterparty to an Additional Contract (an “Additional Assignment Objection”) must: (i) be made in writing and filed on the docket for the Case no later than ten (10) calendar days after the Debtor has sent notice to such counterparty of its intention to assume and assign or reject such Additional Contract (as applicable, the “Additional Assignment Objection Deadline”), (ii) state the basis of such objection with specificity, including, if applicable, the Cure Amount asserted by such counterparties, (iii) include complete contact information for such counterparty (including address, telephone number and email address), (iv) comply with the Bankruptcy Code, the Bankruptcy Rules and the Local Bankruptcy Rules, and (v) be served upon counsel to (a) the Debtor and the United States Trustee, and (b) the applicable Successful Bidder (addresses for the foregoing may be obtained from counsel to the Debtor), so as to be actually received by them on or before 4:00 p.m. (prevailing Eastern Time) on the Additional Assignment Objection Deadline.

If a timely objection is filed, and cannot be resolved consensually, the Bankruptcy Court shall resolve such objection at a hearing to be held (i) on or before five (5) calendar days from the timely filing and service of the Additional Assignment Objection or (ii) such other date designated by the Bankruptcy Court. Unless the Bankruptcy Court orders otherwise, contemporaneously with the resolution of any such objection (which may be after the closing of the Sale), the Additional Contract underlying such objection shall be deemed to have been assumed and assigned, or assigned, as the case may be, to the applicable Successful Bidder without the necessity of obtaining any further order of the Bankruptcy Court.

IF YOU FAIL TO TIMELY FILE AND PROPERLY SERVE AN OBJECTION OR ADDITIONAL ASSIGNMENT OBJECTION, AS APPLICABLE, AS PROVIDED HEREIN, INCLUDING, IF APPLICABLE, AN OBJECTION TO A CURE AMOUNT (I) YOU WILL BE DEEMED TO HAVE FOREVER WAIVED AND RELEASED ANY RIGHT TO ASSERT AN OBJECTION OR ADDITIONAL ASSIGNMENT OBJECTION, AS APPLICABLE, AND TO HAVE OTHERWISE CONSENTED TO THE ASSUMPTION AND ASSIGNMENT, OR SALE AND TRANSFER, OF THE DEBTOR’S RIGHT, TITLE AND INTEREST IN, TO AND UNDER, SUCH TRANSFERRED CONTRACT ON THE TERMS SET FORTH IN THIS ASSIGNMENT NOTICE AND THE PURCHASE AGREEMENT WITH THE APPLICABLE SUCCESSFUL BIDDER, (II) YOU WILL HAVE CONSENTED TO THE ASSUMPTION AND ASSIGNMENT OF, OR SALE AND TRANSFER OF THE DEBTOR’S RIGHT, TITLE AND INTEREST IN, TO AND UNDER, YOUR TRANSFERRED CONTRACT, AS THE CASE MAY BE, WITHOUT THE NECESSITY OF OBTAINING ANY FURTHER ORDER OF THE BANKRUPTCY COURT AND (III) YOU WILL BE BARRED AND ESTOPPED FOREVER FROM ASSERTING OR CLAIMING AGAINST THE DEBTOR, THE APPLICABLE SUCCESSFUL BIDDER THAT ANY ADDITIONAL CURE AMOUNTS ARE DUE OR DEFAULTS EXIST, OR CONDITIONS TO ASSUMPTION AND

ASSIGNMENT, OR SALE AND TRANSFER, MUST BE SATISFIED, UNDER SUCH TRANSFERRED CONTRACT OR APPLICABLE LAW.

The Debtor's assumption and assignment, or sale and transfer, of a Transferred Contract is subject to approval by the Bankruptcy Court, and the closing of the Sale. If there is no closing, the Transferred Contracts shall neither be assumed nor assigned, and shall remain in all respects subject to assumption or rejection by the Debtor.

The inclusion of any contract or lease on the list of Transferred Contracts shall not constitute or be deemed to be a determination or admission by the Debtor or the applicable Successful Bidder that such document is, in fact, an executory contract or unexpired lease within the meaning of the Bankruptcy Code, and all rights with respect thereto are expressly reserved. In addition, the Debtor reserves all of its rights, remedies and defenses with respect to any contract or lease set forth on the list of Transferred Contracts.

Any Objection or Additional Assignment Objection, as applicable, shall not constitute an objection to any of the other relief requested in the Sale Motion to be approved by the Sale Order (e.g., the sale of the Purchased Assets by the Debtor to the Successful Bidder free and clear of all Encumbrances other than Assumed Liabilities). Parties wishing to object to the other relief requested in the Sale Motion (excluding the relief granted pursuant to the Bidding Procedures Order) must timely file and serve a separate objection, stating with particularity such party's grounds for objection, in accordance with the objection procedures approved and set forth in the Bidding Procedures Order and in accordance with the procedures provided in the Stipulation Regarding Revised Deadlines and Respective Rights under the Bidding Procedures Order and Interim DIP Order (D.I. 245) (the "Stipulation").

The dates set forth in this notice are subject to change, and further notice of such changes may not be provided except through announcements in open court and/or the filing of notices and/or amended agendas and/or in accordance with the Bidding Procedures Order. You are encouraged to monitor the electronic court docket.

This Notice is subject to the full terms and conditions of the Bidding Procedures, Bidding Procedures Order and Stipulation, which shall control in the event of any conflict. The Debtor encourages you and other parties in interest to review such documents in their entirety and consult an attorney if you have questions or want advice.

June 14, 2019
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Paige N. Topper

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Schedule 1
(Assignment and Rejection Notice)

Transferred Contracts

Achaogen, Inc.
Contract Schedule (Supplement 2)

#	Contract Counterparty	Contract/Lease Title	Contract Date	Cure Amount	Address 1	Address 2	City	State	Zip
1	Jones Microbiology Institute, Inc.	Master Service Agreement (and associated amendments) ⁽¹⁾		\$209,339	345 Beaver Creek Centre, Suite A		North Liberty	IA	52317
2	Oracle America, Inc.	Ordering Document		\$2,219	500 Oracle Parkway	–	Redwood City	CA	94065
3	Sana Biotechnology, Inc.	Sana Biotech – Sublease	11/27/2018	\$0	–	–	–	–	–
4	Steeprock, Inc.	SteepRock, Inc., Statement of Work	12/18/2017	\$36,300	67 Lower Church Hill Road		Washington	CT	06794
5	Strickland Quality Assurance Ltd	Strickland Quality Assurance Ltd Exhibit A (agr10511)_docsigned	12/28/2018	\$11,682	Windswept, Holywell, St Ives		Cambridgeshire	United Kingdom	PE27 4TQ

Footnote:

⁽¹⁾ JMI Laboratories and the Debtor entered into the Master Services Agreement dated December 10, 2014 (the "MSA"). The agreements identified in line items 12 and 390-395 in the Notice of Proposed Assumption and Assignment of Executory Contracts and Unexpired Leases (Doc. No. 194) are amendments to the MSA and are not separate contracts.