Docket #0156 Date Filed: 05/07/2019

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. 27

NOTICE OF FILING OF PROPOSED ORDER (I) AUTHORIZING IMPLEMENTATION OF A KEY EMPLOYEE INCENTIVE PLAN AND A KEY EMPLOYEE RETENTION PLAN, (II) APPROVING THE TERMS OF THE DEBTORS KEY EMPLOYEE INCENTIVE PLAN AND KEY EMPLOYEE RETENTION PLAN, AND (III) GRANTING RELATED RELIEF

PLEASE TAKE NOTICE that on April 15, 2019, the Debtor filed *Debtor's Motion for Entry of an Order (I) Authorizing Implementation of a Key Employee Incentive Plan and a Key Employee Retention Plan, (II) Approving the Terms of the Debtors Key Employee Incentive Plan and Key Employee Retention Plan, and (III) Granting Related Relief* (D.I. 27) (the "**Motion**").

PLEASE TAKE FURTHER NOTICE that, pursuant to the Notice of Motion, the deadline to file objections or responses (the "**Objection Deadline**") to the relief requested in the Motion was April 26, 2019, at 4:00 p.m. (Prevailing Eastern Time). The Objection Deadline was extended to May 3, 2019 at 4:00 p.m. (Prevailing Eastern Time) for the Official Committee of Unsecured Creditors (the "**Committee**").

PLEASE TAKE FURTHER NOTICE that the Debtor received informal comments to the Motion from the Committee, which the Debtor has resolved through revisions to the proposed order granting the relief requested in the Motion (the "**Proposed Order**"), the terms of which were extensively negotiated with the Committee. The revisions to the Proposed Order, and the

[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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reasons underlying the revisions, are more fully explained in the *Supplemental Declaration of Blake Wise in Support of the Motion* and in the Committee's Statement regarding the Motion filed contemporaneously herewith, and will be further explained at the Court's hearing on the Motion on May 8, 2019.

PLEASE TAKE FURTHER NOTICE that the Proposed Order is attached hereto as **Exhibit A**. 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**.

Dated: May 7, 2019
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Matthew O. Talmo

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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. 27**

ORDER (I) AUTHORIZING IMPLEMENTATION OF A KEY EMPLOYEE INCENTIVE PLAN AND A KEY EMPLOYEE RETENTION PLAN, (II) APPROVING THE TERMS OF THE DEBTOR'S KEY EMPLOYEE INCENTIVE PLAN AND KEY EMPLOYEE RETENTION PLAN, AND (III) GRANTING RELATED RELIEF

Upon consideration of the Debtor's motion (the "Motion")[2] for an order (this "Order"), under Bankruptcy Code sections 105(a), 363(b), and 503(c)(3) of title 11 of the United States Code (the "Bankruptcy Code"), authorizing, but not directing, the implementation of the Debtor's proposed key employee incentive plan and key employee retention plan (as described in the Motion, the "Employee Compensation Plans"), filed by Achaogen, Inc., debtor and debtor-in-possession (the "Debtor"), and upon the arguments of counsel and the entire record of this Chapter 11 Case and other matters of which this Court may properly take judicial notice; and upon reviewing the Cumberland Declaration, the First Day Declaration, the Supplemental Declaration of Blake Wise in Support of the Motion, and the *Statement of the Official Committee of Unsecured Creditors with Regard to the Debtor's Motion for Entry of an Order (I) Authorizing Implementation of a Key Employee Incentive Plan and a Key Employee Retention Plan, (II) Approving the Terms of the Debtor's Key Employee Incentive Plan and Key Employee*

[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 otherwise defined herein shall have the meanings ascribed to them in the Motion.

Retention Plan, and (III) Granting Related Relief (the "Committee Statement") 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 the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. sections 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding in accordance with 28 U.S.C. sections 1408 and 1409; and a hearing having been held to consider the relief requested in the Motion (as modified by the terms agreed to by the Debtor and the Official Committee of Unsecured Creditors (the "Committee")); and upon the record of the hearing and all proceedings had before the Court; and the Court having found and determined that the relief sought in this Motion, as modified by the agreement reached between the Committee and the Debtor, while extraordinary in nature, is in the best interests of the Debtor, its estate, its creditors and other parties in interest and that the legal and factual bases set forth in the Motion and all of the various declarations and statements filed by all parties since the date of the Motion and the statements made on the record, establish just cause for the relief granted herein; 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.

2. Implementation of the Debtor's key employee incentive plan (the "KEIP"), substantially in the form attached hereto as **Exhibit A**, and key employee retention plan (the "KERP" and with the KEIP, the "Employee Compensation Plans"), substantially in the form attached hereto as **Exhibit B**, is based on the Debtor's sound business judgment and is justified by the extraordinary facts and circumstances of the Debtor's Chapter 11 Case.

3. Pursuant to Bankruptcy Code sections 105(a), 363(b), and 503(c)(3), the Debtor is authorized to take all necessary actions to implement the Employee Compensation Plans and to make all payments pursuant thereto.

4. The Debtor is hereby authorized to offer and pay eligible employees in accordance with the Employee Compensation Plans.

5. The Debtor is hereby authorized to implement the Employee Compensation Plans in their entirety, and make all payments due thereunder in accordance with the terms of the Employee Compensation Plans and this Order.

6. Except with respect to the KERP Kicker (as described in Exhibit B hereto), the Retained Severance Claims, the GUC Severance Amount, the 502(h) Claims and the Retained Employment Claims (each as defined below), the claims of the Participants under the Employee Compensation Plans are entitled to and shall be accorded priority under Bankruptcy Code sections 503(b)(1)(A) and 507(a)(2).

7. Pursuant to Section 2.1.1(c) of the DIP Credit and Security Agreement and the terms of the Employee Compensation Plans, obligations under the Employee Compensation Plans (including the KERP Kicker) shall be paid solely from proceeds of the Sale and, except with respect to the KERP Kicker, the Retained Severance Claims, the GUC Severance Amount, the 502(h) Claims and the Retained Employment Claims, ahead of any payments to the DIP Lender on account of the DIP Obligations under the DIP and Security Agreement.

8. By accepting any payment under the Employee Compensation Plans, a Participant shall forever waive and release any and all claims against the Debtor, whether known or unknown; provided, however, that notwithstanding anything in the Order to the contrary, Participants shall be entitled to retain the claims described in paragraphs 9 to 12 below.

9. Notwithstanding their receipt of payments under the Employee Compensation Plans or any other provision of this Order, Participants shall retain and may assert against the Debtor any claims they may have on account of prepetition severance obligations under their applicable employment contracts or as provided for by the Debtor's prepetition compensation policies ("Retained Severance Claims"); provided, however, that (i) only $750,000 of Retained Severance Claims ("GUC Severance Amount") shall be treated *pari passu* with allowed general unsecured claims and (ii) any and all Retained Severance Claims in excess of the GUC Severance Amount shall be subordinated in all respects to all allowed general unsecured claims. The Debtor may allocate the GUC Severance Amount among any or all Retained Severance Claims not assumed or otherwise satisfied by a Purchaser of the Debtor's assets as the Debtor deems appropriate in its sole discretion.

10. Notwithstanding their receipt of payments under the Employee Compensation Plans or any other provision of this Order, Participants shall retain and may assert against the Debtor claims on account of unpaid employee benefits or unpaid bonuses (the "Retained Employment Claims"); provided, however, any and all Retained Employment Claims shall be subordinated in all respects to all allowed general unsecured claims.

11. Notwithstanding their receipt of payments under the Employee Compensation Plans or any other provision of this Order, Participants shall retain the right to receive payment of accrued paid time off in the ordinary course in accordance with this Court's final order authorizing payment of employee wages [D.I. ____].

12. Nothing in this Order shall alter or impair the right of the Committee to seek the avoidance, clawback, disgorgement or unwinding of, or any other cause of action regarding, the Prepetition Retention Payments, and nothing in this Order should alter or impair

the Debtor's or employees' rights or defenses with respect to any action brought by the Committee with regard to the Prepetition Retention Payments. Notwithstanding a Participant's receipt of payments under the Employee Compensation Plans or any other provision of this Order, if the Committee successfully avoids, claws back, disgorges or unwinds part or all of a Prepetition Retention Payment, the recipient of the Prepetition Retention Payment shall reserve the right to seek allowance of a general unsecured claim (which under no circumstances may be granted priority claim status), in the amount successfully avoided, clawed back, disgorged or unwound pursuant to 502(h) of the Bankruptcy Code ("502(h) Claims"), and the Committee (or any successor-in-interest) shall reserve all rights to object to the allowance of any 502(h) Claim and/or seek subordination of any 502(h) Claim to the allowed general unsecured claims.

13. For purposes of the Employee Compensation Plans and the implementation of this Order, Asset Sale Proceeds shall be calculated net of (i) any applicable bid protections approved by this Court and (ii) investment banker fees, regardless of whether the proceeds are comprised of cash consideration, non-cash consideration (including, but not limited to, assumption of liabilities), or a combination of both. To the extent Asset Sale Proceeds include non-cash consideration (including, but not limited to, assumption of liabilities), the Debtor and the Committee shall work in good faith to mutually agree upon the value to be attributed to any non-cash consideration (including, but not limited to, assumption of liabilities) for purposes of the Employee Compensation Plans and the implementation of this Order. If the Debtor and Committee are unable to agree on the total amount of Asset Sale Proceeds for this purpose, the Debtor or Committee shall be entitled to ask the Court to determine the value of any non-cash consideration (including, but not limited to, assumption of liabilities) on an expedited basis.

14. The KERP is being approved based on the specific and extraordinary facts of this Case, including, but not limited to, the fact that all remaining employees are, in effect, key employees because approximately 90% of the Debtor's work force has been involuntarily terminated or has left the Debtor in the 18-months prior to the Petition Date, and the Court's approval of the KERP shall not be used for precedential purposes for any reason whatsoever. As described in the Wise Supplemental Declaration, the Debtor believes that the KERP as currently structured is vital to preserve and maximize the value of the Debtor's assets in the sale process. The reasons underlying the Committee's support of the KERP are set forth in the Committee Statement.

15. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

16. The Debtor is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order.

17. The Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

_____, 2019
Wilmington, Delaware

_____
THE HONORABLE BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

Exhibit A

KEIP Term Sheet

KEY EMPLOYEE INCENTIVE PLAN TERM SHEET

<table>
<tr><td>KEIP Objective</td><td>The Achaogen, Inc. Key Employee Incentive Plan (the "KEIP") is designed to provide incentive payments ("KEIP Payments") to certain employees ("KEIP Participants") of Achaogen, Inc. (the "Debtor") to encourage the achievement of certain performance targets, and to maximize the value of the estate.</td></tr>
<tr><td>Participating Employees</td><td>The KEIP Participants are:
Blake Wise, Chief Executive Officer
Gary Loeb, General Counsel
Janet Dorling, Chief Product Officer
Liz Bhatt, Chief Operating Officer</td></tr>
<tr><td>KEIP Payments</td><td>The KEIP Payments will be paid in connection with the Sale of the Debtor's assets.</td></tr>
<tr><td>Structure of Payment</td><td>KEIP Payments will only be distributed if the Debtor consummates a Sale that results in proceeds to the Debtor of greater than $35 million net of any applicable bid protections approved by this Court and investment banker fees, regardless of whether the proceeds are comprised of cash consideration, non-cash consideration (including, but not limited to, assumption of liabilities), or a combination of both ("Asset Sale Proceeds"). The value of any Asset Sale Proceeds will be determined in accordance with paragraph 13 of the order approving the KEIP.

Specifically, each KEIP Participant will receive a one-time KEIP Payment equal to a percentage of Asset Sale Proceeds of more than $35 million. The KEIP Payout for Asset Sale Proceeds of $35 million to $55 million shall be $450,000 <u>plus</u> 3% of all Asset Sale Proceeds realized in excess of $35 million (which payment will be split among the KEIP Participants pro rata based on their base salaries) as follows:
<table>
<tr><th>Asset Sale Proceeds</th><th>KEIP Payout</th></tr>
<tr><td>< $35,000,000</td><td>$0</td></tr>
<tr><td>$35,000,000</td><td>$450,000</td></tr>
<tr><td>$40,000,000</td><td>$600,000</td></tr>
<tr><td>$45,000,000</td><td>$750,000</td></tr>
<tr><td>$50,000,000</td><td>$900,000</td></tr>
<tr><td>$55,000,000</td><td>$1,050,000</td></tr>
</table>
</td></tr>
</table>

	For Asset Sale Proceeds over $55 million, the KEIP Participants will receive in the aggregate 5% of Asset Sale Proceeds until such time that Asset Sale Proceeds reach $136,516,000 (the "Capped Amount"). No KEIP Payments will be made on account of Asset Sale Proceeds above the Capped Amount. If Asset Sale Proceeds reach the Capped Amount, the KEIP Participants will receive $5,125,800 in the aggregate. KEIP Payments will be distributed upon the consummation of a sale of the Debtor's assets. Even if the Debtor's assets are sold on a piecemeal basis rather than in a single transaction, KEIP Payments will still be determined and distributed based on the total aggregate value of the Debtor's assets, but only when such proceeds are received. For the avoidance of doubt, KEIP Payments will only be paid in cash to the extent cash proceeds are available and the KEIP Payments shall have priority, *pari passu* with the KERP Payments, with regard to to all cash proceeds from the Sale. To the extent no cash proceeds are available from the Sale or are insufficient to satisfy the KEIP Payments in full, the unsatisfied KEIP Payments shall then be satisfied in the form of consideration received by the Debtor from the Sale.
Effect of Termination of Employment	In the event a KEIP Participant voluntarily resigns or is terminated by the Debtor for cause prior to the consummation of a sale of the Debtor's assets, the KEIP Participant will forfeit any right to a KEIP Payment.[1]
Performance Measurement Period	Covers asset sale for period up to the consummation of the sale of the Debtor's assets.
Payment Period	KEIP Payments are paid out on close of the asset sale, but only when Asset Sale Proceeds are received.

[1] The Debtor should not terminate a KEIP Participant without cause in order to ensure that the KEIP Participant receives its KEIP Payment.

Exhibit B

KERP Term Sheet

KEY EMPLOYEE RETENTION PLAN TERM SHEET

KERP Objective	The Achaogen, Inc. Key Employee Retention Plan (the "**KERP**") is designed to retain key employees (the "**KERP Participants**") of Achaogen, Inc. (the "**Debtor**") in their current roles over the near term while providing them with financial stability.
Participating Employees	KERP Participants will include the twenty-six (26) employees of the Debtor as of May 8, 2019.
Timing of Payments	Payments under the KERP (the "**KERP Payments**") will be distributed to KERP Participants upon the consummation of the Debtor's assets being sold, as long as they remain employees of the Debtor through the consummation of the Sale.
Payments	The KERP awards key non-insider personnel with payments equal to 20% to 42% of their base salary not to exceed $1,356,455 in the aggregate; provided, however, if Asset Sale Proceeds are ultimately sufficient to result in a 75% recovery to all holders of allowed general unsecured claims, the KERP Participants shall receive an additional $250,000 in the aggregate to be allocated pro rata among all KERP Participants (the "KERP Kicker"). The KERP Kicker shall have priority over any recoveries on account of the final 25% of the allowed amount of all claims held by all general unsecured creditors and the KERP Participants shall receive distributions on account of the KERP Kicker prior to any distributions being made to holders of general unsecured claims in excess of a 75% recovery to such holders on the allowed amount of such holders' general unsecured claims.
Structure of Payment	The amount of payment received by each of the KERP Participants will be based on their base salaries and continued employment with the Debtor through the earlier of (1) their involuntary termination other than for cause (i.e., a layoff) or (2) the consummation of a sale of the Debtor's assets. No other performance metrics will be included. For the avoidance of doubt, KERP Payments will only be paid in cash to the extent cash proceeds are available and the KERP Payments shall have priority, *pari passu* with the KEIP Payments, with regard to all cash proceeds from the Sale. To the extent no cash proceeds are available from the Sale or are insufficient to satisfy the KERP Payments in full, the unsatisfied KERP Payments shall then be satisfied in the form of consideration received by the Debtor from the Sale.

Effect of Termination of Employment	In the event a KERP Participant voluntarily resigns or is terminated by the Debtor for cause prior to the consummation of a sale of the Debtor's assets, the KERP Participant will forfeit any right to a KERP Payment.[1]
Other Terms	As set forth in the order approving the KERP.

[1] The Debtor should not terminate a KERP Participant without cause in order to ensure that the KERP Participant receives its KERP Payment.

Exhibit B

Blackline

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

ORDER (I) AUTHORIZING IMPLEMENTATION OF A KEY EMPLOYEE INCENTIVE PLAN AND A KEY EMPLOYEE RETENTION PLAN, (II) APPROVING THE TERMS OF THE DEBTOR'S KEY EMPLOYEE INCENTIVE PLAN AND KEY EMPLOYEE RETENTION PLAN, AND (III) GRANTING RELATED RELIEF

Upon consideration of the Debtor's motion (the "Motion")[2] for an order (this "Order"), under Bankruptcy Code sections 105(a), 363(b), and 503(c)(3) of title 11 of the United States Code (the "Bankruptcy Code"), authorizing, but not directing, the implementation of the Debtor's proposed key employee incentive plan and key employee retention plan (as described in the Motion, the "Employee Compensation Plans"), filed by Achaogen, Inc., debtor and debtor-in-possession (the "Debtor"), and upon the arguments of counsel and the entire record of this Chapter 11 Case and other matters of which this Court may properly take judicial notice; and upon reviewing the Cumberland Declaration, the First Day Declaration, the Supplemental Declaration of Blake Wise in Support of the Motion, and the *Statement of the Official Committee of Unsecured Creditors with Regard to the Debtor's Motion for Entry of an Order (I) Authorizing Implementation of a Key Employee Incentive Plan and a Key*

[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 otherwise defined herein shall have the meanings ascribed to them in the Motion.

Employee Retention Plan, (II) Approving the Terms of the Debtor's Key Employee Incentive Plan and Key Employee Retention Plan, and (III) Granting Related Relief (the "Committee Statement") 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 the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. sections 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding in accordance with 28 U.S.C. sections 1408 and 1409; and a hearing having been held to consider the relief requested in the Motion (as modified by the terms agreed to by the Debtor and the Official Committee of Unsecured Creditors (the "Committee")); and upon the record of the hearing and all proceedings had before the Court; and the Court having found and determined that the relief sought in this Motion, as modified by the agreement reached between the Committee and the Debtor, while extraordinary in nature, is in the best interests of the Debtor, its estate, its creditors and other parties in interest and that the legal and factual bases set forth in the Motion and all of the various declarations and statements filed by all parties since the date of the Motion and the statements made on the record, establish just cause for the relief granted herein; 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.

2. Implementation of the Debtor's key employee incentive plan (the "KEIP"), substantially in the form attached hereto as **Exhibit A**, and key employee retention plan (the "KERP" and with the KEIP, the "Employee Compensation Plans"), substantially in

the form attached hereto as **Exhibit B**, is based on the Debtor's sound business judgment and is justified by the extraordinary facts and circumstances of the Debtor's Chapter 11 Case.

3. Pursuant to Bankruptcy Code sections 105(a), 363(b), and 503(c)(3), the Debtor is authorized to take all necessary actions to implement the Employee Compensation Plans and to make all payments pursuant thereto.

4. The Debtor is hereby authorized to offer and pay eligible employees in accordance with the Employee Compensation Plans.

5. The Debtor is hereby authorized to implement ~~and fund~~ the Employee Compensation Plans in their entirety, and make all payments due thereunder in accordance with the terms of the Employee Compensation Plans and this Order.

6. ~~The~~Except with respect to the KERP Kicker (as described in Exhibit B hereto), the Retained Severance Claims, the GUC Severance Amount, the 502(h) Claims and the Retained Employment Claims (each as defined below), the claims of the Participants under the Employee Compensation Plans are entitled to and shall be accorded ~~administrative expense status and~~ priority under Bankruptcy Code sections 503(b)(1)(A) and 507(a)(2).

7. Pursuant to Section 2.1.1(c) of the DIP Credit and Security Agreement and the terms of the Employee Compensation Plans, obligations under the Employee Compensation Plans (including the KERP Kicker) shall be paid solely from proceeds of the Sale and, except with respect to the KERP Kicker, the Retained Severance Claims, the GUC Severance Amount, the 502(h) Claims and the Retained Employment Claims, ahead of any payments to the DIP Lender on account of the DIP Obligations under the DIP and Security Agreement.~~(~~

8. By accepting any payment under the Employee Compensation Plans, a Participant shall forever waive and release any and all claims against the Debtor, whether known or unknown; provided, however, that notwithstanding anything in the Order to the contrary, Participants shall be entitled to retain the claims described in paragraphs 9 to 12 below.

9. Notwithstanding their receipt of payments under the Employee Compensation Plans or any other provision of this Order, Participants shall retain and may assert against the Debtor any claims they may have on account of prepetition severance obligations under their applicable employment contracts or as provided for by the Debtor's prepetition compensation policies ("Retained Severance Claims"); provided, however, that (i) only $750,000 of Retained Severance Claims ("GUC Severance Amount") shall be treated *pari passu* with allowed general unsecured claims and (ii) any and all Retained Severance Claims in excess of the GUC Severance Amount shall be subordinated in all respects to all allowed general unsecured claims. The Debtor may allocate the GUC Severance Amount among any or all Retained Severance Claims not assumed or otherwise satisfied by a Purchaser of the Debtor's assets as the Debtor deems appropriate in its sole discretion.

10. Notwithstanding their receipt of payments under the Employee Compensation Plans or any other provision of this Order, Participants shall retain and may assert against the Debtor claims on account of unpaid employee benefits or unpaid bonuses (the "Retained Employment Claims"); provided, however, any and all Retained Employment Claims shall be subordinated in all respects to all allowed general unsecured claims.

11. Notwithstanding their receipt of payments under the Employee Compensation Plans or any other provision of this Order, Participants shall retain the right to receive payment of accrued paid time off in the ordinary course in accordance with this Court's final order authorizing payment of employee wages [D.I. ____].

12. Nothing in this Order shall alter or impair the right of the Committee to seek the avoidance, clawback, disgorgement or unwinding of, or any other cause of action regarding, the Prepetition Retention Payments, and nothing in this Order should alter or impair the Debtor's or employees' rights or defenses with respect to any action brought by the Committee with regard to the Prepetition Retention Payments. Notwithstanding a Participant's receipt of payments under the Employee Compensation Plans or any other provision of this Order, if the Committee successfully avoids, claws back, disgorges or unwinds part or all of a Prepetition Retention Payment, the recipient of the Prepetition Retention Payment shall reserve the right to seek allowance of a general unsecured claim (which under no circumstances may be granted priority claim status), in the amount successfully avoided, clawed back, disgorged or unwound pursuant to 502(h) of the Bankruptcy Code ("502(h) Claims"), and the Committee (or any successor-in-interest) shall reserve all rights to object to the allowance of any 502(h) Claim and/or seek subordination of any 502(h) Claim to the allowed general unsecured claims.

13. For purposes of the Employee Compensation Plans and the implementation of this Order, Asset Sale Proceeds shall be calculated net of (i) any applicable bid protections approved by this Court and (ii) investment banker fees, regardless of whether the proceeds are comprised of cash consideration, non-cash consideration (including, but not limited to, assumption of liabilities), or a combination of both. To the extent Asset Sale

Proceeds include non-cash consideration (including, but not limited to, assumption of liabilities), the Debtor and the Committee shall work in good faith to mutually agree upon the value to be attributed to any non-cash consideration (including, but not limited to, assumption of liabilities) for purposes of the Employee Compensation Plans and the implementation of this Order. If the Debtor and Committee are unable to agree on the total amount of Asset Sale Proceeds for this purpose, the Debtor or Committee shall be entitled to ask the Court to determine the value of any non-cash consideration (including, but not limited to, assumption of liabilities) on an expedited basis.

14. The KERP is being approved based on the specific and extraordinary facts of this Case, including, but not limited to, the fact that all remaining employees are, in effect, key employees because approximately 90% of the Debtor's work force has been involuntarily terminated or has left the Debtor in the 18-months prior to the Petition Date, and the Court's approval of the KERP shall not be used for precedential purposes for any reason whatsoever. As described in the Wise Supplemental Declaration, the Debtor believes that the KERP as currently structured is vital to preserve and maximize the value of the Debtor's assets in the sale process. The reasons underlying the Committee's support of the KERP are set forth in the Committee Statement.

15. ~~8.~~ The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

16. ~~9.~~ The Debtor is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order.

17. ~~10.~~ The Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

_____, 2019
Wilmington, Delaware

_____
THE HONORABLE BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

Exhibit A

KEIP Term Sheet

KEY EMPLOYEE INCENTIVE PLAN TERM SHEET

KEIP Objective	The Achaogen, Inc. Key Employee Incentive Plan (the "**KEIP**") is designed to provide incentive payments ("**KEIP Payments**") to certain employees ("**KEIP Participants**") of Achaogen, Inc. (the "**Debtor**") to encourage the achievement of certain performance targets, and to maximize the value of the estate.
Participating Employees	The KEIP Participants are: • Blake Wise, Chief Executive Officer • Gary Loeb, General Counsel • Janet Dorling, Chief ~~Commercial~~Product Officer • Liz Bhatt, ~~Acting~~ Chief ~~Business~~Operating Officer
KEIP Payments	The KEIP Payments will be paid in connection with the Sale of the Debtor's assets.
Structure of Payment	KEIP Payments will only be distributed if the Debtor consummates a Sale that ~~amounts to~~results in proceeds to the Debtor ~~(i.e., after bid protection (break-up fee and expense reimbursements) amounts, as applicable, have been deducted) greater than $25 million~~of greater than $35 million net of any applicable bid protections approved by this Court and investment banker fees, regardless of whether the proceeds are comprised of cash consideration, non-cash consideration (including, but not limited to, assumption of liabilities), or a combination of both ("**Asset Sale Proceeds**"). The value of any ~~Upon~~ Asset Sale Proceeds ~~amounting to more than $25 million, the amount of each individual's KEIP Payment will be based on (i) the amount of Asset Sale Proceeds above $25 million and (ii) the KEIP Participants' base salaries.~~will be determined in accordance with paragraph 13 of the order approving the KEIP. ~~Each~~Specifically, each KEIP Participant will receive a one-time KEIP Payment equal to a percentage of ~~their base salaries if the Asset Sale Proceeds amount to more than $25 million. For Asset Sale Proceeds between $25 million and $30 million, the KEIP Participants will receive a KEIP Payment equal to 1% to 10% of their base salaries to be interpolated linearly from $25 million to $30 million. For every $5 million realized over $30 million for a sale of the Debtor's assets, the KEIP Participants will each receive an additional 10% of their base salaries; provided, however, KEIP Payments will be capped at 300% of the KEIP Participants' individual base salaries. For example, the payments to the KEIP Participants upon hypothetical Asset Sale Proceeds of $40 million would total in the aggregate $512,580.~~Asset Sale

<table>
<tr><td></td><td>Proceeds of more than $35 million. The KEIP Payout for Asset Sale Proceeds of $35 million to $55 million shall be $450,000 plus 3% of all Asset Sale Proceeds realized in excess of $35 million (which payment will be split among the KEIP Participants pro rata based on their base salaries) as follows:
<table>
<tr><th>Asset Sale Proceeds</th><th>KEIP Payout</th></tr>
<tr><td>< $35,000,000</td><td>$0</td></tr>
<tr><td>$35,000,000</td><td>$450,000</td></tr>
<tr><td>$40,000,000</td><td>$600,000</td></tr>
<tr><td>$45,000,000</td><td>$750,000</td></tr>
<tr><td>$50,000,000</td><td>$900,000</td></tr>
<tr><td>$55,000,000</td><td>$1,050,000</td></tr>
</table>
For Asset Sale Proceeds over $55 million, the KEIP Participants will receive in the aggregate 5% of Asset Sale Proceeds until such time that Asset Sale Proceeds reach $136,516,000 (the “Capped Amount”). No KEIP Payments will be made on account of Asset Sale Proceeds above the Capped Amount. If Asset Sale Proceeds reach the Capped Amount, the KEIP Participants will receive $5,125,800 in the aggregate.

KEIP Payments will be distributed upon the consummation of a sale of the Debtor’s assets. Even if the Debtor’s assets are sold on a piecemeal basis rather than in a single transaction, KEIP Payments will still be determined and distributed based on the total aggregate value of the Debtor’s assets, but only when such proceeds are received.

For the avoidance of doubt, KEIP Payments will only be paid in cash to the extent cash proceeds are available and the KEIP Payments shall have priority, *pari passu* with the KERP Payments, with regard to to all cash proceeds from the Sale. To the extent no cash proceeds are available from the Sale or are insufficient to satisfy the KEIP Payments in full, the unsatisfied KEIP Payments shall then be satisfied in the form of consideration received by the Debtor from the Sale.</td></tr>
<tr><td>Effect of Termination of Employment</td><td>In the event a KEIP Participant voluntarily resigns or is terminated by the Debtor for cause prior to the consummation of a sale of the Debtor’s assets, the KEIP Participant will forfeit any right to a KEIP Payment.[1]</td></tr>
<tr><td>Performance Measurement Period</td><td>Covers asset sale for period up to the consummation of the sale of the Debtor’s assets.</td></tr>
<tr><td>Payment Period</td><td>KEIP Payments are paid out on close of the asset sale~~.~~
, but only when Asset Sale Proceeds are received.</td></tr>
</table>

[1] The Debtor should not terminate a KEIP Participant without cause in order to ensure that the KEIP Participant receives its KEIP Payment.

Exhibit B

KERP Term Sheet

KEY EMPLOYEE RETENTION PLAN TERM SHEET

KERP Objective	The Achaogen, Inc. Key Employee Retention Plan (the "**KERP**") is designed to retain key employees (the "**KERP Participants**") of Achaogen, Inc. (the "**Debtor**") in their current roles over the near term while providing them with financial stability.
Participating Employees	KERP Participants will include ~~twenty-eight~~the twenty-six (~~28~~26) employees of the Debtor ~~to be determined by the Debtor's management team, in consultation with its employee compensation financial advisor, and approved by its Board of Directors~~as of May 8, 2019.
Timing of Payments	Payments under the KERP (the "**KERP Payments**") will be distributed to KERP Participants upon the consummation of the Debtor's assets being sold, as long as they remain employees of the Debtor through the consummation of the Sale.
Payments	The KERP awards key non-insider personnel with payments equal to 20% to 42% of their base salary not to exceed $~~1,427,255~~1,356,455 in the aggregate; provided, however, if Asset Sale Proceeds are ultimately sufficient to result in a 75% recovery to all holders of allowed general unsecured claims, the KERP Participants shall receive an additional $250,000 in the aggregate to be allocated pro rata among all KERP Participants (the "KERP Kicker"). The KERP Kicker shall have priority over any recoveries on account of the final 25% of the allowed amount of all claims held by all general unsecured creditors and the KERP Participants shall receive distributions on account of the KERP Kicker prior to any distributions being made to holders of general unsecured claims in excess of a 75% recovery to such holders on the allowed amount of such holders' general unsecured claims.
Structure of Payment	The amount of payment received by each of the KERP Participants will be based on their base salaries and continued employment with the Debtor through the earlier of (1) their involuntary termination other than for cause (i.e., a layoff) or (2) the consummation of a sale of the Debtor's assets. No other performance metrics will be included. For the avoidance of doubt, KERP Payments will only be paid in cash to the extent cash proceeds are available and the KERP Payments shall have priority, *pari passu* with the KEIP Payments, with regard to all cash proceeds from the Sale. To the extent no cash proceeds are available from the Sale or are insufficient to satisfy the KERP Payments in full, the unsatisfied KERP Payments shall then be satisfied in the form of consideration received by the Debtor from the Sale.

Effect of Termination of Employment	In the event a KERP Participant voluntarily resigns or is terminated by the Debtor for cause prior to the consummation of a sale of the Debtor's assets, the KERP Participant will forfeit any right to a KERP Payment.[1]
Other Terms	As set forth in the order approving the KERP.

[1] The Debtor should not terminate a KERP Participant without cause in order to ensure that the KERP Participant receives its KERP Payment.

Summary report: **Litéra® Change-Pro 7.5.0.135 Document comparison done on 5/7/2019 8:53:05 PM**	
Style name: Default Style	
Intelligent Table Comparison: Active	
Original filename: AKAO - KEIP_KERP ORIGINAL Revised Proposed Order.DOCX	
Modified filename: AKAO - KEIP_KERP Revised Proposed Order - FOR FILING.DOCX	
Changes:	
Add	68
~~Delete~~	32
~~Move From~~	2
Move To	2
Table Insert	2
~~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:	106