

**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, 274, 291 & 331

**NOTICE OF FIFTH 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.

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, the Debtor filed supplemental notices of proposed assumption and assignment of executory contracts and unexpired leases [Dkt. No. 223, 274, 291 & 331] (collectively, the “Supplemental Notices”).

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.



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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 Notices, 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 **JULY 29, 2019 AT 5:00 P.M. (PREVAILING EASTERN TIME).**

Objections to the assumption and assignment of any of the Transferred Contracts listed on **Schedule 1** must: (i) be made in writing and filed on the docket for the Case no later than **July 29, 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 Cipla USA Inc., Kelley Drye & Warren, 101 Park Avenue, New York, New York 10178, Attn: James S. Carr and Benjamin D. Feder;
- 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 Rheame, (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 August 7, 2019 at 1:30 p.m., 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 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.

July 19, 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

Case No. 19-10844 (BLS)

#	Contract Counterparty	Contract/Lease Title	Cure Amount	Address 1	Address 2	City	State	Zip
1	360 Infusion	Purchasing Agreement	\$0	129 Vision Park Blvd		Shenandoah	TX	77384
2	Albany Urology Clinic & Surgery Center	Purchasing Agreement	\$0	2400 Osler Court		Albany	GA	31707
3	Allergy ARTS, LLP	Purchasing Agreement	\$0	6842 Plum Creek Drive		Amarillo	TX	79124
4	ASD Healthcare and Besse Medical, divisions of ASD Specialty Healthcare, LLC	Distribution Services Agreement	\$0	3101 Gaylord Parkway		Frisco	TX	75034
5	Bay Area Infectious Disease Associates	Purchasing Agreement	\$0	214 Morrison Road	Suite 104	Brandon	FL	33511
6	Capitol Infectious Disease Associates	Purchasing Agreement	\$0	221 W. Lake Lansing Road	Suite 300	East Lansing	MI	48823
7	Clinical Infectious Disease Specialists	Purchasing Agreement	\$0	2435 Fire Mesa St.	Suite 120	Las Vegas	NV	89128
8	David C. Wright, M.D.	Purchasing Agreement	\$0	510 Lighthouse Avenue	Suite 6	Pacific Grove	CA	93950
9	Department of Health & Human Services - Center for Medicare & Medicaid	National Drug Rebate Agreement, Medicare Coverage Gap Discount Program Agreement & Pharmaceutical Pricing Agreement	\$0	7500 Security Blvd, Mail Stop S2-14-26		Baltimore	MD	21244
10	Dr. Donna O'Neil	Purchasing Agreement	\$0	214 North Elm Ave		Jackson	MI	49202
11	Emerald Coast Infectious Diseases Medical Group, P.A.	Purchasing Agreement	\$0	917 Mar Walt Drive		Fort Walton Beach	FL	32547
12	Healix Infusion Therapy, LLC	Specialty Distribution Services and Purchasing Agreement	\$0	14140 SW Freeway		Houston	TX	77478
13	Houston Center for Infectious Diseases	Purchasing Agreement	\$0	1111 Medical Plaza Drive	Suite 170	The Woodlands	TX	77380
14	Infectious Disease Associates	Purchasing Agreement	\$0	1050 NW 15th Street	Suite 205	Boca Raton	FL	33486
15	Infectious Disease Consultants	Purchasing Agreement	\$0	2901 Coral Hills Drive	Suite 200	Coral Springs	FL	33065
16	Infectious Disease Consultants	Purchasing Agreement	\$0	6916 McGinnis Ferry Road	Suite 100	Suwanee	GA	30024
17	Infectious Disease Consultants	Purchasing Agreement	\$0	11211 Waples Mill Road	Suite 200	Fairfax	VA	22030
18	Infectious Disease Consultants	Purchasing Agreement	\$0	685 Palm Springs Drive	Suite 2A	Altamonte Springs	FL	32701
19	Infectious Disease Partners of Nevada	Purchasing Agreement	\$0	3006 S Maryland Pkwy 780		Las Vegas	NV	89109
20	Infectious Disease Specialists of Southeastern Wisconsin, S.C.	Purchasing Agreement	\$0	150 South Sunny Slope Road	Suite 136	Brookfield	WI	53005
21	Infectious Diseases Associates	Purchasing Agreement	\$0	1425 South Osprey Ave	Suite 1	Sarasota	FL	34239
22	Infusion Associates N.E.	Purchasing Agreement	\$0	3230 Eagle Park Drive NE	Suite 101	Grand Rapids	MI	49525
23	Infusion4Health, Inc.	Purchasing Agreement	\$0	77 Rolling Oaks Drive	Suite 2102	Thousand Oaks	CA	91361
24	Lalla-Reddy Medical Corporation	Purchasing Agreement	\$0	11180 Warner Ave	Suite 353	Fountain Valley	CA	92708
25	Lexington Infectious Disease	Purchasing Agreement	\$0	1720 Nicholasville Road	Suite 602	Lexington	KY	40503
26	Mayo Foundation	Collaboration Agreement	\$1,127	200 First Street S. W.		Rochester	MN	55903
27	McKesson Specialty Care Distribution Corporation	Pharmaceutical Products Purchase and Distribution Agreement	\$0	10101 Woodloch Forest Drive		Dallas	TX	77380
28	MED PED I D INCORPORATED	Purchasing Agreement and Amendment One	\$0	28708 Baxter Road	Suite 320	Murrieta	GA	92563
29	Metro Infectious Disease Consultants, LLC	Purchasing Agreement	\$0	901 McClintock Drive	Suite 106	Burr Ridge	IL	60527
30	Orange County Infectious Disease Associates	Purchasing Agreement	\$0	27800 Medical Center Road	Suite 300	Mission Viejo	CA	92691
31	Paragon Healthcare, Inc.	Purchasing Agreement	\$0	17111 Preston Road	Suite 106	Dallas	TX	75428
32	SHI International Corp	Master Services Agreement	\$0	290 Davidson Avenue		Somerset	NJ	8873
33	Sylvan Infectious Disease	Purchasing Agreement	\$0	400 Sylvan Avenue	Suite 108	Englewood Cliffs	NJ	07632
34	Synchrogenix Information Strategies, LLC	Master Services Agreement	\$853	2 Righter Parkway	Suite 205	Wilmington	DE	19803
35	Threlkeld Threlkeld & Omer, PLLC	Purchasing Agreement	\$0	1068 Cresthaven	Suite 250	Memphis	TN	38119
36	U.S. Department of Veterans Affairs VA Federal Supply Schedule	Federal Supply Schedule Contract 36F79719D0035	\$0	P.O. Box 76, Building 37 1st Avenue, North of Cermak Road		Hines	IL	60141
37	Urology Austin, PLLC	Purchasing Agreement	\$0	1301 West 38th St	Suite 200	Austin	TX	78705
38	West Texas Digestive Disease Center	Purchasing Agreement	\$0	5115 80th Street		Lubbock	TX	79424