

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

In re:

Zosano Pharma Corporation,<sup>1</sup>

Debtor.

Chapter 11

Case No. 22-10506 (JKS)

Obj. Date: September 29, 2022 at 4:00 p.m. (ET)

Hearing Date: October 6, 2022 at 1:00 p.m. (ET)

**MOTION OF DEBTOR FOR AN ORDER EXTENDING THE EXCLUSIVE  
PERIODS DURING WHICH DEBTOR MAY FILE AND SOLICIT  
ACCEPTANCES OF A CHAPTER 11 PLAN**

The above-captioned debtor and debtor-in-possession (the “**Debtor**”) hereby moves this Court (the “**Motion**”) for the entry of an order (the “**Order**”), in substantially the form attached hereto as Exhibit A, pursuant to section 1121(d) of chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”), extending (i) the period within which only the Debtor may file a chapter 11 plan as set forth in section 1121(b)(2) of the Bankruptcy Code (the “**Exclusive Filing Period**”) through and including January 27, 2023, and (ii) extending the period within which only the Debtor may solicit acceptances of a chapter 11 plan as set forth in section 1121(c)(3) of the Bankruptcy Code (the “**Exclusive Solicitation Period**”) and, together with the Exclusive Filing Period, the “**Exclusive Periods**”), through and including March 28, 2023. In support of this Motion, the Debtor respectfully states as follows:

**Jurisdiction, Venue and Statutory Predicates**

1. The United States Bankruptcy Court for the District of Delaware (the “**Court**”) has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware,

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<sup>1</sup> 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).



dated February 29, 2012. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), the Debtor consents to the entry of a final judgment or order with respect to this Motion if it is determined that the Court lacks authority under Article III of the United States Constitution to enter such final order or judgment absent consent of the parties.

### **Background**

3. On June 1, 2022 (the “**Petition Date**”), the Debtor commenced this case (the “**Case**”) by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Court.

4. The Debtor continues to operate its business and manage its property as debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. As of the date hereof, no trustee, examiner or official committee of unsecured creditors has been appointed in the Debtor’s Case.

5. On August 8, 2022, the Court entered an Order (Doc No. 164) (the “**Sale Order**”) approving the sale (the “**Sale**”) of substantially all of the assets of the Debtor to Emergex USA Corporation (the “**Buyer**”). The Sale closed on August 15, 2022.

6. The Debtor filed its Chapter 11 Plan of Liquidation [Docket No. 177] and related Disclosure Statement [Docket No. 179] on August 25, 2022. A hearing on the approval of the Disclosure Statement is set for October 6, 2022.

7. Additional information regarding the Debtor’s business and operations, as well as the events precipitating the commencement of this Case, is set forth in the *Declaration of Steven*

*Lo in Support of the Debtor's Chapter 11 Petition and Requests for First Day Relief* [Docket No. 15] (the “**First Day Declaration**”) and incorporated herein by reference.

### **Relief Requested**

8. By this Motion, the Debtor respectfully requests, pursuant to section 1121(d) of the Bankruptcy Code, that this Court extend the Exclusive Filing Period by one hundred twenty (120) days through and including January 27, 2023 and the Exclusive Solicitation Period by one hundred twenty (120) days through and including March 28, 2023. This is the Debtor's first request for an extension of the Exclusive Periods and the request is made without prejudice to the Debtor's right to seek further extensions of exclusivity.

### **Basis For Relief**

#### **A. The Exclusive Periods May Be Extended for Cause**

9. The principal goal of chapter 11 is the successful rehabilitation of a debtor's business. *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 527 (1984); *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 203 (1983). A considered and consensual plan of reorganization is an integral component of this rehabilitatee, and one which poses the added benefits of avoiding lengthy and costly litigation, reducing the bankruptcy court's administrative burden, and increasing the overall distribution to creditors and equity security holders. *See* Chaim Fortgang and Thomas Mayer, *Valuation in Bankruptcy*, 32 UCLA L. Rev. 1061, 1106-1107 (1985).

10. Toward this end, and pursuant to section 1121(b) of the Bankruptcy Code, a debtor has the exclusive right to file a plan for a period of one hundred twenty (120) days after the petition date. 11 U.S.C. § 1121(b). If a debtor files a plan within the one hundred twenty (120) day exclusivity period, Bankruptcy Code section 1121(c)(3) provides sixty (60) additional days during which the debtor has the exclusive right to solicit votes with respect to such plan. 11

U.S.C. §1121(c)(3). The purpose of these exclusive periods is to permit debtors time to stabilize their operations, formulate a plan and negotiate with creditors based on the theory that the debtors are in the best position, given their knowledge of their business and the creditor base, to propose a workable plan. *See* H.R. Rep. No. 95-595, 95<sup>th</sup> Cong., 1st Sess., 231-32 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6190-92; *see also In re Clamp-All Corp.* 233 B.R. 198, 207 (Bankr. D. Mass. 1999).

11. Under section 1121(d) of Bankruptcy Code, the Court may extend these exclusive periods for “cause.” Specifically, section 1121(d) of the Bankruptcy Code provides:

- (1) Subject to paragraph (2), on request of a party in interest made within the respective periods specified in subsections (b) and (c) of this section and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section.
- (2) (A) The 120-day period specified in paragraph (1) may not be extended beyond a date that is 18 months after the date of the order for relief under this chapter.
- (B) The 180-day period specified in paragraph (1) may not be extended beyond a date that is 20 months after the date of the order for relief under this chapter.

11 U.S.C. §1121(d). The decision of whether to grant a request to extend the exclusivity periods lies within the sound discretion of the bankruptcy court. *See First Am. Bank of New York v. Sw. Gloves & Safety Equip., Inc.*, 64 B.R. 963, 965 (D. Del. 1986); *Continental Casualty Co. v. Burns & Roe Enters. (In re Burns & Roe Enters.)*, 2005 U.S. Dist. LEXIS 26247 at \*10-11 (D.N.J. Nov. 2, 2005); *In re Amko Plastics, Inc.*, 197 B.R. 74, 77 (Bankr. S.D. Ohio 1996); H.R. Rep. No. 95-595, at 231, 232 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6191 (“[t]he court is given the power, though, to increase or reduce the 120-day period depending on the circumstances of the case”). The Bankruptcy Code does not define “cause” or establish criteria to be considered in ruling on a motion to extend exclusivity. However, Congress contemplated

that bankruptcy courts would apply the exclusivity provisions flexibly so as to promote the orderly, consensual and successful reorganization of a debtor's affairs. *See* H.R. Rep. No. 95-595, at 232 (1977).

12. Whether "cause" exists in any situation is determined on a case-by-case basis, and the pertinent factors, depends largely upon the factual nature of the case before the court. The following factors have been considered by courts in determining whether cause exists to grant an extension of the exclusivity periods:

- (i) the size and complexity of the debtor's case;
- (ii) the necessity of sufficient time to negotiate and prepare adequate information;
- (iii) the existence of good faith progress toward reorganization;
- (iv) whether the debtor is paying its bills as they come due;
- (v) whether the debtor has demonstrated reasonable prospects for filing a viable plan;
- (vi) whether the debtor has made progress negotiating with creditors;
- (vii) the length of time a case has been pending;
- (viii) whether the debtor is seeking to extend exclusivity to pressure creditors "to accede to [the debtors'] reorganization demands;"
- (ix) the existence of an unresolved contingency (e.g., ongoing negotiations that will not conclude within the exclusive periods, but where the subject matter of the negotiations is vital to reorganization and, if successful, the negotiations would likely enable the debtor to file a successful plan of reorganization).

*See In re Cent. Jersey Airport Servs.*, 282 B.R. 176, 184 (Bankr. D.N.J. 2002); *In re Adelphia Communications Corp.*, 352 B.R. 578, 587 (Bankr. S.D.N.Y. 2006); *In re R.G. Pharm, Inc.*, 374 B.R. 484 (D. Conn. 2007); *see also Bunch v. Hoffinger Indus.*, 292 B.R. at 643-44 ("As always, we emphasize that these are only factors, not all of which are relevant in every case . . . [i]t is within the discretion of the bankruptcy court to decide which factors are relevant and give the

appropriate weight to each”). Not every factor is relevant in every case and courts have used subsets of the factors to evaluate a request to extend the Exclusive Periods. *See Bunch v. Hoffinger Indus., Inc. (In re Hoffinger Indus., Inc.)*, 292 B.R. 639, 643-44 (B.A.P. 8th Cir. 2003). Each of the foregoing factors that is relevant to this Case weighs in favor of the relief requested. As discussed below, the requested extension of the Exclusive Periods will not prejudice the legitimate interests of any creditor and will permit the Debtor to complete the disclosure statement approval, plan solicitation, and confirmation process.

**B. Cause Exists to Extend the Exclusive Periods**

*i. The Debtor’s Progress in the Case Warrants an Extension of the Exclusive Periods*

13. The Debtor is not seeking an extension of the Exclusive Periods to delay administration of its Case. *See In re Adelphia*, 342 B.R. 122, 131 (Bankr. S.D.N.Y. 2006) (considering a variety of factors but focusing on whether “debtors had made a good faith progress towards reorganization and whether the extension of exclusivity was sought to pressure creditors to submit to debtor’s reorganization demands.”). To the contrary, the Debtor seeks the relief requested in this Motion to maintain a framework conducive to an orderly, efficient, and cost-effective exit strategy to this Case. The Debtor has made a great deal of progress in this Case.

14. In less than three months, the Debtor has succeeded in maximizing the value of the estate through obtaining first and second day relief, concluding its sale process, and promptly proposing a plan of liquidation to distribute that value to creditors. *See In re Public Serv. Co. of N.H.*, 88 B.R. 521, 534 (Bankr. D.N.H. 1988) (delay is justified when attempting to realize the maximum value of the debtors’ estate).

**iv. The Debtor Is Paying Its Bills as They Become Due**

15. Courts considering an extension of exclusivity may also assess a debtor's liquidity and solvency. *See In re Ravenna Indus., Inc.*, 20 B.R. 886, 890 (Bankr. N.D. Ohio 1982); *Continental Casualty Co. v. Burns & Roe Enters. (In re Burns & Roe Enters.)*, 2005 U.S. Dist. LEXIS 26247, at \*2 (D.N.J. Nov. 3, 2005). The Debtor is paying its bills as they come due. Consequently, this factor weighs in favor of the relief requested herein.

**v. The Debtor Has Filed a Viable Plan, Has Made Progress Negotiating With Creditors, And Is Not Seeking An Extension To Pressure Creditors**

16. Courts have denied extensions of exclusive periods when plan negotiations among parties-in-interest have broken down and the continuation of exclusivity would merely give the debtor unfair bargaining leverage over the other parties-in-interest. *See Teachers Ins. & Annuity Ass'n of Am. v. Lake in the Woods (In re Lake in the Woods)*, 10 B.R. 338, 345 (E.D. Mich. 1981); *Continental Casualty Co.*, 2005 U.S. Dist. LEXIS 26247, at \*12 (M.D. Pa. 2008). Here, the Debtor's request for an extension of the Exclusive Periods is not a negotiation tactic. Instead, the Debtor promptly filed a plan and disclosure statement after the completion of the sale. The Debtor does not seek an extension for the purpose of shutting out any creditors or parties-in-interest. In fact, the Debtor intends to continue work with creditors to confirm its plan and resolve this Case.

**vi. This Case Has Been Pending for Less Than Four Months**

17. Less than four months have elapsed since the Debtor filed for Chapter 11 protection, a fact that is favorable to the Debtor's request for an extension of the Exclusive Periods. *See In re McLean Indus., Inc.*, 87 B.R. 830, 835 (Bankr. S.D.N.Y. 1987) (granting an extension where the case was on file for less than one year); *cf. Adelphia*, 352 B.R. at 589

(denying motion to terminate exclusivity notwithstanding fact that four years had elapsed in debtors' chapter 11 case).

**C. Numerous Courts Have Granted Similar Relief**

18. As shown above, the Debtor has made significant and productive strides in this Case. Based on this progress and all the other applicable factors, sufficient cause exists to extend the Exclusive Periods without prejudice to the Debtor's right to seek a further extension. There is no harm in granting the requested extensions now because such extensions are minor in nature, and will be without prejudice to the right of any party to request a termination of exclusivity for cause at any time under section 1121(d) of the Bankruptcy Code. Accordingly, the Debtor submits that the relief requested herein is in the best interests of the Debtor, its estate, and other parties-in-interest.

19. The Debtor notes that the relief requested in this Motion has been granted to other debtors in this jurisdiction in other chapter 11 cases. Therefore, the Debtor submits that for the reasons set forth above the requested extension of the Exclusive Periods is justified.

**Notice**

20. Notice of this Motion has been given to the following parties or, in lieu thereof, to their counsel, if known: (a) the Office of the United States Trustee for the District of Delaware and (b) all parties who have requested notice in this Case pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

**Conclusion**

**WHEREFORE**, the Debtor respectfully requests the entry of an Order, substantially in the form submitted herewith, (i) extending the Exclusive Filing Period by one hundred twenty (120) days through and including January 27, 2023 and the Exclusive Solicitation Period one



hundred twenty (120) through and including March 28, 2023 (or such other similar dates as this Court deems just and proper), and (ii) granting such other and further relief as may be just and proper under the circumstances.

Dated: September 21, 2022

GREENBERG TRAURIG, LLP

/s/ Dennis A. Meloro

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

# EXHIBIT A

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

In re:

Zosano Pharma Corporation,<sup>1</sup>

Debtor.

Chapter 11

Case No. 22-10506 (JKS)

Ref Docket No. •

**ORDER GRANTING MOTION OF DEBTOR FOR AN ORDER EXTENDING THE  
EXCLUSIVE PERIODS DURING WHICH DEBTOR MAY FILE AND  
SOLICIT ACCEPTANCES OF A CHAPTER 11 PLAN**

Upon consideration of the *Motion of Debtor for an Order Extending the Exclusive Periods During Which Debtor May File and Solicit Acceptances of a Chapter 11 Plan* (the “**Motion**”)<sup>2</sup> filed by the above-captioned debtor (the “**Debtor**”); and good cause having been shown; and no further notice or hearing on the Motion being required; therefor,

**THE COURT FINDS AND CONCLUDES THAT:**

- A. This Court has jurisdiction over this Case under 28 U.S.C. § 1334(b).
- B. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
- C. Due and adequate notice has been given to all parties entitled thereto, and no other or further notice is necessary or required.
- D. The relief requested in the Motion is necessary and in the best interests of the Debtor, its estate, and their creditors.

**THEREFORE, IT IS HEREBY ORDERED THAT:**

- 1. The Motion is GRANTED as set forth herein.
- 2. The Exclusive Filing Period for the Debtor is extended by ninety (90) days

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<sup>1</sup> 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).

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

through and including January 27, 2023.

3. The Exclusive Solicitation Period for the Debtor is extended by ninety (90) days through and including March 28, 2023.

4. This Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

In re:

Zosano Pharma Corporation,<sup>1</sup>

Debtor.

Chapter 11

Case No. 22-10506 (JKS)

**Obj. Date: September 29, 2022 at 4:00 p.m. (ET)**  
**Hearing Date: October 6, 2022 at 1:00 p.m. (ET)**

**NOTICE OF MOTION OF THE DEBTOR FOR ENTRY OF AN ORDER  
EXTENDING THE EXCLUSIVE PERIODS DURING WHICH DEBTOR  
MAY FILE AND SOLICIT ACCEPTANCES OF A CHAPTER 11 PLAN**

**PLEASE TAKE NOTICE** that, on September 21, 2022, the above-captioned debtor and debtor-in-possession (the “**Debtor**”) filed the *Motion of Debtor for an Order Extending the Exclusive Periods During Which Debtor May File and Solicit Acceptances of a Chapter 11 Plan* (the “**Motion**”) with the United States Bankruptcy Court for the District of Delaware (the “**Court**”). A copy of the Motion is attached hereto.

**PLEASE TAKE FURTHER NOTICE** that any response or objection to the relief sought in the Motion must be filed with the Court **on or before September 29, 2022 at 4:00 p.m. prevailing Eastern Time.**

**PLEASE TAKE FURTHER NOTICE** that at the same time, you must also serve a copy of the response or objection upon: (i) counsel for the Debtor, Greenberg Traurig, LLP (Attn: Dennis A. Meloro (melorod@gtlaw.com), John D. Elrod (elrodj@gtlaw.com), and Ari Newman (newmanar@gtlaw.com)); (ii) counsel to any statutory committee appointed in the chapter 11 case; and (iii) the United States Trustee for the District of Delaware, 844 N. King Street, Room 2207, Wilmington, Delaware, Attn: Joseph F. Cudia (joseph.cudia@usdoj.gov).

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<sup>1</sup> 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).

**PLEASE TAKE FURTHER NOTICE THAT IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED BY THE MOTION WITHOUT FURTHER NOTICE OR HEARING.**

**PLEASE TAKE FURTHER NOTICE THAT A HEARING TO CONSIDER THE RELIEF SOUGHT IN THE MOTION WILL BE HELD ON OCTOBER 6, 2022 AT 1:00 P.M., PREVAILING EASTERN TIME, BEFORE THE HONORABLE J. KATE STICKLES, UNITED STATES BANKRUPTCY COURT JUDGE, AT THE BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 MARKET STREET, 5TH FLOOR, COURTROOM NO. 6, WILMINGTON, DELAWARE 19801.**

Dated: September 21, 2022

GREENBERG TRAURIG, LLP

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