

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. 5

**INTERIM ORDER GRANTING DEBTOR'S MOTION FOR ENTRY OF
INTERIM AND FINAL ORDERS (A) AUTHORIZING THE DEBTOR TO
(I) CONTINUE ITS CASH MANAGEMENT SYSTEM, (II) HONOR CERTAIN
RELATED PREPETITION OBLIGATIONS, AND (III) MAINTAIN EXISTING
BUSINESS FORMS, (B) AUTHORIZING AND DIRECTING THE DEBTOR'S
BANK TO HONOR ALL RELATED PAYMENT REQUESTS, (C) SCHEDULING
A FINAL HEARING, AND (D) GRANTING RELATED RELIEF**

Upon the motion (the "Motion")² of the above-captioned debtor and debtor in possession (the "Debtor") for entry of interim (this "Interim Order") and final orders, (a) authorizing the Debtor to (i) continue its Cash Management System, (ii) honor certain related prepetition obligations, and (iii) maintain its existing Business Forms in the ordinary course of business, (b) authorizing and directing the Debtor's Bank to honor all related payment requests, (c) scheduling a final hearing (the "Final Hearing") to consider entry of the proposed final order granting the Motion and (d) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter 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

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.



found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtor's estate, its creditors, and other parties in interest; and this Court having found that the Debtor's notice of the Motion was appropriate under the circumstances and no other notice need be provided; 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 this 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 this 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. 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. (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 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 **4:00 p.m. (Eastern Time)** on May 1, 2019.
3. The Debtor is authorized, but not directed, to: (a) continue operating the Cash Management System, as described in the Motion; (b) honor its prepetition obligations

related thereto; (c) continue to utilize and honor the Credit Cards, including any prepetition amounts incurred thereunder; and (d) maintain its existing Business Forms, in each case subject to this Interim Order.

4. The Debtor is further authorized, in its sole discretion, to: (a) continue to use, with the same account numbers, the Bank Accounts in existence as of the Petition Date, including those accounts identified in the Motion; (b) use, in their present form, the Business Forms, as well as correspondence, checks and other documents related to the Bank Accounts existing immediately before the Petition Date and thereafter, without reference to the Debtor's status as debtor in possession; provided that once the Debtor's preprinted correspondence, Business Forms (including letterhead) and existing checks have been used, the Debtor shall, when reordering, require the designation "Debtor in Possession" and the corresponding bankruptcy case number on all such documents; provided further that, with respect to checks and letterhead which the Debtor or its agents print themselves, the Debtor shall begin printing the "Debtor in Possession" legend and the bankruptcy case number on such items within ten (10) days of the date of entry of this Order; (c) treat the Debtor's existing Bank Accounts for all purposes as accounts of the Debtor as debtor in possession; (d) deposit funds in and withdraw funds from the Bank Accounts by all usual means, including checks, wire transfers, and other debits; (e) pay the prepetition Bank Fees; and (f) pay any ordinary course Bank Fees incurred in connection with the Debtor's existing Bank Accounts, and to otherwise perform its obligations under the documents governing the Debtor's existing Bank Accounts, with all of the provisions of such agreements, including, without limitation, the termination and fee provisions, remaining in full force and effect. Any requirements by the United States Trustee or otherwise to open separate debtor-in-possession accounts are waived, unless otherwise specified herein.

5. The Bank is authorized to debit the Debtor's accounts in the ordinary course of business without need for further order of this Court for: (a) all checks drawn on the Bank Accounts that are cashed at the Bank or exchanged for cashier's checks by the payees thereof prior to the Petition Date, (b) all checks or other items deposited in one of the Bank Accounts at the Bank prior to the Petition Date that have been dishonored or returned unpaid for any reason, together with any fees and costs in connection therewith, to the same extent the Debtor was responsible for such items prior to the Petition Date, and (c) all undisputed prepetition amounts outstanding as of the date hereof, if any, owed to any Bank as fees or service charges for the maintenance of any aspect of the applicable Cash Management System.

6. The Bank is authorized to continue to maintain, service, and administer the Debtor's existing Bank Accounts as accounts of the Debtor as debtor in possession, without interruption and in the ordinary course, and to receive, process, honor, and pay, to the extent of available funds, any and all checks, drafts, wires, credit card payments, and ACH transfers issued and drawn on the Debtor's existing Bank Accounts after the Petition Date by the holders or makers thereof, as the case may be. Within fifteen (15) days of the date of entry of this Order the Debtor shall (a) contact the Bank, (b) provide the Bank with the Debtor's employer identification number and (c) identify each of its Bank Accounts held at the Bank as being held by a debtor in possession in a bankruptcy case, and provide the case number.

7. The Bank shall not honor or pay any bank payments drawn on the listed Bank Accounts or otherwise issued before the Petition Date for which the Debtor specifically issues stop payment orders in accordance with the documents governing such Bank Accounts.

8. In the course of providing cash management services to the Debtor, the Bank is authorized, without further order of this Court, to deduct the applicable fees from the

appropriate accounts of the Debtor, and further, to charge back to the appropriate accounts of the Debtor any amounts resulting from returned checks or other returned items, including returned items that result from ACH transactions, wire transfers, or other electronic transfers of any kind, regardless of whether such items were deposited or transferred prepetition or postpetition and regardless of whether the returned items relate to prepetition or postpetition items or transfers.

9. Notwithstanding any other provision of this Interim Order, should the Bank honor a prepetition check or other item drawn on any account that is the subject of this Interim Order (a) at the direction of the Debtor to honor such prepetition check or item, (b) in a good faith belief that the Court has authorized such prepetition check or item to be honored, or (c) as the result of an innocent mistake made despite implementation of customary item handling procedures, the Bank shall not be deemed to be nor shall be liable to the Debtor or its estate or otherwise be in violation of this Interim Order.

10. The Bank is further authorized to (a) honor the Debtor's directions with respect to the opening and closing of any Bank Account and (b) accept and hold, or invest, the Debtor's funds in accordance with the Debtor's instructions; provided, however, that the Debtor's Bank shall not have any liability to any party for relying on such representations to the extent such reliance otherwise complies with applicable law.

11. The Debtor is authorized to open any new Bank Accounts or close any existing Bank Accounts as it may deem necessary and appropriate; provided that either the Debtor or the Bank may, without further order of this Court, implement changes to the cash management systems and procedures in the ordinary course of business pursuant to terms of those certain existing deposit agreements, including, without limitation, the opening and closing of Bank Accounts; provided, however, that the Debtor gives notice within fifteen (15) days to the

Office of the United States Trustee for the District of Delaware, counsel to the DIP Lender, and any statutory committees appointed in the chapter 11 case, except that the Debtor shall not be required to provide notice that it has opened a new Bank Account in connection with establishing utility deposits as provided in the Utility Motion (each as defined in the First Day Declaration); provided, further, however, that the Debtor shall open any such new Bank Account at banks that have executed a Uniform Depository Agreement with the Office of the United States Trustee for the District of Delaware, or at such banks that are willing to immediately execute such an agreement.

12. Notwithstanding anything contained in the Motion or this Interim Order, any payment or acts authorized to be made or taken by the Debtor herein shall be subject to the terms and conditions contained in any interim and/or final orders approving the DIP Facility and the use of cash collateral (each, a “DIP Order”), including any budgets in connection therewith, and to the extent there is any inconsistency between the DIP Order and any action taken or proposed to be taken hereunder, the terms of the DIP Order shall control.

13. Notwithstanding the relief granted in this Interim Order and any actions taken pursuant to such relief, nothing in this Interim Order shall be deemed: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of the Debtor’s right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Interim Order or the Motion; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; or (f) a waiver of the Debtor’s rights under the Bankruptcy Code or any other applicable law.

14. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

15. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

16. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order are immediately effective and enforceable upon its entry.

17. The Debtor is authorized to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

18. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Interim Order.

April 16, 2019
Wilmington, Delaware


THE HONORABLE BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE