Docket #0146 Date Filed: 05/03/2019

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	Chapter 11
Achaogen, Inc.	Case No. 19-10844 (BLS)
Debtor.[1]	RE: D.I. 5

CERTIFICATE OF COUNSEL REGARDING 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

The undersigned counsel to the above-captioned debtor and debtor in possession (the "**Debtor**") hereby certifies as follows:

1. On April 15, 2019, the Debtor filed the *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* (D.I. 5) (the "**Motion**").

2. Pursuant to the Notice of Motion, the deadline to file objections or responses to the relief requested in the Motion was May 1, 2019, at 4:00 p.m. (Prevailing Eastern Time).

3. The Debtor received informal comments to the Motion from the Official Committee of Unsecured Creditors (the "**Committee**"). Besides the informal comments from

[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.

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the Committee, the Debtor has received no other objection or informal comments, and no objection or other responsive pleading to the Motion appears on the Court's docket.

4. The Debtor has resolved the informal comments of the Committee through revisions to the proposed order granting the relief requested in the Motion (the "**Proposed Order**"). The Proposed Order is attached hereto as Exhibit A.

5. For the convenience of the Court and all parties in interest, a blackline comparing the Proposed Order against the version filed with the Motion is attached hereto as Exhibit B.

6. The U.S. Trustee and the Committee have reviewed the Proposed Order and do not object to its entry.

WHEREFORE, the Debtor respectfully requests that the Court enter the Proposed Order substantially in the form attached hereto as Exhibit A at its earliest convenience.

Dated: May 3, 2019
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Paige N. Topper

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Proposed Counsel for Debtor and Debtor in Possession

Exhibit A

Revised Proposed Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	Chapter 11
Achaogen, Inc.,	Case No. 19-10844 (BLS)
Debtor.[1]	**Re: D.I. 5 & 50**

FINAL 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 and final orders (this "Final Order"), (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 the Final Hearing 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 found that venue of this proceeding and the Motion in this district is proper

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

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 a final basis as set forth herein.

2. All relief granted in the Interim Order is hereby granted on a final basis.

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 prepepetition amounts incurred thereunder; and (d) maintain its existing Business Forms, in each case subject to the limitations described in the Motion, the Interim Order, this Final 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 its 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. 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.

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 Final Order, should the Bank honor a prepetition check or other item drawn on any account that is the subject of this Final 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 Final 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 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 (a) open any new Bank Accounts or close any existing Bank Accounts, and (b) enter into any ancillary agreements, related to the foregoing, as it may deem necessary and appropriate; provided, however, that in the event that the Debtor opens or closes any Bank Accounts, such opening or closing shall be timely indicated on the Debtor's monthly operating reports and notice of such opening or closing shall be provided to the Office of the United States Trustee for the District of Delaware, counsel to the DIP Lender and proposed counsel to the Official Committee of Unsecured Creditors (the "Committee") within 15 days, 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).

12. Notwithstanding anything contained in the Motion or this Final 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. Those certain existing deposit agreements between the Debtor and the Bank shall continue to govern the postpetition cash management relationship between the Debtor and such Bank, and all of the provisions of such agreements, including, without limitation, the termination and fee provisions, shall remain in full force and effect.

14. 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 shall consult with the DIP Lender and the Committee concering any material changes to the cash management systems and procedures.

15. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (a) an admission as to the validity of any prepetition claim against the Debtor; (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 Final 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.

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

17. The Debtor is authorized to take all actions necessary to effectuate the relief granted in this Final 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 Final Order.

_____, 2019
Wilmington, Delaware

_____
THE HONORABLE BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

Exhibit B

Blackline

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	Chapter 11
Achaogen, Inc.,	Case No. 19-10844 (BLS)
Debtor.[1]	**Re: D.I. 5**

FINAL 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

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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 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 a final basis as set forth herein.

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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 prepepetition amounts incurred thereunder; and (d) maintain its existing Business Forms, in each case subject to the limitations described in the Motion, the Interim Order, this Final Order.

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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. 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.

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9. Notwithstanding any other provision of this Final Order, should the Bank honor a prepetition check or other item drawn on any account that is the subject of this Final 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 Final Order.

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11. The Debtor is authorized to (a) open any new Bank Accounts or close any existing Bank Accounts, and (b) enter into any ancillary agreements, related to the foregoing, as it may deem necessary and appropriate; provided, however, that in the event that the Debtor opens or closes any Bank Accounts, such opening or closing shall be timely indicated on the Debtor's monthly operating reports and notice of such opening or closing shall be provided to the Office of the United States Trustee for the District of Delaware ~~and~~, counsel to the DIP Lender and proposed counsel to the Official Committee of Unsecured Creditors (the "Committee") within 15 days, 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).

12. Notwithstanding anything contained in the Motion or this Final 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.

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15. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (a) an admission as to the validity of any prepetition claim against the Debtor; (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 Final 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.

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_____, 2019
Wilmington, Delaware

_____
UNITED STATES BANKRUPTCY JUDGE

Summary report: **Litéra® Change-Pro 10.1.0.200 Document comparison done on 5/2/2019 12:22:29 PM**	
Style name: Default Style	
Intelligent Table Comparison: Active	
Original filename: Achaogen - Cash Management Proposed Final Order.docx	
Modified filename: Achaogen - Cash Management Revised Final Order.docx	
Changes:	
Add	3
~~Delete~~	1
~~Move From~~	0
Move To	0
Table Insert	0
~~Table Delete~~	0
Table moves to	0
~~Table moves from~~	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	4