

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:

Zosano Pharma Corporation,¹

Debtor.

Chapter 11

Case No. 22-10506 (JKS)

CERTIFICATION OF COUNSEL REQUESTING
ENTRY OF ORDER AUTHORIZING THE RETENTION AND
EMPLOYMENT OF SIERRACONSTELLATION PARTNERS, LLC
AS FINANCIAL ADVISOR TO THE DEBTOR

The undersigned proposed counsel to the above-captioned debtor and debtor-in-possession (the “**Debtor**”) hereby certifies that:

1. On June 1, 2022, the Debtor filed a voluntary petition for relief under chapter 11 of Title 11 of the United States Code.

2. On June 8, 2022, the Debtor filed the *Application of the Debtor for Entry of an Order Authorizing the Retention and Employment of SierraConstellation Partners, LLC as Financial Advisor to the Debtor, Effective as of the Petition Date* [Docket No. 40] (the “**Application**”).

3. Pursuant to the Notice of Application, objections were due on June 22, 2022. On June 22, 2022, Patheon Manufacturing Services LLC (“**Patheon**”) filed the *Objection of Patheon Manufacturing Services LLC to Application of the Debtor for Entry of an Order Authorizing the Retention and Employment of SierraConstellation Partners, LLC as Financial Advisor to the Debtor* [Docket No. 64] (the “**Objection**”). The Debtor also received informal comments to the

¹ The business address and the last four (4) digits of the Debtor’s federal tax identification number is Zosano Pharma Corporation, 34790 Ardentech Court, Fremont, California 94555 (8360).



Application from the Office of the United States Trustee. No other responses or objections were received.

4. On June 27, 2022, the Debtor filed its *Reply to Objection of Patheon Manufacturing Services LLC to Application of the Debtor for Entry of an Order Authorizing the Retention and Employment of SierraConstellation Partners, LLC as Financial Advisor to the Debtor* [Docket No. 75].

5. On June 30, 2022, the Court held a hearing to consider, *inter alia*, the Application and Objection. At the conclusion of the hearing, the Court indicated it would grant the Application and overrule the Objection, subject to the submission of a revised form of order.

6. Attached hereto as Exhibit A is a revised proposed order granting the Application incorporating comments received from the United States Trustee. Attached hereto as Exhibit B is a blackline of the revised proposed order against the version originally filed with the Application. Patheon and the United States Trustee do not object to entry of the revised proposed order.

7. The Debtor therefore requests that the Court enter the revised proposed order attached hereto as Exhibit A at its earliest convenience. Counsel is available at the request of the Court.

Dated: July 6, 2022

GREENBERG TRAURIG, LLP

/s/ Dennis A. Meloro

Dennis A. Meloro (DE Bar No. 4435)

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*Proposed Counsel for the Debtor
and Debtor-in-Possession*

EXHIBIT A

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:

Zosano Pharma Corporation,¹

Debtor.

Chapter 11

Case No. 22-10506 (JKS)

Ref. Docket No. 40

**ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF
SIERRACONSTELLATION PARTNERS, LLC AS FINANCIAL ADVISOR
TO THE DEBTOR, EFFECTIVE AS OF THE PETITION DATE**

Upon the application (the “**Application**”)² of the above-captioned debtor and debtor-in-possession (the “**Debtor**”), pursuant to sections 327(a), 328(a), and 1107(b) of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 2014(a), 2016(b), and 5002 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 2014-1 of the Local Rules of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), for entry of an order: (i) authorizing the retention and employment of SierraConstellation Partners, LLC (“**SCP**”) as financial advisor to the Debtor, effective as of June 1, 2022 (the “**Petition Date**”), pursuant to the terms and conditions set forth in the Engagement Letter, and (ii) providing any additional relief required in order to effectuate the foregoing; and upon the *Declaration of Lawrence Perkins in Support of Application of the Debtor for Entry of an Order Authorizing the Retention and Employment of SierraConstellation Partners, LLC as Financial Advisor to the Debtor, Effective as of the Petition Date* (the “**Perkins Declaration**”); and it appearing that this Court has jurisdiction to consider the Application pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of this Case and the Application in this district is proper pursuant to 28 U.S.C.

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² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Application.

§§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and the Court finding that SCP is “disinterested,” that SCP represents no interest adverse to the Debtor’s estate, SCP is otherwise eligible for retention pursuant to the Bankruptcy Code, and this Court having determined that the relief requested in the Application is in the best interests of the Debtor, its estate, its creditors and other parties in interest; and it appearing that proper and adequate notice of the Application has been given and that no other or further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Application is granted as set forth herein.
2. The *Objection of Patheon Manufacturing Services LLC to Application of the Debtor for Entry of an Order Authorizing the Retention and Employment of SierraConstellation Partners, LLC as Financial Advisor to the Debtor* [Docket No. 64] is overruled for the reasons set forth on the record at the June 30, 2022 hearing.
3. The Debtor is authorized, pursuant to sections 327(a), 328(a), and 1107(b) of the Bankruptcy Code, Bankruptcy Rule 2014(a), and Local Rule 2014-1, to retain and employ SCP as its financial advisor, effective as of the Petition Date, in accordance with the terms and conditions set forth in the Engagement Letter, as modified by this Order, and to pay fees and reimburse expenses to SCP on the terms set forth in the Engagement Letter, as modified by this Order.
4. The terms of the Engagement Letter and conditions of employment are approved, as modified by this Order.
5. Notwithstanding anything to the contrary in the Application, the Retention Agreement or any other document submitted with the Application, (a) SCP shall apply for compensation for professional services rendered and reimbursement of expenses incurred in connection with the Debtors’ chapter 11 cases in compliance sections 330 and 331 of the

Bankruptcy Code, and in accordance with the Bankruptcy Rules, the Local Rules, the guidelines established by the Office of the U.S. Trustee, and any applicable orders of the Court; and (b) the fees payable to SCP, and its requests for reimbursement, shall be subject to the standard of review set forth in section 330 of the Bankruptcy Code, and such review shall not be limited to the standards set forth in section 328(a) of the Bankruptcy Code.

6. SCP is authorized to hold any retainer balance from the Debtor not applied as of the Petition Date as an evergreen retainer providing security throughout the Case.

7. SCP shall file monthly, interim, and final fee applications for allowance of compensation for services rendered and reimbursement of its expenses with respect to services rendered in this Case with the Court. SCP's fee applications shall be prepared in accordance with the applicable procedures of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any applicable orders of this Court. Notwithstanding anything to the contrary in this Order, the Application, the Retention Agreement or any other document submitted with the Application, SCP shall comply with all requirements of Bankruptcy Rule 2016(a) and Local Rule 2016-2, including all information and time keeping requirements of those Rules.

8. Notwithstanding anything to the contrary contained herein, the U.S. Trustee retains all rights to respond or object to SCP's applications for compensation and reimbursement of out-of-pocket expenses based on the reasonableness standard in section 330 of the Bankruptcy Code. This Order and the record relating to the Court's consideration of the Application shall not prejudice or otherwise affect the rights of the U.S. Trustee to challenge the reasonableness of SCP's fees under the standard set forth in the preceding sentence. Accordingly, nothing in this Order or the record shall constitute a finding of fact or conclusion of law binding the U.S. Trustee, on appeal or otherwise, with respect to the reasonableness of SCP's fees.

9. SCP is entitled to reimbursement of actual and necessary expenses, including legal fees related to the Application and future fee applications as approved by this Court, provided, however, that SCP shall not seek reimbursement of any fees incurred defending any of SCP's fee applications in this Case.

10. No agreement or understanding exists between SCP and any other person, other than as permitted by section 504 of the Bankruptcy Code, to share compensation received for services rendered in connection with the Case, nor shall SCP share or agree to share compensation received for services rendered in connection with the Case with any other person other than as permitted by section 504 of the Bankruptcy Code.

11. Notwithstanding anything in the Application to the contrary, SCP shall (i) to the extent that SCP uses the services of independent contractors or subcontractors (collectively, the "**Contractors**") in this Case, pass through the cost of such Contractors to the Debtor at the same rate that SCP pays the Contractors; (ii) seek reimbursement for actual costs only; (iii) ensure that the Contractors are subject to the same conflicts checks as required for SCP; and (iv) file with the Court such disclosures required by Bankruptcy Rule 2014 with respect to such Contractors.

12. The Indemnification Provisions set forth in the Engagement Letter are approved, subject during the pendency of this Case to the following:

- a) SCP shall not be entitled to indemnification or reimbursement of expenses pursuant to the Engagement Letter unless such indemnification or reimbursement of expenses is approved by the Court;
- b) notwithstanding any provision of the Engagement Letter to the contrary, the Debtor shall have no obligation to indemnify or provide reimbursement of expenses to SCP for any claim or expense that is either (i) judicially determined (the determination having become final) to have arisen from SCP's gross negligence, willful misconduct or bad faith, (ii) for a contractual dispute in which the Debtor alleges the breach of SCP's contractual obligations, unless the Court determines that indemnification, contribution or reimbursement of expenses would be permissible pursuant to *In re United Artists Theatre Company, et al.*, 315 F.3d 217 (3d Cir. 2003);

or (iii) settled prior to a judicial determination as to SCP's gross negligence or willful misconduct, but determined by this Court, after notice and a hearing, to be a claim or expense for which SCP should not receive indemnity, contribution or reimbursement under the terms of the Engagement Letter, as modified by the Order; and

- c) if, before the earlier of (i) the entry of an order confirming a chapter 11 plan in this Case (that order having become a final order no longer subject to appeal), and (ii) the entry of an order closing this Case, SCP believes that it is entitled to the payment of any amounts by the Debtor on account of the Debtor's indemnification, contribution and/or reimbursement obligations under the Engagement Letter, as modified by this Order, including without limitation the advancement of defense costs, SCP must file an application therefor in this Court, and the Debtor may not pay any such amounts to SCP before the entry of an order by this Court approving any such payment. This subparagraph (c) is intended only to specify the period of time during which the Court shall have jurisdiction over any request by SCP for indemnification, contribution or reimbursement and is not a provision limiting the duration of the Debtor's obligation to indemnify, or make contributions or reimbursements to, SCP. All parties in interest shall retain the right to object to any demand by SCP for indemnification, contribution and/or reimbursement.

13. Any limitation of liability, warranty, or damages pursuant to the terms and conditions set forth in the Engagement Letter, or otherwise, shall have no force or effect.

14. Notwithstanding anything to the contrary in the Application, the Retention Agreement or the Perkins Declaration, during the course of the Bankruptcy Cases, any provision in the Retention Agreement to the effect that the Retention Agreement does not create a fiduciary relationship between SCP and the Debtors shall have no force or effect.

15. Any provision in the Engagement Letter whereby the Debtors waive any conflicts of interest that SCP has or may have shall have no force or effect during the course of these bankruptcy cases.

16. SCP shall not unilaterally terminate its engagement under the Engagement Letter absent prior approval of the Court.

17. Notwithstanding any applicability of Bankruptcy Rules 6004(h), 7062, or 9014, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

18. To the extent there is any inconsistency between the terms of the Application, the Engagement Letter, and this Order, the express terms of this Order shall govern.

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

20. Notice of the Application as provided therein shall be deemed good and sufficient notice and such satisfies the requirements of Bankruptcy Rule 6004(a) and the Local Rules.

21. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.

EXHIBIT B

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:

Zosano Pharma Corporation,¹

Debtor.

Chapter 11

Case No. 22-10506 (JKS)

Ref. Docket No. ~~___~~40

**ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF
SIERRACONSTELLATION PARTNERS, LLC AS FINANCIAL ADVISOR
TO THE DEBTOR, EFFECTIVE AS OF THE PETITION DATE**

Upon the application (the “**Application**”)² of the above-captioned debtor and debtor-in-possession (the “**Debtor**”), pursuant to sections 327(a), 328(a), and 1107(b) of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 2014(a), 2016(b), and 5002 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 2014-1 of the Local Rules of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), for entry of an order: (i) authorizing the retention and employment of SierraConstellation Partners, LLC (“**SCP**”) as financial advisor to the Debtor, effective as of June 1, 2022 (the “**Petition Date**”), pursuant to the terms and conditions set forth in the Engagement Letter, and (ii) providing any additional relief required in order to effectuate the foregoing; and upon the *Declaration of Lawrence Perkins in Support of Application of the Debtor for Entry of an Order Authorizing the Retention and Employment of SierraConstellation Partners, LLC as Financial Advisor to the Debtor, Effective as of the Petition Date* (the “**Perkins Declaration**”); and it appearing that this Court has jurisdiction to consider the Application pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of this Case and

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the Application in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and the Court finding that SCP is “disinterested,” that SCP represents no interest adverse to the Debtor’s estate, SCP is otherwise eligible for retention pursuant to the Bankruptcy Code, ~~and that the terms of the engagement are reasonable and appropriate;~~ and this Court having determined that the relief requested in the Application is in the best interests of the Debtor, its estate, its creditors and other parties in interest; and it appearing that proper and adequate notice of the Application has been given and that no other or further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Application is granted as set forth herein.
2. *The Objection of Patheon Manufacturing Services LLC to Application of the Debtor for Entry of an Order Authorizing the Retention and Employment of Sierra Constellation Partners, LLC as Financial Advisor to the Debtor [Docket No. 64] is overruled for the reasons set forth on the record at the June 30, 2022 hearing.*
3. ~~2.~~ The Debtor is authorized, pursuant to sections 327(a), 328(a), and 1107(b) of the Bankruptcy Code, Bankruptcy Rule 2014(a), and Local Rule 2014-1, to retain and employ SCP as its financial advisor, effective as of the Petition Date, in accordance with the terms and conditions set forth in the Engagement Letter, as modified by this Order, and to pay fees and reimburse expenses to SCP on the terms set forth in the Engagement Letter, as modified by this Order.
4. ~~3.~~ The terms of the Engagement Letter ~~are reasonable terms~~ and conditions of employment ~~and~~ are approved, as modified by this Order.

5. ~~4.~~ Notwithstanding anything to the contrary in the Application, the Retention Agreement or any other document submitted with the Application, (a) SCP shall ~~file applications and be compensated for fees and reimbursed for out-~~ apply for compensation for professional services rendered and reimbursement of ~~pocket~~ expenses ~~pursuant to~~ incurred in connection with the Debtors' chapter 11 cases in compliance sections 330 and 331 of the Bankruptcy Code, and in accordance with the ~~terms~~ Bankruptcy Rules, the Local Rules, the guidelines established by the Office of the ~~Engagement Letter~~ U.S. Trustee, and ~~all fees and out-of-pocket expense reimbursements to be paid to SCP shall be subject to review only pursuant to the standard of review set forth in section 328(a) of the Bankruptcy Code, and not~~ any applicable orders of the Court; and (b) the fees payable to SCP, and its requests for reimbursement, shall be subject to the standard of review set forth in section 330 of the Bankruptcy Code, ~~except as otherwise~~ and such review shall not be limited to the standards set forth ~~herein~~ in section 328(a) of the Bankruptcy Code.

6. ~~5.~~ SCP is authorized to hold any retainer balance from the Debtor not applied as of the Petition Date as an evergreen retainer providing security throughout the Case.

7. ~~6.~~ SCP shall file monthly, interim, and final fee applications for allowance of compensation for services rendered and reimbursement of its expenses with respect to services rendered in this Case with the Court. SCP's fee applications shall be prepared in accordance with the applicable procedures of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any applicable orders of this Court. Notwithstanding anything to the contrary in this Order, the Application, the Retention Agreement or any other document submitted with the Application, SCP shall comply with all requirements of Bankruptcy Rule 2016(a) and Local Rule 2016-2, including all information and time keeping requirements of those Rules.

8. ~~7.~~ Notwithstanding anything to the contrary contained herein, the U.S. Trustee retains all rights to respond or object to SCP's applications for compensation and reimbursement of out-of-pocket expenses based on the reasonableness standard in section 330 of the Bankruptcy Code. This Order and the record relating to the Court's consideration of the Application shall not prejudice or otherwise affect the rights of the U.S. Trustee to challenge the reasonableness of SCP's fees under the standard set forth in the preceding sentence. Accordingly, nothing in this Order or the record shall constitute a finding of fact or conclusion of law binding the U.S. Trustee, on appeal or otherwise, with respect to the reasonableness of SCP's fees.

9. ~~8.~~ SCP is entitled to reimbursement of actual and necessary expenses, including legal fees related to the Application and future fee applications as approved by this Court, provided, however, that SCP shall not seek reimbursement of any fees incurred defending any of SCP's fee applications in this Case.

10. ~~9.~~ No agreement or understanding exists between SCP and any other person, other than as permitted by section 504 of the Bankruptcy Code, to share compensation received for services rendered in connection with the Case, nor shall SCP share or agree to share compensation received for services rendered in connection with the Case with any other person other than as permitted by section 504 of the Bankruptcy Code.

11. ~~10.~~ Notwithstanding anything in the Application to the contrary, SCP shall (i) to the extent that SCP uses the services of independent contractors or subcontractors (collectively, the "**Contractors**") in this Case, pass through the cost of such Contractors to the Debtor at the same rate that SCP pays the Contractors; (ii) seek reimbursement for actual costs only; (iii) ensure that the Contractors are subject to the same conflicts checks as required for SCP; and (iv)

file with the Court such disclosures required by Bankruptcy Rule 2014 with respect to such Contractors.

12. ~~11.~~ The Indemnification Provisions set forth in the Engagement Letter are approved, subject during the pendency of this Case to the following:

- a) SCP shall not be entitled to indemnification or reimbursement of expenses pursuant to the Engagement Letter unless such indemnification or reimbursement of expenses is approved by the Court;
- b) notwithstanding any provision of the Engagement Letter to the contrary, the Debtor shall have no obligation to indemnify or provide reimbursement of expenses to SCP for any claim or expense that is either (i) judicially determined (the determination having become final) to have arisen from SCP's gross negligence, willful misconduct or bad faith, (ii) for a contractual dispute in which the Debtor alleges the breach of SCP's contractual obligations, unless the Court determines that indemnification, contribution or reimbursement of expenses would be permissible pursuant to *In re United Artists Theatre Company, et al.*, 315 F.3d 217 (3d Cir. 2003); or (iii) settled prior to a judicial determination as to SCP's gross negligence or willful misconduct, but determined by this Court, after notice and a hearing, to be a claim or expense for which SCP should not receive indemnity, contribution or reimbursement under the terms of the Engagement Letter, as modified by the Order; and
- c) if, before the earlier of (i) the entry of an order confirming a chapter 11 plan in this Case (that order having become a final order no longer subject to appeal), and (ii) the entry of an order closing this Case, SCP believes that it is entitled to the payment of any amounts by the Debtor on account of the Debtor's indemnification, contribution and/or reimbursement obligations under the Engagement Letter, as modified by this Order, including without limitation the advancement of defense costs, SCP must file an application therefor in this Court, and the Debtor may not pay any such amounts to SCP before the entry of an order by this Court approving any such payment. This subparagraph (c) is intended only to specify the period of time during which the Court shall have jurisdiction over any request by SCP for indemnification, contribution or reimbursement and is not a provision limiting the duration of the Debtor's obligation to indemnify, or make contributions or reimbursements to, SCP. All parties in interest shall retain the right to object to any demand by SCP for indemnification, contribution and/or reimbursement.

13. ~~12.~~ Any limitation of liability, warranty, or damages pursuant to the terms and conditions set forth in the Engagement Letter, or otherwise, ~~is hereby eliminated~~ shall have no force or effect.

14. Notwithstanding anything to the contrary in the Application, the Retention Agreement or the Perkins Declaration, during the course of the Bankruptcy Cases, any provision in the Retention Agreement to the effect that the Retention Agreement does not create a fiduciary relationship between SCP and the Debtors shall have no force or effect.

15. Any provision in the Engagement Letter whereby the Debtors waive any conflicts of interest that SCP has or may have shall have no force or effect during the course of these bankruptcy cases.

16. SCP shall not unilaterally terminate its engagement under the Engagement Letter absent prior approval of the Court.

17. ~~13.~~ Notwithstanding any applicability of Bankruptcy Rules 6004(h), 7062, or 9014, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

18. ~~14.~~ To the extent there is any inconsistency between the terms of the Application, the Engagement Letter, and this Order, the express terms of this Order shall govern.

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

20. ~~16.~~ Notice of the Application as provided therein shall be deemed good and sufficient notice and such satisfies the requirements of Bankruptcy Rule 6004(a) and the Local Rules.

21. ~~17.~~ The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.

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4:58:51 PM

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Document 2 ID	2
Description	#64974735v2<ADMIN> - ZPC - SPC Retention Order (v1 as filed with application)
Rendering set	GT-1

Legend:	
Insertion	
Deletion	
Moved from	
Moved to	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	42
Deletions	31
Moved from	0
Moved to	0
Style changes	0
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