

**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. 7

**INTERIM ORDER PURSUANT TO 11 U.S.C. §§ 105(a), 363, 1107, AND 1108 AND FED. R. BANKR. P. 6003 AND 6004 AUTHORIZING DEBTOR TO (I) HONOR CERTAIN PREPETITION OBLIGATIONS TO CUSTOMERS AND TO CONTINUE CUSTOMER PROGRAMS AND (II) PAY MEDICAID, MEDICARE AND OTHER OBLIGATIONS**

Upon the motion (the "Motion")<sup>2</sup> of the Debtor for an interim order (the "Interim Order"), pursuant to sections 105(a), 363, 1107, and 1108 of the Bankruptcy Code, and Bankruptcy Rule 6003 and 6004, authorizing the Debtor to continue to (i) honor prepetition obligations owed to Customers and otherwise continue its prepetition Customer Programs and practices in the ordinary course of business and (ii) pay Medicaid, Medicare and other obligations; and upon the First Day Declaration; and due and sufficient notice of the Motion having been given under the particular circumstances; and it appearing that no other or further notice need be provided; and it appearing that the relief requested by the Motion is in the best interests of the Debtor, its estate, its creditors and other parties in interest; and after due deliberation thereon and good and sufficient cause appearing therefor, it is hereby,

**ORDERED, ADJUDGED, AND DECREED that:**

1. The Motion is GRANTED as set forth herein on an interim basis.

<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 otherwise defined herein shall have the meanings ascribed to such terms in the Motion.



2. Until such time as the Final Order is entered, the Debtor is authorized, but not directed, to continue the Customer Programs in the ordinary course of business, including the payment of prepetition amounts not to exceed \$50,000 inclusive of the Debtor's Customers setting off prepetition amounts, where applicable, against the Debtor's accounts receivable in the ordinary course and pursuant to prepetition customary terms between the Debtor and the Customers.

3. All applicable banks and financial institutions are (a) authorized and directed to receive, process, honor and pay any and all checks drawn on the payroll, drafts and other forms of payment, including fund transfers, used by the Debtor on account of the Customer Programs, whether presented before, on or after the Petition Date, provided that sufficient funds are on deposit in the applicable accounts to cover such payments, (b) authorized to rely on the representations of the Debtor as to which checks are subject to this Motion, and (c) prohibited from placing any holds on, or attempting to reverse, any automatic transfers on account of the Customer Programs; provided that the Debtor is authorized to issue new postpetition checks to replace any checks, drafts and other forms of payment, or effect new postpetition fund transfers, which may be inadvertently dishonored or rejected and to reimburse any expenses that may be incurred as a result of any bank's failure to honor a prepetition check.

4. The Debtor is authorized, but not directed, to continue, renew, replace, modify and/or terminate such of its Customer Programs as it deems appropriate, in its discretion, and in the ordinary course of business, without further application to the Court.

5. The provisions contained herein shall not be construed to limit, or in any way affect, the Debtor's ability to contest any claims, on any ground permitted by applicable law, and neither the provisions contained herein, nor any actions or payment made by the Debtor

pursuant to the Interim Order, shall be deemed an admission as to the validity of the underlying obligation or a waiver of any rights the Debtor may have to subsequently dispute such obligation on any ground that applicable law permits.

6. Nothing in the Interim Order or the Motion shall be deemed to constitute postpetition assumption, reaffirmation or adoption of any agreement under Bankruptcy Code section 365. Notwithstanding the relief granted herein and any actions taken hereunder, nothing herein shall create, nor is intended to create, any rights in favor of, or enhance the status of any claim held by, any person.

7. The Court finds and determines that the requirements of Bankruptcy Rule 6003 are satisfied and that the relief requested is necessary to avoid immediate and irreparable harm.

8. Notwithstanding Bankruptcy Rule 6004(h), the Interim Order shall be effective and enforceable immediately upon entry hereof.


9. The final hearing on this Motion is set for May 8, 2019 at 11:00 a.m. ~~p.m.~~ (Eastern Time). Any objections or responses to entry of the proposed Final Order shall be filed and served, so as to be received by 4:00 p.m. (prevailing Eastern Time) no later than seven (7) days prior to the final hearing, upon: (i) the Debtor, care of Achaogen, Inc., 1 Tower Place, Suite 400, South San Francisco, CA 94080, Attention: Gary Loeb, and (ii) proposed counsel to the Debtor, Hogan Lovells US LLP, 1999 Avenue of the Stars, Suite 1400, Los Angeles, California 90067, Attn: Richard L. Wynne and Erin N. Brady, and Hogan Lovells US LLP, 875 Third Avenue, New York, New York 10022, Attn.: John D. Beck, and Morris, Nichols, Arsht & Tunnel LLP, 1201 North Market Street, 16<sup>th</sup> Floor, Wilmington, Delaware 19899-1347, Attn: Derek C. Abbott and Andrew R. Remming.

10. The requirements set forth in Local Bankruptcy Rule 9013-1(b) are satisfied by the contents of the Motion.

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

12. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Interim Order.

April 16, 2019  
Wilmington, Delaware

  
THE HONORABLE BRENDAN L. SHANNON  
UNITED STATES BANKRUPTCY JUDGE