Docket #0161 Date Filed: 05/08/2019

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. 13, 52

CERTIFICATE OF COUNSEL REGARDING SECOND INTERIM ORDER (I) AUTHORIZING ACHAOGEN, INC. TO OBTAIN POSTPETITION SECURED FINANCING, (II) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS, (III) AUTHORIZING THE USE OF CASH COLLATERAL, (IV) GRANTING ADEQUATE PROTECTION, (V) MODIFYING THE AUTOMATIC STAY, (VI) SCHEDULING A FINAL HEARING, AND (VII) 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 *Motion for Entry of Interim and Final Orders (I) Authorizing Achaogen, Inc. to Obtain Postpetition Secured Financing, (II) Granting Liens and Providing Superpriority Administrative Expense Claims, (III) Authorizing the Use of Cash Collateral, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* (D.I. 13) (the "**Motion**").

2. On April 16, 2019, the Court entered the *Interim Order (I) Authorizing Achaogen, Inc. to Obtain Postpetition Secured Financing, (II) Granting Liens and Providing Superpriority Administrative Expense Claims, (III) Authorizing the Use of Cash Collateral, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* (D.I. 52) (the "**Interim Order**").

[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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3. The Debtor received informal comments to the Motion and Interim Order from the Official Committee of Unsecured Creditors (the "**Committee**"), which have been resolved through revisions to the proposed second interim order granting the relief requested in the Motion (the "**Proposed Order**"). The Proposed Order is attached hereto as **Exhibit A**.

4. The Debtor's DIP Lender, Silicon Valley Bank, 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 8, 2019
Wilmington, Delaware

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Proposed Counsel for Debtor and Debtor in Possession

Exhibit A

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. 13, 52

SECOND INTERIM ORDER (I) AUTHORIZING ACHAOGEN, INC. TO OBTAIN POSTPETITION SECURED FINANCING, (II) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS, (III) AUTHORIZING THE USE OF CASH COLLATERAL, (IV) GRANTING ADEQUATE PROTECTION, (V) MODIFYING THE AUTOMATIC STAY, (VI) SCHEDULING A FINAL HEARING, AND (VII) GRANTING RELATED RELIEF

Upon the *Motion for Entry of Interim and Final Orders (I) Authorizing Achaogen, Inc. to Obtain Postpetition Secured Financing, (II) Granting Liens and Providing Superpriority Administrative Expense Claims, (III) Authorizing the Use of Cash Collateral, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* [Docket No. 13] (the "Motion") filed by Achaogen, Inc., as debtor and debtor in possession in the above-captioned case (the "Debtor"); and the Court having reviewed the Motion and held an interim hearing with respect to the Motion on April 16, 2019; and the Court having entered the *Interim Order (I) Authorizing Achaogen, Inc. to Obtain Postpetition Secured Financing, (II) Granting Liens and Providing Superpriority Administrative Expense Claims, (III) Authorizing the Use of Cash Collateral, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* [Docket No. 52] (the "Interim Order"); and the Office of the United States Trustee for the District of Delaware having appointed an official committee of unsecured

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creditors (the "Committee") under section 1102 of the Bankruptcy Code [Docket No. 81]; and the deadline for parties-in-interest (other than the Committee) to file objections to entry of a Final Order having passed with no objections having been filed; and the Debtor, the Committee, and the DIP Lender[2] having commenced discussions in an effort to reach agreement as to the terms of the Final Order; and it appearing to the Court that it is in the best interests of the Debtor and its estate and creditors that the Final Hearing be adjourned to facilitate such discussions and that this order (this "Second Interim Order") be entered; and upon the Motion, the First Day Declaration, and the record of the interim hearing on the Motion; and the DIP Lender and the Committee having consented to the entry of this Order and the relief provided herein; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY FOUND, DETERMINED, ORDERED, ADJUDGED AND DECREED THAT:

1. The Final Hearing is adjourned to June 6, 2019 at 10:00 a.m. (ET).

2. The deadline for the Committee to object to entry of the Final Order shall be extended to 4:00 p.m. (prevailing Eastern Time) on May 30, 2019, or such later date as may be consented to by the Debtor and DIP Lender (the "Committee Objection Deadline"); *provided*, that the Debtor shall file on the docket the proposed form of Final Order no later than one week prior to the Committee Objection Deadline.

3. The terms of the Interim Order shall remain in full force and effect *except* as follows:

[2] Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Interim Order.

(a) The final sentence of Paragraph 2 of the Interim Order is hereby modified to read as follows:

> The Debtor is authorized to execute and deliver the DIP Loan Documents and borrow money under the DIP Facility, on an interim basis, up to an aggregate principal amount not to exceed Eight Million Eight Hundred Thousand Dollars ($8,800,000.00) during the period prior to entry of the Final Order, on the terms set forth in this Interim Order and the DIP Loan Documents.

(b) The definition of "Initial Term Loan Commitment" in the DIP Credit Agreement is hereby modified to read as follows:

> "Initial Term Loan Commitment" means the Bank's obligation to make Initial Term Loan Advances under Section 2.1.1 in an aggregate amount not to exceed Eight Million Eight Hundred Thousand ($8,800,000.000), subject to the terms and conditions set forth in this Agreement and the Interim DIP Order, as such amount shall be reduced by the making of Initial Term Loan Advances under Section 2.1.1; provided that, after the delivery of the Carve Out Trigger Notice, the amount of the Initial Term Loan Commitment shall not exceed the amount of the Carve Out.

(c) The Budget attached to the Interim Order as Exhibit 2 is hereby amended by the revised Budget attached to this Second Interim Order as Exhibit 1 (the "Revised Budget"); *provided*, that the Revised Budget shall not be amended in a manner that would reduce the funding of the Committee's allowed professional fees without the consent of the Committee or a further order of this Court.

(d) Notwithstanding anything in the Interim Order or the DIP Loan Documents to the contrary, (i) the Milestone for obtaining entry of the Final Order shall be June 6, 2019 (or such later date as may be consented to by the DIP Lender), and (ii) the Milestone for consummating the Sale and using the cash proceeds at the closing thereof to cause, without duplication, all Obligations and Prior Obligations (each as defined in the DIP Credit Agreement)

to be paid in full, in cash, on a final and indefeasible basis, subject to the provisions of this Second Interim Order or the Final Order, as applicable, shall be June 21, 2019 (or such later date as may be consented to by the DIP Lender).

4. For the avoidance of doubt, the Debtor is authorized to execute any amendment to the DIP Loan Documents that is necessary to effectuate the terms of this Second Interim Order.

5. Nothing in this Second Interim Order prejudices any rights that the Committee had under the First Interim Order, including, without limitation, the Committee's rights to oppose entry of the Final Order or commence a Challenge (as such rights existed under the Interim Order) and all such rights are reserved.

Dated: _____, 2019
Wilmington, Delaware

THE HONORABLE BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

Revised Budget

Achaogen, Inc.

5/3/19 Forecast

Combined Cash Flow / § 363 DIP Budget
$ in 000's

	Actual		Forecasted							
Week	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**Total**
Week-ending	**Apr-19**	**Apr-26**	**May-03**	**May-10**	**May-17**	**May-24**	**May-31**	**Jun-07**	**Jun-14**	**9 Weeks**
Receipts										
Product	$ -	$ -	$ 15	$ 15	$ 15	$ 15	$ 15	$ 15	$ 15	$ 105
BARDA - C-Scape	-	386	-	-	-	-	-	-	-	386
Sub-lease Income	-	-	-	362	-	-	-	362	-	724
Asset Sales Receipts	-	-	-	-	-	-	-	-	-	-
Other	3	3	-	-	-	-	-	-	-	6
Total Receipts	**3**	**389**	**15**	**377**	**15**	**15**	**15**	**377**	**15**	**1,221**
Disbursements										
Salary, Wages, and Benefits	-	(279)	-	-	(311)	-	(365)	-	(311)	(1,266)
Technical Operations	-	-	(36)	-	(156)	(128)	(124)	(135)	(100)	(680)
Sales & Marketing	-	(88)	(19)	(36)	(37)	(37)	(37)	(37)	(37)	(328)
Development	(129)	(12)	(53)	(34)	(256)	(167)	(84)	(34)	(34)	(802)
Medical Affairs	-	-	-	-	-	-	-	-	-	-
C-Scape	(100)	-	-	-	-	-	-	-	-	(100)
Research	-	5	(5)	-	-	-	-	-	-	(0)
G&A - Facilities	-	(2)	(1,058)	-	-	-	(697)	-	-	(1,757)
G&A - IT	(21)	(95)	(49)	(32)	(98)	(97)	(61)	(38)	(38)	(529)
G&A - Finance and Accounting	(16)	(5)	(11)	(14)	(14)	(34)	(14)	(14)	(14)	(139)
G&A - Legal	-	-	-	(28)	(29)	(94)	(29)	(29)	(29)	(238)
G&A - Other	(2)	(63)	(15)	(32)	-	(0)	-	-	-	(113)
Total Disbursements	**(268)**	**(541)**	**(1,246)**	**(177)**	**(902)**	**(558)**	**(1,411)**	**(287)**	**(563)**	**(5,953)**
Net Cash Flow	**(265)**	**(152)**	**(1,231)**	**200**	**(887)**	**(543)**	**(1,396)**	**90**	**(548)**	**(4,732)**
Bankruptcy Related										
Professional Fees [(1)]	-	-	-	(548)	-	-	(264)	-	(1,052)	(1,864)
DIP Interest / Adequate Protection	-	-	(91)	-	-	-	(54)	-	(96)	(241)
Critical Vendor Payments	-	-	(250)	-	(250)	-	-	-	-	(500)
Utility Deposits	-	-	-	(50)	-	-	-	-	-	(50)
Total Bankruptcy Related	**-**	**-**	**(341)**	**(598)**	**(250)**	**-**	**(318)**	**-**	**(1,147)**	**(2,655)**
Net Cash Flow After Bankruptcy Items	**(265)**	**(152)**	**(1,572)**	**(398)**	**(1,137)**	**(543)**	**(1,714)**	**90**	**(1,696)**	**(7,386)**
Beginning Available Cash Balance	1,436	2,360	3,117	3,117	3,117	3,117	3,117	3,117	3,117	1,436
(+/-) Borrowings / (Repayments)	1,189	909	1,572	398	1,137	543	1,714	(90)	1,696	9,067
(+/-) Net Cash Flow	(265)	(152)	(1,572)	(398)	(1,137)	(543)	(1,714)	90	(1,696)	(7,386)
Ending Cash Balance	**2,360**	**3,117**	**3,117**	**3,117**	**3,117**	**3,117**	**3,117**	**3,117**	**3,117**	**3,117**
Debtor-In-Possession (DIP) Financing										
Beginning DIP Balance	-	1,189	2,098	3,670	4,067	5,204	5,747	7,462	22,372	-
Loan Paydown	-	-	-	-	-	-	-	15,000	-	15,000
(+/-) Borrowings / (Repayments)	1,189	909	1,572	398	1,137	543	1,714	(90)	1,696	9,067
Ending DIP Balance (Excl. Carve Out)	**1,189**	**2,098**	**3,670**	**4,067**	**5,204**	**5,747**	**7,462**	**22,372**	**24,067**	**24,067**
Carve Out [(2)]	-	41	487	389	719	1,042	1,102	1,472	814	814
Ending DIP Need with Carve Out (Excl. Cash)	**$ 1,189**	**$ 2,139**	**$ 4,157**	**$ 4,457**	**$ 5,923**	**$ 6,789**	**$ 8,564**	**$ 23,843**	**$ 24,882**	**$ 24,882**

(1) For the avoidance of doubt, the total amount of professional fees to be paid to Debtor and Creditor Committee professionals pursuant to this Budget (which, for the avoidance of doubt, only includes $500,000 for the Debtor's investment banker, Cassel Salpeter), consists of the (a) the amount at the far right of the row entitled "Professional Fees", plus (b) the amount at the far right of the row entitled "Carve Out", plus (c) the total amount of retainers currently held by the Debtors' various professionals, in the amount of $1.1 million. This should equal at least $3.7 million.

(2) If the Company consummates a Sale Transaction, the Investment Banker shall earn a Sale Transaction Fee equal to the greater of (x) $500,000 or (y) the sum of (i) 3.0% of the Sale Consideration up to $30 million; and (ii) 4.5% of the Sale Consideration in excess of $30 million. For purposes of the budget, carve out takes into account the minimum fee of $500,000.