IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

DECLARATION OF BLAKE WISE
IN SUPPORT OF FIRST DAY RELIEF

I, Blake Wise, hereby declare under penalty of perjury, pursuant to section 1746 of title 28 of the United States Code, as follows:

1. I have served as the Chief Executive Officer of Achaogen, Inc. (the "Debtor" or "Achaogen") since January 2018. Prior to serving as CEO, I was the Chief Operating Officer of Achaogen from October 2015 to December 2017 and was also President of Achaogen from February 2017 to December 2017. In such capacities, I am familiar with the Debtor's day-to-day operations, business, and financial affairs. Previously, I spent 12 years at Genentech beginning in marketing and sales and spent the last 2 years as the Vice President of BioOncology. I also currently serve as a member of the Board of Directors of Calithera Biosciences, a publicly traded bioscience company focused on discovering and developing small molecule drugs that slow tumor growth. I hold a Bachelor's Degree in Business Economics from the University of California, Santa Barbara and a Master of Business Administration from the University of California, Berkeley – Walter A. Haas School of Business.

[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. On the date hereof (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") thereby commencing the above captioned case (the "Chapter 11 Case") and filed the motions described herein requesting certain relief (the "First Day Pleadings"). I submit this declaration (the "Declaration") on behalf of the Debtor in support of the Debtor's chapter 11 petition and the First Day Pleadings.

3. The Debtor is operating its business and managing its property as debtor in possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

4. The First Day Pleadings seek, among other things, to ensure the continuation of the Debtor's cash management system and other business operations without interruption and establish certain other administrative procedures to promote a smooth transition into the Chapter 11 Case.

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

6. This Declaration is divided into three parts. Part I provides background information about the Debtor, its business operations, its corporate and capital structures, and the circumstances surrounding the commencement of the Chapter 11 Case. Part II summarizes the

DIP Facility (as defined below) and sets forth the relevant facts in support of the DIP Motion (as defined below). Part III sets forth the relevant facts in support of each of the First Day Pleadings.

I. BACKGROUND

A. The Debtor's Formation

7. Achaogen was incorporated in November 26, 2002 under the laws of the State of Delaware and commenced operations in 2004. Achaogen wholly owns two non-debtor entities, Achaogen UK Ltd. ("Achaogen UK") and Achaogen Ireland Limited ("Achaogen Ireland" and together with Achaogen UK, the "Foreign Subsidiaries"). Other than a Marketing Authorization Application filed with the European Medicines Agency in the name of Achaogen Ireland, the Foreign Subsidiaries have never had any operations or assets and were established to facilitate regulatory approvals and potential future licensing deals in the United Kingdom, European Union and other European and Asian countries.

B. The Debtor's Business

8. Achaogen is a biopharmaceutical company focused on the development and commercialization of innovative antibiotic treatments against multi-drug resistant gram-negative[2] infections. Achaogen's primary activities since incorporation have included discovering, developing and commercializing its product candidates, including conducting preclinical studies and clinical trials and providing general and administrative support for these operations.

9. Achaogen is committed to fighting what are commonly referred to as "superbugs" – bacterial infections that have developed ways to resist treatment by even the most

[2] All bacteria are classified as either Gram-negative or Gram-positive based on the characteristics of their outer membrane or cell wall. Gram-negative bacteria are bacteria that do not retain the crystal violet stain used in the gram-staining method of bacterial differentiation.

potent available antibiotics. Achaogen designed its lead product, ZEMDRI® (plazomicin), to fight what the Center for Disease Control ("CDC") calls a "nightmare bacteria" and has listed as the highest category threat of "urgent." ZEMDRI can be used to treat patients who have limited or no alternative treatment options from infections with these nightmare bacteria. Even with its current financial situation, Achaogen continues to commercialize ZEMDRI, in part because Achaogen believes that ZEMDRI can save lives for patients who may literally have no alternative.

The Development and FDA Approval of ZEMDRI

10. ZEMDRI was developed in the face of a global crisis of bacterial resistance to the antibiotics we take for granted. Two Phase 3 clinical trials for ZEMDRI demonstrated clinically meaningful results compared to standard of care therapies in patients with complicated urinary tract infections and in patients with life threatening bloodstream infections or pneumonia due to multi-drug resistant bacteria. The results of both of these trials have been published in the prestigious New England Journal of Medicine. In one trial, patients treated with ZEMDRI had a substantially lower rate of mortality due to their infection, with 11.8% of patients treated with ZEMDRI dying by day 28 compared to 40% of patients treated with an existing drug, colistin. We see ZEMDRI as a critically important, lifesaving therapy for the infectious disease community and patients in need.

11. ZEMDRI is a novel aminoglycoside, which is the name for a class of antibiotics that inhibit bacterial protein synthesis and are especially active against gram-negative bacteria. Gram-negative bacteria are found everywhere, in virtually all environments on Earth that support life. Such bacteria pose an important medical obstacle because their outer membrane protects them from many antibiotics (including penicillin).

12. Aminoglycosides have been used successfully for the treatment of serious bacterial infections for more than 50 years. As a class, aminoglycosides have several important characteristics including rapidly killing bacteria, well-characterized pharmacokinetics, a lack of metabolism in humans, and excellent solubility and stability. However, for a variety of reasons, bacterial resistance to currently marketed aminoglycosides has increased in recent years, which has decreased their effectiveness.

13. Certain bacteria have developed or inherited resistance mechanisms such as enzymes that can inactivate the anti-bacterial properties of an aminoglycoside. ZEMDRI was designed by Achaogen scientists to retain its effectiveness in killing these more resistant bacteria. Achaogen chemically engineered and modified a naturally occurring antibiotic called sisomicin, which had lost much of its ability to kill many bacteria. As a result of Achaogen's patented modifications, ZEMDRI is engineered to remain active against multi-drug resistant ("MDR") organisms where most other major drug classes, including commercially available aminoglycosides, such as gentamicin and amikacin, have limited activity. ZEMDRI's development was funded in part by a $124.4 million contract with the Biomedical Advanced Research and Development Authority ("BARDA").

14. ZEMDRI is particularly useful against a specific group of gram-negative bacteria called Enterobacteriaceae, including those which are resistant to treatment by other antibiotics. These more difficult to kill Enterobacteriaceae are also referred to as carbapenem-resistant Enterobacteriaceae ("CRE") and ESBL-producing Enterobacteriaceae. In 2013, the CDC identified CRE as an immediate public health threat and in 2017 the World Health Organization identified CRE as a "Global Priority 1 Pathogen: Critical Need for Research and Development of New Antibiotics."

15. In 2017, the U.S. Food and Drug Administration ("FDA") had granted plazomicin breakthrough therapy designation ("BTD") for the treatment of patients with bloodstream infections ("BSI"). BTD can be granted for a product candidate that is intended, alone or in combination with one or more other drugs, to treat a serious or life-threatening disease or condition, and preliminary clinical evidence indicates that the product candidate may demonstrate substantial improvement over existing therapies.

16. On June 25, 2018, the FDA approved Achaogen's application for approval of ZEMDRI for the intravenous treatment of adult patients with complicated urinary tract infections ("cUTI") including pyelonephritis. However, the FDA indicated that it would not approve ZEMDRI for the treatment of BSI, issuing a Complete Response Letter ("CRL") stating that clinical trials did not provide substantial evidence of effectiveness of plazomicin for the treatment of BSI. In December 2018, Achaogen filed a Formal Dispute Resolution Request ("FDRR") regarding plazomicin's BSI indication. The FDA denied the FDRR.

Production and Distribution of ZEMDRI

17. After its approval by the FDA, ZEMDRI became commercially available in the U.S. for the treatment of cUTI in July 2018. Achaogen has global commercialization rights and has patent protection in the United States through 2031 to 2032 based on current estimations. Achaogen generally sells ZEMDRI to two categories of customers: specialty distributors and physician owned infusion centers ("POICs"). Therefore, all sales either (i) will move through a specialty distributor channel to an end customer of a hospital, smaller physician center or home health set-up, or (ii) will be shipped directly to a POIC from a third party logistics provider.

18. In March 2017, Achaogen entered into a commercial validation and manufacturing agreement (the "Manufacturing Agreement") with Hovione Limited ("Hovione").

Under the Manufacturing Agreement, Hovione agreed to complete the program to validate and scale up Achaogen's technology to manufacture and supply ZEMDRI's active pharmaceutical ingredient, plazomicin, to Achaogen. Under the terms of the Manufacturing Agreement, Achaogen agreed to purchase a minimum quantity of plazomicin from Hovione depending on Achaogen's commercial forecast and the period of time following approval by the FDA. For the first three years following approval of ZEMDRI by the FDA, Achaogen is required to purchase at least 80% of its required plazomicin quantity from Hovione. After the first three years, Achaogen is required to purchase between 40% and 60% of its required quantity from Hovione, depending on the amounts required during any such fiscal year. Achaogen also has minimum annual purchase commitments from Hovione beginning in 2020 through 2024. Achaogen has minimum purchase commitments of $9 million in 2020; $8 million in 2021; $12 million in 2022; and $24 million in 2023 and 2024 combined, for a total commitment of $53 million.

19. The Debtor has also employed the services of Pfizer CentreOne ("Pfizer") to assist in finishing the manufacture ZEMDRI. In August 2015, the Debtor entered into a supply agreement with Hospira, which was amended in September 2015 to include Pfizer which acquired Hospira. The Debtor purchases from Pfizer the ZEMDRI it needs for sales in the U.S., Canada and the EU.

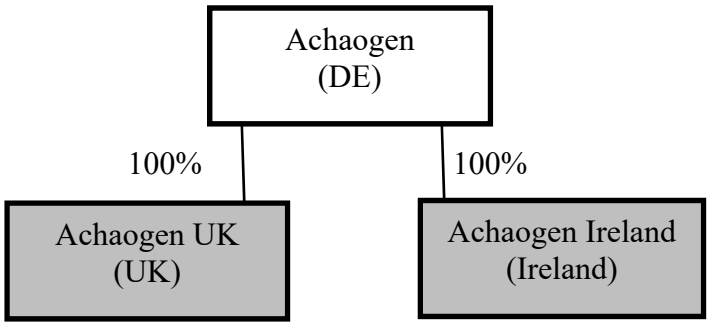
The Development of C-Scape

20. Additionally, Achaogen is in the process of developing C-Scape, an orally administered antibiotic for treatment of patients suffering from cUTI caused by MDR bacteria. C-Scape is a new product combination comprised of ceftibuten, an FDA approved third generation cephalosporin, and clavulanate, an FDA approved beta-lactamase inhibitor. The FDA awarded Qualified Infectious Disease Product (QIDP) status to C-Scape for the treatment of

cUTI in 2017. In September 2017, Achaogen was awarded a development contract for C-Scape (the "C-Scape Contract") from BARDA to support the development of C-Scape. The C-Scape Contract includes a base period with committed funding of $12 million and subsequent option periods that, if exercised, bring the total value of the award to $18 million. In January 2018, Achaogen announced positive Phase 1 top-line results, and Achaogen currently continues to develop C-Scape, including in a Phase 1 Clinical Pharmacology study to improve the likelihood of clinical and commercial success. If successful, the FDA has indicated a single Phase 3 trial may be sufficient for approval in patients with cUTI.

C. The Debtor's Corporate and Capital Structure

21. Achaogen is a publicly traded company with its shares listed on The NASDAQ Global Select Market ("NASDAQ") under the ticker symbol "AKAO". Achaogen wholly owns two non-debtor entities, Achaogen UK and Achaogen Ireland. The following is an organizational chart showing the organizational structure of the foregoing entities with non-debtor entities shaded in gray and the Debtor entity in white:



22. As of the Petition Date, the Debtor's capital structure consisted of the following:

Secured Debt Obligations

23. On February 26, 2018, Achaogen entered into a Loan and Security Agreement (the "Prepetition Term Loan Agreement", and the credit facility extended thereunder, the "Prepetition Term Loan") by and between Achaogen and Silicon Valley Bank ("SVB" or, in such capacity, the "Prepetition Lender"), pursuant to which SVB agreed to extend term loans in the aggregate principal amount of up to $50,000,000, all of which was borrowed by the Debtor. The Prepetition Term Loan was secured by valid, fully perfected and enforceable security interests in substantially all of the Debtor's assets, including proceeds of Intellectual Property (as such term is defined in the Prepetition Term Loan Agreement) but excluding Intellectual Property and stock owned by Achaogen in any Foreign Subsidiary in excess of 65%.

24. The Prepetition Term Loan was structured in two separate parts: first, a term loan made in a single advance in the principal amount of $25 million (the "Term A Loan"), all or a portion of which Achaogen was required to use to repay in full its outstanding obligations to Solar Capital, Ltd. ("Solar Capital"); and second, further advances to Achaogen in an amount not to exceed $25 million (the "Term B Loan"). Each of the Term A Loan and the Term B Loan is subject to (i) a final payment fee (the "Term A Final Payment" and "Term B Final Payment") equal to the original principal amount of the loan multiplied by six percent (6.0%), and (ii) a prepayment premium of one percent (1.0%) of the principal amount of the Prepetition Term Loan outstanding as of the date immediately and prior to such prepayment (the "Prepayment Fee"), if such prepayment is made following the first anniversary but before the second anniversary of the Effective Date (as defined in the Prepetition Term Loan Agreement).

25. Pursuant to Section 6.6(b) of the Prepetition Loan Agreement, in the event the Debtor's cash on deposit with SVB dropped below the greater of (i) $48 million, and (ii) the

"Monthly Cash Burn Amount" (as defined in the Prepetition Loan Amount), Achaogen was required to place on deposit and thereafter maintain at all times as cash collateral in a segregated account cash in an amount equal to at least 100% of the outstanding balance of the Term A Loan. In December 2018, Achaogen funded $25,000,000 into the pledged cash collateral account in accordance with Section 6.6(b) of the Prepetition Loan Agreement.

26. On April 12, 2019, pursuant to the Waiver and First Amendment to the Loan and Security Agreement (the "Prepetition Loan Amendment"), the Debtor agreed, among other things, to permit SVB to debit $34,663,598.50 from its bank accounts held at SVB—including $25,000,000 held in a restricted cash collateral account—and to apply the debited funds to the principal and interest due under the Prepetition Loan Agreement. Upon completion of this sweep, $15,000,000 remained outstanding under the Prepetition Term Loan Agreement.

27. In connection with the Prepetition Loan Amendment, the Debtor agreed to extend SVB's first-priority security interest to the Debtor's Intellectual Property (in addition to SVB's existing first-priority security interest on the proceeds of the Debtor's Intellectual Property) in exchange for SVB providing a commitment to provide debtor-in-possession financing in the amount of $25,000,000 in the Chapter 11 Case. SVB also agreed to waive the Term A Final Payment and the Prepayment Premium. As a result, as of the Petition Date, $15,000,000 in principal, plus a de minimis amount of unpaid interest, was outstanding under the Prepetition Term Loan. As discussed in detail below, SVB has since provided $25,000,000 in debtor-in-possession financing (in such capacity, the "DIP Lender") which includes $10,000,000 million of new money and a rollup of the $15,000,000 principal balance outstanding under the Prepetition Term Loan.

Unsecured Obligations

28. Solar Success Fee. Achaogen was previously party to a loan and security agreement with Solar Capital that Achaogen satisfied from the funds of the Prepetition Term Loan. On August 5, 2015, pursuant to that loan and security agreement, Achaogen entered into a Success Fee Agreement with Solar Capital under which Achaogen agreed to pay Solar Capital $1 million (the "Solar Success Fee") if Achaogen obtained FDA approval to market ZEMDRI. Because Achaogen obtained FDA approval for ZEMDRI, the Solar Success Fee will become due on August 5, 2019.

29. Hovione. As detailed above, following the FDA's approval of ZEMDRI in June 2018, Achaogen has minimum annual purchase commitments from Hovione beginning in 2020 through 2024. Achaogen has minimum purchase commitments of $9 million in 2020; $8 million in 2021; $12 million in 2022; and $24 million in 2023 and 2024 combined, for a total commitment of $53 million.

30. Office Lease. In August 2016, Achaogen entered into an agreement to lease (the "Lease") 47,118 square feet of office, laboratory and research and development space (the "Original Space") for Achaogen's principal executive offices in South San Francisco. In July 2017, the Company entered into an amendment (the "Lease Amendment") to lease an additional 51,866 square feet of space (the "Expansion Space") for a total of 98,984 square feet (the "Premises"). The Lease commenced in March 2017 and as of January 2018, Achaogen occupied the full Premises. The lease term for the Premises is through January 31, 2028 (the "Lease Term") and contains an option to extend the Lease Term for an additional 5 years. The Lease has rent escalation clauses for approximately 3.5% of the base rent in each subsequent year of the Lease Term and a rent abatement period in the first year of the Premises.

31. On October 25, 2018, the Debtor subleased a portion of the Premises to Sana Biotechnology, Inc. for five (5) years commencing on November 1, 2018 for $181,379 per month, subject to scheduled rent escalations. On January 25, 2019, the Debtor further subleased an additional portion of the Premises to Atreca, Inc. for three (3) years commencing on March 1, 2019 for $180,999.50 per month, subject to scheduled rent escalations.

32. In 2017 and 2018, Achaogen's rent expense was $3.0 million and $5.6 million (net of sublease income of $300,000), respectively. Achaogen projects approximately $49.3 million of future lease payments (net of sublease income of approximately $18.0 million) over the term of the Lease. For the next three (3) years, the rent obligations (net of sublease income) are approximately $2.4 million in 2019, $2.2 million in 2020 and $2.3 million in 2021.

33. Trade Debt. In addition to the Solar Success Fee, the Hovione purchase commitments and the Lease, Achaogen has unsecured obligations, as of the Petition Date, in the amount of approximately $18.7 million consisting of accounts payable to various trade creditors.

Equity

34. On March 17, 2014, Achaogen completed its initial public offering ("IPO") and sold 6,900,000 shares of common stock at a price of $12 per share to the public. The aggregate net proceeds received by Achaogen from the IPO, net of underwriting discounts and commissions and offering expenses, was $73.9 million. As of the Petition Date, Achaogen remains a publicly traded company with its shares listed on the NASDAQ. On April 2, 2019, the Debtor received a written notification from NASDAQ indicating that the Debtor is not in compliance with NASDAQ Listing Rule 5450(a)(1), as the Debtor's closing bid price for its common stock was below the $1.00 per share requirement for thirty consecutive business days. On April 11, 2019, the Debtor received a written notification from NASDAQ indicating that the

Debtor is not in compliance with NASDAQ Listing Rule 5450(b)(2)(a), as the Debtor's market capitalization was below the $50 million requirement for thirty consecutive business days.

35. Since its IPO, Achaogen has entered into several private placements, public offerings and at-the-market equity offerings and has also issued warrants to various parties in connection with those transactions. As of the Petition Date, Achaogen has 290,000,000 common shares authorized under its articles of incorporation and 65,452,763 common shares outstanding. Achaogen also has 10,000,000 preferred shares authorized but no preferred shares are outstanding.

36. On April 12, 2019, the closing price of Achaogen common stock was $0.50 per share. At its peak, Achaogen had a market capitalization of over $1 billion in mid-July 2017.

Assets and Receivables.

37. The Debtor has total assets of approximately $82.3 million consisting of cash, inventory, receivables, intellectual property and general intangibles as of December 31, 2018. As of the Petition Date, Achaogen had unrestricted cash, cash equivalents and short-term investments of approximately $1.3 million. Additionally, amounts owing to Achaogen on account of trade and contract accounts receivable total approximately $1.0 million as of March 31, 2019. Trade receivables consist of payments to be received from customers for sales of ZEMDRI recorded net of prompt-payment discounts, incentive fees, chargebacks, and doubtful accounts. Contract accounts receivables consist of payments to be received from U.S. government contracts.

D. Events Preceding the Chapter 11 Case

38. Since 2007, Achaogen has invested significant efforts and financial resources into the development of ZEMDRI, which was only made available for order on July 20, 2018. Due to the cost of ZEMDRI's clinical development and research – as well as the development of other product candidates, none of which have made it beyond phase 1 clinical trials – Achaogen has experienced losses since its inception. As of December 31, 2018, Achaogen had an accumulated deficit of $559.4 million. Achaogen continues to incur losses, and its ability to successfully transition to profitability is dependent upon obtaining financial infusions to drive the commercialization of ZEMDRI to profitability, as well as to develop additional products, such as C-Scape.

39. In the past year, there has been a dramatic downturn in the availability of financing from both the debt and equity markets for companies in the anti-infective field, based in part on the withdrawal from the space by certain large pharmaceutical companies. For example, Novartis recently announced that it is shutting down its antibacterial and antiviral research, which was followed by similar moves from Eli Lilly, Bristol-Myers Squibb and AstraZeneca.[3] Allergan has also recently announced its intention to divest its anti-infective business, consisting of three commercialized products. This "big pharma flight" from anti-infective research, development and commercialization has created significant challenges for early-stage biotech companies seeking to develop and commercialize novel and much needed drugs in this sector, as opportunities for partnerships, joint R&D relationships, and merger/acquisition transactions have diminished. This sector-wide trend has negatively affected not just Achaogen but many of its competitors. Achaogen, however, has been especially

[3] *See* Outlook Capital's analysis from July 2018 attached hereto as **Exhibit A**.

impacted because it has reached the point in its life cycle where it needs substantial capital infusion to drive commercialization of its recently FDA approved drug, ZEMDRI.

40. Faced with these market trends, Achaogen has been unable to raise sufficient additional capital, despite its significant attempts, which has jeopardized its ability to continue to commercialize ZEMDRI, obtain regulatory approval for plazomicin in Europe, develop C-Scape and other new products and, ultimately, avoid defaulting under the Prepetition Term Loan. Challenged with a budget deficit and low cash reserves, Achaogen began to focus on reducing operating costs, which unfortunately included implementing three reductions in force. Specifically, on July 26, 2018, Achaogen implemented a reduction in force of 28% of its workforce, including the departure of three officers. On November 5, 2018, Achaogen underwent a second restructuring reducing staff and operating expenses by approximately 35-40%. Achaogen implemented a third reduction in force effective February 28, 2019, primarily consisting of a reduction of its field-based sales and medical scientist positions. Achaogen's work force was thus reduced to its bare essential employees – those necessary to operate its business plan, and maximize the value of the ongoing business operations.

41. Achaogen has since experienced tremendous difficulties retaining its remaining employees. The California biotech labor market is currently extremely active and despite significant efforts to retain key employees by paying and offering retention and other bonuses, Achaogen has experienced significant attrition. To that end, since completing its third reduction in force on February 28, 2019, 14 employees have given notice or have left, including its Chief Financial Officer and its Vice President of Finance. And the Debtor has further suffered the departures of many key employees, including the Head of Technical Operations, the

Senior Director of Clinical Development and the Vice President of Clinical Pharmacology.[4] In fact, since its third reduction in force, on February 28, 2019, 14 employees have given notice or have left, including its Chief Financial Officer and its Vice President of Finance.

42. Achaogen has only 36 full-time employees as of the Petition Date, down from 298 in June 2018. The reduction in personnel has further exacerbated Achaogen's liquidity crisis as it cannot effectively support, develop, manufacture and commercialize ZEMDRI to generate meaningful revenue with such a depleted team of employees.

E. Prepetition Restructuring Efforts

43. In parallel with its cost-reducing efforts detailed above, Achaogen began exploring potential strategic alternatives for maximizing the value of its business. On November 5, 2018, Achaogen announced a review of strategic alternatives to maximize stockholder value, including but not limited to the potential sale or merger of the company or its assets. This strategic review process has continued alongside Achaogen's continued focus on the commercialization of ZEMDRI and other corporate initiatives.

The Marketing and Sale Process

44. Achaogen retained Evercore Group LLP ("Evercore") as its investment banker to assist it with exploring potential strategic alternatives, including assisting Achaogen in any potential restructuring, sale transaction or financing transaction. Following public announcement of the engagement, Achaogen and Evercore identified and then met with numerous potential parties for such a transaction beginning in November 2018. A team of senior executives worked together on this process with Evercore on a daily basis, and I personally and substantially participated in the process of meeting with potential parties, reaching out to various

[4] The Debtor believes that the buyer of its assets will likely seek to fill these key positions.

potential parties and providing detailed management presentations. A virtual data room was made available containing extensive information about Achaogen, including documents describing Achaogen's business and financial results in considerable detail, and potential purchasers had the opportunity to conduct due diligence via the virtual data room, as well as through meetings with Achaogen management.

45. Achaogen and Evercore ran a marketing process that targeted strategic partners, merger-of-equal candidates and peripheral candidates (ex-U.S. buyers, parties without direct complementary assets, lagging parties, etc.). In total, Evercore contacted 75 potential buyers, including financial buyers, privately-held specialty pharmaceutical companies, small publicly-traded infectious disease companies and a number of publicly-traded pharmaceutical companies. Approximately 21 of the parties Evercore contacted received process letters, and 19 executed NDAs. Of the 19 parties that executed NDAs, all parties received management presentations and 15 received access to the virtual data room.

46. Unfortunately, despite Achaogen's significant efforts, the marketing process did not yield an acceptable proposal. Although Achaogen remained positive about its longer-term prospects and its ability to ultimately reach profitability and maximize value, it continued to be concerned with its inability to generate positive free cash flow in the near-term.

Fundraising and Structuring Efforts

47. Achaogen recognized that maintaining liquidity would be key to achieving a strategic transaction that would bridge the company to profitability, thereby maximizing value for all stakeholders, including the holders of its equity. Thus, to complement the marketing and cost-cutting efforts described above, in December 2018, Achaogen engaged restructuring

professionals at Meru, LLC ("Meru") to assist it in further refining its business strategy and examining the possibility of further cost reductions.

48. At the same time, and throughout this period, Achaogen pursued various funding and financing options, including selling equity and pursuing licensing opportunities outside of the United States. These efforts were all intended to bridge the company to the point of free positive cash flow or consummation of a strategic transaction. As part of that effort, in addition to the reductions in force and reductions in operating expenses, on February 20, 2019, Achaogen commenced an underwritten public offering of 15,000,000 shares of its common stock and accompanying (i) short-term warrants to purchase up to 15,000,000 shares of common stock and (ii) long-term warrants to purchase up to 15,000,000 shares of common stock. This underwritten public offering, however, raised only an additional $13.6 million in net equity capital, which proved insufficient to bridge Achaogen to a strategic transaction.

49. Achaogen also pursued discussions with multiple companies to exclusively license the rights to develop and commercialize plazomicin in China and Europe. Several small private companies and large pharmaceutical companies reviewed the opportunity to license plazomicin and five non-binding term sheets were received for Chinese or European rights in the range of $5 to $10 million upfront cash consideration. All companies in the licensing discussions still need to complete due diligence, and therefore definitive agreements have not been negotiated. Notwithstanding the promising market interest in licensing the drug, Achaogen concluded that the collective upfront payments that would be provided under these licensing agreements would be insufficient to bridge Achaogen to a strategic transaction. In addition, given Achaogen's reduced staff, Achaogen was concerned that it would be difficult for the company to uphold its contractual obligations in a licensing agreement.

The Decision to File Chapter 11

50. Achaogen ultimately concluded that given the significant challenges in achieving positive free cash flows in the near term, the business likely would not be viable on a stand-alone basis absent a strategic transaction or a restructuring of its debt. And given the results of its recent marketing process, Achaogen had low-confidence that it could consummate any strategic transaction out of court given its limited available liquidity.

51. Recognizing that its options were limited, and realizing that it was critical to obtain short-term capital to bridge Achaogen to a sale process, Achaogen began discussions with SVB pursuant to a non-disclosure agreement, regarding, among other things, a restructuring of the debt or a potential auction sale process in the context of a chapter 11 proceeding. Notably, although Achaogen's out-of-court sale process did not yield any acceptable bids, many parties had expressed interest in bidding at any potential 363 auction sale, where it could pursue the Assets free and clear of existing liabilities. Achaogen informed SVB of the details of Achaogen's business circumstances and the strategic alternatives available based on its efforts over the previous six months. Ultimately, Achaogen and SVB mutually determined that, among the strategic alternatives to be considered, Achaogen should prepare for a potential sale process that could be implemented through the filing of a chapter 11 case to maximize the value of the company and its assets. As part of this favorable agreement to support the process, SVB agreed to provide the Debtor DIP Financing in the Chapter 11 Case on the condition that the Debtor agreed to enter into the Prepetition Loan Amendment.

52. On April 7, 2019, Achaogen engaged Cassel Salpeter & Co., LLC ("Cassel") to replace Evercore as the Debtor's investment banker during the Chapter 11 Case, subject to Court approval.

53. Despite the chapter 11 filing, the Debtor fully intends to continue to run an extensive marketing process. With the Debtor's employment of Cassel, whose marketing strategy will include reengaging parties who originally showed interest in the Debtor's assets in addition to new potential buyers, the Debtor is hopeful that such efforts will result in securing a purchaser of the Debtor's assets and possible stalking horse bidder. Thus, the Bidding Procedures together with the Bidding Procedures Order, contemplate an open auction, and provide the Debtor with the option, but not a requirement, to enter into a stalking horse bid and designate a stalking horse purchaser in the Debtor's business judgment (after consultation with SVB and the Committee, as applicable) up to and including seven (7) days prior to the Bid Deadline. This optionality will allow the Debtor to continue to work towards securing a stalking horse bid as a backstop to the Sale process, while enabling the process to proceed as efficiently and economically as possible.

II. THE DIP FACILITY

54. Concurrently with the commencement of the Chapter 11 Case, the Debtor has filed a motion seeking the Court's approval of its debtor-in-possession financing and related relief (the "DIP Motion"). As described below, I believe that approval of the DIP Motion on an interim basis is necessary to prevent immediate and irreparable harm to the Debtor and is in the best interests of the Debtor's estate.

A. Marketing of the DIP Facility

55. Prior to the Petition Date, the Debtor, with the assistance of Evercore, worked diligently to identify parties willing to provide postpetition financing on terms and conditions more favorable than those ultimately contained in the proposed DIP Facility. Of approximately ten interested parties with whom Evercore and the Debtor's management spoke,

no potential lender was willing to extend postpetition financing secured by liens junior to the Prepetition Lender's absent Achaogen securing a stalking horse purchaser offering a purchase price for the Debtor's assets sufficient to repay all amounts due under the Prepetition Loan Facility and all amounts due under any postpetition financing facility, which Achaogen was unable to do through its prepetition marketing process. Nor was any potential lender willing to prime the Prepetition Lender's liens absent the Prepetition Lender's consent, which was not forthcoming. And none of the potential postpetition lenders viewed the Debtor's intellectual property—which at the time was subject to a proceeds lien under the Prepetition Loan Facility—as sufficient collateral to support a non-priming DIP facility. Accordingly, the marketing process did not yield a credible proposal from a party willing to provide DIP financing. Subsequently, the Prepetition Lender agreed to provide DIP financing to the Debtor, but made it clear that it would not provide the required financing without (i) a roll up of the outstanding principal balance of the Prepetition Term Loan; (ii) milestones related to the Debtor's sale of its assets under section 363 of the Bankruptcy Code; and (iii) the other terms and conditions set forth in that certain Senior Secured Superpriority Debtor-in-Possession Loan and Security Agreement, dated as of April 15, 2019 (the "DIP Loan Agreement", and the credit facility extended thereunder, the "DIP Facility"), by and between the Debtor and Silicon Valley Bank (in such capacity, the "DIP Lender").

56. In its capacity as Prepetition Lender, the DIP Lender already has a vested interest in seeing the value of the Debtor's business preserved and maximized, recognizing that the Debtor requires access to liquidity from the DIP Facility, and use of cash collateral, in order to facilitate a smooth transition into chapter 11, avoid serious impairment of its business

operations, operate the Debtor's cash-intensive business in the ordinary course, and implement an auction and sale process to maximize the value of the Debtor's assets.

57. As noted, the terms of the DIP Facility require the Debtor to complete a sale of its assets in accordance with certain milestones. To maximize the value of its estate, and in compliance with the milestones under the proposed DIP Facility, the Debtor has filed contemporaneously herewith a motion seeking authority to conduct an auction process by which the Debtor will solicit offers and ultimately seek approval to sell substantially all of its assets to the bidder with the highest or otherwise best offer (as described more fully below). The Debtor also reserves the right to appoint a stalking horse purchaser of its assets and to modify its auction and sale procedures accordingly. The Debtor also will seek authority to retain Cassel to serve as its investment banker to assist with conducting the marketing and sale of its assets.

58. Another critical element of the negotiations was payment of the KEIP/KERP Plan Amount (as such term is defined in the DIP Loan Agreement) ahead of any payments to the DIP Lender on account of the DIP Obligations under the DIP Loan Agreement. The parties agreed to this structure out of a recognition of the unique set of circumstances at play in this Chapter 11 Case, namely that the Debtor, as a small biopharmaceutical company, depends on the commercialization of its intellectual property, but has not yet been able to turn a profit in this manner. A section 363 sale is the primary, if not exclusive, vehicle available to the Debtor to maximize the value of its assets and continue the Debtor's business, consequently preserving jobs. The KEIP and KERP programs are necessary both to ensure that management is properly incentivized to support and drive an auction process that will yield the highest and best offer for the benefit of the Debtor's estate and to retain "rank and file" employees so that the Debtor can preserve its value as a going concern. Additionally, in light of the recent resignations of

numerous employees before the filing of the Chapter 11 Case—including the Debtor's Chief Financial Officer and Vice President of Finance, in addition to key operations positions like the Head of Technical Operations, Senior Director of Clinical Development and Vice President of Clinical Pharmacology—there is a credible concern that without iron-clad assurances that the KEIP and KERP (if approved) will be paid, other employees will do the same. Thus, this structure is necessary to maximize the value of the Debtor's assets for the benefit of all stakeholders.

59. If the DIP Lender did not agree to provide the DIP Facility, a contested priming or adequate protection fight may have proven devastating to the Debtor's business and to the contemplated auction process, subjecting the Debtor to a significant risk of being unfinanced or underfinanced for an extended period of time, especially in light of the Debtor's low liquidity position as of the Petition Date. Based upon the foregoing, the Debtor submits that its efforts to seek the necessary postpetition financing from additional third parties, as well as vigorous negotiations with the DIP Lender, were reasonable and satisfy the statutory requirements of section 364(c) of the Bankruptcy Code.

B. The Terms of the DIP Facility are Fair and Reasonable

60. As discussed above, the terms and conditions of the proposed DIP Facility are fair and reasonable under the circumstances and are the best terms that the Debtor was able to secure following an extensive marketing process. The interest rates and other covenants negotiated with the DIP Lender are reasonable, and the terms of the DIP Facility were highly negotiated. Further, the DIP Lender made clear that it would not provide postpetition financing absent the Debtor's agreement to the roll up of the outstanding principle balance of the

Prepetition Term Loan and certain milestones related to the sale of substantially all of the Debtor's assets.

61. The Debtor has exercised sound business judgment in determining that the DIP Facility is both necessary and appropriate and has satisfied the legal prerequisites to incur debt under the DIP Facility. The terms of the DIP Facility are fair and reasonable, and are in the best interests of the Debtor's estate. The Debtor has reason to believe that the funds made available through the DIP Facility will be adequate to pay all administrative expenses due and payable during the postpetition periods and fund the sale of its assets.

C. The Prepetition Lender has Consented to the Debtor's Use of Cash Collateral and the Adequate Protection provided in the DIP Loan Agreement

62. The Debtor requires use of cash collateral in order to facilitate a smooth transition into chapter 11, avoid serious impairment of its business operations, operate the Debtor's cash-intensive business in the ordinary course, and implement an auction and sale process to maximize the value of the Debtor's assets. To this end, the Prepetition Lender has consented to the Debtor's continued use of Cash Collateral.

63. As detailed in the DIP Motion, the Prepetition Lender has consented to the proposed adequate protection, which includes a combination of adequate protection liens, superpriority claims, current payment of interest in accordance with the Prepetition Loan Documents, and payment of professional fees and expenses incurred by the Prepetition Lender. The Debtor submits that the proposed adequate protection is sufficient to protect the Prepetition Lender for any diminution in the value of its interests in the Prepetition Collateral from the Petition Date.

D. The DIP Facility Was Negotiated in Good Faith

64. The terms of the DIP Facility were agreed-upon following intensive, good faith negotiations regarding the Debtor's working capital needs and the means by which the Debtor will seek to maximize the value of its assets. Indeed, in its capacity as Prepetition Lender, the DIP Lender already has a vested interest in seeing the value of the Debtor's business preserved and maximized, and accordingly has offered to provide the DIP Facility to address the Debtor's anticipated working capital needs during the pendency of this Chapter 11 Case. The Debtor's efforts to seek the necessary postpetition financing from additional third parties, as well as intensive negotiations with the DIP Lender, were reasonable and satisfy the statutory requirements of section 364(c) of the Bankruptcy Code.

E. The Debtor Requires Immediate Access to the DIP Facility and Cash Collateral

65. Immediate and irreparable harm would result if the relief requested herein is not granted on an interim basis. As described in detail herein and in the DIP Motion, the Debtor has an immediate need to obtain access to liquidity to, among other things, continue to operate is business, maintain key business relationships, make payroll and satisfy other working capital and operational needs. Funding each of these expenditures is necessary to preserve and maintain the value of the Debtor's estate for the benefit of all parties in interest.

III. FIRST DAY PLEADINGS

66. Concurrently with the commencement of the Chapter 11 Case, the Debtor has filed, and requests this Court's approval for, a number of proposed orders (the "First Day Orders"), which the Debtor believes are necessary to enable it to operate with a minimum level of disruption and loss of productivity. The Debtor requests that each of the First Day Orders be entered as critical elements in stabilizing and facilitating the Debtor's operations to maximize

value at the proposed Sale. A description of the relief requested and the facts supporting each of the First Day Orders is set forth below.

A. Administrative and Procedural Matters

67. The Debtor has filed three "administrative" pleadings that seek to (1) to retain Kurtzman Carson Consultants ("KCC") as claims and noticing agent, (2) extend the time for the Debtor to file its schedules and statements, and (3) an equity and claims trading procedures motion. The Debtor's attorneys have explained to me the customary practices with regard to the requested relief in chapter 11 business reorganization cases and the rationale for these pleadings.

1. Application to Appoint KCC as Claims and Noticing Agent

68. It is my understanding that the Debtor is applying ("Section 156(c) Application") for entry of an order appointing KCC as claims and noticing agent in this Chapter 11 Case. I understand that such appointment is required by the rules of this Court. Moreover, I believe that such relief is prudent in light of the thousands of creditors, potential creditors and parties in interest to whom certain notices will be sent.

69. I believe that KCC's retention is the most effective and efficient manner of noticing these creditors and parties in interest of the filing of the Chapter 11 Case and of other developments in this Chapter 11 Case. Moreover, I am informed that KCC has acted as the claims and noticing agent in numerous cases of comparable size, including several large bankruptcy cases pending in both this District and in other districts. Moreover, in compliance with the Protocol for the Employment of Claims and Noticing Agents Under 28 U.S.C. § 156(c) of the United States Bankruptcy Court for the District of Delaware, the Debtor obtained and

reviewed engagement proposals from three other Court-approved claims and noticing agents to ensure selection through a competitive process.

70. As more fully detailed in the Section 156(c) Application, I understand that KCC will engage in certain Claims and Noticing Services, including, but not limited to, transmitting, receiving, docketing and maintaining proofs of claim filed in connection with this Chapter 11 Case. KCC will also work with the office of the Clerk of the United States Bankruptcy Court for the District of Delaware to ensure that its methodology conforms with all of the Court's procedures, the Local Bankruptcy Rules and the provisions of any order entered by this Court. Moreover, I am informed that the Section 156(c) Application pertains only to the work to be performed by KCC under the Clerk of the United States Bankruptcy Court for the District of Delaware delegation of duties permitted by 28 U.S.C. § 156(c) and Local Bankruptcy Rule 2002-1(f).[5]

71. Accordingly, I believe that retention of KCC, an independent third party with significant experience in this role, to act as an agent of the Court, is in the best interests of the Debtor and its estates and creditors.

2. Extension of Time to File Schedules and Statements

72. It is my understanding that the Debtor is requesting that the Court extend the time by which the Debtor must file its schedules of assets and liabilities and statements of financial affairs (the "Schedules and Statements") to thirty-two (32) days after the current deadline. It is my understanding that the Local Bankruptcy Rules automatically extended the Debtor's deadline twenty-eight (28) days because the Debtor filed a creditor matrix containing

[5] The Debtor also intends to file an application to retain KCC to perform certain administrative services pursuant to Bankruptcy Code section 327.

more than two hundred (200) creditors. Thus, the Debtor is requesting the Court to extend the deadline to file Schedules and Statements to June 14, 2019 (the "Filing Deadline").

73. Given the substantial burdens already imposed on the Debtor's management by the commencement of this Chapter 11 Case, the limited number of employees available to collect the information, the competing demands upon such employees and the time and attention that the Debtor must devote to the Chapter 11 process, the Debtor may be unable to complete its Schedules and Statements by the current deadline imposed by the Bankruptcy Rules and the Local Bankruptcy Rules. I also believe that the relief requested is in the best interest of the Debtor, its estate, creditors and other parties in interest.

74. Accordingly, I believe that "cause" exists to extend the current deadline imposed by Bankruptcy Rule 1007(c) for an additional thirty-two (32) days, until the Filing Deadline. The requested extension will enhance the accuracy of the Debtor's Schedules and Statements and avoid the necessity of substantial subsequent amendments.

3. Trading Procedures Motion

75. The Debtor has generated, and is currently generating, a significant amount of Tax Attributes for U.S. federal income tax purposes. The Debtor has experienced losses from the operation of its business, having failed to post positive net earnings since its inception. As a result, the Debtor estimates that its utilizable federal income tax net operating losses are approximately $438 million ("NOLs"), consisting of approximately $302 million of NOLs through 2017 and $136 million of NOLs generated during 2018, and it expects to have incurred additional NOLs since then through the Petition Date, which amounts could be even higher when the Debtor emerges from chapter 11. The Debtor's Tax Attributes are a valuable asset because the Debtor generally can carry forward its Tax Attributes to reduce or eliminate its

income tax liability, thereby potentially freeing up funds to meet working capital requirements and service debt. In particular, the Tax Attributes may be available to the Debtor to offset taxable income generated by ordinary course activity and other transactions completed during the course of the Chapter 11 Case. Additionally, the Debtor can carry forward the NOLs and credits to reduce its future tax liability, thereby potentially recovering cash for the benefit of its estate.

76. It is my understanding that the Debtor's ability to use its Tax Attributes, however, could be severely limited under Section 382 of title 26 of the United States Code as a result of the trading and accumulation of its equity securities and claims against the Debtor prior to consummation of a chapter 11 plan. The Debtor thus seeks to establish procedures for continuously monitoring the trading of its equity securities and provide notice of the potential that it will seek certain sell-down procedures for claims so that the Debtor can preserve its ability to seek substantive relief at the appropriate time, particularly if it appears that additional trading may jeopardize the use of its NOLs under Section 382. Therefore, I submit that the relief requested in the Trading Procedures Motion is appropriate and in the best interests of the Debtor's estate, its creditors and other parties in interest.

B. Motion to Continue Cash Management System

77. The Debtor seeks entry of an interim order, pending the entry of a final order or the interim order becoming a final order, authorizing, but not directing, the Debtor to continue to operate the Cash Management System in the day-to-day operation of its business, and to honor certain prepetition obligations in accordance with the operation of the Cash Management System. Specifically, the Debtor requests authority to: (a) continue to use, with the same account numbers, each of the Bank Accounts; (b) treat the Bank Accounts for all purposes

as accounts of the Debtor as debtor in possession; and (c) conduct banking transactions by all usual means and debit the Bank Accounts on account of all usual items and payment instructions.

78. Additionally, the Debtor seeks authority to use, in their present form, all business forms (including check stock, letterhead, purchase orders, and invoices) and other correspondence and documents related to its bank accounts, without reference to the Debtor's status as debtor in possession.

79. The Debtor further requests authority for the Bank to: (i) continue to maintain, service, and administer the Bank Accounts; and (ii) debit the Bank Accounts in the ordinary course of business on account of (a) all checks drawn on the Bank Accounts that are cashed at the Bank or exchanged for cashier's checks by the payees thereof prior to the Petition Date, (b) all checks or other items deposited in one of the Bank Accounts at the Bank prior to the Petition Date that have been dishonored or unpaid for any reason, together with any fees and costs in connection therewith, to the same extent the Debtor was responsible for such items prior to the Petition Date, and (c) all undisputed prepetition amounts outstanding as of the date hereof, if any, owed to any Bank as fees or service charges for the maintenance of any aspect of the applicable Cash Management System.

80. I believe that all of the relief requested in the Cash Management Motion is in the best interest of the Debtor, its estates, creditors and other parties in interest. The relief requested in the Cash Management Motion will help minimize any disruption in the Debtor's business operations during its restructuring, and preserve the value of the Debtor's estate. Any disruptions in the Cash Management System could lead to delays in satisfying the Debtor's obligations to its vendors and suppliers and meeting the demands of its various customers. In order to avoid the potential erosion of value that could ensue from any such interruptions in the

Debtor's ordinary course business operations, I believe it is imperative that the Debtor be authorized to continue the Cash Management System consistent with its historical practice.

The Cash Management System

81. The Debtor maintains an integrated cash management system, comprising six accounts all located at or affiliated with Silicon Valley Bank (the "Bank"). The Bank is both the Debtor's Prepetition Lender and its proposed DIP Lender. The following table identifies the Bank Accounts and the last four digits of each Bank Account number:

Account Holder	Bank Name	Account Description	Last 4 Digits of Account No.
Achaogen, Inc.	Silicon Valley Bank	AR Account	5720
Achaogen, Inc.	Silicon Valley Bank	Operating Account	4224
Achaogen, Inc.	Silicon Valley Bank	Sweep Account	3256
Achaogen, Inc.	Silicon Valley Bank	Investment Account	3753
Achaogen, Inc.	Silicon Valley Bank	Lender Cash Collateral Account	4403
Achaogen, Inc.	Silicon Valley Bank	Lease Collateral Account	6905

82. The Cash Management System is centrally managed for the Debtor out of the Debtor's offices in South San Francisco, California, and all funds in the Bank Accounts are denominated and held in U.S. Dollars. The Debtor uses the Cash Management System in the ordinary course of business to collect, transfer, and disburse funds generated from its operations and to facilitate cash monitoring, forecasting, and reporting. The Debtor's treasury department maintains daily oversight of the Cash Management System and implements cash management controls for entering, processing, and releasing funds. Additionally, the Debtor regularly reconciles books and records to ensure that all transfers are accounted for properly.

The Bank Accounts

83. As illustrated above, the Debtor maintains six bank accounts with or at affiliates of the Bank. The AR Account is the account into which customer payments are deposited. Funds from the AR Account are transferred into the Operating Account, as necessary.

The Operating Account is swept daily into the Sweep Account, which holds excess cash and investments in short-term government securities. Funds are then again transferred back from the Sweep Account to the Operating Account as necessary for disbursements to fund payroll and operations.

84. In addition, the Debtor also maintains an investment account at the Bank (the "Investment Account") for investments in money-market and short-term overnight repurchase agreements. The Investment Account is managed by SVB Asset Management, a non-bank affiliate of the Bank. The Debtor transfers funds, as necessary, from the Operating Account into the Investment Account. Funds from the Investment Account can also be transferred into the Operating Account, as necessary.

85. Finally, the Debtor maintains two collateral money market accounts at the Bank. As further explained in the First Day Declaration, the Bank was also the Debtor's Prepetition Secured Lender and held $25 million in cash collateral securing the Prepetition Term Loan in the Lender Cash Collateral Account. In connection with the Prepetition Loan Amendment, the Debtor agreed to permit the Bank to sweep the entirety of the $25 million in the Lender Cash Collateral Account and to apply the swept funds to the principal and interest due under the Prepetition Loan Agreement. The second collateral money market account, the Lease Collateral Account, holds $530,000 as security for the Debtor's obligations under its office lease.

Bank and Investment Fees

86. The Debtor pays on average approximately $7,000 per month in bank and investment fees incurred in connection with the Bank Accounts (the "Bank Fees"). The Debtor pays the Bank Fees as they come due on a rolling basis over the course of each month, typically by direct debit. The Debtor estimates that it is required to remit approximately $3,500 in

outstanding Bank Fees as of the Petition Date. The Debtor seeks authority to pay the prepetition Bank Fees and to pay any ordinary course Bank Fees incurred in connection with the Debtor's existing Bank Accounts.

Credit Cards

87. As part of the Cash Management System, the Debtor utilizes (and provides to certain employees) credit cards (collectively, the "Credit Cards") issued by the Bank with an aggregate credit limit of $200,000. Certain authorized employees utilize the Credit Cards for approved travel and business related expenses. Costs incurred through use of the Credit Cards are paid from the Operating Account.

88. On average in the preceding six months prior to the Petition Date, approximately $250,000 per month in the aggregate was charged to the Credit Cards.[6] As of the Petition Date, the Credit Cards had an aggregate outstanding balance of approximately $125,000. The Debtor seeks authority to continue use of the Credit Cards in the ordinary course of business, subject to any terms and conditions thereof, on a postpetition basis consistent with past practice, and to pay any prepetition amounts related to the Credit Cards.

Business Forms

89. As part of the Cash Management System, the Debtor utilizes numerous preprinted business forms, including, without limitation, letterhead, purchase orders, invoices, and preprinted checks (the "Business Forms"), in the ordinary course of its business. The Debtor also maintains books and records to document, among other things, receipts and expenses. To minimize expenses to its estate and avoid confusion on the part of employees, customers,

[6] The Debtor previously had a higher aggregate credit limit to support a larger workforce. Since the aggregate credit limit has been reduced, the Debtor's average monthly credit card charges have been approximately $200,000 per month.

vendors, and suppliers during the pendency of this Chapter 11 Case, the Debtor requests that the Court authorize the continued use of its Business Forms and other correspondence and documents related to the Bank Accounts, as such forms were in existence immediately before the Petition Date and thereafter, without reference to the Debtor's status as debtor in possession, rather than requiring the Debtor to incur the expense and delay of ordering entirely new business forms as required under the U.S. Trustee Guidelines.

C. Payment of Employee and Payroll Obligations and Certain Taxes

90. I believe the Debtor's employees and independent contractors are essential to the Debtor's operations, performing a wide variety of functions critical to the Debtor's operations, the administration of the Chapter 11 Case, and the Debtor's successful reorganization. Their skills, knowledge, and understanding of the Debtor's operations and infrastructure are essential to preserving operational stability and efficiency. In most—if not all—instances, the Debtor's employees and independent contractors include highly trained personnel who are not easily replaced. I believe that the continued, uninterrupted services of their employees and independent contractors, the Debtor's reorganization efforts likely will be jeopardized.

91. As of the Petition Date, the Debtor has approximately 36 employees, all located in the U.S. (the "Employees"), that conduct its business operations, including executive, management, finance and accounting, commercial and marketing, information technology, regulatory, research and development, and legal services.

92. The Debtor has experienced a significant reduction in its employee headcount over the past 10 months, with its overall headcount down approximately 88% since June 2018. The reduction is fueled both by reductions of force and significant employee

attrition. To that end, since July 26, 2018 the Debtor has implemented three reductions of force, with the third and final reduction in force taking place on February 28, 2019. And the Debtor has further suffered the departures of many key employees, including the Head of Technical Operations, the Senior Director of Clinical Development and the Vice President of Clinical Pharmacology. In fact, since its third reduction in force, on February 28, 2019, 14 employees have given notice or have left, including its Chief Financial Officer and its Vice President of Finance. Four employees will leave during the first two weeks of this Chapter 11 Case.

Payroll

93. All Employees are paid twice monthly, on the 15th and last day of each month. If either of these days falls on a weekend or holiday, employees are paid the day before the weekend or holiday. All required tax deductions and voluntary deductions are withheld automatically from paychecks. The Debtor's semi-monthly Employee-related payroll obligations equal approximately $400,000.

Payroll Services

94. The Debtor pre-funded ADP, LLP ("ADP") on April 11, 2019 with the amounts necessary to satisfy the Employee-related payroll obligations due on April 15, 2019 to ensure that payroll would be processed on time. ADP performs all services related to the Debtor's Employee payroll, including payroll deductions and tax withholdings. Each payroll period, the Debtor pre-funds ADP with the amounts necessary to satisfy the Debtor's payroll obligations two (2) business days in advance of the pay date. ADP then processes direct deposit transfers or checks. The services that ADP provides are critical to the smooth functioning of the Debtor's payroll system. The Debtor pays ADP approximately $8,000 per month for the services (the "Payroll Maintenance Fees"). As of the Petition Date, the Debtor estimates that it owes

ADP approximately $4,000 on account of prepetition Payroll Maintenance Fees. The Debtor seeks authority to pay all Payroll Maintenance Fees in the ordinary course, including all prepetition fees.

95. Although the Debtor does not anticipate owing any money on account of prepetition wages and salaries, out of an abundance of caution, the Debtor is seeking authority, but not direction, to pay prepetition Employee-related payroll obligations in an aggregate amount not to exceed $100,000 during the interim period.

Sales Force Commissions

96. In addition to their base salary, the Debtor's sales force Employees receive commission based compensation determined by the sale of the Debtor's drug product (the "Sales Force Commissions"). Beginning in March 2019, if vial sales are at 50% of target number of vials, the Debtor will pay a commission payment of 50% of the monthly target pay in each of the first two months of every three month period. On the third month, the Debtor processes a true up payment based on total vials sales for that three month period. All payments are made on the 15th of each month. A monthly payment of $12,500 will be due on May 15, 2019 on account of post-petition sales. Additionally, the Debtor estimates that approximately $90,000 will be due on June 15, 2019, approximately $30,000 of which is on account of commissions earned on prepetition sales. The Debtor is seeking authority, but not direction, to continue to pay Sales Force Commissions in the ordinary course, including those Sales Force Commissions incurred prior to the Petition Date in an aggregate amount not to exceed $42,500 during the interim period.

Payroll Deductions and Tax Withholdings

97. ADP deducts certain amounts from Employees' paychecks, including, without limitation: (i) pre-tax, optional contributions to health and dependent care, as described in detail below; (ii) other pre-tax and after-tax deductions payable pursuant to certain of the Employee benefit plans discussed below; (iii) certain amounts related to federal, state, and local income taxes, social security taxes, Medicare taxes, and taxes imposed by the law; (iv) matching payments on account of social security and Medicare taxes and, subject to certain limitations, additional amounts based upon a percentage of gross payroll for, among other things, state and federal unemployment insurance and (v) other miscellaneous deductions (collectively, the "Payroll Deductions"). The Debtor estimates that ADP withholds, collectively, approximately 42% of each payroll in Payroll Deductions. The Debtor's average liabilities for Payroll Deductions (as opposed to Employees' personal liabilities) total approximately $100,000 for each payroll period.[7] The Debtor estimates that, as of the Petition Date, its liability for Payroll Deductions is approximately $100,000. The Debtor is seeking authority, but not direction, to remit prepetition Payroll Deductions in an aggregate amount not to exceed $125,000 in the interim period.

98. Additionally, on April 12, 2019, the Debtor initiated a funds transfer of nearly $1 million to satisfy certain payroll taxes (the "Payroll Tax Payment"). As of the time of filing, the Debtor has been unable to confirm that the transfer was successfully consummated. To

[7] In the ordinary course of processing payroll for the Employees, the Debtor may also be required by law, in certain circumstances, to withhold from certain Employees' wages amounts for various garnishments, such as tax levies, child support, and other court-ordered garnishments. In recent years, the Debtor has withheld such amounts from applicable Employees' paychecks and remitted them to the appropriate authorities or entities on a monthly basis. However, since February 1, 2019, the Debtor has not been required to garnish any of its Employees' wages and salaries and currently does not hold any amount in prepetition garnishments that have not yet been remitted.

the extent that the transfer was not consummated before the time of filing, the Debtor requests the Court authorize SVB and the recipient bank to process such electronic transfer.

Expense Reimbursement

99. In the ordinary course of business, the Debtor reimburses Employees monthly for certain expenses incurred while performing their duties. Reimbursable expenses include payments for travel, lodging, reimbursable meals, business meals and entertainment, phone and internet allowance, and other business-related activities. Employees, consultants, and contractors are entitled to expense reasonable and necessary business-related expenses while traveling on authorized company business (the "Reimbursable Expenses"). Employees submit expense reports via Concur when needed. Expense reports must be approved by the Employee's manager or delegate. The approving manager is responsible for reviewing expenses to ensure (i) appropriate business purpose, necessity, and reasonableness, (ii) compliance with reimbursement policies, and (iii) attachment of proper receipts. Once approved, the expense report is routed to Accounts Payable for review. Accounts Payable reviews and processes the report for payment. Payment files are processed weekly on Thursdays and the funds are transferred by ACH to the Employee approximately three (3) to four (4) business days after the payment file is processed (*e.g.*, if a payment file is processed on a Thursday, a corresponding ACH payment is made to the Employee on Tuesday or Wednesday of the following week).

100. The Debtor estimates that, on average, it incurs approximately $10,000 in Reimbursable Expenses. As of the Petition Date, the Debtor believes it is liable for approximately $10,000 in outstanding prepetition expense reimbursements, and seeks authority to reimburse these amounts in the ordinary course of business.

Employee Benefits

101. The Debtor also provides Employees with access to health and other benefit plans. The Debtor is the primary contract party with the applicable coverage provider on the foregoing U.S. benefit programs, and is also the sponsor of the Achaogen 401(k) Plan.

(i) ***Medical, Dental and Vision Plans***

102. The Debtor offers coverage to eligible Employees, their spouses, and their dependents for medical, dental, vision, and other related benefits. All full-time Employees are eligible for these benefits subject to the terms, conditions, and limitations of each program. Part-time employees may be eligible for the benefits package at the sole discretion of the Debtor (subject to the terms, conditions, and limitations of each program). The Debtor offers all PPO, Classic HMO, HDHP, and HMO 10 medical plans. The Debtor pays 90% of the monthly premiums under the medical, dental and vision plans for each eligible U.S. Employee and 80% of the monthly premiums for each eligible dependent.

103. In an average month, the Debtor prepays at the beginning of the month approximately $75,000 in premiums under the medical, dental and vision plans, payable monthly in advance. As of the Petition Date, the Debtor does not owe any prepetition premiums under these plans.

(ii) ***Life and Accidental Death and Dismemberment & Long-Term and Short-Term Disability Insurance***

104. All of the Debtor's full-time Employees and their eligible dependents receive basic life insurance and accidental death and dismemberment coverage ("AD&D"), plus long-term ("LTD") and short-term disability ("STD") insurance through Anthem Life Insurance. The Debtor funds 100% of the premiums under these plans for Employees. As of the Petition Date, the Debtor does not owe any prepetition premiums under these plans.

(iii) ***Group Accident and Critical Illness***

105. All of the Debtor's full-time Employees and their eligible dependents have the opportunity to receive Group Accident and Group Critical Illness insurance through Unum. The Employees can voluntary elect and pay for the premiums under these plans. The Debtor is not responsible for the payment of any premiums related to Group Accident and Group Critical Illness insurance plans.

(iv) ***COBRA Medical, Dental and Vision Coverage***

106. Former Employees are entitled to continue to participate in the Debtor's healthcare, dental and vision insurance coverage pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1986 (as amended, "COBRA") for up to 18 months following the end of their employment (such coverage, the "COBRA Coverage"). Former Employees who elect to participate in the COBRA Coverage must pay a set amount, dependent on which type of plan they elect (*i.e.*, family or individual) to the Debtor's healthcare insurance provider. The Debtor currently has 28 employees terminated prepetition that are currently entitled to participate in COBRA Coverage at the Debtor's cost for up to 3-9 months past the Petition Date at a total cost of approximately $1,500 per month/employee including fees to IGOE Administrative Services ("IGOE Fees"). The COBRA Coverage amounts billed to and paid by the Debtor for the three months prior to the Petition Date averaged approximately $1,500 per month.

(v) ***Workers' Compensation Insurance***

107. Debtor maintains a workers' compensation insurance policy that covers all Employees. The Debtor requests authority to continue the workers' compensation insurance policy in the ordinary course of business by its separate motion to maintain insurance programs, filed contemporaneously herewith.

(vi) ***Paid Time-Off Benefits***

108. Employees accrue days of paid time off ("PTO Days") based on hours worked per year. Employees in the part-time category (less than 30 hours a week) may accrue PTO Days on a pro-rata basis with written approval of the Debtor. Temporary employees do not accrue PTO Days, nor do Employees on unpaid leave.

109. Each calendar year, eligible Employees accrue 7.33 hours of paid time off for every 2 weeks of work up to 22 PTO Days. Employees are able to carry over no more than 11 PTO Days where they will still be paid for accrued PTO. Any other remaining PTO Days do not carry over from year-to-year and will not be paid out at any time, including upon termination of employment. Employees begin to accrue PTO Days on their start date, and are eligible to utilize the benefit as work schedules permit. Once the maximum accrual cap of 33 PTO Days is reached, PTO will no longer be accrued until the accrued vacation drops below the cap. No Employee is permitted to use vacation time prior to actual accrual without the written approval of his or her manager. The Debtor, from time to time, may require Employees to use vacation on specified days, with advanced written notice.

110. The Debtor does not "cash out" Employees for unused accrued vacation time at the end of the calendar year or at any other time while Employees remain employed by the Debtor. Upon termination, Employees are paid for accrued and unused vacation time that has been earned through the last day of work. As of the Petition Date, the Debtor's liability for accrued PTO is estimated at approximately $675,000. Counsel has informed me that under sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code, certain obligations related to wages, salaries, commissions, vacation, severance, sick leave, and employee benefit plans are accorded priority in payment for each employee to the extent such amounts accrued within 180 days of the petition date. As of the Petition Date, the Debtor estimates that approximately 23 Employees had

accrued vacation time that exceeded the priority cap by approximately $200,000 in the aggregate. The Debtor seeks the authority to continue to pay PTO in the ordinary course and to pay out prepetition PTO amounts upon termination to the extent that the payments do not exceed the priority cap in section 507(a)(4) and 507(a)(5) of the Bankruptcy Code.

(vii) *Retirement Plans*

111. The Debtor sponsors a 401(k) retirement savings plan for the benefit of eligible Employees and former Employees. All such Employees who are over the age of 21 are eligible to participate in the 401(k) plan immediately after hire. Employees may enter the plan on the first of the month after eligibility. Employees may choose either a traditional 401(k) account or a Roth 401(k) account. Employees who elect to participate in the traditional 401(k) plan may defer up to 100% of their compensation on a pre-tax basis up to the statutory contribution limit. As of 2019, the contribution limit is $19,000 in one calendar year for participants under the age of 50 and, if the employee is 50 years or older, they may elect to defer an additional $6,000 for the calendar year, for a maximum of $25,000.

112. Employees who elect to participate in the Roth 401(k) program may elect to defer up to 100% of their compensation on a post-tax basis Up to the statutory contribution limit. As of 2019, the contribution limit is $19,000 in one calendar year for participants under the age of 50. If the employee is 50 years or older, they may elect to defer an additional $6,000 for the calendar year, for a maximum of $25,000. Adjusted gross income limits as set forth for Roth IRA accounts do not apply for the Roth 401(k).

113. For both plans, the Debtor can, in the discretion of its Board of Directors, make a matching contribution of 50% of the amount contributed by an Employee up to first 8.0% of an Employee's contribution. For example, if an Employee contributes $100, the Debtor will make a contribution of $4 (50% of the first 8%).

114. Employee contributions to the 401(k) plans are vested immediately at 100%. Debtor contributions, however, are subject to the following vesting schedule (vesting starts from the date of hire): 0% before one (1) year of service; 50% after one (1) year of service; and 100% after two (2) years or more of service.

115. The plan is administered by Empower Retirement Services, and fees are automatically deducted from the 401(k) Plan, which the Debtor pays a quarterly fee to Empower Retirement Services of approximately $5,000. The Debtor remits payment for the plan to Empower Retirement Services on a twice-monthly basis in line with the Debtor's pay cycle. The Debtor's average twice-monthly payment for the plan—representing its matching contributions—is approximately $35,000. Additional fees for investment management services, investment advisory services, and contract administration on a quarterly basis cost the Debtor approximately $7,400. Great West Insurance Services assists the Debtor with compliance and 401(k) plan audits. As of the Petition Date, the Debtor owes approximately $75,000 on account of all fees and matching contributions relating to the 401(k) program.

Employee Benefits

(i) Contractual Severance Payments

116. Many of the Employees have contractual rights to severance in their employment agreements of up to 9 months of their salary. In order to maintain the stability of its operations during the marketing and sale process, and to promote Employee morale and goodwill, the Debtor seeks the discretion to continue to make severance payments, where appropriate, and in the best interests of the Debtor's estate, in the event that the Debtor terminates Employees after the Petition Date (the "Severance Obligations").

117. The Debtor does not seek to pay insiders (as that term is defined under section 101(31) of the Bankruptcy Code) on account of any Severance Obligations or to pay

severance to any Employees that are not contractually entitled to such severance. Nor does the Debtor seek to pay any Severance Obligations that became due and owing prepetition in excess of the priority cap in section 507 of the Bankruptcy Code.

(ii) Acceleration of Restricted Stock Units

118. The Debtor provides newly hired Employees a "new hire" equity grant (generally a mix of Restricted Stock Units ("RSUs") and options). All Employees are eligible for a "refresh" grant of equity each year around February, generally in conjunction with the Debtor issuing annual bonuses. The Debtor has also issued special RSU grants in late 2018 for certain personnel in an effort to retain Employees. As of the Petition Date, there were 2,169,454 unvested RSUs. The majority of these unvested RSUs vest within a year; however, some of the RSUs vest annually over a four-year service period. The Debtor has historically automatically accelerated the vesting of outstanding and unvested RSUs for Employees leaving the Debtor's employment. The automatic vesting on the termination date was irrespective of the duration of service with the Company. I believe this program is important to Employee morale and has no effect on the Debtor's business or potential return to creditors. Therefore, the Debtor seeks the discretion to continue to accelerate vesting of RSUs upon an Employee's termination.

(iii) Laptop Program

119. The Debtor has historically permitted Employees leaving the Debtor's employment to retain their laptop computer provided by the Debtor during their employment after the appropriate scanning and removal of proprietary or confidential company information. As of the Petition Date, each of the laptop computers held by the remaining Employees is worth less than $500 and no more than $15,000 in the aggregate. I believe this program is important to Employee morale and that the laptop computers have little value to the Debtor. The Debtor

seeks the discretion to continue to permit, where appropriate and in the best interests of the Debtor's estate, terminated Employees to retain their laptop computers.

Debtor's Contractor Obligations

120. In addition to its Employees, the Debtor relies on services from approximately 50-75 people that are either independent contractors (the "Independent Contractors") or agency contractors (the "Agency Contractors") obtained through specialty consulting companies (the "Agencies" and together with the Independent Contractors, the "Contractors").

121. The Independent Contractors are individual service providers that, for the most part, receive a 1099 and have a SSN for their tax ID. They are also known as temporary employees or "temps" and provide usual and customary business service in support of the Debtor for a limited period of time (no longer than twelve (12) months). The Independent Contractors perform work in absence of an Employee (such as covering a leave of absence), during a temporary period of vacancy, and/or during period of increased work volume or other similar business necessity. They may work onsite or offsite and may be converted to an Employee at the Debtor's discretion.

122. The Debtor retains the Agency Contractors through the Agencies to provide temporary support needed. The Agencies are specialty consulting firms with areas of expertise such as information technology, finance and accounting. The Agencies bills the Debtor for work provided by the Agency Contractor and charges fees as an addition to each worker's applicable hourly rate. The Debtor remits compensation to the Agencies on account of the Agency Contractor's services upon services rendered.

123. As of the Petition Date, the Debtor estimates it may owe the Independent Contractors $85,000 in the aggregate for prepetition services provided. As of the Petition Date, the Debtor estimates it owes the Agencies approximately $225,000 in the aggregate for prepetition services provided by the Agency Contractors and associated fees. The Debtor therefore seeks the authority, but not the direction, to pay $310,000 on account of prepetition Contractor-related Obligations in the interim period. I believe it is necessary to pay the obligations owed to the Contractors so that they will continue to assist with the Debtor's staffing needs as needed.

D. Motions for Payment of Other Critical Business Expenditures

1. Insurance

124. In the ordinary course of its business, the Debtor maintains various customary insurance policies (collectively, the "Insurance Program") that provides coverage for, among other things: employment practices liability, fiduciary liability, automobile liability, cyber liability, cargo liability, products liability, premises pollution, property; general commercial liability, crime liability, directors and officers liability, and workers compensation liability, as well as an umbrella policy (collectively, the "Policies").

125. The Policies are essential to the preservation of the value of the Debtor's business, property and assets. Not only are some of the Policies required by various regulations, laws, and contracts that govern the Debtor's commercial activities, but I have also been advised by counsel that section 1112(b)(4)(C) of the Bankruptcy Code provides that "failure to maintain appropriate insurance that poses a risk to the estate or to the public" is "cause" for mandatory conversion or dismissal of a chapter 11 case.

126. Moreover, I have been advised by counsel that the Operating Guidelines for Chapter 11 Cases by the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee Guidelines") require the Debtor to maintain insurance coverage throughout the pendency of the Chapter 11 Case. For the policy period of 2018 to 2019, as of the Petition Date, the Debtor believes that it was substantially current on amounts owed under the Policies. Six of the Policies were set to expire in March 2019, prior to which the Debtor entered into three month extensions and paid the related premiums in full, extending these Policies to June 30, 2019. The Debtor estimates that it would cost an additional $25,000 if it were necessary for the Debtor to extend these Policies an additional three months. Additionally, on April 8, 2019, the Debtor purchased a pre-paid D&O Tail policy, which runs through December 31, 2025. Out of an abundance of caution, however, the Debtor seeks authorization to make payments attributable to the prepetition period (plus any unforeseen deductible payment amounts for prepetition claims).

127. I believe that the coverage types, levels and premiums for these Policies are neither unusual in amount nor in number in relation to the extent of the business operations conducted by the Debtor, and they are similar to businesses of comparable size and type to those of the Debtor.

128. In light of the importance of maintaining insurance coverage with respect to its business activities, I believe it is in the best interest of the Debtor's estates to receive Court approval to honor the Debtor's obligations under the Policies and, as necessary, renew or enter into new such agreements.

129. In sum, through the Insurance Motion, the Debtor requests entry of an order authorizing, but not directing, the Debtor authority (i) to make all payments required to continue its Insurance Program, including payment of any prepetition premiums, deductibles, or

other obligations under the Policies and, to the extent applicable, engage and pay insurance brokers in the ordinary course of business (ii) renewing or replacing insurance arrangements in the ordinary course of business without further order of the Court and (iii) related relief. The Debtor wishes to pay the appropriate parties up to $100,000 on an interim basis, to be allocated at the Debtor's discretion without prejudice to seek additional relief on an emergency basis. Further, if the Court grants the relief sought in the Insurance Motion, the Debtor requests that all applicable banks and other financial institutions be authorized, when requested by the Debtor in its discretion, without any duty of inquiry or liability to any party for following the Debtor's instructions, to receive, process, honor, and pay any and all checks drawn on the Debtor's accounts to pay amounts owed under the Insurance Program, whether those checks are presented prior to or after the Petition Date, and to make other transfers, provided that sufficient funds are available in the applicable accounts to make the payments.

130. I believe that all of the relief requested in the Insurance Motion is in the best interest of the Debtor, its estates, creditors and other parties in interest. I also believe that all of the relief requested in the Insurance Motion is necessary to preserve and enhance the value of the Debtor's estate for the benefit of all creditors, and that absent the relief sought in the Insurance Motion, a failure to pay any Insurance Obligations or to permit the Debtor to renew, revise, extend, supplement, change or enter into new insurance policies, as needed in its business judgment, will immediately threaten the continued operation of the Debtor and, consequently, the Debtor's estate. Therefore, it is my opinion that the potential harm and economic disadvantage that would stem from the cancellation of the Policies, and failure to renew the Policies or revise, extend, supplement, change or enter into new insurance arrangements as needed in its business judgment, are grossly disproportionate to the amount of due on the

insurance Policies, and the costs to renew, revise, extend, supplement, change or enter into new insurance coverage.

2. Taxes

131. The Debtor incurs taxes in the ordinary course of business, primarily comprising of income taxes (federal and state), state franchise taxes, and property taxes on owned and leased property (the "Taxes").

132. In the most recently concluded calendar year, the Debtor incurred approximately $400,000 in tax liabilities payable to various authorities. As of the Petition Date, the Debtor estimates that it is required to remit approximately $168,000 in prepetition taxes, with approximately $135,000 due within 30 days of the Petition Date. The Debtor also estimates that it will have approximately $160,000 of taxes incurred for year 2019 that will come due after the Petition Date, none of which is estimated to fall due within 30 days of the Petition Date.

133. In addition to Taxes, the Debtor incurs business license, compliance and regulatory fees and other similar assessments (the "Assessments"). Laws and regulations in jurisdictions in which the Debtor operates require the Debtor to pay fees to obtain a range of business licenses and permits from a number of different authorities. The methods for calculating amounts due for such licenses and permits, and the deadlines for paying such amounts, vary by jurisdiction.

134. In the most recently concluded fiscal year, the Debtor incurred approximately $8,000 in Assessments payable to various authorities. The Debtor estimates that it will have approximately $10,000 in Assessments, including SEC related fees, incurred for year 2019 that will come due after the Petition Date. The fees in connection with the Debtor changing

its business address in early 2019 and having to reregister various business licenses with the new address were paid in the amount of $66,000 in February of 2019.

135. It is my belief that the continued payment of the Taxes on their normal due dates will ultimately preserve the resources of the Debtor's estate, thereby promoting its prospects for maximizing the value of its estate. If such obligations are not timely paid, it is my understanding that the Debtor will be required to expend time and money to resolve a multitude of issues related to such obligations, each turning on the particular terms of each Taxing Authority's applicable laws. The Debtor desires to avoid unnecessary disputes with the Taxing Authorities and expenditures of time and money resulting from such disputes over a myriad of issues that are typically raised by such entities as they attempt to enforce their rights to collect taxes. Accordingly, I believe that the Debtor could suffer irreparable harm if the prepetition Taxes are not paid when they become due and payable.

136. Additionally, the Taxing Authorities may cause the Debtor to be audited if Taxes are not paid immediately. Such audits will unnecessarily divert the Debtor's attention away from its efforts to maximize value, including the conduct of its business and the sale process. If the Debtor does not pay such amounts in a timely manner, the Taxing Authorities may attempt to revoke the Debtor's licenses, suspend the Debtor's operations and pursue other remedies that will harm the estates. In all cases, the Debtor's failure to pay Taxes could have a material adverse impact on its ability to operate in the ordinary course of business.

137. I have also been advised that the federal government and many states in which the Debtor operates have laws providing that the Debtor's officers, directors or other responsible employees could, under certain circumstances, be held personally liable for the payment of certain Taxes. In such event, collection efforts by the Taxing Authorities would be

extremely distracting for the Debtor and its directors and officers in its efforts to bring the Chapter 11 Case to an expeditious conclusion.

3. Customer Programs

138. Prior to the Petition Date and in the ordinary course of its business, the Debtor implemented and participated in various customer programs (the "Customer Programs") to further the commercialization of its product ZEMDRI and maximize the sales of the product. The Debtor seeks authority to honor and continue, in the Debtor's sole discretion, the Customer Programs that it deems to be beneficial and cost-effective to its business. I believe such relief is necessary to the preservation of the Debtor's critical customer relationships, the success and viability of the Debtor's business, ability to maintain access to the current and potential market for the Debtor's product, and ultimately the Debtor's ability to preserve and maximize the value of its estate for the benefit of its creditors. For these and the other reasons set forth herein, I believe it is in the best interests of the Debtor, its estate and its creditors that the Debtor be permitted to honor its prepetition and postpetition obligations in connection with the Customer Programs and to continue or implement customer practices in the ordinary course of the Debtor's business as the Debtor deems necessary.

139. The Debtor sells its drug product to two types of customers: specialty distributors ("Specialty Distributors") and physician owned infusion centers ("POICs") at a wholesale acquisition price ("WAC"). All sales will either move through a specialty distributor channel to an end customer of a hospital, smaller physician center or home health set-up or will be shipped directly to a POIC. The Debtor's financial support programs are each designed to help offset the costs of ZEMDRI™. Further, the Debtor's products are currently covered under Medicaid and Medicare and are available to authorized users of the General Services

Administration's Federal Supply Schedule ("Federal Supply Schedule"), including the Department of Veterans Affairs ("DVA") and the Department of Defense ("DOD") (collectively, the "Governmental Entities" and together with the Specialty Distributors and POICs, the "Customers").

140. Through the Customer Programs, the Debtor provides, among other things, (a) discounted rates on the Debtor's product for purchases made by patients from POICs; and (b) discounted rates on the Debtor's product related to patients eligible for certain federal and State government programs. The Debtor's Customer Programs are common and typical of those in the pharmaceutical industry, critical to the Debtor's ability to serve its Customers and important to the Debtor's future business and revenue growth. During fiscal year 2018, 100% of the Debtor's unit sales ultimately went to patients who received the Debtor's product pursuant to a Customer Program.

141. Therefore, I believe that the success and viability of the Debtor's ongoing business, and ultimately the Debtor's ability to preserve and maximize value for creditors through this Chapter 11 Case, including the sale process, are fundamentally dependent upon the continuation of the Customer Programs and honoring the Debtor's obligations thereunder. Maintaining ordinary course relationships with Customers is integral to preserving the value of the business. I submit that any value-maximizing outcome to this Chapter 11 Case will, of necessity, involve the Debtor being able to continue its ordinary course operations and, thus, the Customer Programs.

142. Through the Customer Programs, the Debtor provides, among other things, (a) discounts on the products for the DVA, the DOD, 340B Covered Entities (defined below), Specialty Distributors, and POICs; (b) Medicaid Rebates and Medicare Part D Rebates;

and (c) a return policy on purchases of the product. The Debtor's Customer Programs are common and typical of those in the pharmaceutical industry. Therefore, if the Debtor is to stay competitive, it is critical that the Debtor be authorized to continue the Customer Programs and honor prepetition obligations associated with the Customer Programs. The following are general descriptions of the Debtor's principal Customer Programs.

i. Customer Discounts via Specialty Distributors and POICs

143. **Specialty Distributors.** The contracts with the Specialty Distributors provide for industry-standard discounts, such as the "prompt pay" discount, which affords a 2% discount to the Customers for paying their invoice within the payment terms of the contract. Further, the Specialty Distributors charge the Debtor fees for management, distribution, logistics and data services (the "Specialty Distributor Fees"). The Specialty Distributor Fees are calculated based on gross sales and range from 2% to 3% of gross sales.

144. Certain contracts with Specialty Distributors include consignment fees (the "Consignment Fees") of 2%, which are calculated based on net sales of the product used on a consignment basis to customers with installed refrigerators. The Consignment Fee terms in these contracts note that the Specialty Distributor maintains the title and risk for loss for product purchased on a consignment basis.

145. **POICs.** The contracts with the POICs also provide for the "prompt pay" discount of 2% for paying within the payment terms of the contract. The POIC contracts also include an additional discount (the "POIC Discount") that ranges from 2% to 15%. The POIC Discount is meant to encourage POICs to adopt ZEMDRI, and is calculated into the WAC. Further, the POICs charge the Debtor data fees for management, distribution, logistics and data services (the "POIC Fees"), similar to the Specialty Distributor Fees. The POIC Fees also relate

to monthly reporting of information on the dispensing clinic, ship date, and number of vials dispensed. The POIC Fees are calculated based on gross sales and amount to 2% of gross sales.

146. **Co-Pay Assistance Program.** The Debtor instituted a copay assistance program in December 2018. The copay assistance program is designed to help patients with the high cost of their medications when infused at an infusion center, hospital outpatient department or home infusion service. The program is available to U.S. residents 18 years or older with commercial insurance. It is not available for patients under government funded insurance. Under the program, the patient is responsible for the first $15 per infusion and then the Debtor will assist with the remaining copay amount up to a maximum of $1,000 over a 12-month period. The program is administered by CareMetx, LLC, who determines eligibility and provides financial reimbursement from a prepaid joint account with the Debtor.

147. **Chargebacks**. As described in more detail below, if the Debtor has contracted with certain Customers that acquire the product, or subsidized the price to the patient, for a lower agreed upon contract price than the WAC, then the Specialty Distributor will receive payment for the product from particular Government Entities at the lower contracted price and the Specialty Distributor will chargeback the Debtor for the price difference to the WAC price originally paid ("Chargebacks"). These price differences are resolved through (i) credits for Chargebacks attributed to such Specialty Distributor in the Debtor's accounts receivable system and are applied against subsequent payments for product made by the Customer (the "Discount Program").

148. Given that Customers continue to owe the Debtor for subsequent product purchases, they will simply reduce their next payment to the Debtor for the Chargebacks they've incurred. Further, because purchases and Chargebacks happen through the accounts receivable

system on a daily basis, it is difficult for the Debtor to determine with precision the actual amount of outstanding Chargebacks at any particular time. These Chargebacks generally do not result in an actual payment of cash to the Specialty Distributor except for in rare circumstances, such as where the Debtor is ending its relationship with a particular Specialty Distributor and the amount of the Chargeback has not yet been fully applied against subsequent orders. This same mechanism of setoff applies for Returns (discussed below).

149. By offering customary prompt pay discounts and Specialty Distributor Fees to Specialty Distributors, the Debtor is able to incentivize the Specialty Distributors to enter into contracts with the Debtor. In addition, allowing Specialty Distributors to set off prompt pay discounts, Chargebacks, and Returns against amounts owing to the Debtor is a customary practice in the pharmaceutical industry. The Debtor believes that the failure to continue to allow the Specialty Distributors to purchase the product with the customary prompt pay discounts and Specialty Distributor Fees, or to allow for continued set off of prompt pay discounts, Chargebacks, and Returns against amounts owing to the Debtor, will result in such Customers ceasing to (a) enter into purchase agreements with the Debtor or (b) purchase the Debtor's product. Any interruption in purchases by Specialty Distributors will likely have a devastating impact on the Debtor's ability to continue to sell its product and be detrimental to its revenue stream.

150. In sum, the Debtor seeks authority to continue the Discount Programs in the ordinary course of business. The Debtor's average monthly liabilities for the Discount Program are as follows: (i) Specialty Distributor Fees of approximately $2,000, (ii) Chargebacks to Specialty Distributors of approximately $1,000 and (iii) POIC Fees of approximately $300. The Debtor estimates that as of the Petition Date, (i) approximately $11,000 is outstanding for

prepetition Specialty Distributor Fees, (ii) $3,000 is outstanding for prepetition Chargeback claims, and (iii) approximately $3,000 in outstanding prepetition POIC Fees. The Debtor seeks the authority, but not the direction, to allow Specialty Distributors to continue to setoff Chargebacks against the Debtor's accounts receivable in the ordinary course and pursuant to prepetition customary terms between the Debtor and Specialty Distributors, even if such Chargebacks constitute prepetition claims, and to pay POIC Fees when they become due in the ordinary course of business.

ii. Government Programs

151. The Medicaid Drug Rebate Program ("MDRP") is a health program that includes the Centers for Medicare & Medicaid Services ("CMS"), State Medicaid Agencies, and participating drug manufacturers to help offset the Federal and State costs of most outpatient prescription drugs dispensed to Medicaid patients. In order to participate in MDRP, the Debtor is required to enter into agreements with two other Federal programs in order to have their drugs covered under Medicaid: A pricing agreement for the 340B Drug Pricing Program (the "340B Program") and a master agreement with the Secretary of Veterans Affairs for the Federal Supply Schedule. Each of these programs requires the Debtor to sell ZEMDRI at a substantial discount to WAC to the applicable Customers.

152. **Federal Supply Schedule.** The Federal Supply Schedule collectively includes the Governmental Entities, and provides the maximum amount that can be charged to these Governmental Entities for pharmaceuticals based on a specific mandated formula set annually. The Debtor was awarded a Federal Supply Schedule contract (the "FSS Contract") in exchange for the Debtor providing federally mandated pricing to the Governmental Entities. Participants under the Federal Supply Schedule place orders for the product through Specialty

Distributors who purchase the product from the Debtor and then ship the product directly to the participating hospitals and clinics. In accordance with the Federal Supply Schedule, the Debtor will charge member patients $2,357.91 per carton of ZEMDRI, a discount of approximately 25.2% to the Debtor's current WAC price of $3,150 per carton.[8] If the price of the product offered through the FSS Contract is lower than the WAC price, the Specialty Distributor will Chargeback the Debtor for the difference on its next purchase.[9] The Debtor expects that the ZEMDRI discount will remain the same through November 30, 2023.

153. The Debtor seeks authority to continue operating pursuant to the FSS Contract in the ordinary course of business. The Debtor's average monthly liability for Chargebacks related to the FSS Contract is approximately $1,000, though Chargebacks and purchases are reconciled through the Debtor's accounts receivable and do not generally result in cash payment. The Debtor also seeks authority to allow Specialty Distributors to continue to setoff Chargebacks related to the FSS Contract against the Debtor's accounts receivable in the ordinary course of business.

154. **340B Covered Entities.** Certain hospitals and health care facilities (the "340B Covered Entities") provide the majority of their services to low income patients and receive payments from CMS to cover the costs of providing care to uninsured patients. Pursuant to the 340B Program, the Debtor provides its product to 340B Covered Entities at a discounted price set by statute, which is calculated on a quarterly basis. The 340B price, as of March 2019,

[8] The 2018 Federal Supply Schedule price includes The Industrial Funding Fee ("IFF"), a fee that is required to be added to a Federal Supply Schedule price to reimburse the VA National Acquisition Center for the costs incurred in operating the Federal Supply Schedule program. The IFF applicable to the VA FSS contract is 0.5% of total sales related to the Federal Supply Schedule program. The IFF payment is due 60 days following the end of each reporting quarter.

[9] The contract with McKesson SD includes an additional discount if the total volume of sales to a government is greater than 10% of McKesson's total sales. This servicing discount is an additional 4% discount which is calculated on VA only sales.

is $2,408.08 per carton of ZEMDRI, a discount of approximately 24% to the Debtor's current WAC price of $3,150 per carton. 340B Covered Entities submit a request for the product to one of the Debtor's Specialty Distributors and the Specialty Distributor fulfills that request and then submits a Chargeback to the Debtor for the difference between the price that the Specialty Distributor paid and the discounted price that the 340B Covered Entities paid for the product.

155. The Debtor's average monthly liability for Chargebacks related to the 340B Program is approximately $1,000, but Chargebacks and purchases are reconciled through the Debtor's accounts receivable and do not generally result in a cash payment. By the Customer Program Motion, the Debtor seeks authority to continue the 340B Program in the ordinary course of business and to apply any prepetition Chargebacks that may be outstanding against prepetition accounts receivable and, if necessary, against subsequent orders of the Debtor's products in the ordinary course of business.

156. **Medicaid Rebates.** MDRP covers certain outpatient drugs, including the Debtor's product, and requires the Debtor to enter into a national rebate agreement with the Secretary of the Department of Health and Human Services in exchange for Medicaid coverage of its product. The Debtor's Specialty Distributors or the POICs provide the product to a hospital or clinic to be utilized by a Medicaid patient. Individual states collect product utilization data on the use of the product and send the Debtor a report and invoice. The Debtor is then responsible for paying a rebate ("Medicaid Rebate") on the product for each time that the product was dispensed to Medicaid patients. The amount of the Medicaid Rebate due for each unit of the individual product is based on a statutory formula. The Debtor pays the Medicaid Rebates to each State MDRP on a quarterly basis, and the amount is shared between the states and the federal government to offset the overall cost of the prescription drugs under the Medicaid

program. As of the Petition Date, the Debtor estimates that approximately $5,000 has been accrued but has not been invoiced for Medicaid Rebates. While this amount is not yet due and payable, it may become due and payable over the course of this Chapter 11 Case.

157. The Debtor seeks the authority, but not the direction, to pay Medicaid Rebates in the ordinary course, even if such Medicaid Rebates constitute prepetition claims.

158. **Medicare Rebates.** The Debtor has also signed the Medicaid Part D Coverage Gap Discount Agreement, whereby the Debtor pays certain rebates related to the Medicare Part D program (the "Medicare Part D Rebates"). The Department of Health and Human Services administers Medicare, a federal health insurance program for people with disabilities and people over the age of sixty-five (65). Medicare Part D is the prescription drug program in which seniors choose from a wide variety of privately run drug plans that negotiate individually with drug makers. The Debtor participates in the Medicare Coverage Gap Discount Program, which provides a 70% discount on drugs to beneficiaries that have reached the coverage gap. In 2018, the coverage gap occurred when the participant had spent between $3,750-5,000 on covered drugs. The Medicare Part D Rebates work in a similar fashion as the Medicaid Rebates described above. As of the Petition Date, the Debtor estimates that approximately $10,000 has been accrued but has not been invoiced for Medicare Part D Rebates. While this amount is not yet due and payable, it may become due and payable over the course of this Chapter 11 Case. The Debtor seeks the authority, but not the discretion, to pay Medicare Part D Rebates in the ordinary course, even if such Medicare Part D Rebates constitute prepetition claims.

159. The Debtor's participation in the FSS Contract and the 340B Program requires the Debtor to participate in the MDRP and pay Medicaid Rebates and Medicare Part D Rebates. As a result, if the Debtor fails to fulfill its obligations under the MDRP, including

payment of the Medicaid Rebates and Medicare Part D Rebates as they become due, it risks becoming excluded from all federal programs. As such, honoring Medicaid Rebates and Medicare Part D Rebates is integral to the Debtor's business, and the Debtor cannot risk the harm that could arise from the failure to pay the Medicaid Rebates and Medicare Part D Rebates, including denial of coverage and damage to the Debtor's relationship with its Customers. Such a result would irreparably impair the Debtor's efforts to conduct its business during this Chapter 11 Case and maximize value. Consequently, the Debtor requests authorization to continue to make Medicaid Rebates and Medicare Part D Rebates pursuant to the MDRP during this Chapter 11 Case as related to both prepetition and postpetition sales of its products.

160. In addition, as noted above, the Debtor offers mandated price discounts as part of the FSS Contract and the 340B Program. These price discounts are honored by Specialty Distributors who, in turn, Chargeback the price difference between the discounted price and the WAC back to the Debtor. These Chargebacks are normally taken as credits against future payments by the Specialty Distributors to the Debtor. Thus, there will be prepetition amounts for these Chargebacks, which are going to be setoff against payments of prepetition receivables. The Debtor estimates there is approximately $5,000 accrued in prepetition Chargebacks, which would be entirely setoff against the Debtor's prepetition accounts receivables.

iii. Sales Return Program

161. In the ordinary course of business, the Debtor allows its Customers to return damaged products or products under a shipping error (a "Return") in exchange for credit when reported within fifteen (15) days of receipt (the "Sales Return Program"). Certain Customers have additional Return policy terms stated in their contracts, which allow for returns within three (3) months prior to and three (3) months after the expiration date.

162. As of the Petition Date, the Debtor estimates that there is approximately $5,000 in potential Returns of the Debtor's product, which would be setoff against the Debtor's prepetition accounts receivable. To maintain its Customers' goodwill and continued business, the Debtor seeks authorization to honor any prepetition Return requests and obligations under the Sales Return Program that occur postpetition in the ordinary course of business, even if such Return requests constitute prepetition claims.

163. The ability of the Debtor to maximize the value of its business and its inventory is dependent on continuing the Customer Programs. Any delay in honoring the Debtor's obligations thereunder could severely disrupt the Debtor's efforts to maximize its value. Any failure to honor prepetition Customer obligations, even for a brief period of time, may drive away valuable Customers, thereby harming the Debtor's efforts to maximize the value of its inventory. Accordingly, the Debtor seeks authorization to continue the Customer Programs.

iv. Managed Services Operations

164. The Debtor utilizes KPMG to provide managed services operations that include government price calculations and Medicaid claim validation and processing. Once Medicaid Rebates have been validated and processed, KPMG makes a funding request to the Debtor sufficient to fund payments to Medicaid, as applicable, in accordance with their terms of payment. KPMG provides these ongoing services daily and such services are an integral part of the Debtor's management of access to an important segment of its target market. As of the Petition Date, there is approximately $29,000 accrued and outstanding from KPMG pertaining to its services. Any interruption in KPMG's services will likely have a devastating impact on the Debtor's ability to continue to sell its product and be detrimental to its revenue stream.

Therefore, the Debtor seeks permission to continue paying KPMG its service fees in the ordinary course, including any service fees that may have arose prepetition.

4. Utilities

165. In connection with its business operations, the Debtor obtains electricity, natural gas, and telephone and telecommunication services (collectively, the "Utility Services") through approximately seven accounts that it has with various utility companies and other providers (each a "Utility Provider" and, collectively, the "Utility Providers"). The Debtor has filed a motion requesting that the Court approve the Debtor's proposed form of adequate assurance of postpetition payment (the "Proposed Adequate Assurance") to the Utility Companies, as that term is used in Bankruptcy Code section 366, approving procedures for resolving any objections by the Utility Providers relating to the Proposed Adequate Assurance and prohibiting the Utility Providers from altering, refusing, or discontinuing service to, or discriminating against, the Debtor.

166. I believe that any interruption in Utility Services, even for a brief period of time, would cause the Debtor to no longer be able to operate its business and the Debtor could suffer irreparable harm. Such an interruption would undoubtedly impede the Debtor's efforts to maximize the value of its business. In my opinion, it is critical that Utility Services continue uninterrupted during the Chapter 11 Case. I believe that the procedures the Debtor has proposed for the Utility Providers adequately protect the rights that I have been advised are provided to the Utility Providers under the Bankruptcy Code, while also protecting the Debtor's need to continue to receive, for the benefit of its estate, the Utility Services upon which its business depends on.

5. Critical Vendors

167. The Debtor's business depends on, among other things, the Debtor's ability to retain its vendors and service providers and to maintain its reputation and customer loyalty within the pharmaceutical industry. The Debtor continues to do business with vendors whose goods and services are essential to the Debtor's operations (the "Critical Vendors"). The Debtor has categorized its Critical Vendors into three subsets for purposes of the Critical Vendor Motion. First, the Debtor has Critical Vendors on account of manufacturing, supply and service provider arrangements with the Debtor (the "Critical Supply and Service Vendors"). Second, the Debtor has Critical Vendors on account of certain warehousing and freight arrangements with the Debtor (the "Critical Warehouse and Freight Vendors"). Third, the Debtor has Critical Vendors that are foreign suppliers of goods and services (the "Critical Foreign Vendors"). In the Critical Vendor Motion, the Debtor seeks entry of an order granting it authority to make payments on account of the prepetition claims of all Critical Vendors (the "Critical Vendor Claims"), not to exceed an aggregate amount of $250,000 on an interim basis and $500,000 on a final basis (for both interim and final periods, the "Critical Vendor Claims Cap"), without prejudice to the Debtor's ability to seek additional amounts pursuant to this Motion at the final hearing if the Debtor determines it is necessary.

168. The Debtor seeks the authority to pay, in its sole discretion and business judgment, all or a portion of the Critical Vendor Claims. The Debtor estimates the maximum amount needed to pay the Critical Vendor Claims is the amount of the Critical Vendor Claims Cap. Of this amount, the Debtor estimates the maximum amount needed to pay Critical Vendor Claims before the final hearing is $250,000. The Critical Vendor Claims Cap represents the Debtor's best estimate as to how much must be paid to such creditors to continue an

uninterrupted supply of critical goods and services. The Debtor may pay less than the requested amount. The Debtor further requests that the Court grant the Debtor the authority to allocate the forgoing amounts at the Debtor's discretion without prejudice to the Debtor's ability to seek additional amounts at the final hearing if the Debtor determines it is necessary or to seek additional relief on an emergency basis, and subject to an agreement to receive terms consistent with Customary Trade Terms (as defined in the Critical Vendor Motion) from the Critical Vendors.

169. In an exercise of business judgment, the Debtor has determined that continuing to receive specialized goods and services from the Critical Vendor Claimants is necessary to operate and restructure its business as a going concern and to maximize value. If granted discretion to satisfy Critical Vendor Claims, as requested in the Critical Vendor Motion, the Debtor will assess, case by case and in real time the benefits to the estate of paying Critical Vendor Claims, and pay any such claims only to the extent the estate will benefit. Without this relief, the Debtor believes that the Critical Vendor Claimants would cease providing goods and services to the Debtor or otherwise take action to impede the Debtor's restructuring – a dire result for the Debtor and its stakeholders.

170. The Debtor believes that most of its vendors will continue to do business with the Debtor after commencement of this Chapter 11 Case because doing so simply makes good business sense. I, however, anticipate that certain vendors that supply goods or services that are necessary to the Debtor's business will: (a) refuse to deliver goods and services without payment of its prepetition claims; (b) refuse to deliver goods and services on reasonable credit terms absent payment of prepetition claims, thereby requiring the Debtor to use even greater liquidity and increase its operating costs; or (c) suffer significant financial hardship, such that the

Debtor's non-payment of its prepetition claims could have a significant negative impact on a Critical Vendor's business and therefore its ability to supply the Debtor with needed goods and services.

171. Accordingly, the Debtor requests the Court's authority to pay the prepetition Critical Vendor Claims because payment of such claims is necessary to an effective businesses, the Debtor used the following criteria: (a) whether the vendor in question is a "sole source" provider; (b) whether quality requirements or other specifications prevent the Debtor from obtaining a vendor's products or services from alternative sources within a reasonable timeframe; (c) whether a vendor meeting the standards of (a) or (b) is likely to refuse to ship product to the Debtor postpetition if its prepetition balances are not paid; (d) whether a vendor would suffer significant financial hardship absent the Debtor's payment of prepetition claims; (e) the degree to which replacement costs (including, pricing, transition expenses, professional fees and lost sales of future revenue) exceed the amount of a vendor's prepetition claim; (f) whether an agreement exists by which the Debtor could compel a vendor to continue performing on prepetition terms; and (g) for foreign vendors specifically, whether the vendor lacks minimum contacts with the United States such that the vendor may not be subject to the jurisdiction of this Court or the provisions of the Bankruptcy Code that otherwise protect the Debtor's assets and business operations, or may simply be confused by the chapter 11 process.

172. I am confident that this process has appropriately identified only those vendors that meet some or all of the foregoing stringent guidelines and that, if the Debtor failed to pay for the vital goods and services it provided prepetition, would likely cease to provide them in the future. It is my opinion that the cessation of such goods or services would adversely impact the Debtor's ability to reorganize, and any efforts to replace such good or services would

distract the Debtor from the chapter 11 process more generally, at the expense of the Debtor's creditors and other parties in interest.

[*Remainder of page intentionally left blank; signature page follows*]

I declare under penalty of perjury, pursuant to section 1746 of title 28 of the United States Code that the foregoing is true and correct to the best of my knowledge.

Dated: April 15, 2019

Blake Wise
Chief Executive Officer

Exhibit A

Anti-infectives: Addressing Market Dynamics that Challenge New Entrants to the Sector

July 30, 2018



Anti-infectives: Addressing Market Dynamics that Challenge New Entrants to the Sector

By: Oded Ben-Joseph, PhD, MBA and Echoe Bouta, PhD

Outcome Capital

Bacterial resistance is a huge and growing unmet need. However, Novartis' recent announcement that the company is shutting down its antibacterial and antiviral research — followed by similar moves from Eli Lilly, Bristol-Myers Squibb and AstraZeneca — presents a sector-wide trend. This big pharma flight from anti-infective R&D will create significant challenges for early-stage biotech companies seeking to develop novel and much needed drugs in this sector, as opportunities for partnerships, joint R&D relationships, and merger/acquisition transactions are diminishing. This trend supports our internal research and analysis of the anti-infectives segment (J. Comm. Biotech., Vol 24, 2, 47-53).

Even when a company's management and board is committed to the success of its endeavors, we often find they exhibit a tendency to disregard the dynamics of the segment in which they operate. Recently, we analyzed financing events, M&A transactions and initial public offerings (IPOs) from 2015-2017 in various separate sectors. Within that time period, the anti-infectives sector showed little opportunity for successful exit. Few M&As or IPOs were successfully completed, likely due to the low revenues earned by recently approved antibiotics. Of the limited number of exits that were achieved, the majority occurred when the lead asset was in Phase III trials or already approved. Most investors in the anti-infectives sector have experienced limited returns, and that experience challenges the ability of young companies to raise either private or public capital for new anti-infectives development. This finding is evidenced by the low number of funded companies in the sector, and by the total capital raised to support anti-infectives development compared to other industry segments.

Undercapitalization is a risk for any biotech company. Due to the challenges of raising capital and exiting successfully within this sector, that risk is further increased for anti-infective companies. This situation dictates a strategy of targeting large venture firms with sufficient capital to support the company to Phase III and beyond. Furthermore, these dynamics suggest that young companies should hold discussions early with prospective future buyers to determine those companies' interest in their development strategy. Early partnering/collaboration as a risk mitigation measure is critical.

August 31, 2018

Federal Data Systems Has Received an Investment from McNally Capital

Federal Data Systems Has Received an Investment from McNally Capital August 30, 2018, Reston, VA Federal Data Systems, Inc (FedData) has received an investment from McNally Capital. FedData is a leader in providing critical infrastructure and services to the Department of Defense and the National Intelligence Community, and a provider of threat reduction and counterintelligence [...]

News June 19, 2018

Outcome Capital Announces Digital Intelligence Systems Has Acquired Xtreme Consulting Group

Outcome Capital Announces Digital Intelligence Systems Has Acquired Xtreme Consulting Group June 18, 2018, Reston, VA and Boston, MA. Outcome Capital, an investment banking firm that serves middle market growth companies in the life science and technology segments, is pleased to announce that its client, Digital Intelligence Systems (DISYS), a global staffing and IT consulting firm, [...]

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Would you like to learn more about working with Outcome Capital or discuss your specific needs?

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