

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. 12

**FINAL ORDER (I) AUTHORIZING DEBTOR TO (A) CONTINUE PREPETITION INSURANCE PROGRAM; (B) PAY ANY PREPETITION PREMIUMS AND RELATED OBLIGATIONS; AND (C) RENEW OR ENTER INTO NEW INSURANCE ARRANGEMENTS AND/OR PREMIUM FINANCING AGREEMENTS IN THE ORDINARY COURSE OF BUSINESS; AND (II) 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 interim and final orders (i) authorizing the Debtor to (a) continue its prepetition insurance program; (b) pay any prepetition premiums and related obligations and/or renew or enter into new insurance arrangements; and (ii) granting related relief; and upon the *Declaration of Blake Wise in Support of First Day Relief* (the "First Day Declaration"); and the Court having jurisdiction to consider the Motion and the relief requested therein 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 this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper

<sup>1</sup> The last four digits of the Debtor's federal tax identification number are 3693. The Debtor's mailing address for purposes of this Chapter 11 Case is 1Tower Place, Suite 400, South San Francisco, CA 94080.

<sup>2</sup> Capitalized terms not defined in this Order are defined in the Motion.



pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided under the circumstances; and the relief requested being in the best interests of the Debtor and its estate and creditors; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, **IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED, on a final basis, as set forth herein.
2. The Debtor is authorized, but not required, to maintain, at its discretion, the Insurance Program including, but not limited to, the employment and compensation in the ordinary course of any agents and brokers that Debtor relies upon to maintain the Insurance Program.
3. The Debtor is authorized, but not required, to pay all amounts necessary to maintain the Insurance Program, including, but not limited to, any prepetition premium, deductible or financing payments, or other amount that is due in respect of any of the Policies and any fees or other amounts due to brokers and agents engaged by the Debtor without prejudice to the Debtor's ability to request to increase the foregoing amount or seek additional relief.
4. The Debtor is authorized, but not required, to renew or extend the Policies, or to enter into new insurance arrangements, in the ordinary course of business, without further order of the Court.

5. The Debtor is authorized, but not required, to enter into premium financing agreements in connection with its Insurance Program to the extent that the Debtor determines that such action is in the best interest of its estate.

6. Subject to the availability of funds, the Debtor's banks and financial institutions (collectively, the "Banks") are authorized and directed to process, honor, and pay any and all checks or electronic transfers issued in connection with the Insurance Program.

7. All Banks that process, honor, and pay any and all checks or electronic transfers on account of the Insurance Program may rely on the representations of the Debtor as to which checks or electronic transfers are issued and authorized to be paid in accordance with this Order without any duty of further inquiry and without liability for following the Debtor's instructions.

8. Authorization of the payments shall not be deemed to constitute an order approving the postpetition assumption of any executory contract pursuant to Section 365 of the Bankruptcy Code.

9. Nothing in this Order shall affect the Debtor's rights to contest the amount or validity of any amounts claimed to be due by the Debtor under, or with respect to, any aspect of the Insurance Program, in whole or in part.

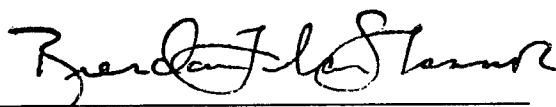
10. Notwithstanding the relief granted herein or any actions taken hereunder, nothing contained in this Order shall create any rights in favor of, or enhance the status of any claim held by, any of the Debtor's insurance carriers, any other agents or brokers employed by the Debtor, or any other third party relating to the Insurance Program.

11. Notwithstanding any provision in the Bankruptcy Rules to the contrary, this Order shall be immediately effective and enforceable upon its entry.

12. Notwithstanding anything contained in the Motion or this Order, any payment authorized to be made by the Debtor herein shall be subject to the terms and conditions contained in any interim or final order authorizing the Debtor to obtain postpetition financing and to use cash collateral, including any budgets in connection therewith.

13. The Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

May 3, 2019  
Wilmington, Delaware

  
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THE HONORABLE BRENDAN L. SHANNON  
UNITED STATES BANKRUPTCY JUDGE