

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. 12

INTERIM 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")² 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; (c) renew or enter into new insurance arrangements and/or enter into premium financing agreements in the ordinary course of business; 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 pursuant to

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

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



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, as set forth herein.
2. Until such time as the Final Order is entered, 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. Until such time as the Final Order is entered, 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, in an amount not to exceed \$100,000, 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. 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.

5. 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.

6. 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.

7. Nothing in this Order shall affect the Debtor's right 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.

8. 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.

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 May 8, 2019 at 11:00a.m. (Eastern Time); and any objections to entry of such order shall be in writing, filed with the Court, and served upon (i) 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 Rheaume, 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 this Chapter 11 Case so as to be received no later than **4:00 p.m. (Eastern Time) on May 1, 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. The Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

April 16, 2019
Wilmington, Delaware



THE HONORABLE BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE