

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. 6

**FINAL ORDER AUTHORIZING THE DEBTOR TO (A) PAY  
PREPETITION WAGES, SALARIES, AND OTHER COMPENSATION  
AND (B) PAY PREPETITION PAYROLL TAXES AND BENEFITS AND CONTINUE  
BENEFIT PROGRAMS IN THE ORDINARY COURSE, (II) DIRECTING BANKS TO  
HONOR CHECKS FOR PAYMENT OF PREPETITION EMPLOYEE PAYMENT AND  
PROGRAM OBLIGATIONS, AND (III) GRANTING RELATED RELIEF**

Upon the motion and the supplemental motion (together, the “Motions”)<sup>2</sup> of the above-captioned debtor and debtor in possession (the “Debtor”), for an order authorizing the Debtor to (a) pay prepetition wages, salaries, and other compensation and (b) pay prepetition payroll taxes and benefits and continue benefit programs in the ordinary course, (II) directing banks to honor checks for payment of prepetition employee payment and program obligations, and (III) granting related relief, all as more fully set forth in the Motions; 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 Motions 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

<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 1 Tower Place, Suite 400, South San Francisco, CA 94080.

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



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found that venue of this proceeding and the Motions in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motions having been provided; and the relief requested being in the best interests of the Debtor and its estate and creditors; and this Court having reviewed the Motions 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 Motions 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 Motions are GRANTED on a final basis.
2. The Debtor is authorized, but not directed, in its sole discretion, (i) to pay any and all prepetition amounts relating to its ordinary course Employee-related obligations and programs and the Contractor-related obligations, including, but not limited to, the VP Priority Payment, the Director Priority Payment, the Board Priority Payment, the Sales Force Commissions and the Severance Obligations; provided, however, that, aggregate payments of prepetition amounts under this Order shall not exceed \$13,650 per individual Employee or Contractor in accordance with the priority cap provided in section 507(a)(4)–(5) of the Bankruptcy Code; (ii) to reimburse Employees and Contractors for Reimbursable Expenses; (iii) to continue the Employee programs and practices in the ordinary course to the extent such Employee programs and practices were in effect immediately prior to the filing of this Chapter 11 Case; (iv) to terminate its 2014 Employee Stock Purchase Plan; and (v) to continue making payments postpetition for Employee-related programs and Contractors as they become due.
3. Nothing in this Order authorizes the Debtor to cash out unpaid PTO upon termination of an Employee, unless applicable state law requires such payment, and in no event

shall such payments exceed \$13,650 per individual Employee or Contractor in accordance with the priority cap provided in section 507(a)(4)–(5) of the Bankruptcy Code.

4. The Debtor is further authorized, but not directed, in its sole discretion, to pay all prepetition processing fees associated with, and all costs incident to, payment of the foregoing obligations.

5. The Debtor is further authorized to reissue checks, wire transfers, automated clearing house payments, electronic payments, or other similar methods of payment for prepetition payments approved by the Court in this Order where such method of payment has been dishonored postpetition.

6. The Debtor is further authorized, but not directed, to setoff any prepetition Employee-related obligations authorized by this Order against any applicable Return Obligation of the applicable employee. Any exercise of such a setoff shall only be applied to payments an employee might otherwise be entitled to receive under this Order and/or section 507(a)(4)-(5) of the Bankruptcy Code. The Order does not, and shall not be deemed to, authorize the exercise of the Bonus Setoff to any remaining general unsecured claim the employee may have against the estate. Any such Bonus Setoff will be without prejudice to the Debtor's ability to enforce and collect any Return Obligation which remains owing to the Debtor after application of the aforementioned setoff. The discretion afforded to the Debtor in this paragraph shall apply to its treatment of claims by and against both current and former employees.

7. All banks and other financial institutions on which checks were drawn or electronic payment requests made in connection with the payment of the prepetition obligations approved herein are authorized and directed to (i) receive, process, honor, and pay all such checks and electronic payment requests when presented for payment (assuming that sufficient

funds are then available in the Debtor's bank accounts to cover such payments) and (ii) rely on the Debtor's designation of any particular check or electronic payment request as approved by this Order.

8. Nothing contained in the Motions or this Order, or any actions taken by the Debtor pursuant to relief granted in the Order, shall be: (a) an admission as to the validity of any particular claim against the Debtor; (b) a waiver of the Debtor's rights to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in the Motions; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtor's rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtor that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motions are valid, and the Debtor expressly reserved its rights to contest the extent, validity, or perfection or seek avoidance of all such liens. Any payment made pursuant to this Order shall not be an admission as to the validity of any particular claim or a waiver of the Debtor's rights to subsequently dispute such claim.

9. The Debtor is authorized and empowered to take all actions necessary to implement the relief granted in this Order.

10. For the avoidance of doubt, and notwithstanding anything to the contrary herein, to the extent there is any conflict between this Order and the order approving the *Debtor's Motion for Entry of an Order (I) Authorizing Implementation of a Key Employee Incentive Plan and a Key Employee Retention Plan, (II) Approving the Terms of the Debtors Key Employee*

*Incentive Plan and Key Employee Retention Plan, and (III) Granting Related Relief* [D.I. 27]  
(the “KEIP/KERP Motion”), the order approving the KEIP/KERP Motion shall prevail.

11. Notwithstanding any applicability of any of the Bankruptcy Rules, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

12. Nothing in this Order authorizes or approves any payment subject to section 503(c) of the Bankruptcy Code.

13. Notwithstanding anything contained in the Motions 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.

14. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, enforcement and/or interpretation of this Order.

May 8, 2019  
Wilmington, Delaware

  
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THE HONORABLE BRENDAN L. SHANNON  
UNITED STATES BANKRUPTCY JUDGE