

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re

Achaogen, Inc.,

Debtor.¹

Chapter 11

Case No. 19-10844 (BLS)

**DEBTOR’S MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS
(I) AUTHORIZING THE DEBTOR TO PAY CERTAIN PREPETITION TAXES AND
ASSESSMENTS IN THE ORDINARY COURSE OF BUSINESS AND (II)
AUTHORIZING BANKS AND FINANCIAL INSTITUTIONS TO HONOR AND
PROCESS CHECKS AND TRANSFERS RELATED THERETO**

The above-captioned debtor and debtor in possession (the “Debtor”) hereby moves this Court for entry of interim and final orders (the “Motion”), substantially in the forms attached hereto as **Exhibit A** (the “Proposed Interim Order”) and **Exhibit B** (the “Proposed Final Order”) (i) authorizing but not directing the Debtor in its discretion to pay certain prepetition Taxes and Assessments (defined below) in the ordinary course of business, and (ii) authorizing banks and financial institutions to honor and process related checks and transfers. In support of the Motion, the Debtor submits the *Declaration of Blake Wise in Support of First Day Relief* (the “First Day Declaration”),² filed contemporaneously herewith and incorporated by reference, and respectfully states as follows:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the

¹ 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.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the First Day Declaration.



Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and the Debtor confirms its consent pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”) to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

2. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory and legal predicates for the relief requested herein are sections 105(a) and 363(b) of the Bankruptcy Code and Rules 6003(b) and 6004(h) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

BACKGROUND

4. On the date hereof (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (this “Chapter 11 Case”). The Debtor continues to operate its business as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No party has requested the appointment of a trustee or examiner and no committee has been appointed in this Chapter 11 Case.

5. The Debtor is a biopharmaceutical company focused on the development and commercialization of innovative antibiotic treatments against multi-drug resistant gram-negative infections. Additional details regarding the Debtor’s business and the facts and circumstances supporting the relief requested herein are set forth in the First Day Declaration, which was filed contemporaneously with this Motion and is incorporated by reference.

THE DEBTOR'S TAX AND FEE OBLIGATIONS

6. The Debtor incurs taxes in the ordinary course of business, primarily comprising of income taxes (federal and state), state franchise taxes, sales and use taxes and property taxes on owned and leased property (the "Taxes").

7. In the most recently concluded calendar year, the Debtor incurred approximately \$400,000 in tax liabilities payable to various authorities. As of the Petition Date, the Debtor estimates that it is required to remit approximately \$168,000 in prepetition Taxes, with approximately \$135,000 due within 30 days of the Petition Date. The Debtor also estimates that it will have approximately \$160,000 of Taxes incurred for year 2019 that will come due after the Petition Date, none of which is estimated to fall due within 30 days of the Petition Date.

8. In addition to Taxes, the Debtor incurs business license, compliance and regulatory fees and other similar assessments (the "Assessments"). Laws and regulations in jurisdictions in which the Debtor operates require the Debtor to pay fees to obtain a range of business licenses and permits from a number of different authorities. The methods for calculating amounts due for such licenses and permits, and the deadlines for paying such amounts, vary by jurisdiction.

9. In the most recently concluded fiscal year, the Debtor incurred approximately \$8,000 in Assessments payable to various authorities. The Debtor estimates that it will have approximately \$10,000 in Assessments, including SEC related fees, incurred for year 2019 that will come due after the Petition Date. Fees in connection with the Debtor changing its business address in early 2019 and having to reregister various business licenses with the new address were paid in the amount of \$66,000 in February of 2019.

10. A non-exclusive list of such taxing authorities is annexed hereto as **Exhibit C** (the "Taxing Authority List"). Although the Taxing Authority List is substantially

complete, the relief requested herein is to be applicable with respect to all Taxing Authorities and is not limited to those Taxing Authorities listed on the Taxing Authority List.

RELIEF REQUESTED

11. By the Motion, the Debtor seeks, pursuant to sections 105(a) and 363 of the Bankruptcy Code, entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, authorizing but not directing the Debtor to pay Taxes and Assessments that in the ordinary course of business accrued or arose before the Petition Date. To the extent that certain prepetition amounts remain outstanding, by this Motion the Debtor seeks entry of an order granting it authority to make payments on account of the prepetition tax and fee claims on the terms set forth below. The Debtor estimates that it owes Taxes and Assessments of approximately \$350,000. The Debtor wishes to continue to pay the appropriate authorities in the ordinary course, including tax liabilities arising prepetition not to exceed \$135,000 on an interim basis to be allocated at the Debtor's discretion without prejudice to seek additional relief on an emergency basis.

12. Additionally, to the extent that any check has been issued or electronic transfer initiated prior to the Petition Date to satisfy any prepetition obligation on account of Taxes or Assessments, and such payment has not cleared the Debtor's bank accounts as of the Petition Date, the Debtor requests the Court to authorize the Debtor's banks, when requested by the Debtor in its sole discretion, to receive, process, honor, and pay such checks or electronic transfers initiated prior to the Petition Date. The Debtor also seeks authorization to issue replacement checks, or to provide for other means of payment to applicable authorities, to the extent necessary to pay such Taxes and Assessments.

BASIS FOR RELIEF

A. The Court has Authority to Grant the Requested Relief Under Sections 363(b) and 105(a) of the Bankruptcy Code.

13. The Court may authorize the Debtor to pay prepetition amounts related to taxes and assessments pursuant to section 363(b) of the Bankruptcy Code. Section 363 of the Bankruptcy Code provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Under this section, a court may authorize a debtor to pay certain prepetition claims where a sound business purpose exists for doing so. *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (finding that a sound business justification existed to justify payment of prepetition wages); *see also Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 397 (S.D.N.Y. 1983) (relying on section 363 to allow contractor to pay prepetition claims of suppliers who were potential lien claimants because the payments were necessary for general contractors to release funds owed to debtors). Here, the Debtor’s failure to pay the Taxes and Assessments could have a material adverse impact on its ability to operate in the ordinary course.

14. Additionally, the Court may authorize the Debtor to pay the Taxes and Assessments under section 105(a) of the Bankruptcy Code and the “doctrine of necessity.” Section 105(a) provides that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [title 11].” 11 U.S.C. § 105(a). Specifically, the Court may use its power under section 105(a) of the Bankruptcy Code to authorize payment of prepetition obligations pursuant to the “doctrine of necessity” (also referred to as the “necessity of payment” rule). The Third Circuit recognized the “necessity of payment” doctrine in *In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981),

where it held that a court could authorize the payment of prepetition claims if such payment was essential to the continued operation of the debtor. *Id.* (stating courts may authorize payment of prepetition claims when there “is the possibility that the creditor will employ an immediate economic sanction, failing such payment”); *see also In re Penn Central Transp. Co.*, 467 F.2d 100, 102 (3rd Cir. 1972) (holding necessity of payment doctrine permits “immediate payment of claims of creditors where those creditors will not supply services or material essential to the conduct of the business until their pre-reorganization claims have been paid”); *In re Just for Feet, Inc.*, 242 B.R. 821, 824-45 (Bankr. D. Del. 1999) (noting that, in the Third Circuit, debtors may pay prepetition claims that are essential to continued operation of business); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191-92 (Bankr. D. Del. 1994) (same).

15. Paying the Taxes and Assessments is necessary in this case to preserve and maximize the value of the Debtor’s estate. Likewise, paying the Assessments is also essential to the value of the Debtor’s business. The Debtor’s corporate structure and registration with applicable authorities are valuable aspects of its enterprise because they provide capital and regulatory efficiencies that cannot otherwise be achieved. Failing to pay the Assessments could jeopardize the Debtor’s good standing or status with applicable authorities. The Debtor believes that any loss of good standing or status would severely, and potentially irreparably, damage its business. For these reasons, the Debtor submits that paying the Taxes and Assessments is necessary to preserve the value of its business.

16. Under the Debtor’s existing cash management system, the Debtor represents that checks or electronic payment requests can be readily identified as relating to an authorized payment in respect of the Taxes and Assessments. Accordingly, the Debtor believes that checks or electronic payment requests, other than those relating to authorized payments, will

not be honored inadvertently and that all applicable financial institutions should be authorized, when requested by the Debtor, to receive, process, honor and pay any and all checks or electronic payment requests in respect of the Taxes and Assessments to the extent that there are sufficient funds in the applicable accounts to make such payments. Moreover, all applicable banks and other financial institutions shall not have any liability in connection with honoring any prepetition checks or electronic payment requests contemplated by the proposed orders or designated by the Debtor pursuant to the proposed orders.

B. Most of the Taxes and Assessments Are Priority Claims and, Therefore, Authorizing the Debtor to Pay Such Amounts Will Only Affect the Timing of Payment of Such Claims.

17. Additionally, most, if not all, of the Taxes and Assessments are entitled to priority status under section 507(a)(8) of the Bankruptcy Code. For example, priority status is afforded to unsecured claims of governmental units for a tax on or measured by income or gross receipts for a taxable year ending on or before the Petition Date (11 U.S.C. § 507(a)(8)(A)), property taxes incurred before the Petition Date and last payable without penalty after one year before the Petition Date (11 U.S.C. § 507(a)(8)(B)), and taxes required to be collected or withheld and for which the Debtor is liable in whatever capacity (11 U.S.C. § 507(a)(8)(C)).

18. As priority claims, such Taxes and Assessments must be paid in full before any general unsecured obligations of the Debtor may be satisfied. Accordingly, the relief requested herein will only affect the timing of the payment of the Taxes and Assessments and will not prejudice the rights of general unsecured creditors or other parties in interest. The Debtor submits that sufficient assets exist to pay all the Taxes and Assessments. Therefore, the Court should grant the Debtor authority to pay the Taxes and Assessments in the ordinary course.

THE MOTION SATISFIES BANKRUPTCY RULE 6003

19. Under Bankruptcy Rule 6003(b), a court shall not grant “a motion to pay all or part of a claim that arose before the filing of the petition” within 21 days of the petition date “[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm[.]” Fed. R. Bankr. P. 6003(b). As described herein and in the First Day Declaration, the Debtor’s business operations rely on current payment of the Taxes and Assessments. Failing to pay the Taxes and Assessments would have immediate and detrimental consequences to the Debtor’s business operations and would decrease the value of the Debtor’s estate to the detriment and prejudice of all stakeholders. Accordingly, the Debtor submits that the requirements of Bankruptcy Rule 6003 have been met and that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtor and its estates.

WAIVER OF BANKRUPTCY RULES 6004(a) AND 6004(h)

20. To implement the relief requested, the Debtor seeks a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h). Pursuant to Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As set forth above, paying the Taxes and Assessments is necessary to prevent irreparable damage to the Debtor’s business operations and, therefore, the value of the Debtor’s business. Accordingly, the Debtor submits that ample cause exists to justify a waiver of the fourteen day stay imposed by Bankruptcy Rule 6004(h), to the extent it applies.

RESERVATION OF RIGHTS

21. Nothing contained in this Motion or any actions taken by the Debtor pursuant to relief granted in the Order is intended or should be construed as: (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 this Motion; (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 this Motion are valid, and the Debtor expressly reserved its rights to contest the extent, validity, or perfection or seek avoidance of all such liens. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtor's rights to subsequently dispute such claim.

NOTICE

22. Notice of this Motion is being provided to: (a) the U.S. Trustee; (b) the parties included on the Debtor's list of twenty (20) largest unsecured creditors; (c) counsel to SVB in its capacity as Prepetition Lender and DIP Lender (each as defined in the First Day Declaration); (d) the authorities to whom the Debtor pays Taxes and Assessments; (e) the Delaware Secretary of State; (f) the Delaware State Treasury; (g) the Internal Revenue Service; (h) the Securities and Exchange Commission; (i) any party that has requested notice pursuant to Bankruptcy Rule 2002; and (j) any other party required to be provided notice under Local Rule 9013-1(m). As this Motion is seeking "first day" relief, within two business days after entry of

an order on this Motion, the Debtor will serve copies of this Motion and any order entered in respect to this Motion as required by Local Rule 9013-l(m). The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

CONCLUSION

WHEREFORE, the Debtor respectfully requests that the Court enter interim and final orders, substantially in the forms annexed hereto as **Exhibit A** and **Exhibit B**, granting the relief requested in the Motion and such other and further relief as may be just and proper.

[Remainder of page intentionally left blank]

April 15, 2019
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Derek C. Abbott

Derek C. Abbott (No. 3376)
Andrew R. Remming (No. 5120)
Matthew O. Talmo (No. 6333)
Paige N. Topper (No. 6470)
1201 North Market Street, 16th Floor
P.O. Box 1347
Wilmington, Delaware 19899-1347
Tel.: (302) 658-9200
Fax: (302) 658-3989
dabbott@mnat.com
aremming@mnat.com
mtalmo@mnat.com
ptopper@mnat.com

- and -

Richard L. Wynne (CA 120349)
Pro hac vice admission pending
Erin N. Brady (CA 215038)
Pro hac vice admission pending
HOGAN LOVELLS US LLP
1999 Avenue of the Stars, Suite 1400
Los Angeles, California 90067
Telephone: (310) 785-4600
Facsimile: (310) 785-4601
richard.wynne@hoganlovells.com
erin.brady@hoganlovells.com

- and -

Christopher R. Bryant (NY 3934973)
Pro hac vice admission pending
John D. Beck (TX 24073898)
Pro hac vice admission pending
HOGAN LOVELLS US LLP
875 Third Avenue
New York, NY 10022
Telephone: (212) 918-3000
Facsimile: (212) 918-3100
chris.bryant@hoganlovells.com
john.beck@hoganlovells.com

Proposed Counsel for Debtor and Debtor in Possession

EXHIBIT A

Proposed Interim Order

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

In re

Achaogen, Inc.

Debtor.¹

Chapter 11

Case No. 19-10844 (BLS)

**INTERIM ORDER (I) AUTHORIZING THE DEBTOR TO PAY CERTAIN
PREPETITION TAXES AND ASSESSMENTS IN THE ORDINARY COURSE OF
BUSINESS AND (II) AUTHORIZING BANKS AND FINANCIAL INSTITUTIONS TO
HONOR AND PROCESS CHECKS AND TRANSFERS RELATED THERETO**

Upon consideration of the motion (the “Motion”)² of the debtor and debtor in possession in the above-captioned case (the “Debtor”) for the entry of interim and final orders pursuant to sections 105(a) and 363 of title 11 of the Bankruptcy Code, (i) authorizing but not directing the Debtor to pay or honor, in the Debtor’s sole discretion, certain prepetition taxes and assessments in the ordinary course of business, and (ii) authorizing banks and financial institutions to honor and process checks and transfers related thereto; 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

¹ 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.

² Capitalized terms not defined in this Order are defined in the Motion.

venue of this proceeding and the Motion in this district is proper 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 an interim basis, to the extent set forth herein.

2. Until such time as a Final Order is entered, the Debtor is authorized but not directed, in the Debtor's sole discretion, to pay and remit Taxes and Assessments in the ordinary course of business without regard to whether the Taxes or Assessments accrued or arose before or after the Petition Date in an aggregate amount not to exceed \$135,000.

3. In accordance with this Order and any other order of this Court, the financial institutions at which the Debtor maintains its accounts (the "Banks") shall be, and hereby are, authorized, when requested by the Debtor (in the Debtor's sole discretion), to honor and pay all checks or electronic fund transfers drawn on the Debtor's accounts for the payments authorized pursuant to this Order, whether such payments were presented prior to or following the Petition Date, provided that sufficient funds are on deposit in such accounts to honor and make such payments.

4. The Banks may rely on the representations of the Debtor with respect to whether any check or electronic fund transfers drawn or issued by the Debtor prior to the Petition Date should be honored pursuant to this Order, and any such Bank shall not have any liability to any party for relying on such representations by the Debtor as provided for in this Order.

5. The Debtor is authorized to issue postpetition checks, or to effect postpetition electronic fund transfers, in replacement of any checks or electronic fund transfers in respect of payments authorized by this Order that are dishonored or rejected after the Petition Date.

6. Nothing in the Motion or this Order, nor as a result of any payment made pursuant to this Order, shall be deemed or construed as (a) an admission as to the validity, amount, classification, or priority of any claim or lien against the Debtor, (b) a waiver of the right of the Debtor, or shall impair the ability of the Debtor, to contest the validity, amount, classification, or priority of any claim, lien, or payment made pursuant to this Order; or (c) a request or an approval to assume any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code.

7. The Debtor is authorized and empowered to take such actions as may be reasonably necessary to implement and effectuate this Order.

8. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied.

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

10. The hearing to consider entry of an order granting the relief requested in the Motion on a final basis shall be held on _____, 2019 at ___:___ p.m. (**Eastern Time**); and any objections to entry of such order shall be in writing, filed with the Court, and

served upon (i) proposed counsel to the Debtor, (ii) the United States Trustee, (iii) counsel to the DIP Lender, Morrison & Foerster LLP, 200 Clarendon Street, Boston, MA 02116, Attn: Alexander Rheume, Morrison & Foerster LLP, 250 West 55th Street, New York, NY 10019-9601, Attn: Todd Goren and Benjamin Butterfield, and Ashby & Geddes, 500 Delaware Avenue, P.O. Box 1150, Wilmington, DE 19899, Attn: Gregory Taylor, and (iv) counsel for any statutory committee appointed in these cases so as to be received no later than : **p.m. (Eastern Time)** on _____, 2019.

11. 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.

12. This Court shall retain jurisdiction over the Debtor and any party receiving payment from the Debtor pursuant to this Order with respect to any matters, claims, rights, or disputes arising from or related to the Motion, the implementation of this Order, or the validity of any of claims against the Debtor or payment made pursuant to this Order.

_____, 2019
Wilmington, Delaware

THE HONORABLE BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

Proposed Final Order

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

In re

Achaogen, Inc.

Debtor.¹

Chapter 11

Case No. 19-10844 (BLS)

FINAL ORDER (I) AUTHORIZING THE DEBTOR TO PAY CERTAIN PREPETITION TAXES AND ASSESSMENTS IN THE ORDINARY COURSE OF BUSINESS AND (II) AUTHORIZING BANKS AND FINANCIAL INSTITUTIONS TO HONOR AND PROCESS CHECKS AND TRANSFERS RELATED THERETO

Upon consideration of the motion (the “Motion”)² of the debtor and debtor in possession in the above-captioned case (the “Debtor”) for the entry of interim and final orders pursuant to sections 105(a) and 363 of title 11 of the Bankruptcy Code, (i) authorizing but not directing the Debtor to pay or honor, in the Debtor’s sole discretion, certain prepetition taxes and assessments in the ordinary course of business, and (ii) authorizing banks and financial institutions to honor and process checks and transfers related thereto; 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

¹ 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.

² Capitalized terms not defined in this Order are defined in the Motion.

venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion 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 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 to the extent set forth herein.
2. The Debtor is authorized but not directed, in the Debtor's sole discretion, to pay and remit Taxes and Assessments in the ordinary course of business without regard to whether the Taxes or Assessments accrued or arose before or after the Petition Date, including prepetition Taxes and Assessments.
3. In accordance with this Order and any other order of this Court, the financial institutions at which the Debtor maintains its accounts (the "Banks") shall be, and hereby are, authorized, when requested by the Debtor (in the Debtor's sole discretion), to honor and pay all checks or electronic fund transfers drawn on the Debtor's accounts for the payments authorized pursuant to this Order, whether such payments were presented prior to or following the Petition Date, provided that sufficient funds are on deposit in such accounts to honor and make such payments.
4. The Banks may rely on the representations of the Debtor with respect to whether any check or electronic fund transfers drawn or issued by the Debtor prior to the Petition

Date should be honored pursuant to this Order, and any such Bank shall not have any liability to any party for relying on such representations by the Debtor as provided for in this Order.

5. The Debtor is authorized to issue postpetition checks, or to effect postpetition electronic fund transfers, in replacement of any checks or electronic fund transfers in respect of payments authorized by this Order that are dishonored or rejected after the Petition Date.

6. Nothing in the Motion or this Order, nor as a result of any payment made pursuant to this Order, shall be deemed or construed as (a) an admission as to the validity, amount, classification, or priority of any claim or lien against the Debtor, (b) a waiver of the right of the Debtor, or shall impair the ability of the Debtor, to contest the validity, amount, classification, or priority of any claim, lien, or payment made pursuant to this Order; or (c) a request or an approval to assume any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code.

7. The Debtor is authorized and empowered to take such actions as may be reasonably necessary to implement and effectuate this Order.

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

9. 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.

10. This Court shall retain jurisdiction over the Debtor and any party receiving payment from the Debtor pursuant to this Order with respect to any matters, claims, rights, or

disputes arising from or related to the Motion, the implementation of this Order, or the validity of any of claims against the Debtor or payment made pursuant to this Order.

_____, 2019
Wilmington, Delaware

THE HONORABLE BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT C

Taxing Authority List

Income/Franchise Tax

California Department of Revenue
Alabama Department of Revenue
Georgia Department of Revenue

State/Local Taxes

Massachusetts Department of Revenue
Texas Comptroller of Public Accounts
Delaware Secretary of State
State of Connecticut Department of Revenue Services
South Carolina Department of Revenue
Louisiana Department of Revenue
New York State Department of Taxation and Finance
NYC Department of Finance
Georgia Department of Revenue
North Carolina Department of Revenue (NCDOR)
Arizona Department of Revenue
Alabama Department of Revenue
State Board of Equalization

Property Tax

San Mateo County Tax Collector
Delaware Secretary of State

Regulatory, Miscellaneous and License Fees

California Department of Tax and Fee Administration
San Mateo County Environmental Health Fee
China General Administration of Customs - Value-Added-Tax (VAT) (Foreign Tax)
Public Company Accounting Oversight Board (PCAOB)
Financing Accounting Standards Board (FASB)