Docket #0476 Date Filed: 09/24/2019

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 & 166**

CERTIFICATION OF COUNSEL REGARDING FINAL 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, AND (VI) 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 its *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, this 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 DIP 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. On May 8, 2019, this Court entered the *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* (D.I. 166) (the "Second Interim DIP Order").

4. The Debtor, the DIP Lender, and the Creditors' Committee have agreed to the proposed order granting the relief requested in the Motion on a final basis (the "Proposed Final DIP 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 Final DIP Order against the Interim DIP Order is attached hereto as **Exhibit B**.

6. The DIP Lender and the Creditors' Committee have reviewed the Proposed Final DIP Order and do not object to, and support, its entry. The Debtor circulated the Proposed Final DIP Order to the U.S. Trustee simultaneously with filing this certification of counsel. As of this filing, the U.S. Trustee has not responded to the Proposed Final DIP Order.

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

Dated: September 23, 2019
Wilmington, Delaware

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Exhibit A

Proposed Final DIP 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, 166**

FINAL 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, AND (VI) GRANTING RELATED RELIEF

Upon the motion (the "Motion") of Achaogen, Inc., as debtor and debtor in possession (the "Debtor") in the above-captioned case (the "Chapter 11 Case"), for entry of interim and final orders under sections 105, 361, 362, 363(c), 363(e), 364(c), 364(d)(1), 364(e), and 507 of title 11 of the United States Code, 11 U.S.C. §§101-1532 (as amended, the "Bankruptcy Code"), rules 2002, 4001, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (as amended, the "Bankruptcy Rules"), and rules 4001-1 and 9013-1(m) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Local Rules"), seeking *inter alia:*

(a) authorization for the Debtor to obtain postpetition financing in the form of a term loan facility (the "DIP Facility") as set forth in that certain Senior Secured Superpriority Debtor-in-Possession Loan and Security Agreement (the "DIP Credit Agreement")[2] attached as Exhibit 1 to the First Interim Order (as amended, supplemented, or otherwise modified from time to time),

[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.

by and among the Debtor and Silicon Valley Bank (in such capacity, the "DIP Lender"), up to the aggregate principal amount of Twenty Five Million Dollars ($25,000,000), subject to the terms of the Interim Orders (as defined below), this final order (this "Final Order"), and all other agreements, documents, instruments, delivered or executed in connection therewith, as hereafter amended, supplemented or otherwise modified from time to time, including the Budget (as defined in the Interim Orders) (collectively, together with the DIP Credit Agreement, the "DIP Loan Documents");

(b) authorizing the continued use of Cash Collateral (as defined below) by the Debtor effective as of the Petition Date;

(c) subject to the Carve Out and KEIP/KERP Plan Amount (as each such term is defined below), granting to the DIP Lender on account of the DIP Facility and all obligations owing thereunder and under, or secured by, the DIP Loan Documents (collectively, and including all "Obligations" as defined in the DIP Credit Agreement, the "DIP Obligations") allowed superpriority administrative expense claim status in the Debtor's chapter 11 case (the "Chapter 11 Case");

(d) subject to the Carve Out and KEIP/KERP Plan Amount, granting to the DIP Lender automatically perfected security interests in and liens on the DIP Collateral (as defined below) to the extent set forth herein;

(d) vacating and modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of this Final Order, in each case, to the extent set forth herein;

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the DIP Credit Agreement.

(e) subject to the Carve Out and KEIP/KERP Plan Amount, granting adequate protection to the Prepetition Lender (as defined below); and

(g) granting related relief.

The Court having found that the relief requested in the Motion is in the best interests of the Debtor, its estate, its creditors, and other parties in interest; and the Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before the Court on April 16, 2019 (the "Interim Hearing"); 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 "First Interim Order"); and the Court having entered the *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* [Docket No. 166] (the "Second Interim Order," and together with the First Interim Order, the "Interim Orders"); and the Court having heard the statements in support of the relief requested in the Motion at a hearing before the Court on September 25, 2019 (the "Final Hearing" and, together with the Interim Hearing, collectively, the "Hearings"); and the Court having determined that the legal and factual bases set forth in the Motion, the *Declaration of Blake Wise in Support of First Day Relief* (the "First Day Declaration"); and at the Hearings establish just cause for the relief granted herein; and upon all

of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY FOUND AND CONCLUDED THAT:**

A. Disposition. The Motion is granted on a final basis in accordance with the terms of this Final Order. Any objections, reservations of rights, and/or other statements with respect to the Motion with respect to the entry of this Final Order that have not been withdrawn, waived, or settled are hereby denied and overruled on the merits.

B. Commencement of Chapter 11 Case. On April 15, 2019 (the "Petition Date"), the Debtor filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor is continuing to operate its business as a debtor and debtor in possession under sections 1107 and 1108 of the Bankruptcy Code. An official committee of unsecured creditors (the "Committee") was appointed on April 23, 2019. No chapter 11 trustee has been appointed in the Chapter 11 Case.

C. Jurisdiction and Venue. This Court has jurisdiction over the Chapter 11 Case, the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. Consideration of the Motion constitutes a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The Court may enter a final order consistent with Article III of the United States Constitution. Venue for the Chapter 11 Case in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The predicates for the relief sought herein are sections 105, 361, 362, 363(c), 363(e), 364(c), 364(d)(1), 364(e), and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6004 and 9014, and Bankruptcy Local Rules 4001-1 and 9013-1(m).

D. Adequate Notice. On the Petition Date, the Debtor filed the Motion with this Court pursuant to Bankruptcy Rules 2002, 4001, and 9014. The Debtor provided timely notice of the Interim Orders and the Final Hearing by electronic mail, facsimile, hand delivery, or

overnight delivery to the following parties and/or their respective counsel as indicated below (collectively, the "Notice Parties"): (a) the Office of the United States Trustee for the District of Delaware; (b) the Debtor's top twenty (20) unsecured creditors; (c) SVB, in its capacity as Prepetition Lender and DIP Lender; (d) all other known holders of prepetition liens, encumbrances or security interests against the Debtor's property; (e) the Internal Revenue Service; (f) the Securities and Exchange Commission; (g) the Delaware Secretary of State; (h) the Delaware Secretary of the Treasury; (i) any party that has requested notice pursuant to Bankruptcy Rule 2002; and (j) any other party required to be provided notice under Local Rule 9013-1(m).

E. Debtor's Stipulations on the Prepetition Loan Obligations. The Debtor acknowledges, admits, represents, stipulates, and agrees that:

(i) *Prepetition Loan Agreement*: As of the Petition Date, the Debtor was indebted and liable, without defense, counterclaim, or offset of any kind to the lenders under that certain Loan and Security Agreement, dated as of February 26, 2018 (as heretofore amended, supplemented, or otherwise modified, including by that certain Waiver and First Amendment to Loan and Security Agreement, dated as of April 12, 2019, the "Prepetition Loan Agreement" and, together with all other agreements, documents and instruments executed and/or delivered in connection therewith, as all of the same have been supplemented, modified, extended, renewed, restated, and/or replaced at any time prior to the Petition Date, the "Prepetition Loan Documents"), among the Debtor, and Silicon Valley Bank (the "Prepetition Lender") in the aggregate principal amount of $15,000,000.00 (the "Prepetition Loan Facility") as of the Petition Date. All obligations of the Debtor arising under the Prepetition Loan Agreement or any other Prepetition Loan Documents, including under the Prepetition Loan Facility, shall hereinafter be

referred to collectively as the "Prepetition Loan Obligations". As of the date of this Final Order and as set forth herein, outstanding Prepetition Loan Obligations, in the amount of $15,000,000,00 are repaid with proceeds of the DIP Facility.

(ii) The liens and security interests securing the Prepetition Loan Obligations are referred to herein as the "Prepetition Loan Liens" and the collateral to which such Prepetition Loan Liens attach, the "Prepetition Loan Collateral".

(iii) *Value of the Prepetition Collateral*. At all times prior to the Petition Date, the aggregate value of the Prepetition Loan Collateral exceeded the aggregate amount of the Prepetition Loan Obligations.

(iv) *No Claims*. The Debtor has no valid claims (as such term is defined in section 101(5) of the Bankruptcy Code) or causes of action against the Prepetition Lender with respect to the Prepetition Loan Documents, the Prepetition Loan Obligations, the Prepetition Loan Liens, any prior financing transactions, or otherwise, whether arising at law or at equity, including, without limitation, any challenge, recharacterization, subordination, avoidance, or other claims arising under or pursuant to sections 105, 510, 541, or 542 through 553, inclusive, of the Bankruptcy Code.

(v) *Release.* The Debtor hereby stipulates and agrees that it forever, unconditionally and irrevocably releases, discharges and acquits the Prepetition Lender and each of its successors, assigns, affiliates, subsidiaries, parents, officers, shareholders, directors, employees, attorneys, and agents, past, present, and future, and their respective heirs, predecessors, successors, and assigns (collectively, the "Releasees") of and from any and all claims, controversies, disputes, liabilities, obligations, demands, damages, expenses (including, without limitation, reasonable attorneys' fees), debts, liens, actions, and causes of action of any

and every kind whatsoever, whether arising in law or otherwise, and whether or not known or matured, arising out of or relating to, as applicable, the Interim Orders, this Final Order, the DIP Facility, the DIP Loan Documents, the Prepetition Loan Facility, and the Prepetition Loan Documents, any prior financing transaction between the Debtor and any Releasee, and/or the transactions contemplated hereunder or thereunder including, without limitation, (x) any so-called "lender liability" or equitable subordination claims or defenses, (y) any and all claims and causes of action arising under the Bankruptcy Code, and (z) any and all claims and causes of action with respect to the validity, priority, perfection or avoidability of the liens or claims of the DIP Lender and the Prepetition Lender; provided that the forgoing shall not release any claims against a Releasee that a court of competent jurisdiction determines results primarily from the bad faith, gross negligence, or willful misconduct of such Releasee. The Debtor further waives and releases any defense, right of counterclaim, right of set-off, or deduction to the payment of the Prepetition Loan Obligations and the DIP Obligations, which the Debtor now has or may claim to have, directly or indirectly against the Releasees, arising out of, connected with or relating to any and all acts, omissions, or events occurring prior to the Court entering this Final Order.

(vi) *No Control.* Neither the DIP Lender nor the Prepetition Lender controls the Debtor or its properties or operations, has authority to determine the manner in which any of the Debtor's operations are conducted or is a control person or insider of the Debtor or any of its affiliates by virtue of any of the actions taken with respect to, in connection with, related to, or arising from the Interim Orders or this Final Order, the DIP Facility, the DIP Loan Documents, the Prepetition Loan Facility, and/or the Prepetition Loan Documents.

(vii) *Cash Collateral*. Any and all of the Debtor's cash including cash and other amounts on deposit or maintained in any account or accounts by the Debtor, whether subject to

control agreements or otherwise, and any amount generated by the collection of accounts receivable or other disposition of the Prepetition Loan Collateral, and the proceeds of any of the foregoing, whether existing on the Petition Date or thereafter, constitutes the cash collateral (within the meaning of section 363(a) of the Bankruptcy Code) of the Prepetition Lender (the "Cash Collateral").

F. [Reserved].

G. Use of DIP Facility and Cash Collateral. The Debtor has an immediate and critical need to use the DIP Facility and Cash Collateral to preserve and operate its business and effectuate a restructuring of its business, which will be used in accordance with the terms of this Final Order and the Budget. Outstanding Prepetition Loan Obligations, in the aggregate amount of $15,000,000.00, are hereby repaid with proceeds of the DIP Facility. The remaining Ten Million Dollars ($10,000,000.00) available under the DIP Facility will be used in accordance with the Budget for operating expenses, to effectuate the sale of the Debtor's assets, and to provide adequate protection in accordance with the Interim Orders and this Final Order. The adequate protection provided herein and other benefits and privileges contained herein are consistent with and authorized by the Bankruptcy Code and are necessary in order to avoid the objection of the Prepetition Lender. Without the use of the DIP Facility and Cash Collateral, the Debtor will not have sufficient liquidity to be able to (i) pay its vendors, (ii) fund employee wages, benefits, and related obligations, (iii) pay for the necessary services and materials to maintain compliance with regulatory requirements, (iv) pay for use of its business equipment, (v) fund its sale process, and (vi) continue to operate its business during the pendency of the Chapter 11 Case. Moreover, the provisions of the DIP Credit Agreement, the Interim Orders and this Final Order were extensively negotiated and are the most favorable terms that the Debtor was

able to obtain. Approval of the DIP Facility will ensure the Debtor is able to maintain its operations, pursue the Chapter 11 Case, and maximize the value of its estate for the benefit of all stakeholders. Absent authorization to immediately use a portion of the DIP Facility and Cash Collateral, the Debtor's estate and its creditors would suffer immediate and irreparable harm.

H. Roll-Up of Prepetition Loans. Without any further action by the Debtor or any other party, outstanding principal, interest, and other amounts under the Prepetition Loan Facility, in the aggregate amount of $15,000,000.00, are hereby repaid with proceeds from the DIP Facility. The replacement and refinancing (or "roll-up") of the Prepetition Loan Obligations shall be authorized as compensation for, in consideration for, and solely on account of, the agreement of the DIP Lender (who is the Prepetition Lender) to commit to and fund the DIP Facility, and provide other consideration to the Debtor, under the DIP Facility and not as payments under, adequate protection for, or otherwise on account of, any Prepetition Loan Obligations. The Prepetition Lender would not otherwise consent to the use of their Cash Collateral or the subordination of their liens to the DIP Liens (as defined below), and the DIP Lender would not be willing to provide the DIP Facility or extend credit to the Debtor thereunder without the roll up of the Prepetition Loan Obligations into the DIP Obligations or the Term Loan Commitment Fees (as defined below). Moreover, the replacement and refinancing of all outstanding amounts under the Prepetition Loan Facility into DIP Obligations will enable the Debtor to obtain urgently needed financing critical to administering this Chapter 11 Case and funding its operations. All security agreements in respect of the Prepetition Loan Obligations being refinanced shall continue in full force and effect in favor of the DIP Lender.

I. Other Financing Unavailable. As discussed in the First Day Declaration, the Debtor is unable to obtain (i) adequate unsecured credit allowable either (a) under sections

364(b) and 503(b)(l) of the Bankruptcy Code or (b) under section 364(c)(l) of the Bankruptcy Code, (ii) adequate credit secured by (x) a senior lien on unencumbered assets of its estate under section 364(c)(2) of the Bankruptcy Code or (y) a junior lien on encumbered assets of its estate under section 364(c)(3) of the Bankruptcy Code, or (iii) secured credit under section 364(d)(l) of the Bankruptcy Code from sources other than the DIP Lender on terms more favorable than the terms of the DIP Facility. The only source of secured credit available to the Debtor on commercial terms, other than the continued use of Cash Collateral, is the DIP Facility, and the Prepetition Lender would not give its consent to the Debtor to have its liens and security interests primed by a third party DIP financing source. Financing on a postpetition basis is not otherwise available without granting the DIP Lender: (1) perfected security interests in and liens on the DIP Collateral; (2) superpriority claims and liens; (3) the other protections set forth in this Final Order; and (4) a full refinancing of the outstanding Prepetition Loan Obligations.

J. Best Financing Presently Available. The DIP Lender will provide the Debtor with financing solely on the terms and conditions set forth in the Interim Orders, this Final Order and the applicable DIP Loan Documents. After considering all of its alternatives, the Debtor has concluded, in an exercise of its sound business judgment, that the financing to be provided by the DIP Lender pursuant to the terms of the Interim Orders, this Final Order and the DIP Loan Documents, represents the best financing presently available. The DIP Lender has acted in good faith and therefore is entitled to the good faith protections under section 364(e) of the Bankruptcy Code. The DIP Lender's claims, superpriority claims, security interests, liens, and other protections granted pursuant to the Interim Orders, this Final Order and the applicable DIP Loan Documents will not be affected by any subsequent reversal, modification, vacatur, or

amendment of the Interim Orders, this Final Order, or any other order, as provided in section 364(e) of the Bankruptcy Code.

K. Good Cause for Immediate Entry. Good cause has been shown for immediate entry of this Final Order pursuant to Bankruptcy Rules 4001(b)(2) and (c)(2) and Local Rule 4001-2. In particular, the authorization granted herein for the Debtor to enter into the DIP Facility, to continue using Cash Collateral and to obtain financing, including on a priming lien basis as set forth herein, is necessary to avoid immediate and irreparable harm to the Debtor and its estate. Entry of this Final Order is in the best interest of the Debtor, its estate, and creditors. The terms of the DIP Facility are fair and reasonable under the circumstances, reflect the Debtor's exercise of prudent business judgment consistent with its fiduciary duties, and are supported by reasonably equivalent value and fair consideration.

L. Arm's Length Negotiation. The Debtor, the DIP Lender, and the Prepetition Lender have negotiated the terms and conditions of the DIP Facility, the Interim Orders and this Final Order in good faith and at arm's length, and any credit extended and loans made to the Debtor pursuant to the Interim Orders and this Final Order shall be, and hereby are, deemed to have been extended, issued or made, as the case may be, in "good faith" within the meaning of section 364(e) of the Bankruptcy Code.

M. Adequate Protection for the Prepetition Lender. The Prepetition Lender has acted in good faith regarding the DIP Facility and the Debtor's continued use of the Prepetition Loan Collateral (including the Cash Collateral) to fund the administration of the Debtor's estate and continued operation of its business, in accordance with the terms hereof. The Prepetition Lender has consented to the Debtor's use of the Prepetition Loan Collateral, including the Cash Collateral, in accordance with the terms hereof. The Prepetition Lender is entitled to the

adequate protection provided in the Interim Orders and this Final Order as and to the extent set forth therein and herein pursuant to §§ 361, 363 and 364 of the Bankruptcy Code. Based on the Motion and on the record presented to the Court at the Hearings, as of the Petition Date the terms of the proposed adequate protection arrangements and of the use of the Prepetition Loan Collateral are fair and reasonable, reflect the Debtor's prudent exercise of business judgment and constitute reasonably equivalent value and fair consideration for the use of Cash Collateral; provided, that nothing in the Interim Orders, this Final Order or the other DIP Loan Documents shall prejudice, limit, or otherwise impair the rights of the Prepetition Lender to seek new, different, or additional adequate protection.

N. Committee Settlement. The Committee Settlement (as defined herein) set forth in paragraph 46 of this Final Order resolves the informal objection of the Committee to the entry of this Final Order, and is fair, reasonable, and in best interests of the Debtor, its estate, its creditors, and other parties in interest. Silicon Valley Bank (as DIP Lender and Prepetition Lender), the Committee, and the Debtor (collectively, the "Settlement Parties") have negotiated the terms and conditions of the Committee Settlement in good faith and at arm's length. The terms of the Committee Settlement reflect the considered judgment of the Settlement Parties with respect to the probability of success in litigation against the DIP Lender and the Prepetition Lender, the complexity of any such litigation, the inconvenience and delay necessarily attending such litigation, and the paramount interests of the Debtor's creditors.

O. Order of the Court. Based upon the foregoing findings, acknowledgements, and conclusions, and upon the record made before this Court at the Hearings, and good and sufficient cause appearing therefor:

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

1. Motion Granted. The Motion is granted on a final basis, subject to the terms set forth herein. Any objections, reservations of rights, and/or other statements with respect to the Motion that have not previously been withdrawn or resolved are hereby overruled on their merits. This Final Order shall be valid, binding on all parties in interest, and fully effective immediately upon entry notwithstanding the possible application of Bankruptcy Rules 6004(h), 7062, and/or 9014. All actions taken in connection with or in reliance on the Interim Orders are hereby reaffirmed.

2. Authority to Enter Into DIP Facility. The Debtor was, by the Interim Orders, and, pursuant to this Final Order is, authorized to incur and perform the obligations arising from and after the Petition Date under the DIP Facility, on the terms set forth in this Final Order, including the Debtor's entry into, execution and delivery of the DIP Credit Agreement attached to the First Interim Order as Exhibit 1 and such additional documents, instruments, and agreements as may be reasonably required by the DIP Lender to implement the terms or effectuate the purposes of and transactions contemplated by the Interim Orders, this Final Order and the other DIP Loan Documents. The Debtor is authorized to execute and deliver the DIP Loan Documents and borrow money under the DIP Facility, on a final basis, up to an aggregate principal amount not to exceed Twenty Five Million Dollars ($25,000,000.00), on the terms set forth in this Final Order and the DIP Loan Documents.

3. DIP Liens. As used herein, "DIP Collateral" shall include all prepetition and postpetition tangible and intangible property and assets, whether real or personal of the Debtor, including, without limitation, all assets and property pledged under the DIP Loan Documents,

and all cash, any investment of such cash, inventory, accounts receivable, including intercompany accounts (and all rights associated therewith), other rights to payment whether arising before or after the Petition Date, contracts, contract rights, chattel paper, goods, investment property, inventory, deposit accounts, and all amounts on deposit therein from time to time, equity interests, securities accounts, securities entitlements, securities, commercial tort claims and claims that may constitute commercial tort claims (known and unknown), books, records, plants, equipment, general intangibles, documents, instruments, interests in leases and leaseholds, interests in real property, fixtures, payment intangibles, tax or other refunds, insurance proceeds, letters of credit, letter of credit rights, supporting obligations, machinery and equipment, patents, copyrights, trademarks, tradenames, other intellectual property, all licenses therefor, and all proceeds, rents, profits, products, and substitutions, if any, of any of the foregoing; provided that DIP Collateral shall not include any Bankruptcy Recoveries, but the DIP Collateral shall include the proceeds of any Bankruptcy Recoveries. Notwithstanding anything to the contrary contained herein or in the DIP Loan Documents, the DIP Collateral shall not include any right, title, or interest in: (a) that certain lease dated as of August 12, 2016 (as amended, the "Lease") between AP3-SF2 CT South LLC (the "Landlord") and the Debtor for certain premises (the "Premises") in that certain building located at One Tower Place, South San Francisco, California, any leasehold estate created by the Lease, or any fixtures constituting a portion of the premises within, on, or about the Premises; (b) any sublease of the Premises or the Lease (or any portion thereof), any related sublease rents, or any subleasehold estate created by any such sublease; and/or (c) any letter of credit (or the proceeds thereof) or security deposits related to the Lease or any sublease of the Premises; provided, that the term "DIP Collateral" shall include the economic value of the proceeds of any sale or other disposition of, and any

other proceeds or products of, each of (a), (b) and (c) of this sentence. Effective as of the Petition Date and in each case perfected without the necessity of the execution by the Debtor (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages, or other similar documents, or by possession or control, subject to the Carve Out and KEIP/KERP Plan Amount, the following security interests and liens were granted under the Interim Orders and hereby continue to be granted to the DIP Lender:

(a) Pursuant to section 364(d)(1) of the Bankruptcy Code, the DIP Obligations are secured by a perfected first priority priming security interest and lien on all DIP Collateral (such security interest and lien, the "Priming Lien"), to the extent that such property and assets are subject to liens that secure the obligations of the Debtor under the Prepetition Loan Documents (collectively, the "Primed Liens");

(b) The Priming Lien shall be senior (i) in all respects to the Primed Liens and (ii) to any liens granted to provide adequate protection in respect of any of the Primed Liens;

(c) The Primed Liens shall be primed by and made subject and subordinate to the Priming Liens;

(d) Pursuant to section 364(c)(2) of the Bankruptcy Code, the DIP Obligations are secured by a perfected first priority security interest and lien on all DIP Collateral of the Debtor (other than Bankruptcy Recoveries (as defined below)) to the extent such property and assets are not subject to valid, perfected, and non-avoidable liens as of the Petition Date; provided, that the DIP Lender is hereby granted a perfected security interest pursuant to this clause in any recoveries of Debtor, by settlement or otherwise, in respect of claims and causes of action to which Debtor may be entitled to assert by reason of any avoidance or other power

vested in or on behalf of a debtor or the estate of a debtor under chapter 5 of the Bankruptcy Code ("Bankruptcy Recoveries");

(e) Pursuant to section 364(c)(3) of the Bankruptcy Code, the DIP Obligations are secured by a perfected junior-priority security interest and lien on all DIP Collateral of the Debtor to the extent that such property and assets are subject to valid, perfected, and unavoidable liens in favor of third parties that were in existence immediately prior to the Petition Date, or to valid and unavoidable liens in favor of third parties that were in existence immediately prior to the Petition Date that were perfected subsequent to the Petition Date as permitted by Section 546(b) of the Bankruptcy Code (other than the existing Prepetition Loan Liens, which existing liens will be primed by this Final Order), junior to the priority of such liens in favor of such third parties; and

(f) The foregoing liens and security interests are referred to herein as "DIP Liens".

4. DIP Superpriority Claims. In addition to the liens and security interests granted to the DIP Lender pursuant to the Interim Orders and this Final Order, subject and subordinate to the Carve Out and the KEIP/KERP Plan Amount, and in accordance with sections 364(c)(1), 503, and 507 of the Bankruptcy Code, all of the DIP Obligations (including, without limitation, all DIP Extensions of Credit (as defined below)), shall constitute allowed superpriority administrative expense claims of the DIP Lender (the "DIP Superpriority Claims") with priority over any and all administrative expenses of the Debtor, whether heretofore or hereafter incurred, of the kind specified in, or ordered pursuant to, sections 105, 326, 328, 330, 331, 364, 365, 503(b), 506(c), 507(a), 507(b), 1113, 1114, or any other provisions of the Bankruptcy Code.

5. Continuation of Prepetition Loan Liens. The liens granted to the Prepetition Lender under the Prepetition Loan Documents shall continue in full force and effect and shall continue to secure the obligations of the Debtor under the Prepetition Loan Documents, provided that such liens are Primed Liens and junior to the DIP Liens.

6. Roll Up. Without any further action by the Debtor or any other party, and as a condition to the provision of further liquidity under the DIP Facility, Prepetition Loan Obligations, in the aggregate amount of $15,000,000.00, are hereby repaid with proceeds of the DIP Facility in accordance with the terms of the DIP Credit Agreement and this Final Order.

7. Use of Cash Collateral and DIP Extensions of Credit. Subject to Paragraph 24 of this Final Order, the Debtor is hereby authorized to continue to use Cash Collateral and the proceeds of any borrowings under the DIP Facility in accordance with the DIP Credit Agreement and the other terms and conditions set forth in this Final Order and the DIP Loan Documents and subject to and in accordance with the Budget.

8. DIP Extensions of Credit. All loans made to or for the benefit of the Debtor on or after the Petition Date in accordance with the DIP Loan Documents are herein referred to as the "DIP Extensions of Credit". The DIP Extensions of Credit: (a) shall be evidenced by the books and records of the DIP Lender; (b) shall bear interest payable and incur fees at the rates set forth in the applicable provisions of the DIP Credit Agreement; (c) shall be secured in the manner specified herein and in the DIP Loan Documents; (d) shall be payable in accordance with the DIP Loan Documents and this Final Order; and (e) shall otherwise be governed by the terms set forth in this Final Order and the other DIP Loan Documents. The DIP Lender shall have no obligation to make any DIP Extension of Credit or any other financial accommodation hereunder

unless all conditions precedent to making DIP Extensions of Credit under the DIP Credit Agreement have been satisfied or waived in accordance with the DIP Credit Agreement.

9. Adequate Protection for the Prepetition Lender. In addition to all the existing security interests and liens previously granted to the Prepetition Lender, which security interests and liens shall continue in full force and effect and secure the Prepetition Loan Obligations as adequate protection for, and to secure the payment of an amount equal to the diminution of the value of the Prepetition Loan Collateral, due to the Debtor's sale, use, or lease of such Prepetition Loan Collateral, and as an inducement for the Prepetition Lender to permit the Debtor's use of the Cash Collateral as provided for in this Final Order, the Prepetition Lender is hereby granted, subject to the Carve Out and the KEIP/KERP Plan Amount, the following adequate protection (the "Adequate Protection Obligations"), pursuant to sections 361, 363(e), 364(d)(1), and 507 of the Bankruptcy Code:

(a) ***Adequate Protection Liens.*** Effective as of the Petition Date and in each case perfected without the necessity of the execution by the Debtor (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages or other similar documents, or by possession or control, the following security interests and liens are hereby granted to the Prepetition Lender: A valid, binding, continuing, enforceable, fully-perfected replacement (and if applicable, new) security interest in and lien on the DIP Collateral (the "Adequate Protection Liens"). The Adequate Protection Liens are junior to the liens securing the DIP Facility.

(b) ***Adequate Protection Claims.*** An allowed administrative expense claim against the Debtor with priority over all other administrative claims in the Case (subject only to the Carve Out and the KEIP/KERP Plan Amount), including all claims of the kind specified

under sections 503(b) and 507(b) of the Bankruptcy Code (the "Adequate Protection Claims"), which administrative claim shall have recourse to and be payable from all prepetition and postpetition property of the Debtor, excluding the Carve Out and the KEIP/KERP Plan Amount. The Adequate Protection Claims are junior to the DIP Superpriority Claims.

(c) ***Payment of Interest.*** As additional adequate protection, so long as any Prepetition Loan Obligations remain outstanding, the Debtor is authorized and directed to pay interest on the Prepetition Loan Obligations in accordance with the Prepetition Loan Documents.

(d) ***Fees and Expenses.*** As additional adequate protection, the Debtor is authorized and directed to pay: (i) the reasonable and documented professional fees, expenses, and disbursements (including, but not limited to, the fees, expenses and disbursements of counsel and other third-party consultants, including financial advisors) incurred by the Prepetition Lender arising prior to the Petition Date; and (ii) in regular course, all reasonable and documented out-of-pocket fees and expenses incurred by the Prepetition Lender arising on or after the Petition Date, subject to paragraph 19 of this Final Order. The Prepetition Lender (and each of its professionals) shall not be required to comply with U.S. Trustee fee guideline or file applications or motions with, or obtain approval of, the Court for the payment of any of their out-of-pocket costs, fees, expenses, disbursements and other charges.

10. Budget. The 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 the Court. Beginning on the first Friday following the Petition Date (as defined in the DIP Credit Agreement), and then no later than the Friday of each subsequent calendar week, the Debtor shall deliver to the DIP Lender an updated, proposed Budget (each, a "Proposed Budget") for the following 13-week period, which shall be in form and substance

satisfactory to the DIP Lender. A Proposed Budget shall become the new Budget upon approval by the DIP Lender (which must be in writing) and, if no such approval is received, the prior approved budget shall continue in place and the DIP Lender and the Debtor shall negotiate in good faith regarding the terms of the Proposed Budget. The Debtor shall not permit the amount of its actual disbursements (excluding payment of all Bank Expenses (as defined in the DIP Credit Agreement)) for any week to exceed one hundred fifteen percent (115.0%) of the disbursements shown in the Budget for such week and on an aggregate basis, and the Debtor shall not permit the actual cash receipts for any week to be less than eighty-five percent (85.0%) of the cash receipts shown in the Budget for such week and on an aggregate basis (the "Budget Variances"; all references in this Final Order and the DIP Loan Documents to "Budget" shall mean the Budget as it is subject to the Budget Variances). The Debtor shall also deliver with each updated Budget a variance report reflecting on a line item and an aggregate basis, Debtor's actual unrestricted cash receipts and cash disbursements compared to the Budget for such immediately preceding week and for the period commencing on the Petition Date through and including the end of the week immediately preceding the date of the variance report. For the avoidance of doubt, for purposes of calculating the Budget Variances, any unused amounts set forth in the Budget for any period of determination may be carried forward and used during subsequent periods.

11. Weekly Reporting. The Debtor will deliver a weekly reporting package to the DIP Lender, which shall consist of a Proposed Budget, the variance report, and any other reporting required by the DIP Loan Documents.

12. Cash Management. The Debtor shall maintain its cash management arrangements in a manner consistent with that described in the orders approving the Debtor's motion for

authorization to maintain its existing cash management system, which orders shall be in form and substance acceptable to the DIP Lender. Silicon Valley Bank is authorized to apply and/or liquidate all amounts held as collateral (the "LC Collateral") for the Debtor's reimbursement obligations arising from any letter of credit issued by Silicon Valley Bank in accordance with the terms thereof.

13. Validity of DIP Loan Documents. The DIP Loan Documents shall constitute valid and binding obligations of the Debtor, enforceable against the Debtor in accordance with the terms thereof. No obligation, payment, transfer or grant of security under the DIP Loan Documents as approved under the Interim Orders or this Final Order shall be stayed, restrained, voided, voidable, or recoverable under the Bankruptcy Code or under any applicable non-bankruptcy law, or subject to any defense, reduction, setoff, recoupment, or counterclaim.

14. Preservation of Liens and Rights Granted Under this Final Order. Except as otherwise expressly provided for herein (including with respect to the Carve Out and the KEIP/KERP Plan Amount), or permitted under the DIP Credit Agreement, no claim or lien having a priority superior to or *pari passu* with those granted by the Interim Orders or this Final Order to the DIP Lender or to the Prepetition Lender, respectively, shall be granted or allowed while any portion of (a) the DIP Facility (or any refinancing thereof in accordance with the DIP Loan Documents) or the commitments thereunder or the DIP Obligations remain outstanding, or (b) the Prepetition Loan Obligations remain outstanding. Subject to the Carve Out and the KEIP/KERP Plan Amount, the DIP Liens, the Adequate Protection Liens, and the Prepetition Loan Liens shall not be (i) subject or junior to any lien or security interest that is avoided and preserved for the benefit of the Debtor's estate under section 551 of the Bankruptcy Code or (ii) subordinated to or made *pari passu* with any liens arising after the Petition Date including,

without limitation, any liens or security interests granted in favor of any federal, state, municipal or other domestic or foreign governmental unit (including any regulatory body), commission, board or court for any liability of the Debtor.

15. Automatic Effectiveness of Liens. The automatic stay imposed under section 362(a) of the Bankruptcy Code is hereby vacated and modified to permit the Debtor to grant the liens and security interests to the DIP Lender and the Prepetition Lender contemplated by the Interim Orders, this Final Order and the other DIP Loan Documents.

16. Automatic Perfection of Liens. The DIP Liens and the Adequate Protection Liens granted pursuant to the Interim Orders and this Final Order shall constitute valid, enforceable, nonavoidable, and duly perfected first priority security interests and liens (subject to the priorities set forth in this Final Order). The DIP Lender and the Prepetition Lender shall not be required to file or serve financing statements, notices of lien, mortgage deeds, deeds of trust or similar instruments which otherwise may be required under federal, state or local law in any jurisdiction, or take any action, including taking possession or control, to validate and perfect the DIP Liens and the Adequate Protection Liens, respectively, pursuant to this Final Order. The failure by the Debtor to execute any documentation relating to the DIP Liens or the Adequate Protection Liens or deliver possessory collateral shall in no way affect the validity, enforceability, perfection, or priority of such liens. The DIP Lender and the Prepetition Lender were, by the Interim Orders, and hereby are authorized, but not required, to file or record financing statements, trademark filings, copyright filings, mortgages, deeds of trust, notices of lien, or similar instruments in any jurisdiction or take any other action in order to validate and perfect the liens and security interests granted to them hereunder and under the DIP Credit Agreement, the Prepetition Loan Agreement, the Interim Orders, or this Final Order. Whether or

not the DIP Lender or the Prepetition Lender shall file such financing statements, trademark filings, copyright filings, mortgages, deeds of trust, notices of lien or similar instruments or otherwise take any action to validate, perfect, or confirm perfection of the liens and security interests granted to them hereunder, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, nonavoidable and not subject to challenge, dispute or subordination (except as a result of the relative lien priorities set forth in this Final Order), at the time and as of the Petition Date.

17. Other Automatic Perfection Matters. To the extent that the Prepetition Lender is the secured party under any account control agreements, listed as loss payee or additional insured under any of the Debtor's insurance policies or is the secured party under any Prepetition Loan Document, the DIP Lender is also deemed to be the secured party under such account control agreements, loss payee, or additional insured under the Debtor's insurance policies and the secured party under each such Prepetition Loan Document (in any such case with the same priority of liens and claims thereunder relative to the priority of the Prepetition Loan Liens and Adequate Protection Liens, and shall have all rights and powers in each case attendant to that position (including, without limitation, rights of enforcement, but subject in all respects to the terms of this Final Order)), and shall, subject to the terms of this Final Order, act in that capacity and distribute any proceeds recovered or received in accordance with the terms of this Final Order, as applicable, and the other DIP Loan Documents. Security interests in and liens on all DIP Collateral that is of a type such that perfection of a security interest therein may be accomplished by possession or control by a secured party will be delivered, upon written request, to the DIP Lender, provided that the DIP Lender continues to retain a properly perfected lien on

such DIP Collateral by virtue of the Interim Orders and this Final Order even if such other party fails to timely deliver possession to the DIP Lender.

18. Protection of DIP Lender's Rights.

(a) A "Termination Event" means: (i) the Debtor shall violate the terms of this Final Order; (ii) the occurrence of an Event of Default (including without limitation a breach of any Milestone as defined in the DIP Credit Agreement), (ii) the Term Loan Maturity Date of the DIP Facility, (iii) this Final Order ceasing to be in full force and effect for any reason, (iv) Debtor shall file, propose, or support confirmation of a chapter 11 plan that is not reasonably acceptable to the DIP Lender or Prepetition Lender, and (v) all or substantially all of the assets of the Debtor are sold without the prior written consent of the DIP Lender or the Prepetition Lender (each a "Termination Event"). Upon the occurrence and during the continuance of a Termination Event, five (5) business after the delivery, by the DIP Lender to the Debtor or its counsel (via email or otherwise), of a written notice (the "Remedies Notice") of the occurrence of a Termination Event (the "Remedies Notice Period"), unless such Termination Event is cured by the Debtor or waived by the DIP Lender, the DIP Lender may (1) declare (a) the commitment of the DIP Lender as to the DIP Facility to be terminated, whereupon such commitments and obligation shall be terminated; (b) all DIP Obligations immediately due and owing, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Debtor, whereupon all DIP Obligations shall be immediately due and payable; and (c) subject to the Carve Out and the KEIP/KERP Plan Amount, that the Debtor shall have no right to request or use any proceeds of any DIP Extensions of Credit, other than towards the satisfaction of the DIP Obligations; and (2) and exercise all rights and remedies provided in the Interim Orders, this Final Order and the DIP Loan Documents, as applicable. Immediately upon

the delivery of the Remedies Notice, to the extent not previously provided, the Debtor shall provide a line-by-line itemization of the Budget to the DIP Lender. During the Remedies Notice Period, (i) the Debtor and DIP Lender shall have the rights and obligations set forth in, and shall act in accordance with, section 9.1 of the DIP Credit Agreement; and (ii) the Debtor, United States Trustee, and/or Committee may contest the existence or continuation of an Event of Default, or the DIP Lender's right to assert remedies in connection with an Event of Default set forth in a Remedies Notice, or any such other issue that may be relevant to the Bankruptcy Court or the parties, by filing of an expedited motion in the Bankruptcy Court. Nothing in the DIP Loan Documents, the Interim Orders or this Final Order shall limit the ability of Debtor and other parties-in-interest to timely request any such expedited hearing on a motion seeking such a finding.

19. DIP Fees and Expenses. The Debtor is authorized and directed to pay all reasonable and documented fees and expenses of the DIP Lender in connection with the DIP Facility, as applicable, as provided in the applicable DIP Loan Documents, whether or not the transactions contemplated hereby are consummated, whether or not incurred prepetition or postpetition. A copy of any invoice submitted by the DIP Lender to the Debtor for the foregoing purpose shall also be delivered contemporaneously to the U.S. Trustee and counsel to the Committee (each, a "Fee Notice"). The DIP Lender (and each of its professionals) shall not be required to comply with U.S. Trustee fee guideline or file applications or motions with, or obtain approval of, the Court for the payment of any of their out-of-pocket costs, fees, expenses, disbursements and other charges. Subject to the U.S. Trustee or the Committee filing a written objection with this Court to any such fees and expenses within ten (10) days after receipt of a Fee Notice, the Debtor shall pay such invoice. To the extent a timely filed objection is filed by the

U.S. Trustee or the Committee, the Debtor shall (a) pay such portion of the fees and expenses to which no objection is interposed and (b) pay any remaining fees and expenses as ordered by the Bankruptcy Court (or upon withdrawal or resolution of the objection). Payments of any amounts set forth in this paragraph are not subject to recharacterization, avoidance, subordination or disgorgement.

20. Term Loan Commitment Fees; Interest. The DIP Lender shall be entitled to receive the following commitment fees: (i) a non-refundable commitment fee of One Million Five Hundred Thousand Dollars ($1,500,000.00) (the "Initial Term Loan Commitment Fee"), which was earned as of entry of the First Interim Order and is due at the Term Loan Maturity Date; and (ii) a non-refundable commitment fee of One Million Five Hundred Thousand Dollars ($1,500,000.00) (the "Final Term Loan Commitment Fee" and, together with the Initial Term Loan Commitment Fee, the "Term Loan Commitment Fees"), which is earned as of entry of the this Final Order and is due at the Term Loan Maturity Date; provided, that the Term B Final Payment (as defined in the Prior Loan Agreement) is hereby waived. The Debtor is authorized and directed to pay the Term Loan Commitment Fees at the Term Loan Maturity Date. The Debtor is authorized and directed to pay interest on the DIP Loan Obligations in accordance with the terms of the DIP Credit Agreement.

21. Debtor's Right to Draw under DIP Facility. Subject to the Carve Out and the KEIP/KERP Plan Amount, unless otherwise agreed to by the DIP Lender in writing in accordance with this Final Order and the DIP Credit Agreement, the Debtor's right to draw under the DIP Facility (a) shall be suspended upon the occurrence and during the continuation of any Event of Default pursuant to the DIP Credit Agreement, and (b) shall terminate upon the Term Loan Maturity Date.

22. Milestones. As a condition to the DIP Facility and the use of Cash Collateral, the Debtor shall comply with the Milestones. The term "Milestones" shall include the following: (a) on or before October 18, 2019, the Debtor shall obtain conditional approval of a disclosure statement (the "Disclosure Statement") for the Liquidating Plan (as defined herein) and solicitation procedures with respect thereto; and (b) on or before November 26, 2019, the Debtor shall obtain final approval of the Disclosure Statement and confirmation of the Liquidating Plan. The Milestones can only be modified or waived by the DIP Lender in writing in accordance with the provisions of the DIP Credit Agreement; provided, that the Milestones that relate to the entry of this Final Order and to the sale of the Debtor's assets are deemed waived by the DIP Lender.

23. Termination of Consent to Use of Cash Collateral.

(a) Subject to the Carve Out and the KEIP/KERP Plan Amount, the Remedies Notice Period, and opportunity to cure set forth in Paragraph 18(a) of this Final Order, the consent of the DIP Lender and the Prepetition Lender to the use of Cash Collateral may be terminated following the occurrence of a Termination Event and expiration of the Remedies Notice Period, and any prior consent of the DIP Lender or Prepetition Lender to the Debtor's use of Cash Collateral shall be deemed automatically withdrawn upon expiration of the Remedies Notice Period.

24. Modifications of DIP Loan Documents. The Debtor and the DIP Lender are hereby authorized to implement, in accordance with the terms of the DIP Loan Documents, any modifications of the DIP Loan Documents (other than this Final Order) that are not materially adverse to the Debtor's estate or creditors without further notice, motion, or application to, order of or hearing before, this Court. Any material modification or amendment to the DIP Loan Documents shall only be permitted pursuant to an order of this Court (which may be sought

within (3) Business Days), provided, however, that any forbearance from, or waiver of, (a) a breach by the Debtor of a covenant, representation or any other agreement or (b) a default or an Event of Default (including breach of any Milestone), in each case under the DIP Loan Documents, shall not require an order of this Court. 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 Final Order, with the Committee being provided reasonable advance written notice of such amendments.

25. DIP Lender and Prepetition Lender Authorization. Notwithstanding any provision of the Prepetition Loan Documents or the DIP Loan Documents, the DIP Lender and the Prepetition Lender are hereby authorized to make any and all account transfers requested by the Debtor in accordance with the Budget, the Interim Orders and this Final Order, and is further authorized to take any other action reasonably necessary to implement the terms of this Final Order.

26. Waiver of Requirement to File Proofs of Claim. The DIP Lender and the Prepetition Lender shall not be required to file proofs of claim in the Chapter 11 Case or any successor case in order to maintain their respective claims for payment of the obligations under their respective loan documents. The statements of claim in respect of the DIP Obligations and the Prepetition Loan Obligations set forth in the Interim Orders and this Final Order, together with the evidence accompanying the Motion and presented at the Hearings are deemed sufficient to and do constitute proofs of claim in respect of such obligations and such secured status.

27. Carve Out.

(a) Carve Out. For purposes of this Final Order: (i) "Carve Out" means all Obligations, Prepetition Loan Obligations and Reinstated Prior Obligations and the repayment of

any of the foregoing, and the Liens and Superpriority Claims of the DIP Lender shall be subject to and subordinate to a carve out for payment of: (A) all fees required to be paid pursuant to the Clerk of the Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code prior to or after delivery by the DIP Lender of a Carve Out Trigger Notice plus interest at the statutory rate, plus (B) all reasonable fees and expenses up to $20,000 incurred by a trustee under section 726(b) of the Bankruptcy Code, plus (C) subject to the Budget, all unpaid Case Professional Fees and Expenses (excluding any success or completion fees payable to the Committee Case Professionals) incurred at any time prior to delivery by the DIP Lender of a Carve Out Trigger Notice, plus (D) Case Professional Fees and Expenses (excluding any success or completion fees payable to the Committee Case Professionals) in an aggregate amount not to exceed the applicable Carve Out Cap incurred after delivery by the DIP Lender of the Carve Out Trigger Notice, plus (E) all earned and unpaid advisory, success, transaction, completion or other fees and expenses payable to the Investment Banker pursuant to the Investment Banker Agreement incurred at any time that are allowed by the Bankruptcy Court, (ii) "Carve Out Cap" means an aggregate amount of Case Professional Fees and Expenses in accordance with the Budget not to exceed $250,000.00; provided, that the Carve Out Cap shall be reduced on a dollar-for-dollar basis by any payments of any Case Professional Fees and Expenses made after delivery of the Carve Out Trigger Notice in respect of fees and expenses incurred after delivery of the Carve Out Trigger Notice, (iii) "Case Professional Fees and Expenses" means, all accrued and unpaid fees, disbursements, costs and expenses incurred by Case Professionals in accordance with the Budget and allowed by the Bankruptcy Court at any time; provided, that the term "Case Professional Fees and Expenses" shall not include any advisory, success, transaction, completion or other fees and expenses payable or paid to the

Investment Banker; and (iv) "Carve Out Trigger Notice" means a written notice delivered by email (or other electronic means) by the DIP Lender to the Debtor, its counsel, the United States Trustee, and lead counsel to the Committee, stating that the Carve Out Cap has been invoked, which notice may be delivered at any time following the occurrence of any Event of Default under the DIP Credit Agreement.

(b) Carve Out Reserve. Until the Term Loan Maturity Date, the Debtor shall deposit cash on a weekly basis into an account designated by the Debtor at the DIP Lender for such purpose (the "Carve Out Account") in an amount equal to the "Carve Out" line item shown in the Budget for that week. Proceeds deposited into the Carve Out Account shall be held in trust and used solely for purposes of the Carve Out in accordance with the Interim Orders and this Final Order. The funds on deposit in the Carve Out Account shall be used to fund Carve Out expenses before any other funds of the Debtor may be used for such purpose. Any excess cash held in the Carve Out Account that is not used to fund Carve Out expenses in accordance with the Interim Orders and this Final Order, as applicable, shall be remitted to the DIP Lender. The DIP Lender and the Prepetition Lender shall each have a security interest in any residual interest in the Carve Out Account. On the day on which a Carve Out Trigger Notice is given by the DIP Lender to the Debtor with a copy to counsel to the Committee (the "Termination Declaration Date"), the Carve Out Trigger Notice shall (i) constitute a demand to the Debtor to utilize all available cash held by the Debtor to fund any deficit in the Carve Out Reserve in an amount equal to the difference between the Carve Out Reserve balance and the amount anticipated to be need to fully fund the Carve Out (the "Carve Out Reserve Deficit"), and (ii) only to the extent such cash on hand is insufficient for the foregoing purpose, be deemed a draw request and notice of borrowing by the Debtor for DIP Loans (as defined in the DIP Loan Documents) under the

available commitments under the DIP Facility, in an amount equal to the Carve Out Reserve Deficit (any such amounts actually advanced shall constitute DIP Loans).

(c) Payment of Allowed Professional Fees Prior to the Termination Declaration Date. Any payment or reimbursement made prior to the occurrence of the Termination Declaration Date in respect of any Case Professional Fees and Expenses shall not reduce the Carve Out.

(d) No Direct Obligation to Pay Allowed Professional Fees. Neither the DIP Lender nor the Prepetition Lender shall be responsible for the payment or reimbursement of any fees or disbursements of any Case Professional incurred in connection with the Chapter 11 Case or any successor case under any chapter of the Bankruptcy Code. Without limiting the Debtor's rights under Paragraph 38(b)(ii), nothing in the Interim Orders, this Final Order or otherwise shall be construed to obligate the DIP Lender or the Prepetition Lender in any way, to pay compensation to, or to reimburse expenses of, any Case Professional or to guarantee that the Debtor has sufficient funds to pay such compensation or reimbursement. The DIP Lender and the Prepetition Lender reserve all rights to object to the payment or reimbursement of any fees or disbursements of any Case Professional or other parties seeking substantial contribution incurred in connection with the Chapter 11 Case or any successor case under any chapter of the Bankruptcy Code.

(e) Payment of Carve Out On or After the Termination Declaration Date. Any payment or reimbursement made on or after the occurrence of the Termination Declaration Date in respect of any Case Professional Fees and Expenses shall permanently reduce the Carve Out on a dollar-for-dollar basis. Any funding of the Carve Out shall be added to, and made a part of, the obligation secured by the DIP Collateral and shall be otherwise entitled to the

protections granted under the Interim Orders, this Final Order, the DIP Loan Documents, the Bankruptcy Code, and applicable law.

(f) Funding of KEIP. Notwithstanding anything to the contrary contained herein or in any of the DIP Loan Documents, the Debtor's proposed key employee incentive plan shall be funded only from proceeds of a sale of the DIP Collateral that are in excess of $25,000,000.00.

28. Prohibition on Use of Collateral; Investigation Budget. A "Termination Event" shall occur if the Debtor directly or indirectly (a) investigates, asserts, or prosecutes (i) any claims or causes of action arising under or related to the DIP Loan Documents, the Prepetition Loan Obligations, or any other financing provided to the Debtor by the Prepetition Lender, or the liens or security interests securing the obligations under any of the foregoing, or (ii) a contested matter or adversary proceeding (a "Challenge") challenging the amount, validity or enforceability of the Prepetition Loan Obligations, the perfection or priority of the Prepetition Loan Liens or otherwise asserting any objections, claims or causes of action (including, without limitation, any actions for preferences, fraudulent conveyances, or other avoidance power claims), or the "roll-up" of the Prepetition Loan Obligations on behalf of the Debtor's estate against the Prepetition Lender relating to the Prepetition Loan Obligations or the Prepetition Loan Liens; or (b) raises any defenses to the Prepetition Loan Obligations or the DIP Obligations. No portion of the DIP Facility, the DIP Collateral (including the Prepetition Loan Collateral and the Cash Collateral), the Carve Out, or any disbursements set forth in the Budget, shall be used for the payment of professional fees, disbursements, costs, or expenses incurred by any party in interest in connection with the foregoing (a) and (b) of this paragraph; provided that not more than $25,000 in the aggregate of proceeds of any Cash Collateral or any proceeds of the

DIP Facility or the DIP Collateral may be used to pay any allowed fees (the "Investigation Fees") of the Committee or professionals retained by the Committee and incurred in connection with investigating the matters covered by the stipulations contained in recital Paragraph E of the First Interim Order and this Final Order (the "Investigation Budget").

29. Stipulations Regarding Prepetition Loan Obligations and the Prepetition Loan Liens Binding on Parties in Interest. The stipulations and admissions contained in the Interim Orders and this Final Order, including, without limitation, in recital Paragraph E of the First Interim Order and this Final Order, are binding on the Debtor's estate and any successor thereto (including, without limitation, any chapter 7 or chapter 11 trustee appointed or elected for the Debtor) and all parties in interest, including, without limitation, the Committee.[3] The claims, liens and security interests of the Prepetition Lender are hereby deemed to be finally allowed for all purposes in the Chapter 11 Case and any subsequent chapter 7 case and shall not be subject to challenge or objection by any party in interest as to validity, priority, amount or otherwise, and the Debtor and its estate are hereby deemed to have released any and all claims or causes of action against the Prepetition Lender with respect to the Prepetition Loan Documents or any related prior transactions. Notwithstanding anything to the contrary herein, the stipulations and admissions contained in the Interim Orders and this Final Order, including, without limitation, in recital Paragraph E of the First Interim Order and this Final Order are binding on the Debtor's estate, the Committee, and all parties in interest.

[3] Paragraph 29 of the First Interim Order required that any Challenge be commenced by the earlier of (a) seventy-five (75) days after entry of the First Interim Order and, (b) with respect to the Committee, sixty (60) days after the formation of the Committee (the "Challenge Deadline"). The DIP Lender granted multiple extensions of the Challenge Deadline solely with respect to the Committee and the entry of this Final Order constitutes a settlement (and waiver) of the Committee's right to commence a Challenge. No other party commenced a Challenge.

30. Limitation on Charging Expenses Against Collateral. Notwithstanding anything in the Interim Orders or this Final Order, (i) no costs or expenses of administration of this Chapter 11 Case, a successor case or any other future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code shall be charged against or recovered from the DIP Collateral or the Prepetition Loan Collateral, including Cash Collateral, pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law or equity and (ii) the Debtor (and any successor thereto, including any representatives thereof, including any trustee appointed in this Chapter 11 Case or any successor case) shall be deemed to have waived any rights, benefits or causes of action under section 506(c) of the Bankruptcy Code as they may related to or be asserted against the DIP Lender, the Prepetition Lender, the DIP Collateral or the Prepetition Loan Collateral, and such waiver shall be binding upon all parties in interest in this Chapter 11 Case. Nothing contained in the Interim Orders or this Final Order, shall be deemed a consent by the DIP Lender or the Prepetition Lender to any charge, lien, assessment or claim against, or in respect of, the DIP Collateral or the Prepetition Loan Collateral under 506(c) of the Bankruptcy Code or otherwise.

31. Payments Free and Clear. Any and all payments or proceeds remitted to the DIP Lender or the Prepetition Lender pursuant to the provisions of the Interim Orders or this Final Order or any subsequent order of the Court shall be irrevocable, received free and clear of any claim, charge, assessment or other liability, including without limitation, any such claim or charge arising out of or based on, directly or indirectly, section 506(c) (whether asserted or assessed by, through or on behalf of the Debtor) or 552(b) of the Bankruptcy Code, and solely in the case of payments made or proceeds remitted after the delivery of a Carve Out Trigger Notice,

subject to the Carve Out in all respects. No payments authorized by the Interim Orders or this Final Order shall be subject to recharacterization, avoidance, subordination or disgorgement.

32. No Marshaling/Applications of Proceeds. The DIP Lender and the Prepetition Lender shall not be subject to the equitable doctrine of 'marshaling' or any other similar doctrine with respect to any of the DIP Collateral or the Prepetition Loan Collateral, as the case may be, and proceeds shall be received and applied pursuant to this Final Order and the DIP Loan Documents notwithstanding any other agreement or provision to the contrary.

33. Section 552(b). The DIP Lender and the Prepetition Lender shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply to the DIP Lender or the Prepetition Lender in any respect.

34. Limitation of Liability. Nothing in the Interim Orders, this Final Order, the DIP Loan Documents, or the Prepetition Loan Documents shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Lender or the Prepetition Lender, or any of their successors or predecessors, of any liability for any claims arising from the prepetition or postpetition activities of the Debtor or any affiliate of the Debtor.

35. Indemnification. The Debtor shall indemnify and hold harmless the DIP Lender and its successors, assigns, affiliates, parents, subsidiaries, partners, controlling persons, representatives, agents, attorneys, advisors, financial advisors, consultants, professionals, officers, directors, members, managers, shareholders and employees, past, present and future, and their respective heirs, predecessors, successors and assigns, in accordance with the DIP Loan Documents, which indemnification is hereby authorized and approved.

36. Credit Bidding. The DIP Lender and the Prepetition Lender shall have the unqualified right to credit bid (i) up to the full amount of their respective obligations in any sale of the DIP Collateral (or any part thereof), (ii) subject to paragraph 29 of the First Interim Order and this Final Order, with respect to the Prepetition Lender, any Prepetition Loan Obligations or the Adequate Protection Claim, and (iii) any unpaid amounts due and owing to the DIP Lender or the Prepetition Lender under the Interim Orders or this Final Order, without the need for further Court order authorizing the same, and whether such sale is effectuated through section 363 or 1129 of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise.

37. Monitoring of Collateral. During normal business hours and after advanced written notice to the Debtor's counsel (email shall suffice), the Prepetition Lender and the DIP Loan Lender, and their representatives, consultants and advisors, shall be given reasonable access to the Debtor's books, records, assets and properties for purposes of monitoring the Debtor's business and the value of the DIP Collateral.

38. No Third Party Rights. This Final Order does not create any rights for the benefit of any party, creditor, equity holder or other entity other than the DIP Lender, the Prepetition Lender, the Committee, and the Debtor, and their respective successors and assigns.

39. Rights Preserved. Notwithstanding anything herein to the contrary, the entry of the Interim Orders and this Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly the DIP Lender's or the Prepetition Lender's right to seek any other or supplemental relief in respect of the Debtor, including the right to seek new, different or additional adequate protection, as applicable. Nothing contained in the Interim Orders or this Final Order shall be deemed a finding by the Court or an acknowledgement by the Prepetition

Lender that the adequate protection granted in the Interim Orders or this Final Order does in fact adequately protect the Prepetition Lender against any diminution in value of the Prepetition Loan Collateral.

40. Protection under Section 364(e) of the Bankruptcy Code. If any or all of the provisions of the Interim Orders or this Final Order are hereafter reversed, modified, vacated or stayed, such reversal, modification, vacation or stay shall not affect (i) the validity of any DIP Obligations or Adequate Protection Obligations owing to the DIP Lender or the Prepetition Lender, as applicable, incurred prior to the actual receipt by such entities of written notice of the effective date of such reversal, modification, vacation or stay, or (ii) the validity or enforceability of any claim, lien, security interest or priority authorized or created hereby or pursuant to the DIP Loan Documents with respect to any DIP Obligations or Adequate Protection Obligations owing to the DIP Lender or the Prepetition Lender, as applicable. Notwithstanding any such reversal, modification, vacation or stay, any use of Cash Collateral or the incurrence of DIP Obligations or Adequate Protection Obligations owing to the Prepetition Lender by the Debtor prior to the actual receipt by the Prepetition Lender of written notice of the effective date of such reversal, modification, vacation or stay, shall be governed in all respects by the provisions of this Final Order, and the Prepetition Lender shall be entitled to all of the rights, remedies, protections and benefits granted under section 364(e) of the Bankruptcy Code, the Interim Orders, this Final Order and the other DIP Loan Documents with respect to all uses of Cash Collateral and the incurrence of DIP Obligations and Adequate Protection Obligations owing to the Prepetition Lender.

41. Binding Nature of Order. The provisions of this Final Order shall be binding upon the Debtor and its successors and assigns (including, without limitation, any trustee or other

fiduciary hereafter elected or appointed for or on behalf of the Debtor's estate or with respect to its property).

42. Survival of Order. Solely with respect to the DIP Lender and the Prepetition Lender, the provisions of this Final Order and any actions taken pursuant hereto (a) shall survive the entry of any order: (i) confirming any plan of restructuring in the Chapter 11 Case; (ii) converting the Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code; or (iii) dismissing the Chapter 11 Case; and (b) shall continue in full force and effect notwithstanding the entry of any such order, and the claims, liens, and security interests granted pursuant to the Interim Orders and this Final Order shall maintain their priority as provided by this Final Order until (x) all of the DIP Obligations are indefeasibly paid or otherwise satisfied in full and discharged in accordance with the DIP Loan Documents and (y) the obligations owed to the Prepetition Lender are paid or otherwise satisfied in full. The DIP Obligations shall not be discharged by the entry of any order confirming any plan in the Chapter 11 Case that does not provide for payment in full of the DIP Obligations or such other treatment of the DIP Obligations as may be agreed to by the DIP Lender.

43. Priority of Terms. To the extent of any conflict between or among the Motion, the DIP Loan Documents, the Interim Orders and this Final Order, the terms and provisions of this Final Order shall govern.

44. Entry of Final Order; Effect. This Final Order shall take effect and be fully enforceable immediately upon entry hereof *nunc pro tunc* to the Petition Date, notwithstanding the possible application of Fed. R. Bankr. P. 6004(h), 7062, 9014, or otherwise, and the Clerk of this Court is hereby directed to enter this Final Order on this Court's docket in the Chapter 11 Case. Any findings of fact shall constitute a finding of fact even if it is stated as a conclusion of

law, and any conclusion of law shall constitute a conclusion of law even if it is stated as a finding of fact.

45. The Interim Orders. Except as specifically amended, supplemented, or otherwise modified hereby, all provisions of the Interim Orders, except to the extent inconsistent with this Final Order, shall remain in effect and are hereby ratified by this Final Order.

46. Committee Settlement. Notwithstanding anything else in the Interim Orders, this Final Order, or the DIP Loan Documents to the contrary, the Settlement Parties have agreed to the following terms in settlement of the Committee's informal objection to entry of this Final Order (the "Committee Settlement"), and the Committee Settlement is hereby approved:

(a) Initial Distributions of DIP Collateral. On or before September 30, 2019, the Debtor shall apply all cash held by the Debtor (including all Cash Collateral and all cash proceeds of DIP Collateral or any other property of the Debtor's estate, but excluding the LC Collateral) as of such date (the "Initial Cash Balance") as follows:

(i) The Debtor shall apply $1,100,000 plus the amount in the Carve Out Account as of the date of entry of this Final Order (together, the "Wind Down Reserve Amount") to fund a reserve to be created and maintained by the Debtor, on terms mutually agreeable to the Debtor and the Case Professionals (as such reserve may be further funded as set forth herein, the "Wind Down Reserve"), until the effective date of a liquidating plan for the Debtor which shall include such terms agreed to as part of this Committee Settlement and shall otherwise be reasonably acceptable to each of the Settlement Parties (such plan, the "Liquidating Plan"), at which point the amounts in the Wind Down Reserve shall be transferred to a liquidating trust (the "Trust") in accordance with the terms of the Liquidating Plan; and

(ii) The Debtor shall pay (A) $968,150 to the DIP Lender (the "First DIP Loan Payment"), which amount shall be applied by the DIP Lender towards the satisfaction of the DIP Obligations in accordance with the terms of the DIP Loan Documents, and (B) $170,850 (the "First GUC Payment") into a reserve to be created and maintained by the Debtor (the "GUC Reserve") until the effective date of the Liquidating Plan, at which point the

amounts in the GUC Reserve shall be transferred to the Trust in accordance with the terms of the Liquidating Plan; provided, that the foregoing distributions of the Initial Cash Balance shall only be made contemporaneously with each other and no such distributions in (ii)(A) or (ii)(B) shall occur before the other without the consent of the DIP Lender and the Committee.

(b) Future Distributions of DIP Collateral. Within five business days of receipt, and from time to time, the Debtor shall apply all cash obtained by the Debtor (including all Cash Collateral and all cash proceeds of DIP Collateral or any other property of the Debtor's estate, but excluding the LC Collateral) after the date of entry of this Final Order (the "Future Cash Proceeds") in the following order of priority (to the extent of the Future Cash Proceeds):

(i) *First*, the Debtor shall apply any additional amounts mutually agreed between the Debtor, the DIP Lender, and the Committee to the Wind Down Reserve (or, if Future Cash Proceeds are received after the effective date of the Liquidating Plan, any additional amount mutually agreed between the Trust and the DIP Lender) (any such payments, collectively, the "Supplemental Wind Down Reserve Payments");

(ii) *Second*, any portion of the Future Cash Proceeds that remains after the funding of the Wind Down Reserve in the Wind Down Reserve Amount, and the payment of any Supplemental Wind Down Reserve Payments, shall be paid by the Debtor (or, if Future Cash Proceeds are received after the effective date of the Liquidating Plan, by the Trust) on a ratable basis, (*i.e.*, 85% to the DIP Lender and 15% to the GUC Reserve) (A) to the DIP Lender, $1,700,000 less the amount of the First DIP Loan Payment (the "Second DIP Loan Payment"), which amount shall be applied by the DIP Lender towards the satisfaction of the DIP Obligations in accordance with the terms of the DIP Loan Documents, and (B) to the GUC Reserve, $300,000 less the amount of the First GUC Payment (the "Second GUC Payment"); provided, that the foregoing distributions of the Future Cash Proceeds shall only be made contemporaneously with each other and no such distributions in (ii)(A) or (ii)(B) shall occur before the other without the consent of the DIP Lender and the Committee;

(iii) *Third*, any portion of the Future Cash Proceeds that remains after the funding of the Wind Down Reserve in the Wind Down Reserve Amount, the payment of any Supplemental Wind Down Reserve Payments, and the payment in full of the First DIP Loan Payment, the Second DIP Loan Payment, the First GUC Payment and the

Second GUC Payment, shall be paid by the Debtor (or, if Future Cash Proceeds are received after the effective date of the Liquidating Plan, by the Trust), on a ratable basis (*i.e.*, 80% to the DIP Lender and 20% to the GUC Reserve), as follows: (A) an additional $10,400,000 to the DIP Lender (the "Third DIP Loan Payment"), which amount shall be applied by the DIP Lender towards the satisfaction of the DIP Obligations in accordance with the terms of the DIP Loan Documents, and (B) an additional $2,600,000 (the "Third GUC Payment") into the GUC Reserve; provided, that the foregoing distributions of the Future Cash Proceeds shall only be made contemporaneously with each other and no such distributions in (iii)(A) or (iii)(B) shall occur before the other without the consent of the DIP Lender and the Committee; and

(iv) *Fourth*, any portion of the Future Cash Proceeds that remains after the funding of the Wind Down Reserve in the Wind Down Reserve Amount, and the payment of any Supplemental Wind Down Reserve Payments, the First DIP Loan Payment, the Second DIP Loan Payment, the Third DIP Loan Payment, the First GUC Payment, the Second GUC Payment, and the Third GUC Payment shall be applied by the Debtor (or, if Future Cash Proceeds are received after the effective date of the Liquidating Plan, by the Trust) as follows: (A) 50% towards the payment of DIP Obligations and Prepetition Loan Obligations, which amount shall be applied by the DIP Lender towards the satisfaction of the DIP Obligations in accordance with the terms of the DIP Loan Documents, and (B) 50% into the GUC Reserve.

(c) Additional Terms Regarding Wind Down Reserve. Notwithstanding anything to the contrary contained herein, the amounts in the Wind Down Reserve shall be used to fund (x) the Carve-Out (including the Carve-Out Cap), which shall be held and applied by the Debtor in accordance with Paragraph 27 of this Final Order, and (y) fees and expenses incurred in connection with the wind down of the Debtor's estate (including the confirmation of the Liquidating Plan and any fees, expenses and interest payments due to Silicon Valley Bank under this Final Order; provided, that, subject to the effective date of a Liquidating Plan, no interest shall accrue under the DIP Facility on or after September 1, 2019); provided, further, that (i) no more than $250,000 of the Wind Down Reserve shall be used to fund costs associated with the Trust (such amount, the "Trust Budget"), and (ii) the Trust Budget shall be allocated as follows: (A) $100,000 to fund costs associated with the Trust solely as it relates to activities or costs incurred in connection with, or related to, general unsecured claims, including administrative costs associated with

administering general unsecured claims and making distributions to unsecured creditors in accordance with the terms of the Liquidating Plan, and (B) $150,000 to fund all other costs associated with the Trust. Silicon Valley Bank shall have no obligation to provide any funding to the Trust that is in excess of the Trust Budget. Unless otherwise agreed to by the Committee, the Liquidating Plan (or such agreement governing the Trust) shall set forth procedures, reasonably acceptable to the Debtors, the DIP Lender and the Committee, to ensure that the Liquidating Trustee (as defined herein) appropriately allocates and records its fees and expenses to ensure that such fees and expenses are properly allocated pursuant to (ii)(A) and (ii)(B) of the immediately prior sentence. Any amounts in the Wind Down Reserve that are in excess of the actual fees and expenses incurred in connection with the wind down of the Debtor's estate and payable from the Wind Down Reserve in accordance with this paragraph 46 shall be deemed to be Future Cash Proceeds and shall be distributed in accordance with paragraph 46(b) of this Final Order.

(d) Additional Terms Regarding GUC Reserve. Notwithstanding anything to the contrary contained herein, (i) all proceeds distributed into the GUC Escrow shall be free and clear of all liens, including the DIP Liens, the Prepetition Loan Liens and the Adequate Protection Liens, (ii) the terms and conditions of the agreement governing the GUC Reserve shall be acceptable to the Committee in all respects, and (iii) all funds in the GUC Reserve shall be used to fund (A) distributions to holders of allowed general unsecured claims under a Liquidating Plan, (B) administrative costs associated with reconciling general unsecured claims and making distributions to general unsecured creditors under the Liquidating Plan (solely to the extent the Trust Budget is exhausted), and (C) any other distributions to unsecured creditors that are otherwise ordered by the Court. For the avoidance of doubt, the Prepetition Secured Lender and the DIP Lender shall not be to any recoveries or distributions from the GUC Reserve.

(e) Additional Terms Regarding Carve-Out and Additional Amendments. The Carve-Out shall be funded solely in accordance with the terms of paragraph 27 as amended by this paragraph 46; provided, for the avoidance of doubt, that no additional amounts (over and above the Wind Down Reserve Amount) shall be required to fund the Carve-Out. The entry of this Final Order shall, for all purposes, be deemed to be an automatic irrevocable delivery of a Carve Out Trigger Notice by the DIP Lender in accordance with the provisions of this Final Order. The definition of "Termination Event" is amended to remove clause (ii) therefrom, and the definition of "Cash Collateral" is amended to exclude the GUC Reserve.

(f) Additional Terms of Committee Settlement. After entry of this Final Order, all decisions made by the Debtor (or, after the effective date of a Liquidating Plan, the liquidating trustee (the "Liquidating Trustee")) regarding the disposition and/or treatment of the Debtor's assets, including any litigation, settlements or otherwise related thereto, shall require (i) the consent of the DIP Lender and, prior to the effective date of the Liquidating Plan, the Committee or (ii) a further order of the Court. The Committee and the DIP Lender shall jointly determine the identity of the Liquidating Trustee.

(g) Stipulations Effective and Binding. The stipulations and admissions contained in the Interim Orders and this Final Order, including, without limitation, in recital Paragraph E of the First Interim Order and this Final Order, are immediately effective and binding on the Debtor's estate and any successor thereto (including, without limitation, any chapter 7 or chapter 11 trustee appointed or elected for the Debtor) and all parties in interest, including, without limitation, the Committee.

(h) DIP Commitment Terminated. As of the entry of this Final Order, the Commitment (as defined in the DIP Credit Agreement) is terminated and the DIP Lender shall have no further obligation to make any term loan advances in connection with any DIP Loan Document. The provisions of this Final Order that relate to the delivery of a Budget and weekly reporting shall not longer be applicable, subject to reasonable cash reporting from the Debtor upon request by the DIP Lender, with a copy to be provided to the Committee.

(i) Waiver of Defaults. The DIP Lender agrees to waive all defaults that have occurred and are continuing under the DIP Loan Documents as of entry of this Final Order.

(j) Successors and Assigns. The Committee Settlement binds and is for the benefit of the successors and assigns of each Settlement Party.

47. Retention of Jurisdiction. Notwithstanding any provision in the DIP Loan Documents or the Prepetition Loan Documents, this Court shall retain jurisdiction over all matters pertaining to the implementation, interpretation and enforcement of this Final Order, the DIP Facility or the DIP Loan Documents.

Dated: _____, 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. 13, 52, 166**

~~INTERIM~~FINAL 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~~VI) GRANTING RELATED RELIEF

Upon the motion (the "Motion") of Achaogen, Inc., as ~~a~~ debtor and debtor in possession (the "Debtor") in the above-captioned case (the "~~Debtor~~Chapter 11 Case"), for entry of ~~an~~ interim ~~order (this "Interim Order") and a~~and final ~~order (the "Final Order")~~orders under sections 105, 361, 362, 363(c), 363(e), 364(c), 364(d)(1), 364(e), and 507 of title 11 of the United States Code, 11 U.S.C. §§101-1532 (as amended, the "Bankruptcy Code"), rules 2002, 4001, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (as amended, the "Bankruptcy Rules"), and rules 4001-1 and 9013-1(m) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Local Rules"), seeking *inter alia:*

(a) authorization for the Debtor to obtain postpetition financing in the form of a term loan facility (the "DIP Facility") as set forth in that certain Senior Secured Superpriority Debtor-in-Possession Loan and Security Agreement (the "DIP Credit Agreement")[2] attached

[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 used but not otherwise defined herein have the meanings ascribed to them in the DIP Credit Agreement.

~~hereto~~ as Exhibit 1 to the First Interim Order (as amended, supplemented, or otherwise modified from time to time), by and among the Debtor and Silicon Valley Bank (in such capacity, the "DIP Lender"), up to the aggregate principal amount of Twenty Five Million Dollars ($25,000,000), subject to the terms of ~~this~~the Interim ~~Order, the~~ Orders (as defined below), this final order (this "Final Order"), and all other agreements, documents, instruments, delivered or executed in connection therewith, as hereafter amended, supplemented or otherwise modified from time to time, including the Budget (as defined ~~below~~in the Interim Orders) (collectively, together with the DIP Credit Agreement, the "DIP Loan Documents");

(b) authorizing the continued use of Cash Collateral (as defined below) by the Debtor effective as of the Petition Date;

(c) subject to the Carve Out and KEIP/KERP Plan Amount (as each such term is defined below), granting to the DIP Lender on account of the DIP Facility and all obligations owing thereunder and under, or secured by, the DIP Loan Documents (collectively, and including all "Obligations" as defined in the DIP Credit Agreement, the "DIP Obligations") allowed superpriority administrative expense claim status in the Debtor's chapter 11 case (the "Chapter 11 Case");

(d) subject to the Carve Out and KEIP/KERP Plan Amount, granting to the DIP Lender automatically perfected security interests in and liens on the DIP Collateral (as defined below) to the extent set forth herein;

(d) vacating and modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of this ~~Interim Order and the~~ Final Order, in each case, to the extent set forth herein;

(e) subject to the Carve Out and KEIP/KERP Plan Amount, granting adequate protection to the Prepetition Lender (as defined below)~~; (f) scheduling a final hearing (the "Final Hearing") to consider entry of the Final Order~~; and

(g) granting related relief.

The Court having found that the relief requested in the Motion is in the best interests of the Debtor, its estate, its creditors, and other parties in interest; and the Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before the Court on ~~[ ] (the "Interim Hearing~~April 16, 2019 (the "Interim Hearing"); 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 "First Interim Order"); and the Court having entered the *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* [Docket No. 166] (the "Second Interim Order," and together with the First Interim Order, the "Interim Orders"); and the Court having heard the statements in support of the relief requested in the Motion at a hearing before the Court on September 25, 2019 (the "Final Hearing" and, together with the Interim Hearing, collectively, the "Hearings"); and the Court having determined that the legal and factual bases set forth in the Motion, the *Declaration of Blake Wise in Support of First Day Relief* (the "First Day Declaration"); and at the ~~Interim Hearing~~Hearings establish just cause for the relief

granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY FOUND AND CONCLUDED THAT:**

A. Disposition. The Motion is granted on ~~an interim~~a final basis in accordance with the terms of this ~~Interim~~Final Order. Any objections, reservations of rights, and/or other statements with respect to the Motion with respect to the entry of this ~~Interim~~Final Order that have not been withdrawn, waived, or settled are hereby denied and overruled on the merits.

B. Commencement of Chapter 11 Case. On April 15, 2019 (the "Petition Date"), the Debtor filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor is continuing to operate its business as a debtor and debtor in possession under sections 1107 and 1108 of the Bankruptcy Code. ~~No~~An official committee of unsecured creditors (the "Committee") ~~or~~was appointed on April 23, 2019. No chapter 11 trustee has been appointed in the Chapter 11 Case.

C. Jurisdiction and Venue. This Court has jurisdiction over the Chapter 11 Case, the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. Consideration of the Motion constitutes a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The Court may enter a final order consistent with Article III of the United States Constitution. Venue for the Chapter 11 Case in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The predicates for the relief sought herein are sections 105, 361, 362, 363(c), 363(e), 364(c), 364(d)(1), 364(e), and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6004 and 9014, and Bankruptcy Local Rules 4001-1 and 9013-1(m).

D. Adequate Notice. On the Petition Date, the Debtor filed the Motion with this Court pursuant to Bankruptcy Rules 2002, 4001, and ~~9014, and represents that it~~9014. The Debtor provided timely notice of the ~~Motion~~Interim Orders and the ~~Interim~~Final Hearing by

electronic mail, facsimile, hand delivery, or overnight delivery to the following parties and/or their respective counsel as indicated below (collectively, the "Notice Parties"): (a) the Office of the United States Trustee for the District of Delaware; (b) the Debtor's top twenty (20) unsecured creditors; (c) SVB, in its capacity as Prepetition Lender and DIP Lender; (d) all other known holders of prepetition liens, encumbrances or security interests against the Debtor's property; (e) the Internal Revenue Service; (f) the Securities and Exchange Commission; (g) the Delaware Secretary of State; (h) the Delaware Secretary of the Treasury; (i) any party that has requested notice pursuant to Bankruptcy Rule 2002; and (j) any other party required to be provided notice under Local Rule 9013-1(m).

E. Debtor's Stipulations on the Prepetition Loan Obligations. The Debtor acknowledges, admits, represents, stipulates, and agrees that:

(i) *Prepetition Loan Agreement*: As of the Petition Date, the Debtor was indebted and liable, without defense, counterclaim, or offset of any kind to the lenders under that certain Loan and Security Agreement, dated as of February 26, 2018 (as heretofore amended, supplemented, or otherwise modified, including by that certain Waiver and First Amendment to Loan and Security Agreement, dated as of April 12, 2019, the "Prepetition Loan Agreement" and, together with all other agreements, documents and instruments executed and/or delivered in connection therewith, as all of the same have been supplemented, modified, extended, renewed, restated, and/or replaced at any time prior to the Petition Date, the "Prepetition Loan Documents"), among the Debtor, and Silicon Valley Bank (the "Prepetition Lender") in the aggregate principal amount of $15,000,000.00 (the "Prepetition Loan Facility") as of the Petition Date. All obligations of the Debtor arising under the Prepetition Loan Agreement or any other Prepetition Loan Documents, including under the Prepetition Loan Facility, shall hereinafter be

referred to collectively as the "Prepetition Loan Obligations". ~~Pursuant to~~As of the date of this Final Order and as set forth herein~~, all of the~~, outstanding Prepetition Loan Obligations ~~will be~~, in the amount of $15,000,000.00 are repaid with proceeds of the DIP Facility ~~upon entry of the Final DIP Order~~.

(ii) The liens and security interests securing the Prepetition Loan Obligations are referred to herein as the "Prepetition Loan Liens" and the collateral to which such Prepetition Loan Liens attach, the "Prepetition Loan Collateral".

(iii) *Value of the Prepetition Collateral*. At all times prior to the Petition Date, the aggregate value of the Prepetition Loan Collateral exceeded the aggregate amount of the Prepetition Loan Obligations.

(iv) *No Claims*. The Debtor has no valid claims (as such term is defined in section 101(5) of the Bankruptcy Code) or causes of action against the Prepetition Lender with respect to the Prepetition Loan Documents, the Prepetition Loan Obligations, the Prepetition Loan Liens, any prior financing transactions, or otherwise, whether arising at law or at equity, including, without limitation, any challenge, recharacterization, subordination, avoidance, or other claims arising under or pursuant to sections 105, 510, 541, or 542 through 553, inclusive, of the Bankruptcy Code.

(v) *Release.* ~~Subject to entry of the Final Order, the~~The Debtor hereby stipulates and agrees that it forever, unconditionally and irrevocably releases, discharges and acquits the Prepetition Lender and each of its successors, assigns, affiliates, subsidiaries, parents, officers, shareholders, directors, employees, attorneys, and agents, past, present, and future, and their respective heirs, predecessors, successors, and assigns (collectively, the "Releasees") of and from any and all claims, controversies, disputes, liabilities, obligations, demands, damages,

expenses (including, without limitation, reasonable attorneys' fees), debts, liens, actions, and causes of action of any and every kind whatsoever, whether arising in law or otherwise, and whether or not known or matured, arising out of or relating to, as applicable, the Interim Orders, this Final Order, the DIP Facility, the DIP Loan Documents, the Prepetition Loan Facility, and the Prepetition Loan Documents, any prior financing transaction between the Debtor and any Releasee, and/or the transactions contemplated hereunder or thereunder including, without limitation, (x) any so-called "lender liability" or equitable subordination claims or defenses, (y) any and all claims and causes of action arising under the Bankruptcy Code, and (z) any and all claims and causes of action with respect to the validity, priority, perfection or avoidability of the liens or claims of the DIP Lender and the Prepetition Lender; provided that the forgoing shall not release any claims against a Releasee that a court of competent jurisdiction determines results primarily from the bad faith, gross negligence, or willful misconduct of such Releasee. The Debtor further waives and releases any defense, right of counterclaim, right of set-off, or deduction to the payment of the Prepetition Loan Obligations and the DIP Obligations, which the Debtor now has or may claim to have, directly or indirectly against the Releasees, arising out of, connected with or relating to any and all acts, omissions, or events occurring prior to the Court entering this ~~Interim~~Final Order.

(vi) *No Control.* Neither the DIP Lender nor the Prepetition Lender controls the Debtor or its properties or operations, has authority to determine the manner in which any of the Debtor's operations are conducted or is a control person or insider of the Debtor or any of its affiliates by virtue of any of the actions taken with respect to, in connection with, related to, or arising from ~~this~~the Interim Orders or this Final Order, the DIP Facility, the DIP Loan Documents, the Prepetition Loan Facility, and/or the Prepetition Loan Documents.

(vii) *Cash Collateral*. Any and all of the Debtor's cash including cash and other amounts on deposit or maintained in any account or accounts by the Debtor, whether subject to control agreements or otherwise, and any amount generated by the collection of accounts receivable or other disposition of the Prepetition Loan Collateral, and the proceeds of any of the foregoing, whether existing on the Petition Date or thereafter, constitutes the cash collateral (within the meaning of section 363(a) of the Bankruptcy Code) of the Prepetition Lender (the "Cash Collateral").

F. [Reserved].

G. Use of DIP Facility and Cash Collateral. The Debtor has an immediate and critical need to use the DIP Facility and Cash Collateral to preserve and operate its business and effectuate a restructuring of its business, which will be used in accordance with the terms of this ~~Interim~~Final Order and the Budget. ~~Upon entry of the Final Order, outstanding~~Outstanding Prepetition Loan Obligations, in the aggregate amount of $15,000,000.00, ~~will be~~are hereby repaid with proceeds of the DIP Facility. The remaining Ten Million Dollars ($10,000,000.00) available under the DIP Facility will be used in accordance with the Budget for operating expenses, to effectuate the sale of the Debtor's assets, and to provide adequate protection in accordance with ~~this~~the Interim ~~Order~~Orders and ~~the~~this Final Order. The adequate protection provided herein and other benefits and privileges contained herein are consistent with and authorized by the Bankruptcy Code and are necessary in order to avoid the objection of the Prepetition Lender. Without the use of the DIP Facility and Cash Collateral, the Debtor will not have sufficient liquidity to be able to (i) pay its vendors, (ii) fund employee wages, benefits, and related obligations, (iii) pay for the necessary services and materials to maintain compliance with regulatory requirements, (iv) pay for use of its business equipment, (v) fund its sale process, and

(vi) continue to operate its business during the pendency of the Chapter 11 Case. Moreover, the provisions of the DIP Credit Agreement ~~and~~, the Interim Orders and this Final Order were extensively negotiated and are the most favorable terms that the Debtor was able to obtain. Approval of the DIP Facility will ensure the Debtor is able to maintain its operations, pursue the Chapter 11 Case, and maximize the value of its estate for the benefit of all stakeholders. Absent authorization to immediately use a portion of the DIP Facility and Cash Collateral, the Debtor's estate and its creditors would suffer immediate and irreparable harm.

H. Roll-Up of Prepetition Loans. ~~Upon entry of the Final Order, without~~Without any further action by the Debtor or any other party, outstanding principal, interest, and other amounts under the Prepetition Loan Facility, in the aggregate amount of $15,000,000.00, ~~will be~~are hereby repaid with proceeds from the DIP Facility. The replacement and refinancing (or "roll-up") of the Prepetition Loan Obligations shall be authorized as compensation for, in consideration for, and solely on account of, the agreement of the DIP Lender (who is the Prepetition Lender) to commit to and fund the DIP Facility, and provide other consideration to the Debtor, under the DIP Facility and not as payments under, adequate protection for, or otherwise on account of, any Prepetition Loan Obligations. The Prepetition Lender would not otherwise consent to the use of their Cash Collateral or the subordination of their liens to the DIP Liens (as defined below), and the DIP Lender would not be willing to provide the DIP Facility or extend credit to the Debtor thereunder without the roll up of the Prepetition Loan Obligations into the DIP Obligations or the Term Loan Commitment Fees (as defined below). Moreover, the replacement and refinancing of all outstanding amounts under the Prepetition Loan Facility into DIP Obligations will enable the Debtor to obtain urgently needed financing critical to administering this Chapter 11 Case and

funding its operations. All security agreements in respect of the Prepetition Loan Obligations being refinanced shall continue in full force and effect in favor of the DIP Lender.

I. Other Financing Unavailable. As discussed in the First Day Declaration, the Debtor is unable to obtain (i) adequate unsecured credit allowable either (a) under sections 364(b) and 503(b)(l) of the Bankruptcy Code or (b) under section 364(c)(l) of the Bankruptcy Code, (ii) adequate credit secured by (x) a senior lien on unencumbered assets of its estate under section 364(c)(2) of the Bankruptcy Code or (y) a junior lien on encumbered assets of its estate under section 364(c)(3) of the Bankruptcy Code, or (iii) secured credit under section 364(d)(l) of the Bankruptcy Code from sources other than the DIP Lender on terms more favorable than the terms of the DIP Facility. The only source of secured credit available to the Debtor on commercial terms, other than the continued use of Cash Collateral, is the DIP Facility, and the Prepetition Lender would not give its consent to the Debtor to have its liens and security interests primed by a third party DIP financing source. Financing on a postpetition basis is not otherwise available without granting the DIP Lender: (1) perfected security interests in and liens on the DIP Collateral; (2) superpriority claims and liens; (3) the other protections set ~~for~~forth in this ~~Interim~~Final Order; and (4) a full refinancing of the outstanding Prepetition Loan Obligations.

J. Best Financing Presently Available. The DIP Lender will ~~as of the Petition Date~~ provide the Debtor with financing solely on the terms and conditions set forth in ~~this~~the Interim ~~Order (and, subject to entry by the Court, the~~Orders, this Final Order~~)~~ and the applicable DIP Loan Documents. After considering all of its alternatives, the Debtor has concluded, in an exercise of its sound business judgment, that the financing to be provided by the DIP Lender pursuant to the terms of ~~this~~the Interim ~~Order (and, subject to entry by the Court, the~~Orders, this Final Order~~)~~ and the DIP Loan Documents, represents the best financing presently available. The

DIP Lender has acted in good faith and therefore is entitled to the good faith protections under section 364(e) of the Bankruptcy Code. The DIP Lender's claims, superpriority claims, security interests, liens, and other protections granted pursuant to ~~this~~the Interim ~~Order (and, subject to entry by the Court, the~~Orders, this Final Order~~)~~ and the applicable DIP Loan Documents will not be affected by any subsequent reversal, modification, vacatur, or amendment of ~~this~~the Interim ~~Order~~Orders, ~~the~~this Final Order, or any other order, as provided in section 364(e) of the Bankruptcy Code.

K. Good Cause for Immediate Entry. Good cause has been shown for immediate entry of this ~~Interim~~Final Order pursuant to Bankruptcy Rules 4001(b)(2) and (c)(2) and Local Rule 4001-2. In particular, the authorization granted herein for the Debtor to enter into the DIP Facility, to continue using Cash Collateral and to obtain ~~interim~~ financing, including on a priming lien basis as set forth herein, is necessary to avoid immediate and irreparable harm to the Debtor and its estate. Entry of this ~~Interim~~Final Order is in the best interest of the Debtor, its estate, and creditors. The terms of the DIP Facility are fair and reasonable under the circumstances, reflect the Debtor's exercise of prudent business judgment consistent with its fiduciary duties, and are supported by reasonably equivalent value and fair consideration.

L. Arm's Length Negotiation. The Debtor, the DIP Lender, and the Prepetition Lender have negotiated the terms and conditions of the DIP Facility, the Interim Orders and this ~~Interim~~Final Order in good faith and at arm's length, and any credit extended and loans made to the Debtor pursuant to ~~this~~the Interim Orders and this Final Order shall be, and hereby are, deemed to have been extended, issued or made, as the case may be, in "good faith" within the meaning of section 364(e) of the Bankruptcy Code.

M. Adequate Protection for the Prepetition Lender. The Prepetition Lender has acted in good faith regarding the DIP Facility and the Debtor's continued use of the Prepetition Loan Collateral (including the Cash Collateral) to fund the administration of the Debtor's estate and continued operation of its business, in accordance with the terms hereof. The Prepetition Lender has consented to the Debtor's use of the Prepetition Loan Collateral, including the Cash Collateral, in accordance with the terms hereof. The Prepetition Lender is entitled to the adequate protection provided in ~~this~~the Interim Orders and this Final Order as and to the extent set forth therein and herein pursuant to §§ 361, 363 and 364 of the Bankruptcy Code. Based on the Motion and on the record presented to the Court at the ~~Interim Hearing~~Hearings, as of the Petition Date the terms of the proposed adequate protection arrangements and of the use of the Prepetition Loan Collateral are fair and reasonable, reflect the Debtor's prudent exercise of business judgment and constitute reasonably equivalent value and fair consideration for the use of Cash Collateral; provided, that nothing in ~~this~~the Interim Orders, this Final Order or the other DIP Loan Documents shall prejudice, limit, or otherwise impair the rights of the Prepetition Lender to seek new, different, or additional adequate protection.

N. Committee Settlement. The Committee Settlement (as defined herein) set forth in paragraph 46 of this Final Order resolves the informal objection of the Committee to the entry of this Final Order, and is fair, reasonable, and in best interests of the Debtor, its estate, its creditors, and other parties in interest. Silicon Valley Bank (as DIP Lender and Prepetition Lender), the Committee, and the Debtor (collectively, the "Settlement Parties") have negotiated the terms and conditions of the Committee Settlement in good faith and at arm's length. The terms of the Committee Settlement reflect the considered judgment of the Settlement Parties with respect to the probability of success in litigation against the DIP Lender and the Prepetition Lender, the

complexity of any such litigation, the inconvenience and delay necessarily attending such litigation, and the paramount interests of the Debtor's creditors.

O. ~~N.~~ Order of the Court. Based upon the foregoing findings, acknowledgements, and conclusions, and upon the record made before this Court at the ~~Interim Hearing~~Hearings, and good and sufficient cause appearing therefor:

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

1. Motion Granted. The Motion is granted on ~~an interim~~a final basis, subject to the terms set forth herein. Any objections, reservations of rights, and/or other statements with respect to the Motion that have not previously been withdrawn or resolved are hereby overruled on their merits. This ~~Interim~~Final Order shall be valid, binding on all parties in interest, and fully effective immediately upon entry notwithstanding the possible application of Bankruptcy Rules 6004(h), 7062, and/or 9014. All actions taken in connection with or in reliance on the Interim Orders are hereby reaffirmed.

2. Authority to Enter Into DIP Facility. The Debtor ~~is hereby~~was, by the Interim Orders, and, pursuant to this Final Order is, authorized to incur and perform the obligations arising from and after the ~~date of this Interim Order~~Petition Date under the DIP Facility, on the terms set forth in this ~~Interim~~Final Order, including the Debtor's entry into, execution and delivery of the DIP Credit Agreement attached ~~hereto~~to the First Interim Order as Exhibit 1 and such additional documents, instruments, and agreements as may be reasonably required by the DIP Lender to implement the terms or effectuate the purposes of and transactions contemplated by ~~this Interim Order, the Final Order (when entered by the Court) and the DIP Credit Agreement (collectively, this Interim Order, the Final Order, the DIP Credit Agreement, and such additional~~

~~documents, instruments, and agreements, the "DIP Loan Documents")~~the Interim Orders, this Final Order and the other DIP Loan Documents. The Debtor is authorized to execute and deliver the DIP Loan Documents and borrow money under the DIP Facility, on ~~an interim~~a final basis, up to an aggregate principal amount not to exceed ~~Four~~Twenty Five Million ~~Three Hundred Thousand~~ Dollars ($~~4,300,000.00) during the period prior to entry of the Final Order~~25,000,000.00), on the terms set forth in this ~~Interim~~Final Order and the DIP Loan Documents.

3. DIP Liens. As used herein, "DIP Collateral" shall include all prepetition and postpetition tangible and intangible property and assets, whether real or personal of the Debtor, including, without limitation, all assets and property pledged under the DIP Loan Documents, and all cash, any investment of such cash, inventory, accounts receivable, including intercompany accounts (and all rights associated therewith), other rights to payment whether arising before or after the Petition Date, contracts, contract rights, chattel paper, goods, investment property, inventory, deposit accounts, and all amounts on deposit therein from time to time, equity interests, securities accounts, securities entitlements, securities, commercial tort claims and claims that may constitute commercial tort claims (known and unknown), books, records, plants, equipment, general intangibles, documents, instruments, interests in leases and leaseholds, interests in real property, fixtures, payment intangibles, tax or other refunds, insurance proceeds, letters of credit, letter of credit rights, supporting obligations, machinery and equipment, patents, copyrights, trademarks, tradenames, other intellectual property, all licenses therefor, and all proceeds, rents, profits, products, and substitutions, if any, of any of the foregoing; provided that DIP Collateral shall not include any Bankruptcy Recoveries, but~~, subject to entry of the Final Order,~~ the DIP Collateral shall include the proceeds of any Bankruptcy

Recoveries. Notwithstanding anything to the contrary contained herein or in the DIP Loan Documents, the DIP Collateral shall not include any right, title, or interest in: (a) that certain lease dated as of August 12, 2016 (as amended, the "Lease") between AP3-SF2 CT South LLC (the "Landlord") and the Debtor for certain premises (the "Premises") in that certain building located at One Tower Place, South San Francisco, California, any leasehold estate created by the Lease, or any fixtures constituting a portion of the premises within, on, or about the Premises; (b) any sublease of the Premises or the Lease (or any portion thereof), any related sublease rents, or any subleasehold estate created by any such sublease; and/or (c) any letter of credit (or the proceeds thereof) or security deposits related to the Lease or any sublease of the Premises; provided, that the term "DIP Collateral" shall include the economic value of the proceeds of any sale or other disposition of, and any other proceeds or products of, each of (a), (b) and (c) of this sentence. Effective as of the Petition Date and in each case perfected without the necessity of the execution by the Debtor (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages, or other similar documents, or by possession or control, subject to the Carve Out and KEIP/KERP Plan Amount, the following security interests and liens ~~are~~were granted under the Interim Orders and hereby continue to be granted to the DIP Lender:

(a) Pursuant to section 364(d)(1) of the Bankruptcy Code, the DIP Obligations are secured by a perfected first priority priming security interest and lien on all DIP Collateral (such security interest and lien, the "Priming Lien"), to the extent that such property and assets are subject to liens that secure the obligations of the Debtor under the Prepetition Loan Documents (collectively, the "Primed Liens");

(b) The Priming Lien shall be senior (i) in all respects to the Primed Liens and (ii) to any liens granted to provide adequate protection in respect of any of the Primed Liens;

(c) The Primed Liens shall be primed by and made subject and subordinate to the Priming Liens;

(d) Pursuant to section 364(c)(2) of the Bankruptcy Code, the DIP Obligations are secured by a perfected first priority security interest and lien on all DIP Collateral of the Debtor (other than Bankruptcy Recoveries (as defined below)) to the extent such property and assets are not subject to valid, perfected, and non-avoidable liens as of the Petition Date ~~(it being agreed and understood~~; provided, that the ~~Final Order shall grant, for the benefit of the DIP Facility,~~DIP Lender is hereby granted a perfected security interest pursuant to this clause in any recoveries of Debtor, by settlement or otherwise, in respect of claims and causes of action to which Debtor may be entitled to assert by reason of any avoidance or other power vested in or on behalf of a debtor or the estate of a debtor under chapter 5 of the Bankruptcy Code ("Bankruptcy Recoveries")~~)~~;

(e) Pursuant to section 364(c)(3) of the Bankruptcy Code, the DIP Obligations are secured by a perfected junior-priority security interest and lien on all DIP Collateral of the Debtor to the extent that such property and assets are subject to valid, perfected, and unavoidable liens in favor of third parties that were in existence immediately prior to the Petition Date, or to valid and unavoidable liens in favor of third parties that were in existence immediately prior to the Petition Date that were perfected subsequent to the Petition Date as permitted by Section 546(b) of the Bankruptcy Code (other than the existing Prepetition Loan Liens, which existing liens will be primed by this ~~Interim~~Final Order), junior to the priority of such liens in favor of such third parties; and

(f) The foregoing liens and security interests are referred to herein as "DIP Liens".

4. DIP Superpriority Claims. In addition to the liens and security interests granted to the DIP Lender pursuant to ~~this~~the Interim Orders and this Final Order, subject and subordinate to the Carve Out and the KEIP/KERP Plan Amount, and in accordance with sections 364(c)(1), 503, and 507 of the Bankruptcy Code, all of the DIP Obligations (including, without limitation, all DIP Extensions of Credit (as defined below)), shall constitute allowed superpriority administrative expense claims of the DIP Lender (the "DIP Superpriority Claims") with priority over any and all administrative expenses of the Debtor, whether heretofore or hereafter incurred, of the kind specified in, or ordered pursuant to, sections 105, 326, 328, 330, 331, 364, 365, 503(b), 506(c) ~~(subject to entry of the Final Order)~~, 507(a), 507(b), 1113, 1114, or any other provisions of the Bankruptcy Code.

5. Continuation of Prepetition Loan Liens. The liens granted to the Prepetition Lender under the Prepetition Loan Documents shall continue in full force and effect and shall continue to secure the obligations of the Debtor under the Prepetition Loan Documents, provided that such liens are Primed Liens and junior to the DIP Liens.

6. Roll Up. ~~Upon entry of the Final Order, without~~Without any further action by the Debtor or any other party, and as a condition to the provision of further liquidity under the DIP Facility, Prepetition Loan Obligations, in the aggregate amount of $15,000,000.00, ~~shall be~~are hereby repaid with proceeds of the DIP Facility in accordance with the terms of the DIP Credit Agreement and this Final Order.

7. Use of Cash Collateral and DIP Extensions of Credit. Subject to Paragraph 24 of this ~~Interim~~Final Order, the Debtor is hereby authorized to continue to use Cash Collateral and

the proceeds of any borrowings under the DIP Facility in accordance with the DIP Credit Agreement and the other terms and conditions set forth in this ~~Interim~~Final Order and the DIP Loan Documents and subject to and in accordance with the Budget ~~(as defined below)~~.

8. DIP Extensions of Credit. All loans made to or for the benefit of the Debtor on or after the Petition Date in accordance with the DIP Loan Documents are herein referred to as the "DIP Extensions of Credit". The DIP Extensions of Credit: (a) shall be evidenced by the books and records of the DIP Lender; (b) shall bear interest payable and incur fees at the rates set forth in the applicable provisions of the DIP Credit Agreement; (c) shall be secured in the manner specified herein and in the DIP Loan Documents; (d) shall be payable in accordance with the DIP Loan Documents and ~~Interim~~this Final Order; and (e) shall otherwise be governed by the terms set forth in this ~~Interim~~Final Order and the other DIP Loan Documents. The DIP Lender shall have no obligation to make any DIP Extension of Credit or any other financial accommodation hereunder unless all conditions precedent to making DIP Extensions of Credit under the DIP Credit Agreement have been satisfied or waived in accordance with the DIP Credit Agreement.

9. Adequate Protection for the Prepetition Lender. In addition to all the existing security interests and liens previously granted to the Prepetition Lender, which security interests and liens shall continue in full force and effect and secure the Prepetition Loan Obligations as adequate protection for, and to secure the payment of an amount equal to the diminution of the value of the Prepetition Loan Collateral, due to the Debtor's sale, use, or lease of such Prepetition Loan Collateral, and as an inducement for the Prepetition Lender to permit the Debtor's use of the Cash Collateral as provided for in this ~~Interim~~Final Order, the Prepetition Lender is hereby granted, subject to the Carve Out and the KEIP/KERP Plan Amount, the following adequate

protection (the ""Adequate Protection Obligations"), pursuant to sections 361, 363(e), 364(d)(1), and 507 of the Bankruptcy Code:

(a) ***Adequate Protection Liens.*** Effective as of the Petition Date and in each case perfected without the necessity of the execution by the Debtor (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages or other similar documents, or by possession or control, the following security interests and liens are hereby granted to the Prepetition Lender: A valid, binding, continuing, enforceable, fully-perfected replacement (and if applicable, new) security interest in and lien on the DIP Collateral (the "Adequate Protection Liens"). The Adequate Protection Liens are junior to the liens securing the DIP Facility.

(b) ***Adequate Protection Claims.*** An allowed administrative expense claim against the Debtor with priority over all other administrative claims in the Case (subject only to the Carve Out and the KEIP/KERP Plan Amount), including all claims of the kind specified under sections 503(b) and 507(b) of the Bankruptcy Code (the "Adequate Protection Claims"), which administrative claim shall have recourse to and be payable from all prepetition and postpetition property of the Debtor, excluding the Carve Out and the KEIP/KERP Plan Amount. The Adequate Protection Claims are junior to the DIP Superpriority Claims.

(c) ***Payment of Interest.*** As additional adequate protection, so long as any Prepetition Loan Obligations remain outstanding, the Debtor is authorized and directed to pay interest on the Prepetition Loan Obligations in accordance with the Prepetition Loan Documents.

(d) ***Fees and Expenses.*** As additional adequate protection, the Debtor is authorized and directed to pay: (i) ~~immediately upon the entry of this Interim Order,~~ the reasonable and documented professional fees, expenses, and disbursements (including, but not

limited to, the fees, expenses and disbursements of counsel and other third-party consultants, including financial advisors) incurred by the Prepetition Lender arising prior to the Petition Date; and (ii) in regular course, all reasonable and documented out-of-pocket fees and expenses incurred by the Prepetition Lender arising on or after the Petition Date, subject to paragraph 19 of this ~~Interim~~Final Order. The Prepetition Lender (and each of its professionals) shall not be required to comply with U.S. Trustee fee guideline or file applications or motions with, or obtain approval of, the Court for the payment of any of their out-of-pocket costs, fees, expenses, disbursements and other charges.

10. Budget. The ~~budget annexed hereto as **Exhibit 2** (as it may be updated periodically in accordance with this Interim Order and the DIP Loan Documents, the "Budget"), hereby is approved~~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 the Court. Beginning on the first Friday following the Petition Date (as defined in the DIP Credit Agreement), and then no later than the Friday of each subsequent calendar week, the Debtor shall deliver to the DIP Lender an updated, proposed Budget (each, a "Proposed Budget") for the following 13-week period, which shall be in form and substance satisfactory to the DIP Lender. A Proposed Budget shall become the new Budget upon approval by the DIP Lender (which must be in writing) and, if no such approval is received, the prior approved budget shall continue in place and the DIP Lender and the Debtor shall negotiate in good faith regarding the terms of the Proposed Budget. The Debtor shall not permit the amount of its actual disbursements (excluding payment of all Bank Expenses (as defined in the DIP Credit Agreement)) for any week to exceed one hundred fifteen percent (115.0%) of the disbursements shown in the Budget for such week and on an aggregate basis, and the Debtor shall not permit the

actual cash receipts for any week to be less than eighty-five percent (85.0%) of the cash receipts shown in the Budget for such week and on an aggregate basis (the "Budget Variances"; all references in this ~~Interim~~Final Order and the DIP Loan Documents to "Budget" shall mean the Budget as it is subject to the Budget Variances). The Debtor shall also deliver with each updated Budget a variance report reflecting on a line item and an aggregate basis, Debtor's actual unrestricted cash receipts and cash disbursements compared to the Budget for such immediately preceding week and for the period commencing on the Petition Date through and including the end of the week immediately preceding the date of the variance report. For the avoidance of doubt, for purposes of calculating the Budget Variances, any unused amounts set forth in the Budget for any period of determination may be carried forward and used during subsequent periods.

11. Weekly Reporting. The Debtor will deliver a weekly reporting package to the DIP Lender, which shall consist of a Proposed Budget, the variance report, and any other reporting required by the DIP Loan Documents.

12. Cash Management. The Debtor shall maintain its cash management arrangements in a manner consistent with that described in the orders approving the Debtor's motion for authorization to maintain its existing cash management system, which orders shall be in form and substance acceptable to the DIP Lender. Silicon Valley Bank is authorized to apply and/or liquidate all amounts held as collateral (the "LC Collateral") for the Debtor's reimbursement obligations arising from any letter of credit issued by Silicon Valley Bank in accordance with the terms thereof.

13. Validity of DIP Loan Documents. The DIP Loan Documents shall constitute valid and binding obligations of the Debtor, enforceable against the Debtor in accordance with the

terms thereof. No obligation, payment, transfer or grant of security under the DIP Loan Documents as approved under ~~this~~the Interim Orders or this Final Order shall be stayed, restrained, voided, voidable, or recoverable under the Bankruptcy Code or under any applicable non-bankruptcy law, or subject to any defense, reduction, setoff, recoupment, or counterclaim.

14. Preservation of Liens and Rights Granted Under this ~~Interim~~Final Order. Except as otherwise expressly provided for herein (including with respect to the Carve Out and the KEIP/KERP Plan Amount), or permitted under the DIP Credit Agreement, no claim or lien having a priority superior to or *pari passu* with those granted by ~~this~~the Interim Orders or this Final Order to the DIP Lender or to the Prepetition Lender, respectively, shall be granted or allowed while any portion of (a) the DIP Facility (or any refinancing thereof in accordance with the DIP Loan Documents) or the commitments thereunder or the DIP Obligations remain outstanding, or (b) the Prepetition Loan Obligations remain outstanding. Subject to the Carve Out and the KEIP/KERP Plan Amount, the DIP Liens, the Adequate Protection Liens, and the Prepetition Loan Liens shall not be (i) subject or junior to any lien or security interest that is avoided and preserved for the benefit of the Debtor's estate under section 551 of the Bankruptcy Code or (ii) subordinated to or made *pari passu* with any liens arising after the Petition Date including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other domestic or foreign governmental unit (including any regulatory body), commission, board or court for any liability of the Debtor.

15. Automatic Effectiveness of Liens. The automatic stay imposed under section 362(a) of the Bankruptcy Code is hereby vacated and modified to permit the Debtor to grant the liens and security interests to the DIP Lender and the Prepetition Lender contemplated by ~~this~~the Interim Orders, this Final Order and the other DIP Loan Documents.

16. Automatic Perfection of Liens. The DIP Liens and the Adequate Protection Liens granted pursuant to ~~this~~the Interim Orders and this Final Order shall constitute valid, enforceable, nonavoidable, and duly perfected first priority security interests and liens (subject to the priorities set forth in this ~~Interim~~Final Order). The DIP Lender and the Prepetition Lender shall not be required to file or serve financing statements, notices of lien, mortgage deeds, deeds of trust or similar instruments which otherwise may be required under federal, state or local law in any jurisdiction, or take any action, including taking possession or control, to validate and perfect the DIP Liens and the Adequate Protection Liens, respectively, pursuant to this ~~Interim~~Final Order. The failure by the Debtor to execute any documentation relating to the DIP Liens or the Adequate Protection Liens or deliver possessory collateral shall in no way affect the validity, enforceability, perfection, or priority of such liens. The DIP Lender and the Prepetition Lender ~~are~~were, by the Interim Orders, and hereby are authorized, but not required, to file or record financing statements, trademark filings, copyright filings, mortgages, deeds of trust, notices of lien, or similar instruments in any jurisdiction or take any other action in order to validate and perfect the liens and security interests granted to them hereunder and under the DIP Credit Agreement, the Prepetition Loan Agreement, the Interim Orders, or this ~~Interim~~Final Order. Whether or not the DIP Lender or the Prepetition Lender shall file such financing statements, trademark filings, copyright filings, mortgages, deeds of trust, notices of lien or similar instruments or otherwise take any action to validate, perfect, or confirm perfection of the liens and security interests granted to them hereunder, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, nonavoidable and not subject to challenge, dispute or subordination (except as a result of the relative lien priorities set forth in this ~~Interim~~Final Order), at the time and as of the ~~date of entry of this Interim Order~~Petition Date.

17. Other Automatic Perfection Matters. To the extent that the Prepetition Lender is the secured party under any account control agreements, listed as loss payee or additional insured under any of the Debtor's insurance policies or is the secured party under any Prepetition Loan Document, the DIP Lender is also deemed to be the secured party under such account control agreements, loss payee, or additional insured under the Debtor's insurance policies and the secured party under each such Prepetition Loan Document (in any such case with the same priority of liens and claims thereunder relative to the priority of the Prepetition Loan Liens and Adequate Protection Liens, and shall have all rights and powers in each case attendant to that position (including, without limitation, rights of enforcement, but subject in all respects to the terms of this ~~Interim~~Final Order)), and shall, subject to the terms of this ~~Interim~~Final Order, act in that capacity and distribute any proceeds recovered or received in accordance with the terms of this ~~Interim Order and/or the~~ Final Order, as applicable, and the other DIP Loan Documents. Security interests in and liens on all DIP Collateral that is of a type such that perfection of a security interest therein may be accomplished by possession or control by a secured party will be delivered, upon written request, to the DIP Lender, provided that the DIP Lender continues to retain a properly perfected lien on such DIP Collateral by virtue of ~~this~~the Interim Orders and this Final Order even if such other party fails to timely deliver possession to the DIP Lender.

18. Protection of DIP Lender's Rights.

(a) A "Termination Event" means: (i) the Debtor shall violate the terms of this ~~Interim~~Final Order; (ii) the occurrence of an Event of Default (including without limitation a breach of any Milestone as defined in the DIP Credit Agreement), (ii) the Term Loan Maturity Date of the DIP Facility, (iii) this ~~Interim~~Final Order ceasing to be in full force and effect for any reason, (iv) Debtor shall file, propose, or support confirmation of a chapter 11 plan that is not

reasonably acceptable to the DIP Lender or Prepetition Lender, and (v) all or substantially all of the assets of the Debtor are sold without the prior written consent of the DIP Lender or the Prepetition Lender (each a "Termination Event"). Upon the occurrence and during the continuance of a Termination Event, five (5) business after the delivery, by the DIP Lender to the Debtor or its counsel (via email or otherwise), of a written notice (the "Remedies Notice") of the occurrence of a Termination Event (the "Remedies Notice Period"), unless such Termination Event is cured by the Debtor or waived by the DIP Lender, the DIP Lender may (1) declare (a) the commitment of the DIP Lender as to the DIP Facility to be terminated, whereupon such commitments and obligation shall be terminated; (b) all DIP Obligations immediately due and owing, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Debtor, whereupon all DIP Obligations shall be immediately due and payable; and (c) subject to the Carve Out and the KEIP/KERP Plan Amount, that the Debtor shall have no right to request or use any proceeds of any DIP Extensions of Credit, other than towards the satisfaction of the DIP Obligations; and (2) and exercise all rights and remedies provided in ~~this~~the Interim Orders, this Final Order and the DIP Loan Documents, as applicable. Immediately upon the delivery of the Remedies Notice, to the extent not previously provided, the Debtor shall provide a line-by-line itemization of the Budget to the DIP Lender. During the Remedies Notice Period, (i) the Debtor and DIP Lender shall have the rights and obligations set forth in, and shall act in accordance with, section 9.1 of the DIP Credit Agreement; and (ii) the Debtor, United States Trustee, and/or Committee may contest the existence or continuation of an Event of Default, or the DIP Lender~~'~~'s right to assert remedies in connection with an Event of Default set forth in a Remedies Notice, or any such other issue that may be relevant to the Bankruptcy Court or the parties, by filing of an expedited motion in the Bankruptcy Court.

Nothing in the DIP Loan Documents, the Interim Orders or this ~~Interim~~Final Order shall limit the ability of Debtor and other parties-in-interest to timely request any such expedited hearing on a motion seeking such a finding.

19. DIP Fees and Expenses. The Debtor is authorized and directed to pay all reasonable and documented fees and expenses of the DIP Lender in connection with the DIP Facility, as applicable, as provided in the applicable DIP Loan Documents, whether or not the transactions contemplated hereby are consummated, whether or not incurred prepetition or postpetition. A copy of any invoice submitted by the DIP Lender to the Debtor for the foregoing purpose shall also be delivered contemporaneously to the U.S. Trustee and counsel to the Committee~~, if any~~ (each, a "Fee Notice"). The DIP Lender (and each of its professionals) shall not be required to comply with U.S. Trustee fee guideline or file applications or motions with, or obtain approval of, the Court for the payment of any of their out-of-pocket costs, fees, expenses, disbursements and other charges. Subject to the U.S. Trustee or ~~a~~the Committee~~, if any,~~ filing a written objection with this Court to any such fees and expenses within ten (10) days after receipt of a Fee Notice, the Debtor shall pay such invoice. To the extent a timely filed objection is filed by the U.S. Trustee or the Committee, ~~if any,~~ the Debtor shall (a) pay such portion of the fees and expenses to which no objection is interposed and (b) pay any remaining fees and expenses as ordered by the Bankruptcy Court (or upon withdrawal or resolution of the objection). Payments of any amounts set forth in this paragraph are not subject to recharacterization, avoidance, subordination or disgorgement.

20. Term Loan Commitment Fees; Interest. The DIP Lender shall be entitled to receive the following commitment fees: (i) a non-refundable commitment fee of One Million Five Hundred Thousand Dollars ($1,500,000.00) (the "Initial Term Loan Commitment Fee"),

which ~~shall be deemed~~was earned as of entry of ~~this~~the First Interim Order and ~~shall be~~is due at the Term Loan Maturity Date; and (ii) a non-refundable commitment fee of One Million Five Hundred Thousand Dollars ($1,500,000.00) (the "Final Term Loan Commitment Fee" and, together with the Initial Term Loan Commitment Fee, the "Term Loan Commitment Fees"), which ~~shall be deemed~~is earned as of entry of the this Final Order and ~~shall be~~is due at the Term Loan Maturity Date; provided, that the Term B Final Payment (as defined in the Prior Loan Agreement) ~~shall be waived as of the entry of the Final Order (which, for the avoidance of doubt, shall authorize the Debtor's repayment in full of the Prepetition Loan Obligations and approve the Final Term Loan Commitment Fee)~~is hereby waived. The Debtor is authorized and directed to pay the Term Loan Commitment Fees at the Term Loan Maturity Date. The Debtor is authorized and directed to pay interest on the DIP Loan Obligations in accordance with the terms of the DIP Credit Agreement.

21. Debtor's Right to Draw under DIP Facility. Subject to the Carve Out and the KEIP/KERP Plan Amount, unless otherwise agreed to by the DIP Lender in writing in accordance with this ~~Interim~~Final Order and the DIP Credit Agreement, the Debtor's right to draw under the DIP Facility (a) shall be suspended upon the occurrence and during the continuation of any Event of Default pursuant to the DIP Credit Agreement, and (b) shall terminate upon the Term Loan Maturity Date.

22. Milestones. As a condition to the DIP Facility and the use of Cash Collateral, the Debtor shall comply with the Milestones. The term "Milestones" shall include the following: (a) on or before October 18, 2019, the Debtor shall obtain conditional approval of a disclosure statement (the "Disclosure Statement") for the Liquidating Plan (as defined herein) and solicitation procedures with respect thereto; and (b) on or before November 26, 2019, the Debtor

shall obtain final approval of the Disclosure Statement and confirmation of the Liquidating Plan. The Milestones can only be modified or waived by the DIP Lender in writing in accordance with the provisions of the DIP Credit Agreement; provided, that the Milestones that relate to the entry of this Final Order and to the sale of the Debtor's assets are deemed waived by the DIP Lender.

23. Termination of Consent to Use of Cash Collateral.

(a) Subject to the Carve Out and the KEIP/KERP Plan Amount, the Remedies Notice Period, and opportunity to cure set forth in Paragraph 18(a) of this ~~Interim~~Final Order, the consent of the DIP Lender and the Prepetition Lender to the use of Cash Collateral may be terminated following the occurrence of a Termination Event and expiration of the Remedies Notice Period, and any prior consent of the DIP Lender or Prepetition Lender to the Debtor's use of Cash Collateral shall be deemed automatically withdrawn upon expiration of the Remedies Notice Period.

24. Modifications of DIP Loan Documents. The Debtor and the DIP Lender are hereby authorized to implement, in accordance with the terms of the DIP Loan Documents, any modifications of the DIP Loan Documents (other than this ~~Interim~~Final Order) that are not materially adverse to the Debtor's estate or creditors without further notice, motion, or application to, order of or hearing before, this Court. Any material modification or amendment to the DIP Loan Documents shall only be permitted pursuant to an order of this Court (which may be sought within (3) Business Days), provided, however, that any forbearance from, or waiver of, (a) a breach by the Debtor of a covenant, representation or any other agreement or (b) a default or an Event of Default (including breach of any Milestone), in each case under the DIP Loan Documents, shall not require an order of this Court. 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 Final Order, with the Committee being provided reasonable advance written notice of such amendments.

25. DIP Lender and Prepetition Lender Authorization. Notwithstanding any provision of the Prepetition Loan Documents or the DIP Loan Documents, the DIP Lender and the Prepetition Lender are hereby authorized to make any and all account transfers requested by the Debtor in accordance with the Budget, the Interim Orders and this ~~Interim~~Final Order, and is further authorized to take any other action reasonably necessary to implement the terms of this ~~Interim~~Final Order.

26. Waiver of Requirement to File Proofs of Claim. The DIP Lender and the Prepetition Lender shall not be required to file proofs of claim in the Chapter 11 Case or any successor case in order to maintain their respective claims for payment of the obligations under their respective loan documents. The statements of claim in respect of the DIP Obligations and the Prepetition Loan Obligations set forth in ~~this~~the Interim Orders and this Final Order, together with the evidence accompanying the Motion and presented at the ~~Interim Hearing~~Hearings are deemed sufficient to and do constitute proofs of claim in respect of such obligations and such secured status.

27. Carve Out.

(a) Carve Out. For purposes of this ~~Interim~~Final Order: (i) "Carve Out" means all Obligations, Prepetition Loan Obligations and Reinstated Prior Obligations and the repayment of any of the foregoing, and the Liens and Superpriority Claims of the DIP Lender shall be subject to and subordinate to a carve out for payment of: (A) all fees required to be paid pursuant to the Clerk of the Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code prior to or after delivery by the DIP Lender of a Carve Out

Trigger Notice plus interest at the statutory rate, plus (B) all reasonable fees and expenses up to $20,000 incurred by a trustee under section 726(b) of the Bankruptcy Code, plus (C) subject to the Budget, all unpaid Case Professional Fees and Expenses (excluding any success or completion fees payable to the Committee Case Professionals) incurred at any time prior to delivery by the DIP Lender of a Carve Out Trigger Notice, plus (D) Case Professional Fees and Expenses (excluding any success or completion fees payable to the Committee Case Professionals) in an aggregate amount not to exceed the applicable Carve Out Cap incurred after delivery by the DIP Lender of the Carve Out Trigger Notice, plus (E) all earned and unpaid advisory, success, transaction, completion or other fees and expenses payable to the Investment Banker pursuant to the Investment Banker Agreement incurred at any time that are allowed by the Bankruptcy Court, (ii) "Carve Out Cap" means an aggregate amount of Case Professional Fees and Expenses in accordance with the Budget not to exceed $250,000.00; provided, that the Carve Out Cap shall be reduced on a dollar-for-dollar basis by any payments of any Case Professional Fees and Expenses made after delivery of the Carve Out Trigger Notice in respect of fees and expenses incurred after delivery of the Carve Out Trigger Notice, (iii) "Case Professional Fees and Expenses" means, all accrued and unpaid fees, disbursements, costs and expenses incurred by Case Professionals in accordance with the Budget and allowed by the Bankruptcy Court at any time; provided, that the term "Case Professional Fees and Expenses" shall not include any advisory, success, transaction, completion or other fees and expenses payable or paid to the Investment Banker; and (iv) "Carve Out Trigger Notice" means a written notice delivered by email (or other electronic means) by the DIP Lender to the Debtor, its counsel, the United States Trustee, and lead counsel to ~~any~~the Committee, stating that the Carve

Out Cap has been invoked, which notice may be delivered at any time following the occurrence of any Event of Default under the DIP Credit Agreement.

(b) Carve Out Reserve. Until the Term Loan Maturity Date, the Debtor shall deposit cash on a weekly basis into an account designated by the Debtor at the DIP Lender for such purpose (the "Carve Out Account") in an amount equal to the ""Carve Out"" line item shown in the Budget for that week. Proceeds deposited into the Carve Out Account shall be held in trust and used solely for purposes of the Carve Out in accordance with ~~this~~the Interim ~~Order~~Orders and ~~the~~this Final Order. The funds on deposit in the Carve Out Account shall be used to fund Carve Out expenses before any other funds of the Debtor may be used for such purpose. Any excess cash held in the Carve Out Account that is not used to fund Carve Out expenses in accordance with ~~this~~the Interim ~~Order~~Orders and this Final Order, as applicable, shall be remitted to the DIP Lender. The DIP Lender and the Prepetition Lender shall each have a security interest in any residual interest in the Carve Out Account. On the day on which a Carve Out Trigger Notice is given by the DIP Lender to the Debtor with a copy to counsel to the Committee (the "Termination Declaration Date"), the Carve Out Trigger Notice shall (i) constitute a demand to the Debtor to utilize all available cash held by the Debtor to fund any deficit in the Carve Out Reserve in an amount equal to the difference between the Carve Out Reserve balance and the amount anticipated to be need to fully fund the Carve Out (the ""Carve Out Reserve Deficit""), and (ii) only to the extent such cash on hand is insufficient for the foregoing purpose, be deemed a draw request and notice of borrowing by the Debtor for DIP Loans (as defined in the DIP Loan Documents) under the available commitments under the DIP Facility, in an amount equal to the Carve Out Reserve Deficit (any such amounts actually advanced shall constitute DIP Loans).

(c) Payment of Allowed Professional Fees Prior to the Termination Declaration Date. Any payment or reimbursement made prior to the occurrence of the Termination Declaration Date in respect of any Case Professional Fees and Expenses shall not reduce the Carve Out.

(d) No Direct Obligation to Pay Allowed Professional Fees. Neither the DIP Lender nor the Prepetition Lender shall be responsible for the payment or reimbursement of any fees or disbursements of any Case Professional incurred in connection with the Chapter 11 Case or any successor case under any chapter of the Bankruptcy Code. Without limiting the Debtor's rights under Paragraph 38(b)(ii), nothing in ~~this~~the Interim Orders, this Final Order or otherwise shall be construed to obligate the DIP Lender or the Prepetition Lender in any way, to pay compensation to, or to reimburse expenses of, any Case Professional or to guarantee that the Debtor has sufficient funds to pay such compensation or reimbursement. The DIP Lender and the Prepetition Lender reserve all rights to object to the payment or reimbursement of any fees or disbursements of any Case Professional or other parties seeking substantial contribution incurred in connection with the Chapter 11 Case or any successor case under any chapter of the Bankruptcy Code.

(e) Payment of Carve Out On or After the Termination Declaration Date. Any payment or reimbursement made on or after the occurrence of the Termination Declaration Date in respect of any Case Professional Fees and Expenses shall permanently reduce the Carve Out on a dollar-for-dollar basis. Any funding of the Carve Out shall be added to, and made a part of, the obligation secured by the DIP Collateral and shall be otherwise entitled to the protections granted under ~~this~~the Interim Orders, this Final Order, the DIP Loan Documents, the Bankruptcy Code, and applicable law.

(f) Funding of KEIP. Notwithstanding anything to the contrary contained herein or in any of the DIP Loan Documents, the Debtor's proposed key employee incentive plan shall be funded only from proceeds of a sale of the DIP Collateral that are in excess of $25,000,000.00.

28. Prohibition on Use of Collateral; Investigation Budget. A "Termination Event" shall occur if the Debtor directly or indirectly (a) investigates, asserts, or prosecutes (~~a~~i) any claims or causes of action arising under or related to the DIP Loan Documents, the Prepetition Loan Obligations, or any other financing provided to the Debtor by the Prepetition Lender, or the liens or security interests securing the obligations under any of the foregoing, or ~~to pursue a Challenge (as defined in this Interim Order); provided that the Debtor may respond to good faith inquiries from the Committee, if any, or any other party in interest with standing, or (b) any Challenge or raise~~(ii) a contested matter or adversary proceeding (a "Challenge") challenging the amount, validity or enforceability of the Prepetition Loan Obligations, the perfection or priority of the Prepetition Loan Liens or otherwise asserting any objections, claims or causes of action (including, without limitation, any actions for preferences, fraudulent conveyances, or other avoidance power claims), or the "roll-up" of the Prepetition Loan Obligations on behalf of the Debtor's estate against the Prepetition Lender relating to the Prepetition Loan Obligations or the Prepetition Loan Liens; or (b) raises any defenses to the Prepetition Loan Obligations or the DIP Obligations. No portion of the DIP Facility, the DIP Collateral (including the Prepetition Loan Collateral and the Cash Collateral), the Carve Out, or any disbursements set forth in the Budget, shall be used for the payment of professional fees, disbursements, costs, or expenses incurred by any party in interest in connection with the foregoing (a) and (b) of this paragraph; provided that not more than $25,000 in the aggregate of proceeds of any Cash Collateral or any proceeds of the

DIP Facility or the DIP Collateral may be used to pay any allowed fees (the "Investigation Fees") of the Committee~~, if any,~~ or professionals retained by the Committee and incurred in connection with investigating the matters covered by the stipulations contained in recital Paragraph E of ~~this~~the First Interim Order and this Final Order (the "Investigation Budget").

29. Stipulations Regarding Prepetition Loan Obligations and the Prepetition Loan Liens Binding on Parties in Interest. ~~Subject to entry of the Final Order, the~~The stipulations and admissions contained in ~~this~~the Interim Orders and this Final Order, including, without limitation, in recital Paragraph E of ~~this~~the First Interim Order~~, shall be~~ and this Final Order, are binding on the Debtor's estate and any successor thereto (including, without limitation, any chapter 7 or chapter 11 trustee appointed or elected for the Debtor) and all parties in interest, including, without limitation, ~~any Committee, unless (a) any Committee, or another party in interest (other than the Debtor) with standing and requisite authority, has timely commenced a contested matter or adversary proceeding (a "Challenge") challenging the amount, validity or enforceability of the Prepetition Loan Obligations, the perfection or priority of the Prepetition Loan Liens or otherwise asserting any objections, claims or causes of action (including, without limitation, any actions for preferences, fraudulent conveyances, or other avoidance power claims), or the "roll-up" of the Prepetition Loan Obligations on behalf of the Debtor's estate against the Prepetition Lender relating to the Prepetition Loan Obligations or the Prepetition Loan Liens from the later of (a) seventy-five (75) days after entry of this Interim Order and (b) with respect to any Committee, sixty (60) days after the formation of the Committee (if any). If no such Challenge is timely commenced and sustained as of such dates then, without further order of the Court, to the extent not theretofore indefeasibly repaid, satisfied, or discharged, as~~

~~applicable, (x) the~~the Committee.[3] The claims, liens and security interests of the Prepetition Lender ~~shall, without further order of the Court, be~~are hereby deemed to be finally allowed for all purposes in the Chapter 11 Case and any subsequent chapter 7 case and shall not be subject to challenge or objection by any party in interest as to validity, priority, amount or otherwise, and ~~(y) without further order of the Court,~~ the Debtor and its estate ~~shall be~~are hereby deemed to have released any and all claims or causes of action against the Prepetition Lender with respect to the Prepetition Loan Documents or any related prior transactions. Notwithstanding anything to the contrary herein, ~~if no Challenge is timely commenced,~~ the stipulations and admissions contained in ~~this~~the Interim Orders and this Final Order, including, without limitation, in recital Paragraph E of ~~this~~the First Interim Order~~, shall be~~ and this Final Order are binding on the Debtor's estate, the Committee, and all parties in interest. ~~If any such Challenge is timely commenced and/or sustained, the stipulations contained in recital Paragraph E shall nonetheless remain binding on the Debtor's estate, any Committee and all parties in interest, except to the extent that such stipulations were expressly challenged in such Challenge. Nothing in this Interim Order vests or confers on any Person (as defined in the Bankruptcy Code), including any committee appointed or formed in the Chapter 11 Case, standing or authority to pursue any cause of action belonging to the Debtor or its estate, including, without limitation, any Challenges, without prior express Court approval.~~

30. Limitation on Charging Expenses Against Collateral. ~~Subject to entry of the~~Notwithstanding anything in the Interim Orders or this Final Order, (i) no costs or expenses of

[3] Paragraph 29 of the First Interim Order required that any Challenge be commenced by the earlier of (a) seventy-five (75) days after entry of the First Interim Order and, (b) with respect to the Committee, sixty (60) days after the formation of the Committee (the "Challenge Deadline"). The DIP Lender granted multiple extensions of the Challenge Deadline solely with respect to the Committee and the entry of this Final Order constitutes a settlement (and waiver) of the Committee's right to commence a Challenge. No other party commenced a Challenge.

administration of this Chapter 11 Case, a successor case or any other future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code shall be charged against or recovered from the DIP Collateral or the Prepetition Loan Collateral, including Cash Collateral, pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law or equity and (ii) the Debtor (and any successor thereto, including any representatives thereof, including any trustee appointed in this Chapter 11 Case or any successor case) shall be deemed to have waived any rights, benefits or causes of action under section 506(c) of the Bankruptcy Code as they may related to or be asserted against the DIP Lender, the Prepetition Lender, the DIP Collateral or the Prepetition Loan Collateral, and such waiver shall be binding upon all parties in interest in this Chapter 11 Case. Nothing contained in ~~this~~the Interim Orders or this Final Order, shall be deemed a consent by the DIP Lender or the Prepetition Lender to any charge, lien, assessment or claim against, or in respect of, the DIP Collateral or the Prepetition Loan Collateral under 506(c) of the Bankruptcy Code or otherwise.

31. Payments Free and Clear. Any and all payments or proceeds remitted to the DIP Lender or the Prepetition Lender pursuant to the provisions of ~~this~~the Interim Orders or this Final Order or any subsequent order of the Court shall be irrevocable, received free and clear of any claim, charge, assessment or other liability, including without limitation, ~~subject to the entry of the Final Order,~~ any such claim or charge arising out of or based on, directly or indirectly, section 506(c) (whether asserted or assessed by, through or on behalf of the Debtor) or 552(b) of the Bankruptcy Code, and solely in the case of payments made or proceeds remitted after the delivery of a Carve Out Trigger Notice, subject to the Carve Out in all respects. No payments authorized by ~~this~~the Interim Orders or this Final Order shall be subject to recharacterization, avoidance, subordination or disgorgement.

32. No Marshaling/Applications of Proceeds. ~~Subject to entry of the Final Order, the~~The DIP Lender and the Prepetition Lender shall not be subject to the equitable doctrine of 'marshaling' or any other similar doctrine with respect to any of the DIP Collateral or the Prepetition Loan Collateral, as the case may be, and proceeds shall be received and applied pursuant to this ~~Interim~~Final Order and the DIP Loan Documents notwithstanding any other agreement or provision to the contrary.

33. Section 552(b). ~~Subject to entry of the Final Order, the~~The DIP Lender and the Prepetition Lender shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply to the DIP Lender or the Prepetition Lender in any respect.

34. Limitation of Liability. Nothing in ~~this~~the Interim Orders, this Final Order, the DIP Loan Documents, or the Prepetition Loan Documents shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Lender or the Prepetition Lender, or any of their successors or predecessors, of any liability for any claims arising from the prepetition or postpetition activities of the Debtor or any affiliate of the Debtor.

35. Indemnification. The Debtor shall indemnify and hold harmless the DIP Lender and its successors, assigns, affiliates, parents, subsidiaries, partners, controlling persons, representatives, agents, attorneys, advisors, financial advisors, consultants, professionals, officers, directors, members, managers, shareholders and employees, past, present and future, and their respective heirs, predecessors, successors and assigns, in accordance with the DIP Loan Documents, which indemnification is hereby authorized and approved.

36. Credit Bidding. ~~Subject to entry of the Final Order, the~~The DIP Lender and the Prepetition Lender shall have the unqualified right to credit bid (i) up to the full amount of their

respective obligations in any sale of the DIP Collateral (or any part thereof), (ii) subject to paragraph 29 of ~~this~~the First Interim Order and this Final Order, with respect to the Prepetition Lender, any Prepetition Loan Obligations or the Adequate Protection Claim, and (iii) any unpaid amounts due and owing to the DIP Lender or the Prepetition Lender under ~~this~~the Interim Orders or this Final Order, without the need for further Court order authorizing the same, and whether such sale is effectuated through section 363 or 1129 of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise.

37. Monitoring of Collateral. During normal business hours and after advanced written notice to the Debtor's counsel (email shall suffice), the Prepetition Lender and the DIP Loan Lender, and their representatives, consultants and advisors, shall be given reasonable access to the Debtor's books, records, assets and properties for purposes of monitoring the Debtor's business and the value of the DIP Collateral.

38. No Third Party Rights. This ~~Interim~~Final Order does not create any rights for the benefit of any party, creditor, equity holder or other entity other than the DIP Lender, the Prepetition Lender, the Committee, and the Debtor, and their respective successors and assigns.

39. Rights Preserved. Notwithstanding anything herein to the contrary, the entry of ~~this~~the Interim Orders and this Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly the DIP Lender's or the Prepetition Lender's right to seek any other or supplemental relief in respect of the Debtor, including the right to seek new, different or additional adequate protection, as applicable. Nothing contained in ~~this~~the Interim Orders or this Final Order shall be deemed a finding by the Court or an acknowledgement by the Prepetition Lender that the adequate protection granted in ~~this~~the Interim Orders or this Final Order does in

fact adequately protect the Prepetition Lender against any diminution in value of the Prepetition Loan Collateral.

40. Protection under Section 364(e) of the Bankruptcy Code. If any or all of the provisions of ~~this~~the Interim Orders or this Final Order are hereafter reversed, modified, vacated or stayed, such reversal, modification, vacation or stay shall not affect (i) the validity of any DIP Obligations or Adequate Protection Obligations owing to the DIP Lender or the Prepetition Lender, as applicable, incurred prior to the actual receipt by such entities of written notice of the effective date of such reversal, modification, vacation or stay, or (ii) the validity or enforceability of any claim, lien, security interest or priority authorized or created hereby or pursuant to the DIP Loan Documents with respect to any DIP Obligations or Adequate Protection Obligations owing to the DIP Lender or the Prepetition Lender, as applicable. Notwithstanding any such reversal, modification, vacation or stay, any use of Cash Collateral or the incurrence of DIP Obligations or Adequate Protection Obligations owing to the Prepetition Lender by the Debtor prior to the actual receipt by the Prepetition Lender of written notice of the effective date of such reversal, modification, vacation or stay, shall be governed in all respects by the provisions of this ~~Interim~~Final Order, and the Prepetition Lender shall be entitled to all of the rights, remedies, protections and benefits granted under section 364(e) of the Bankruptcy Code, ~~this~~the Interim Orders, this Final Order and the other DIP Loan Documents with respect to all uses of Cash Collateral and the incurrence of DIP Obligations and Adequate Protection Obligations owing to the Prepetition Lender.

41. Binding Nature of Order. The provisions of this ~~Interim~~Final Order shall be binding upon the Debtor and its successors and assigns (including, without limitation, any trustee

or other fiduciary hereafter elected or appointed for or on behalf of the Debtor's estate or with respect to its property).

42. Survival of Order. Solely with respect to the DIP Lender and the Prepetition Lender, the provisions of this ~~Interim~~Final Order and any actions taken pursuant hereto (a) shall survive the entry of any order: (i) confirming any plan of restructuring in the Chapter 11 Case; (ii) converting the Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code; or (iii) dismissing the Chapter 11 Case; and (b) shall continue in full force and effect notwithstanding the entry of any such order, and the claims, liens, and security interests granted pursuant to ~~this~~the Interim Orders and this Final Order shall maintain their priority as provided by this ~~Interim~~Final Order until (x) all of the DIP Obligations are indefeasibly paid or otherwise satisfied in full and discharged in accordance with the DIP Loan Documents and (y) the obligations owed to the Prepetition Lender are paid or otherwise satisfied in full. The DIP Obligations shall not be discharged by the entry of any order confirming any plan in the Chapter 11 Case that does not provide for payment in full of the DIP Obligations or such other treatment of the DIP Obligations as may be agreed to by the DIP Lender.

43. Priority of Terms. To the extent of any conflict between or among the Motion, the DIP Loan Documents, the Interim Orders and this ~~Interim~~Final Order, the terms and provisions of this ~~Interim~~Final Order shall govern.

44. Entry of ~~Interim~~Final Order; Effect. This ~~Interim~~Final Order shall take effect and be fully enforceable immediately upon entry hereof *nunc pro tunc* to the Petition Date~~immediately upon entry hereof~~, notwithstanding the possible application of Fed. R. Bankr. P. 6004(h), 7062, 9014, or otherwise, and the Clerk of this Court is hereby directed to enter this ~~Interim~~Final Order on this Court's docket in the Chapter 11 Case. Any findings of fact shall

constitute a finding of fact even if it is stated as a conclusion of law, and any conclusion of law shall constitute a conclusion of law even if it is stated as a finding of fact.

45. ~~Final Hearing. The Final Hearing is scheduled for [--], 2019, at [--] before this Court. Any objections by creditors or other parties in interest to any relief sought at the Final Hearing to be granted pursuant to the Final Order shall be deemed waived unless timely filed and served. The Debtor shall promptly serve notice of entry of this Interim Order and the Final Hearing on the appropriate parties in interest in accordance with the Bankruptcy Rules and the Bankruptcy Local Rules. Without limiting the foregoing, the Debtor shall promptly serve a notice of entry of this Interim Order and the Final Hearing, together with a copy of this Interim Order, by first class mail, postage prepaid, facsimile, electronic mail or overnight mail upon the Notice Parties. The notice of the entry of this Interim Order and the Final Hearing shall state that objections to the entry of a Final Order shall be filed with the United States Bankruptcy Court for the District of Delaware by no later than 4:00 p.m. (prevailing Eastern Time) on [--], 2019.~~The Interim Orders. Except as specifically amended, supplemented, or otherwise modified hereby, all provisions of the Interim Orders, except to the extent inconsistent with this Final Order, shall remain in effect and are hereby ratified by this Final Order.

46. Committee Settlement. Notwithstanding anything else in the Interim Orders, this Final Order, or the DIP Loan Documents to the contrary, the Settlement Parties have agreed to the following terms in settlement of the Committee's informal objection to entry of this Final Order (the "Committee Settlement"), and the Committee Settlement is hereby approved:

(a) Initial Distributions of DIP Collateral. On or before September 30, 2019, the Debtor shall apply all cash held by the Debtor (including all Cash Collateral and all cash proceeds of DIP Collateral or any other property of the Debtor's estate, but excluding the LC Collateral) as of such date (the "Initial Cash Balance") as follows:

(i) The Debtor shall apply $1,100,000 plus the amount in the Carve Out Account as of the date of entry of this Final Order (together, the "Wind Down Reserve Amount") to fund a reserve to be created and maintained by the Debtor, on terms mutually agreeable to the Debtor and the Case Professionals (as such reserve may be further funded as set forth herein, the "Wind Down Reserve"), until the effective date of a liquidating plan for the Debtor which shall include such terms agreed to as part of this Committee Settlement and shall otherwise be reasonably acceptable to each of the Settlement Parties (such plan, the "Liquidating Plan"), at which point the amounts in the Wind Down Reserve shall be transferred to a liquidating trust (the "Trust") in accordance with the terms of the Liquidating Plan; and

(ii) The Debtor shall pay (A) $968,150 to the DIP Lender (the "First DIP Loan Payment"), which amount shall be applied by the DIP Lender towards the satisfaction of the DIP Obligations in accordance with the terms of the DIP Loan Documents, and (B) $170,850 (the "First GUC Payment") into a reserve to be created and maintained by the Debtor (the "GUC Reserve") until the effective date of the Liquidating Plan, at which point the amounts in the GUC Reserve shall be transferred to the Trust in accordance with the terms of the Liquidating Plan; provided, that the foregoing distributions of the Initial Cash Balance shall only be made contemporaneously with each other and no such distributions in (ii)(A) or (ii)(B) shall occur before the other without the consent of the DIP Lender and the Committee.

(b) Future Distributions of DIP Collateral. Within five business days of receipt, and from time to time, the Debtor shall apply all cash obtained by the Debtor (including all Cash Collateral and all cash proceeds of DIP Collateral or any other property of the Debtor's estate, but excluding the LC Collateral) after the date of entry of this Final Order (the "Future Cash Proceeds") in the following order of priority (to the extent of the Future Cash Proceeds):

(i) *First*, the Debtor shall apply any additional amounts mutually agreed between the Debtor, the DIP Lender, and the Committee to the Wind Down Reserve (or, if Future Cash Proceeds are received after the effective date of the Liquidating Plan, any additional amount mutually agreed between the Trust and the DIP Lender) (any such payments, collectively, the "Supplemental Wind Down Reserve Payments");

(ii) *Second*, any portion of the Future Cash Proceeds that remains after the funding of the Wind Down Reserve in the Wind Down Reserve

Amount, and the payment of any Supplemental Wind Down Reserve Payments, shall be paid by the Debtor (or, if Future Cash Proceeds are received after the effective date of the Liquidating Plan, by the Trust) on a ratable basis, (*i.e.*, 85% to the DIP Lender and 15% to the GUC Reserve) (A) to the DIP Lender, $1,700,000 less the amount of the First DIP Loan Payment (the "Second DIP Loan Payment"), which amount shall be applied by the DIP Lender towards the satisfaction of the DIP Obligations in accordance with the terms of the DIP Loan Documents, and (B) to the GUC Reserve, $300,000 less the amount of the First GUC Payment (the "Second GUC Payment"); provided, that the foregoing distributions of the Future Cash Proceeds shall only be made contemporaneously with each other and no such distributions in (ii)(A) or (ii)(B) shall occur before the other without the consent of the DIP Lender and the Committee;

(iii) *Third*, any portion of the Future Cash Proceeds that remains after the funding of the Wind Down Reserve in the Wind Down Reserve Amount, the payment of any Supplemental Wind Down Reserve Payments, and the payment in full of the First DIP Loan Payment, the Second DIP Loan Payment, the First GUC Payment and the Second GUC Payment, shall be paid by the Debtor (or, if Future Cash Proceeds are received after the effective date of the Liquidating Plan, by the Trust), on a ratable basis (*i.e.*, 80% to the DIP Lender and 20% to the GUC Reserve), as follows: (A) an additional $10,400,000 to the DIP Lender (the "Third DIP Loan Payment"), which amount shall be applied by the DIP Lender towards the satisfaction of the DIP Obligations in accordance with the terms of the DIP Loan Documents, and (B) an additional $2,600,000 (the "Third GUC Payment") into the GUC Reserve; provided, that the foregoing distributions of the Future Cash Proceeds shall only be made contemporaneously with each other and no such distributions in (iii)(A) or (iii)(B) shall occur before the other without the consent of the DIP Lender and the Committee; and

(iv) *Fourth*, any portion of the Future Cash Proceeds that remains after the funding of the Wind Down Reserve in the Wind Down Reserve Amount, and the payment of any Supplemental Wind Down Reserve Payments, the First DIP Loan Payment, the Second DIP Loan Payment, the Third DIP Loan Payment, the First GUC Payment, the Second GUC Payment, and the Third GUC Payment shall be applied by the Debtor (or, if Future Cash Proceeds are received after the effective date of the Liquidating Plan, by the Trust) as follows: (A) 50% towards the payment of DIP

Obligations and Prepetition Loan Obligations, which amount shall be applied by the DIP Lender towards the satisfaction of the DIP Obligations in accordance with the terms of the DIP Loan Documents, and (B) 50% into the GUC Reserve.

(c) Additional Terms Regarding Wind Down Reserve. Notwithstanding anything to the contrary contained herein, the amounts in the Wind Down Reserve shall be used to fund (x) the Carve-Out (including the Carve-Out Cap), which shall be held and applied by the Debtor in accordance with Paragraph 27 of this Final Order, and (y) fees and expenses incurred in connection with the wind down of the Debtor's estate (including the confirmation of the Liquidating Plan and any fees, expenses and interest payments due to Silicon Valley Bank under this Final Order; provided, that, subject to the effective date of a Liquidating Plan, no interest shall accrue under the DIP Facility on or after September 1, 2019); provided, further, that (i) no more than $250,000 of the Wind Down Reserve shall be used to fund costs associated with the Trust (such amount, the "Trust Budget"), and (ii) the Trust Budget shall be allocated as follows: (A) $100,000 to fund costs associated with the Trust solely as it relates to activities or costs incurred in connection with, or related to, general unsecured claims, including administrative costs associated with administering general unsecured claims and making distributions to unsecured creditors in accordance with the terms of the Liquidating Plan, and (B) $150,000 to fund all other costs associated with the Trust. Silicon Valley Bank shall have no obligation to provide any funding to the Trust that is in excess of the Trust Budget. Unless otherwise agreed to by the Committee, the Liquidating Plan (or such agreement governing the Trust) shall set forth procedures, reasonably acceptable to the Debtors, the DIP Lender and the Committee, to ensure that the Liquidating Trustee (as defined herein) appropriately allocates and records its fees and expenses to ensure that such fees and expenses are properly allocated pursuant to (ii)(A) and (ii)(B) of the immediately prior sentence. Any amounts in the Wind Down Reserve that are in excess of the actual fees and expenses incurred in connection with the wind down of the Debtor's estate and payable from the Wind Down Reserve in accordance with this paragraph 46 shall be deemed to be Future Cash Proceeds and shall be distributed in accordance with paragraph 46(b) of this Final Order.

(d) Additional Terms Regarding GUC Reserve. Notwithstanding anything to the contrary contained herein, (i) all proceeds distributed into the GUC Escrow shall be free and clear of all liens, including the DIP Liens, the Prepetition Loan Liens and the Adequate Protection Liens, (ii) the terms and conditions of the agreement governing the GUC Reserve shall be acceptable to the Committee in all respects, and (iii) all funds in the GUC Reserve shall be used to fund (A) distributions to holders of allowed

general unsecured claims under a Liquidating Plan, (B) administrative costs associated with reconciling general unsecured claims and making distributions to general unsecured creditors under the Liquidating Plan (solely to the extent the Trust Budget is exhausted), and (C) any other distributions to unsecured creditors that are otherwise ordered by the Court. For the avoidance of doubt, the Prepetition Secured Lender and the DIP Lender shall not be to any recoveries or distributions from the GUC Reserve.

(e) Additional Terms Regarding Carve-Out and Additional Amendments. The Carve-Out shall be funded solely in accordance with the terms of paragraph 27 as amended by this paragraph 46; provided, for the avoidance of doubt, that no additional amounts (over and above the Wind Down Reserve Amount) shall be required to fund the Carve-Out. The entry of this Final Order shall, for all purposes, be deemed to be an automatic irrevocable delivery of a Carve Out Trigger Notice by the DIP Lender in accordance with the provisions of this Final Order. The definition of "Termination Event" is amended to remove clause (ii) therefrom, and the definition of "Cash Collateral" is amended to exclude the GUC Reserve.

(f) Additional Terms of Committee Settlement. After entry of this Final Order, all decisions made by the Debtor (or, after the effective date of a Liquidating Plan, the liquidating trustee (the "Liquidating Trustee")) regarding the disposition and/or treatment of the Debtor's assets, including any litigation, settlements or otherwise related thereto, shall require (i) the consent of the DIP Lender and, prior to the effective date of the Liquidating Plan, the Committee or (ii) a further order of the Court. The Committee and the DIP Lender shall jointly determine the identity of the Liquidating Trustee.

(g) Stipulations Effective and Binding. The stipulations and admissions contained in the Interim Orders and this Final Order, including, without limitation, in recital Paragraph E of the First Interim Order and this Final Order, are immediately effective and binding on the Debtor's estate and any successor thereto (including, without limitation, any chapter 7 or chapter 11 trustee appointed or elected for the Debtor) and all parties in interest, including, without limitation, the Committee.

(h) DIP Commitment Terminated. As of the entry of this Final Order, the Commitment (as defined in the DIP Credit Agreement) is terminated and the DIP Lender shall have no further obligation to make any term loan advances in connection with any DIP Loan Document. The provisions of this Final Order that relate to the delivery of a Budget and weekly reporting shall not longer be applicable, subject to reasonable cash

reporting from the Debtor upon request by the DIP Lender, with a copy to be provided to the Committee.

(i) Waiver of Defaults. The DIP Lender agrees to waive all defaults that have occurred and are continuing under the DIP Loan Documents as of entry of this Final Order.

(j) Successors and Assigns. The Committee Settlement binds and is for the benefit of the successors and assigns of each Settlement Party.

47. ~~46.~~ Retention of Jurisdiction. Notwithstanding any provision in the DIP Loan Documents or the Prepetition Loan Documents, this Court shall retain jurisdiction over all matters pertaining to the implementation, interpretation and enforcement of this ~~Interim~~Final Order, the DIP Facility or the DIP Loan Documents.

Dated: _____, 2019
Wilmington, Delaware

THE HONORABLE BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

~~**EXHIBIT 1**~~

~~DIP Credit Agreement~~

~~**EXHIBIT 2**~~

~~Budget~~

Document comparison by Workshare 9.5 on Tuesday, September 24, 2019 12:26:32 PM

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Document 2 ID	interwovenSite://WIL-DMS/WILM/13122731/1
Description	#13122731v1<WILM> - Achaogen - Final DIP Order
Rendering set	Standard

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Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
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Moved cell	
Split/Merged cell	
Padding cell	

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