Docket #0157 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**

DECLARATION OF BLAKE WISE IN SUPPORT OF DEBTOR'S MOTION FOR ORDER APPROVING THE IMPLEMENTATION OF THE KEY EMPLOYEE INCENTIVE PLAN AND KEY EMPLOYEE RETENTION PLAN

I, Blake Wise, hereby declare and state as follows:

1. I have served as the Chief Executive Officer of Achaogen, Inc. (the "Debtor" or "Achaogen") since January 2018. Prior to serving as CEO, I was the Chief Operating Officer of Achaogen from October 2015 to December 2017 and was also President of Achaogen from February 2017 to December 2017. In such capacities, I am familiar with the Debtor's day-to-day operations, business, and employee responsibilities and compensation. I hold a Bachelor's Degree in Business Economics from the University of California, Santa Barbara and a Master of Business Administration from the University of California, Berkeley – Walter A. Haas School of Business.

2. I am familiar with the pre- and post-petition structure of the Debtor's compensation plans as well as the structure of the Debtor's proposed 2019 Key Employee Incentive Plan (the "KEIP") and Key Employee Retention Plan (the "KERP" and together with the KEIP, the "Employee Compensation Plans"), as it was set forth in the Debtor's Motion

[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.

Pursuant to 11 U.S.C. §§ 105, 363(b), and 503(c)(3) for entry of an Order[2] approving the Debtor's KEIP and KERP (the "Motion") [D.I. 27], and as modified after negotiations with the Official Committee of Unsecured Creditors (the "Committee") as described herein. In addition to my declaration in support of the Debtor's First Day Relief in this case (the "Chapter 11 Case"), I respectfully submit this declaration (the "Declaration") in further support of the Motion, in response to certain questions and inquiries made by the Office of the United States Trustee for the District of Delaware (the "UST") and to describe those changes to the Employee Compensation Plans agreed to between the Committee and the Debtor.

3. Except as otherwise indicated, all of the facts set forth in this Declaration are based upon my personal knowledge, information supplied to me by other members of the Debtor's management and professionals, information learned from my review of the relevant documents, or my experience and knowledge of the Debtor's operations, its employee work-force and compensation, and employee compensation within the industry generally. If called as a witness, I could and would testify to the facts set forth in this Declaration. I am authorized to submit this Declaration on behalf of the Debtor.

B. The Debtor's KEIP

4. As I set forth in my Declaration, the Debtor has recognized a need to address the concerns of its employees and its creditors and to align the interests of these respective constituencies. In order to effectively and efficiently accomplish a Sale that maximizes value for all stakeholders, the Debtor has determined that implementing the KEIP is in the best interest of its estate and all parties in interest. The Debtor's board of directors approved the KEIP, as originally proposed, on April 12, 2019.

[2] Unless otherwise defined herein, each capitalized term shall have the meaning ascribed to such term in the Motion.

5. After extensive negotiations, the Debtor and the Committee have agreed on a revised structure for the KEIP. As revised, the KEIP awards four of the Debtor's executives, including myself (the "KEIP Participants"), with certain incentive payments (the "KEIP Payments") if the Debtor closes a section 363 sale transaction that results in proceeds to the Debtor greater than $35 million 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 ("Asset Sale Proceeds"). Specifically, for Asset Sale Proceeds between $35 million to $55 million, the KEIP Participants will receive a one-time KEIP Payment equal to $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). 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.

6. If Asset Sale Proceeds are equal to or above the Capped Amount, it is my belief based on my knowledge of the Debtor's finances, including its total assets and liabilities, that such Sale Proceeds, after distribution of the KEIP Payments, will satisfy in full (i) the DIP Obligations, (ii) the Prepetition Term Loan Obligations, and (iii) all currently known general unsecured claims (estimated at approximately $25 million).[3]

7. The estimated level of potential compensation provided under the KEIP, when considered within the context of total compensation, is reasonable, and in my belief

[3] This figure does not include any contract rejection claims that may be brought against the Debtor.

considerably below market in comparison to market-based compensation of other similarly-situated biotech companies in the San Francisco Bay Area.

C. The KEIP Participants

8. The KEIP Participants are all insiders and consist of myself, as Chief Executive Officer, the General Counsel, the Chief Product Officer, and the Chief Operating Officer.

9. Each of the KEIP Participants is playing a central role in the chapter 11 process and, in particular, the Debtor's ongoing marketing and sale efforts. Incentivizing the KEIP Participants is critical in order to ensure that these key employees remain focused on their efforts to successfully guide the Debtor through the bankruptcy process and maximize value for the benefit of all of the Debtor's stakeholders.

10. As the Debtor continues its marketing efforts to solicit the highest and best offer from interested market participants, it is imperative that the Debtor's key personnel is appropriately incentivized to maximize the sale price. Despite reducing its work force to the bare essential employees – those necessary to operate its business plan and maximize the value of the ongoing business operations – to counterbalance its inability to raise capital prepetition, the Debtor has faced tremendous difficulties retaining its remaining employees due to the Debtor's financial struggles and an active California biotech labor market.

11. To that end, the Debtor's workforce is down approximately 90% since June 2018, as the Debtor's overall headcount is now 30 full-time employees as of the date of this Declaration (down from 292 in June 2018). The high prepetition employee attrition rate has resulted in all of the KEIP Participants, as well as all remaining employees of the Debtor, fulfilling multiple roles in the Debtor's operations. The KEIP Participants have been forced to

take on expanded roles in managing the day-to-day operational workforce and handling responsibilities previously under their subordinates' purview while additionally dealing with their executive duties to analyze and determine overall corporate strategy and make proposals to the Debtor's Board.

12. Not only have the KEIP Participants continued to fulfill these increased tasks required by the demands of the Debtor's operations, but they have been, and will continue to be, required to expend substantial additional time and resources on tasks relating to the implementation of the proposed restructuring, the day-to-day reporting and operational requirements of this Chapter 11 Case, and the ongoing marketing and sales process. Such tasks, in addition to their day-to-day responsibilities, include, but are not limited to, oversight and management of the Debtor's on-going operations, including retaining and managing the Debtor's diminishing workforce, strategic networking with contacts in the biotech and pharmaceutical industry to gauge interest in a potential transaction, arranging meetings with potential bidders, providing detailed management presentations to various constituencies, protecting of the value of the Purchased Assets, interfacing with key customers, management of strategic vendors and partners, interfacing with the appropriate government agencies, interfacing with potential funding sources and attending and, if necessary, testifying at various court hearings in the Chapter 11 Case.

13. Based upon my experience and judgment, I believe the duties of each KEIP Participant are (a) significant to maximizing the value of the Purchased Assets, (b) critical to maintaining employees and keeping morale high during the bankruptcy process and (c) vital to running a successful marketing and going-concern sale process. The KEIP Participants' willingness to take on such tasks and knowledge of the industry generally, and the Debtor's

business specifically, puts them in the best position to ensure that the Debtor receives the highest value for the Purchased Assets.

D. The Debtor's KERP

14. After extensive negotiations, the Debtor and the Committee have agreed on a revised KERP. As revised, the KERP awards all twenty-six (26) remaining non-insider employees (the "KERP Participants" and, together with the KEIP Participants, the "Participants") 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. Each respective KERP payment will be solely based on a percentage of the KERP Participants' base salaries and their 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.

15. Although the Debtor recognizes that a KERP covering all non-insider employees is extraordinary, the Debtor's employee retention crisis is equally extraordinary and warrants the relief requested in the Motion. As stated above, the Debtor has suffered a devastating depletion of approximately 90% of its workforce since June 2018. The Debtor's workforce has continued to see significant departures since its bankruptcy filing, as six (6)

employees have left since the Petition Date, reducing the number of total employees to thirty (30) with twenty-six (26) being eligible KERP Participants. Thus, all employees who remain—including each non-insider employee—are vital to maximizing the value of the Debtor's estate in the sale process and are "key" in every sense of the word. Additionally, the biotech employment market in the San Francisco Bay Area is incredibly competitive. Many of our employees are being recruited for positions with other companies, and several employees have been offered positions with pay commensurate to, or even greater than, their current compensation with the Debtor.

16. To ensure the remaining employees stay with the Debtor, providing such employees with KERP payments is absolutely necessary to award the KERP Participants for their diligence and resiliency during a period of financial uncertainty. Further, while the layoffs and resignations of 262 employees over the last year has created significant challenges, the Debtor has saved approximately $25 million in wages and bonuses not paid to those departed employees, after taking into account any severance paid to these individuals upon their departure. I believe it is fair and reasonable, given the extraordinary circumstances, that the Debtor's KERP provide a small portion of those savings to the 26 employees that remain with the Debtor and continue to fulfill their expanding roles on a daily basis, which will maximize the value of the Debtor's estates to the benefit of all the Debtor's constituencies. These employees are irreplaceable and the loss of additional employees could have lasting impacts on the Debtor's chances of successfully selling its business and emerging out of bankruptcy. Thus, this Court should approve the KERP to provide the Debtor every chance to retain all of its vital employees.

E. Release of Claims

17. As a condition to its agreement to the revised KERP, the Committee requested, and after significant negotiations, the Debtor has agreed that Participants accepting

payment under the Employee Compensation Plans 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 18-21 below.

18. Notwithstanding their receipt of payments under the Employee Compensation Plans or any other provision of the 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.

19. Notwithstanding their receipt of payments under the Employee Compensation Plans or any other provision of the 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.

20. Notwithstanding their receipt of payments under the Employee Compensation Plans or any other provision of the 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.

21. The Committee reserves all rights to seek the avoidance, clawback, disgorgement or unwinding of, or any other cause of action regarding, the Prepetition Retention Payments, and nothing in the 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 the 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.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Date: May 7, 2019

/s/ *Blake Wise*
Blake Wise