

**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. 10

**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 May 8, 2019 at 11:00^{a.m.} ~~11:00 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 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 these cases 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. 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.

April 16, 2019
Wilmington, Delaware



THE HONORABLE BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE