

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

In re:

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

Debtor.

Chapter 11

Case No. 22-10506 (JKS)

**MOTION OF THE DEBTOR FOR ENTRY OF INTERIM AND  
FINAL ORDERS (A) AUTHORIZING THE MAINTENANCE OF  
BANK ACCOUNTS AND CONTINUED USE OF EXISTING BUSINESS  
FORMS AND CHECKS, (B) AUTHORIZING THE CONTINUED  
USE OF CASH MANAGEMENT SYSTEM AND (C) WAIVING  
CERTAIN INVESTMENT AND DEPOSIT GUIDELINES**

The above-captioned debtor and debtor-in-possession (the “**Debtor**”) submits this motion (the “**Motion**”), pursuant to sections 105, 345, 363, 364 and 553 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “**Bankruptcy Code**”), Rules 6003 and 6004(h) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), Rule 2015-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”) and the *Operating Guidelines for Chapter 11 Cases* (the “**Guidelines**”) promulgated by the Office of the United States Trustee (the “**U.S. Trustee**”), for entry of an in interim order, substantially in the form attached hereto as **Exhibit B** (the “**Interim Order**”), and a final order, substantially in the form attached hereto as **Exhibit C** (the “**Final Order**”), (a) authorizing the maintenance of its bank accounts and continued use of existing business forms and checks, (b) authorizing, but not directing, continued use of its prepetition cash management system (the “**Cash Management System**”), (c) waiving certain investment and deposit requirements under the Guidelines, and (d) providing any additional

---

<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).



relief as is necessary to effectuate the foregoing. In support of this Motion, the Debtor respectfully states as follows:

**Jurisdiction and Venue**

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. 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 chapter 11 case.

5. 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* (the “**First**

**Day Declaration**”), filed on or shortly following the Petition Date and incorporated herein by reference.

**A. The Debtor’s Bank Accounts and Cash Management System**

6. Prior to the commencement of this chapter 11 case, and in the ordinary course of business, the Debtor maintained a total of six bank accounts (the “**Bank Accounts**”): five of which are located at Silicon Valley Bank<sup>2</sup> (“**SVB**”) and the other is located at UBS Financial Services (“**UBS**,” and with SVB, the “**Banks**”). A chart reflecting the Bank Accounts, along with a brief description of each account, is attached hereto as **Exhibit A**.

7. In the ordinary course of business, the Debtor utilizes the Cash Management System to efficiently collect, concentrate and disburse funds generated by its operations. The Cash Management System allows the Debtor to pool funds generated from operations of its business and to disburse funds in an organized and efficient manner. The continued use of the Cash Management System would ensure the preservation and enhancement of its going-concern value.

**B. Existing Business Forms and Checks**

8. In the ordinary course of business, the Debtor prints check information on blank safety paper check stock. In addition, the Debtor maintains pre-printed correspondence and business forms, including, but not limited to, letterhead, envelopes, promotional materials and other business forms (collectively, along with the Debtor’s checks, the “**Business Forms**”). To minimize administrative expense and delay, the Debtor requests authority to continue to use its Business Forms substantially in the forms existing immediately prior to the Petition Date, without reference to the Debtor’s “debtor-in-possession” status.

---

<sup>2</sup> The Bank Accounts are all subject to deposit account control agreements (each, a “**DACA**”) with Debtor’s senior secured lender, Trinity Capital Fund III, L.P.

**Relief Requested**

9. By this Motion, the Debtor seeks an Interim Order and Final Order: (a) authorizing the maintenance of its Bank Accounts and continued use of existing Business Forms; (b) authorizing, but not directing, continued use of the Cash Management System; (c) waiving certain of the investment and deposit requirements under the Guidelines; and (d) providing any additional relief required in order to effectuate the foregoing. The relief requested herein will help ensure the Debtor’s smooth transition into chapter 11.

10. The Debtor reserves the right, in its sole discretion, to close, open or otherwise modify the terms of certain of the Bank Accounts and open new debtor-in-possession accounts as may be necessary to facilitate the chapter 11 case and continue operations or as may otherwise be necessary to comply with the requirements of any debtor-in-possession financing and/or cash collateral order entered in the chapter 11 case.

**Basis for Relief Requested**

**A. The Debtor Should Be Permitted to Continue Using the Cash Management System.**

11. Courts in this district have noted that an integrated cash management system “allows efficient utilization of cash resources and recognizes the impracticalities of maintaining separate cash accounts for the many different purposes that require cash.” *In re Columbia Gas Sys., Inc.*, 136 B.R. 930, 934 (Bankr. D. Del. 1992), *aff’d in part and rev’d in part*, 997 F.2d 1039 (3d Cir. 1993). The United States Court of Appeals for the Third Circuit has agreed, emphasizing that requiring a debtor to maintain separate accounts “would be a huge administrative burden and economically inefficient.” *Columbia Gas*, 997 F.2d at 1061; *see also In re Southmark Corp.*, 49 F.3d 1111, 1114 (5th Cir. 1995) (stating a cash management system allows a debtor “to administer more efficiently and effectively its financial operations”).

12. Further, section 105(a) of the Bankruptcy Code empowers the Court to “issue any order, process or judgment that is necessary to carry out the provisions of this title” and section 363(c)(1) of the Bankruptcy Code authorizes the debtor-in-possession to “use property of the estate in the ordinary course of business without notice or a hearing.” 11 U.S.C. §§ 105(a), 363(c)(1). The purpose of these sections of the Bankruptcy Code is to provide a debtor-in-possession with the flexibility to engage in the ordinary transactions required to operate its business without undue oversight by creditors or the court. *See Med. Malpractice Ins. Ass’n v. Hirsch (In re Lavigne)*, 114 F.3d 379, 384 (2d Cir. 1997).

13. Here, requiring the Debtor to adopt a new, segmented cash management system during the chapter 11 case would be expensive, burdensome and unnecessarily disruptive to the Debtor’s operations. The Debtor’s Cash Management System constitutes a customary and essential business practice that was created and implemented by the management of the Debtor in the exercise of its business judgment. The Cash Management System acts as a practical mechanism that allows the Debtor to collect the cash generated by its business operations and use that cash to pay creditors. Maintaining the Cash Management System will also decrease the burden on the Debtor and provides several other important benefits, including the ability to: (a) control and monitor corporate funds and spending, and (b) ensure cash availability for the Debtor, all through a centralized method of coordinating the collection and movement of funds. These benefits will assist the Debtor in its efforts to maintain its operations during the chapter 11 case.

14. Further, any disruption of the Cash Management System could have a negative effect on the Debtor’s chapter 11 case. New bank accounts would increase operating costs, and the delays that would result from opening new accounts, revising cash management procedures

and redirecting revenues would negatively impact the Debtor's ability to operate its businesses while pursuing these arrangements. The Debtor would also be subject to undue administrative burden and expense, given that it would need to execute new signatory cards and depository agreements, and create an entirely new manual system for issuing checks and paying postpetition obligations, all as would be required by the Guidelines. By contrast, maintaining the current Cash Management System will facilitate the Debtor's transition into chapter 11 by, among other things, minimizing delays in paying postpetition debts and eliminating administrative inefficiencies.

15. Accordingly, the Debtor respectfully requests that the Court authorize the continued use of the existing Cash Management System to facilitate the Debtor's transition into chapter 11.

**B. The Debtor Should Be Permitted to Maintain its Bank Accounts.**

16. As previously discussed, the Debtor maintains approximately six different Bank Accounts and conducts different financial transactions utilizing these Bank Accounts. It would cause unnecessary disruption to force the Debtor to open new bank accounts and close the existing Bank Accounts. For instance, funds may be deposited into the wrong account, misapplied, held in limbo or otherwise delayed, thus negatively affecting the Debtor's relationships with parties who are necessary to the Debtor's efforts to continue as a going-concern and who already may be burdened by the filing of the case. Such disruption would provide no benefit to the Debtor's estate and would likely result in havoc for the Debtor's Cash Management System. Further, almost all of the Debtor's Bank Accounts are with SVB, which

has executed the Uniform Depository Agreement with the U.S. Trustee.<sup>3</sup> For these reasons, the Debtor should be authorized to continue to fund its business and operations by payments made from the Bank Accounts listed on Exhibit A to this Motion and should be exempt from certain of the Guidelines.<sup>4</sup>

17. As part of the requested relief, the Debtor respectfully requests that the Court authorize the Banks to continue to maintain, service and administer the Bank Accounts as accounts of the Debtor as a debtor-in-possession, without interruption and in the ordinary course of business. In this regard, the Banks should be authorized and directed to receive, process, honor and pay any and all checks and other instructions, and drafts payable through, drawn or directed on the Bank Accounts after the Petition Date by holders, makers or other parties entitled to issue instructions with respect thereto.

18. Further, the Debtor respectfully requests that the Court authorize each of the Banks to receive, process, honor and pay any and all checks, wire transfer, credit card, and other instructions, and drafts payable through, or drawn or directed on, such Bank Accounts after the Petition Date by holders, makers or other parties entitled to issue instructions with respect thereto, irrespective of whether such checks, drafts, wires, or credit card payments are dated prior

---

<sup>3</sup> To the extent it is discovered that any of the Bank Accounts is held at banks that have not executed a Uniform Depository Agreement with the Office of the United States Trustee for the District of Delaware, the Debtor requests that the Court authorize, but not require, the Debtor to attempt to cause such bank or banks to execute the Uniform Depository Agreement in a form prescribed by the Office of the United States Trustee within forty-five (45) days of the date of entry of an order granting this Motion, subject to the full reservation of rights of the United States Trustee if the Uniform Depository Agreement is not executed.

<sup>4</sup> One provision of the Guidelines requires a chapter 11 debtor-in-possession to open new bank accounts and close all existing accounts. This requirement, designed to provide a clear line of demarcation between prepetition and postpetition claims and payments, helps to protect against the inadvertent payment of prepetition claims by preventing banks from honoring checks drawn before the Petition Date. The Guidelines also require that the new bank accounts only be opened in certain financial institutions designated as authorized depositories by the United States Trustee.

to or subsequent to the Petition Date, provided that sufficient funds are on deposit and standing in the Debtor's credit in the applicable Bank Accounts to cover such payments.

19. The Debtor also respectfully requests that, to the extent a Bank honors a prepetition check or other item drawn on any Bank Account at the direction of the Debtor, in a good faith belief that the Court has authorized such prepetition check or item to be honored, or as the result of an innocent mistake made despite implementation of reasonable procedures, such Bank will not be deemed to be liable to the Debtor, its estate or any other party on account of such prepetition check or other item honored postpetition. Such relief is reasonable and appropriate because the Banks are not in a position to independently verify or audit whether the Debtor may pay a particular item in accordance with a Court order or otherwise.

20. In addition, the Debtor seeks a waiver of the requirement to establish specific bank accounts for tax payments. The Debtor believes that tax obligations can be paid most efficiently out of the existing Bank Accounts, that the U.S. Trustee can adequately monitor the flow of funds into, among, and out of the Bank Accounts and that the creation of new debtor-in-possession accounts designated solely for tax obligations would be unnecessary and inefficient.

21. Finally, the Debtor respectfully requests that the Court authorize the Debtor to continue to pay any obligations incurred in connection with the Bank Accounts, whether such items are dated prior to, on, or subsequent to the Petition Date, in the ordinary course of business.

22. The Debtor does not believe that granting it authority to maintain the Bank Accounts and utilize them pursuant to the Cash Management System will prejudice any party-in-interest or its estate because the Debtor has implemented appropriate mechanisms to ensure that unauthorized payments will not be made on account of prepetition obligations. Specifically, the

Debtor will not pay any debts incurred before the Petition Date unless specifically authorized by the Court and will work closely with the Banks to ensure appropriate procedures are in place to prevent checks that were issued prepetition from being honored without the Court's approval.

23. Last, for the reasons stated above, and subject to section 553 of the Bankruptcy Code, all Banks that maintain the Bank Accounts should be prohibited from offsetting, affecting, freezing or otherwise impeding the Debtor's use of any funds deposited in the Bank Accounts on account of, or by reason of, any claim (as defined in section 101(5) of the Bankruptcy Code) of any such bank against the Debtor that arose before the Petition Date, absent further order of the Court.

**C. The Debtor Should Be Permitted to Continue Using Existing Business Forms**

24. The Guidelines and Local Rule 2015-2(a) require debtors to obtain checks that bear the designation "DIP" or "Debtor-in-Possession" thereon. Accordingly, the Debtor requests that this Court authorize it to use all correspondence and Business Forms substantially in the form existing immediately before the Petition Date without reference to the Debtor's status as "debtor-in-possession." As of the Petition Date, the Debtor has stock of Business Forms that it uses in the ordinary course of business. Reprinting its Business Forms to indicate that the Debtor is a "Debtor-in-Possession" would impose an unnecessary burden and expense on the Debtor. Further, there is little doubt that the parties with whom the Debtor does business will become aware shortly that the Debtor is a chapter 11 debtor-in-possession.

**D. Cause Exists to Allow the Debtor to Pay Bank Fees and Prepetition Obligations Related to the Bank Accounts.**

25. The Debtor pays monthly bank fees and similar service charges (the "**Bank Fees**"), whether incurred prior to or after the commencement of the chapter 11 case. Payment of the Bank Fees is in the best interests of the Debtor and parties in interest in this case because it

will prevent any disruption to the Cash Management System. Further, because the Banks likely have setoff rights for the Bank Fees, payment of prepetition Bank Fees should not alter the rights of unsecured creditors in the chapter 11 case. Accordingly, by this Motion, the Debtor seeks authority, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004 to pay any outstanding prepetition Bank Fees to maintain the Cash Management System, and to continue making payments on account of Bank Fees postpetition.

**E. Cause Exists to Waive Certain Deposit Requirements under the Guidelines and Section 345(b) of the Bankruptcy Code.**

26. To the extent the Cash Management System does not strictly comply with the Guidelines and section 345 of the Bankruptcy Code, the Debtor seeks a waiver of the deposit requirements set forth therein. Section 345 of the Bankruptcy Code governs a debtor's deposit and investment of cash during a chapter 11 case and authorizes deposits or investments of money as "will yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment." 11 U.S.C. § 345(a). For deposits or investments that are not "insured or guaranteed by the United States or by a department, agency, or instrumentality of the United States or backed by the full faith and credit of the United States," section 345(b) requires the estate to obtain from the entity with which the money is deposited or invested a bond in favor of the United States and secured by the undertaking of an adequate corporate surety, unless the court orders for "cause" otherwise. 11 U.S.C. § 345(b). In addition, the Guidelines require, among other things, chapter 11 debtors to deposit all estate funds in an account with an Authorized Depository that agrees to comply with the U.S. Trustee's requirements.

27. Courts may waive compliance with section 345(b) of the Bankruptcy Code and the Guidelines for "cause." In evaluating whether "cause" exists, courts have considered a number of factors, such as: (a) the sophistication of the debtor's business, (b) the size of the

debtor's business operations, (c) the amount of the investments involved, (d) the bank rating (Moody's and Standard & Poor's) of the financial institution where the debtor-in-possession funds are held, (e) the complexity of the case, (f) the safeguards in place within the debtor's own business for ensuring the safety of the funds, (g) the debtor's ability to reorganize in the face of a failure of one or more of the financial institutions, (h) the benefit to the debtor, (i) the harm, if any, to the estate, and (j) the reasonableness of the debtor's request for relief from section 345(b) requirements in light of the overall circumstances of the case. *See In re Serv. Merch. Co., Inc.*, 240 B.R. 894, 896 (Bankr. M.D. Tenn. 1999).

28. Here, "cause" exists because each Bank at which the Bank Accounts is a stable financial institution that is insured by the FDIC, and overwhelming majority of the funds that will be held in the Debtor's Bank Accounts will be in accounts with Banks that are Authorized Depositories under the Guidelines. Thus, the Debtor's funds are safe. Further, in light of the regular deposits to, and sweeps of, the various Bank Accounts and the "as needed" funding structure of the overall system, it would be especially disruptive, unnecessary, and wasteful to require the posting of a bond to the extent that the balances of the Bank Accounts exceed applicable insurance limits at a given time. Accordingly, the Court should authorize the Debtor to continue to deposit funds in the Bank Accounts and to the extent that the requirements of section 345(b) are inconsistent with these practices, the Debtor requests an initial 45-day period to come into compliance with its obligations under section 345(b) of the Bankruptcy Code or otherwise reach agreement with the U.S. Trustee, without prejudice to the Debtor's right to seek an extension of such period, or to return to the Court to argue that cause exists to waive the requirements of section 345(b) of the Bankruptcy Code and the U.S. Trustee Guidelines to the extent such requirements are inconsistent with the Debtor's current deposit practices.

**Bankruptcy Rule 6003 Is Satisfied and Request for Waiver of Stay**

29. The Debtor further submits that because the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtor for the reasons set forth herein and in the First Day Declaration, Bankruptcy Rule 6003 has been satisfied and the relief requested herein should be granted.

30. Specifically, Bankruptcy Rule 6003 provides:

Except to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, issue an order granting the following: . . . (b) a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition, but not a motion under Rule 4001 . . . .

FED. R. BANKR. P. 6003.

31. The Third Circuit Court of Appeals has interpreted the “immediate and irreparable harm” language in the context of preliminary injunctions. In that context, irreparable harm has been interpreted as a continuing harm that cannot be adequately redressed by final relief on the merits and for which money damages cannot provide adequate compensation. *See, e.g., Norfolk S. Ry. Co. v. City of Pittsburgh*, 235 F. App’x 907, 910 (3d Cir. 2007) (citing *Glasco v. Hills*, 558 F.2d 179, 181 (3d Cir. 1977)). Further, the harm must be shown to be actual and imminent, not speculative or unsubstantiated. *See, e.g., Acierno v. New Castle Cty.*, 40 F.3d 645, 653-55 (3d Cir. 1994).

32. The Debtor further seeks a waiver of any stay of the effectiveness of an order approving this Motion. Pursuant to Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As set forth above, the relief requested herein is essential to prevent immediate and irreparable damage to the

Debtor's operations, going concern value and its efforts to pursue a resolution to this chapter 11 case. Accordingly, the relief requested herein is appropriate under the circumstances and under Bankruptcy Rules 6003 and 6004(h).

**Notice**

33. 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; (b) creditors holding the twenty (20) largest unsecured claims against the Debtor; (c) the Office of the United States Attorney for the District of Delaware; (d) the Internal Revenue Service; (e) the Securities & Exchange Commission; (f) the Delaware Secretary of State; (g) the Delaware State Treasury; (h) the Banks; (i) any party that has requested notice pursuant to Bankruptcy Rule 2002; and (j) any other party entitled to notice pursuant to Local Rule 9013-1(m)(iii). As the Motion is seeking "first day" relief, within two (2) business days of the hearing on the Motion, the Debtor will serve copies of the Motion and any order entered with respect to the Motion in accordance with Local Rule 9013-1(m)(iv). The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

**No Prior Request**

34. No prior request for the relief sought in this Motion has been made to this or any other court.

*[Signature on Next Page]*

**Conclusion**

WHEREFORE, the Debtor respectfully requests that this Court enter an order granting the relief requested herein and such other and further relief as is just and proper.

Dated: June 2, 2022

GREENBERG TRAURIG, LLP

/s/ Dennis A. Meloro

Dennis A. Meloro (DE Bar No. 4435)  
The Nemours Building  
1007 North Orange Street, Suite 1200  
Wilmington, Delaware 19801  
Telephone: (302) 661-7000  
Facsimile: (302) 661-7360  
Email: melorod@gtlaw.com

-and-

John D. Elrod (Admitted *pro hac vice*)  
Terminus 200  
3333 Piedmont Road NE, Suite 2500  
Atlanta, Georgia 30305  
Telephone: (678) 553-2100  
Facsimile: (678) 553-2212  
Email: elrodj@gtlaw.com

-and-

Ari Newman (Admitted *pro hac vice*)  
333 S.E. Second Ave, Suite 4400  
Miami, Florida 33131  
Telephone: (305) 579-0500  
Facsimile: (305) 579-0717  
Email: newmanar@gtlaw.com

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

**Exhibit A****List of Bank Accounts**

<b>Bank Account Description</b>	<b>Bank Name</b>	<b>Bank Acct #</b>
Operating	Silicon Valley Bank	6478
Restricted Cash Collateral Account (secures letter of credit in favor of landlord)	Silicon Valley Bank	6508
Restricted Cash Collateral Account (secures letter of credit in favor of PG&E)	Silicon Valley Bank	6206
Restricted Cash Collateral Account (secures corporate credit cards)	Silicon Valley Bank	3389
Employee Benefits (HSA/FSA)	Silicon Valley Bank	0046
Excess Funds in Money Market	UBS Financial Systems	4893 DE

**Exhibit B**

**Interim Order**

**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.**

**INTERIM ORDER (A) AUTHORIZING THE MAINTENANCE OF BANK ACCOUNTS  
AND CONTINUED USE OF EXISTING BUSINESS FORMS AND CHECKS,  
(B) AUTHORIZING THE CONTINUED USE OF CASH MANAGEMENT SYSTEM  
AND (C) WAIVING CERTAIN INVESTMENT AND DEPOSIT GUIDELINES**

Upon consideration of the motion (the “**Motion**”)<sup>2</sup> filed by the above-captioned debtor and debtor-in-possession (the “**Debtor**”) seeking entry of interim and final orders, (a) authorizing the maintenance of the Debtor’s existing Bank Accounts and continued use of existing Business Forms, (b) authorizing, but not directing, the use of the existing Cash Management System and (c) waiving certain investment and deposit requirements under the Guidelines; and upon the First Day Declaration; and upon the statements of counsel in support of the relief requested in the Motion at the hearing before the Court; and it appearing that this Court has jurisdiction to consider the 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 dated February 29, 2012; and it appearing that venue of the chapter 11 case and the Motion 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 it appearing that proper and adequate notice of the Motion has been given under the circumstances and in accordance with the

---

<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 used but not defined herein shall have the meanings ascribed to them in the Motion.

Bankruptcy Rules and Local Rules 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 Motion is GRANTED on an interim basis as set forth herein.
2. The Debtor is authorized, but not directed, to maintain and use its Cash Management System, as more fully set forth in the Motion.
3. Notwithstanding any requirements to the contrary in the Guidelines or otherwise, the Debtor is authorized, but not directed, to maintain and use the existing Bank Accounts listed on Exhibit A to the Motion in the name and with the account numbers existing immediately prior to the Petition Date.
4. The requirement in the Guidelines that the Debtor establish a specific new bank account for tax payments is waived. The Debtor is granted an extension of the time to comply with the requirements of 11 U.S.C. § 345(b) for a period of thirty (30) days, without prejudice to the Debtor's right to seek further waivers from the U.S. Trustee without further Order of this Court.
5. The Debtor is authorized, but not directed, to deposit funds in and withdraw funds from its Bank Accounts by all usual means, subject to the same access rights and limitations existing prior to the Petition Date, including, but not limited to, checks, wire transfers, automated clearinghouse transfers, electronic funds transfers and other debits and to treat the Bank Accounts for all purposes as debtor-in-possession accounts.
6. The Debtor is authorized to continue to use its checks, correspondence and other Business Forms including, but not limited to, purchase orders, letterhead, envelopes, promotional materials, substantially in the forms existing immediately prior to the Petition Date, without reference to the Debtor's debtor-in-possession status.

7. The Banks listed on **Exhibit A** to the Motion and any and all other financial institutions receiving or transferring funds from the Debtor is hereby authorized, but not directed, to continue to service and administer the Bank Accounts of the Debtor as a debtor-in-possession account without interruption and in the usual and ordinary course, and to receive, process, honor and pay any and all checks, drafts, wires or automated clearinghouse transfers drawn on the Bank Accounts by the holders or makers thereof, provided that nothing contained herein shall authorize any such Bank to honor any check issued or dated prior to the date of the commencement of this chapter 11 case, except as otherwise provided by further order of this Court. In no event shall any of the Banks be required to honor overdrafts or to pay any check, wire or other debit against any of the Bank Accounts that is drawn against uncollected funds.

8. For Banks at which the Debtor holds Bank Accounts that are party to a Uniform Depository Agreement with the Office of the United States Trustee for the District of Delaware, within fifteen (15) days of the date of entry of this Order, the Debtor shall (a) contact each Bank; (b) provide the Bank with each of the Debtor's employer identification numbers; and (c) identify each of its Bank Accounts held at such Banks as being held by a debtor-in-possession in a bankruptcy case.

9. For Banks at which the Debtor holds Bank Accounts that are not party to a Uniform Depository Agreement with the Office of the United States Trustee for the District of Delaware, if any, the Debtor is authorized, but not directed, to use its good-faith efforts to attempt to cause the Banks to execute a Uniform Depository Agreement in a form prescribed by the Office of the United States Trustee within forty-five (45) days of the date of this Order. The U.S. Trustee's rights to seek further relief from this Court on notice in the event that the

aforementioned Banks are unwilling to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee are fully reserved.

10. The Debtor shall retain the authority to close or otherwise modify certain of its Bank Accounts and open new debtor-in-possession accounts, or otherwise make changes to its Cash Management System as it deems necessary to facilitate the chapter 11 case and continued operations, or as may be necessary to comply with the requirements of any debtor-in-possession financing facility or cash collateral usage approved by this Court; *provided, however*, that the Debtor shall open any such new Bank Account at Banks that have executed a Uniform Depository Agreement with the Office of the United States Trustee for the District of Delaware, or at such Banks that are willing to immediately execute such an agreement. In the event that the Debtor opens any additional Bank Accounts or close any current or additional Bank Accounts, such opening or closing shall be timely indicated on the Debtor's monthly operating reports and notice of such opening or closing shall be provided seven (7) days prior to such opening or closing to the Office of the United States Trustee for the District of Delaware, counsel to any statutory committee appointed in the chapter 11 case (subsequent to its appointment).

11. Subject to section 553 of the Bankruptcy Code, all Banks that maintain the Bank Accounts are prohibited from offsetting, affecting, freezing or otherwise impeding the Debtor's use of any funds in the Bank Accounts on account of, or by reason of, any claim (as defined in section 101(5) of the Bankruptcy Code) of any such Bank against the Debtor that arose before the Petition Date, absent further order of this Court.

12. In connection with the ongoing utilization of the Cash Management System, the Debtor shall continue to maintain records with respect to all transfers of cash so that all

transactions may be readily ascertained, traced, recorded properly and distinguished between prepetition and postpetition transactions.

13. The Debtor shall not make any transfers to any non-Debtor affiliates or non-Debtor subsidiaries, if any, absent further order of this Court, upon a motion on notice to parties in interest.

14. The Debtor is authorized, but not directed, to pay or reimburse any Bank Fees, claims, costs, expenses or charges associated with the Bank Accounts and arising prior to and after the Petition Date, including, without limitation, (i) service charges or fees; (ii) checks deposited with the Banks which have been dishonored or returned for insufficient funds; and (iii) any reimbursement or other payment obligations, such as overdrafts, arising under the terms of any prepetition agreement existing between the Debtor and each Bank (collectively, the “**Bank Account Claims**”). In the course of maintaining any of the Bank Accounts for the Debtor, the Banks are authorized, without further Order of this Court, to continue to deduct from the appropriate Bank Accounts, the Bank Account Claims incurred in connection with the Bank Accounts.

15. This Order shall apply to any and all Bank Accounts actually in, or linked to, the Cash Management System, even if such Bank Accounts do not appear on the list attached as **Exhibit A** to the Motion. Any and all accounts opened by the Debtor on or after the Petition Date at any Bank shall be deemed a Bank Account (as if it had been opened prior to the Petition Date and listed on **Exhibit A** to the Motion) and any and all Banks at which such accounts are opened shall similarly be subject to the rights and obligations of this Order once served with a copy of this Order.

16. The Debtor is authorized to request the Banks, and the Banks are authorized to accept and honor all representations from the Debtor, as to which checks, drafts, wires or automated clearinghouse transfers should be honored or dishonored whether the Banks believe the payment is or is not consistent with the order(s) of this Court and governing law, and whether such checks, drafts, wires or automated clearinghouse transfers are dated or made prior to, on or subsequent to the Petition Date.

17. Each of the Banks is authorized to debit the Debtor's accounts in the ordinary course of business without the need for further order of this Court for (i) all checks drawn on the Debtor's accounts which are cashed at such Bank's counters or exchanged for cashier's checks by the payees thereof prior to the Petition Date; (ii) all checks or other items deposited in one of the Debtor's accounts with such Bank prior to the Petition Date which have been dishonored or returned 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 (iii) all undisputed prepetition amounts outstanding as of the date hereof, if any, owed to any Bank as service charges for the maintenance of the Cash Management System.

18. Any of the Banks may rely on the representations of the Debtor with respect to whether any check or other payment order drawn or issued by the Debtor prior to the Petition Date should be honored pursuant to this or any other order of this Court, and such Bank shall not have any liability to any party for relying on such representations by the Debtor as provided for herein.

19. Nothing in this Order (i) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtor and its estate; (ii) shall impair, prejudice, waive, or

otherwise affect the rights of the Debtor and its estate with respect to the validity, priority, or amount of any claim against the Debtor and its estate or (iii) shall be construed as a promise to pay a claim.

20. A final hearing to consider the relief requested in the Motion shall be held on \_\_\_\_\_, 2022 at \_\_\_\_:\_\_\_\_.m. (prevailing Eastern Time) and any objections to entry of such order shall be in writing and filed with this Court no later than \_\_\_\_\_, 2022 at 4:00 p.m. (prevailing Eastern Time) and served on: the Debtor, Zosano Pharma Corporation, 34790 Ardentech Court, Fremont, CA 94555, Attn: Steven Lo; (ii) proposed 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)); (iii) counsel to any statutory committee appointed in the chapter 11 case; and (vi) the United States Trustee for the District of Delaware, 844 N. King Street, Room 2207, Wilmington, Delaware. If no objections to the entry of the Final Order are timely filed, this Court may enter the Final Order without further notice or a hearing.

21. Bankruptcy Rule 6003(b) has been satisfied because the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtor.

22. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

23. The Debtor is authorized and empowered to take all actions necessary to implement the relief granted in this Order.

24. This Court shall retain jurisdiction with respect to all matters arising from or relating to the interpretation or implementation of this Order.

**Exhibit C**

**Final Order**

**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 Nos.**

**FINAL ORDER (A) AUTHORIZING THE MAINTENANCE OF BANK ACCOUNTS  
AND CONTINUED USE OF EXISTING BUSINESS FORMS AND CHECKS,  
(B) AUTHORIZING THE CONTINUED USE OF CASH MANAGEMENT SYSTEM  
AND (C) WAIVING CERTAIN INVESTMENT AND DEPOSIT GUIDELINES**

Upon consideration of the motion (the “**Motion**”)<sup>2</sup> filed by the above-captioned debtor and debtor-in-possession (collectively, the “**Debtor**”) seeking entry of interim and final orders (a) authorizing the maintenance of the Debtor’s existing Bank Accounts and continued use of existing Business Forms; (b) authorizing, but not directing, the use of the existing Cash Management System; and (c) waiving certain investment and deposit requirements under the Guidelines; and upon the First Day Declaration; and the Court having entered an order granting the relief requested on an interim basis [Docket No. \_\_\_\_]; and upon the statements of counsel in support of the relief requested in the Motion at the hearings before the Court; and it appearing that this Court has jurisdiction to consider the 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 dated February 29, 2012; and it appearing that venue of the chapter 11 case and the Motion 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 it appearing that proper and adequate notice of the Motion has been given under the circumstances and in accordance with

---

<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 used but not defined herein shall have the meanings ascribed to them in the Motion.

the Bankruptcy Rules and Local Rules 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 Motion is GRANTED on a final basis as set forth herein.
2. The Debtor is authorized, but not directed, to maintain and use its Cash Management System, as more fully set forth in the Motion.
3. Notwithstanding any requirements to the contrary in the Guidelines or otherwise, the Debtor is authorized, but not directed, to maintain and use the existing Bank Accounts listed on Exhibit A to the Motion in the name and with the account numbers existing immediately prior to the Petition Date.
4. The requirement in the Guidelines that the Debtor establish a specific new bank account for tax payments is waived. The requirements provided in 11 U.S.C. § 345(b) are hereby waived as to the Bank Accounts.
5. The Debtor is authorized, but not directed, to deposit funds in and withdraw funds from its Bank Accounts by all usual means, subject to the same access rights and limitations existing prior to the Petition Date, including, but not limited to, checks, wire transfers, automated clearinghouse transfers, electronic funds transfers and other debits and to treat the Bank Accounts for all purposes as debtor-in-possession accounts.
6. The Debtor is authorized to continue to use its checks, correspondence and other Business Forms including, but not limited to, purchase orders, letterhead, envelopes, promotional materials, substantially in the forms existing immediately prior to the Petition Date, without reference to the Debtor's debtor-in-possession status.

7. The Banks listed on Exhibit A to the Motion and any and all other financial institutions receiving or transferring funds from the Debtor is hereby authorized, but not directed, to continue to service and administer the Bank Accounts of the Debtor as a debtor-in-possession account without interruption and in the usual and ordinary course, and to receive, process, honor and pay any and all checks, drafts, wires, or automated clearinghouse transfers drawn on the Bank Accounts by the holders or makers thereof, provided that nothing contained herein shall authorize any such Bank to honor any check issued or dated prior to the date of the commencement of the chapter 11 case, except as otherwise provided by further order of this Court. In no event shall any of the Banks be required to honor overdrafts or to pay any check, wire or other debit against any of the Bank Accounts that is drawn against uncollected funds.

8. The Debtor shall retain the authority to close or otherwise modify certain of its Bank Accounts and open new debtor-in-possession accounts, or otherwise make changes to its Cash Management System as its deems necessary to facilitate the chapter 11 case and continued operations, or as may be necessary to comply with the requirements of any debtor-in-possession financing facility or cash collateral usage approved by this Court; *provided, however*, that the Debtor shall open any such new Bank Account at Banks that have executed a Uniform Depository Agreement with the Office of the United States Trustee for the District of Delaware, or at such Banks that are willing to immediately execute such an agreement. In the event that the Debtor opens any additional Bank Accounts or close any current or additional Bank Accounts, such opening or closing shall be timely indicated on the Debtor's monthly operating reports and notice of such opening or closing shall be provided seven (7) days prior to such opening or closing to the Office of the United States Trustee for the District of Delaware, counsel to any statutory committee appointed in the chapter 11 case (subsequent to its appointment).

9. Subject to section 553 of the Bankruptcy Code, all Banks that maintain the Bank Accounts are prohibited from offsetting, affecting, freezing or otherwise impeding the Debtor's use of any funds in the Bank Accounts on account of, or by reason of, any claim (as defined in section 101(5) of the Bankruptcy Code) of any such Banks against the Debtor that arose before the Petition Date, absent further order of this Court.

10. In connection with the ongoing utilization of the Cash Management System, the Debtor shall continue to maintain records with respect to all transfers of cash so that all transactions may be readily ascertained, traced, recorded properly and distinguished between prepetition and postpetition transactions.

11. The Debtor shall not make any transfers to any non-Debtor affiliates or non-Debtor subsidiaries, if any, absent further order of this Court, upon a motion on notice to parties in interest.

12. The Debtor is authorized, but not directed, to pay or reimburse any Bank Fees, claims, costs, expenses or charges associated with the Bank Accounts and arising prior to and after the Petition Date, including, without limitation, (i) service charges or fees, (ii) checks deposited with the Banks which have been dishonored or returned for insufficient funds and (iii) any reimbursement or other payment obligations, such as overdrafts, arising under the terms of any prepetition agreement existing between the Debtor and each Bank (collectively, the "**Bank Account Claims**"). In the course of maintaining any of the Bank Accounts for the Debtor, the Banks are authorized, without further Order of this Court, to continue to deduct from the appropriate Bank Accounts, the Bank Account Claims incurred in connection with the Bank Accounts.

13. This Order shall apply to any and all Bank Accounts actually in, or linked to, the Cash Management System, even if such Bank Accounts do not appear on the list attached as **Exhibit A** to the Motion. Any and all accounts opened by the Debtor on or after the Petition Date at any Bank shall be deemed a Bank Account (as if it had been opened prior to the Petition Date and listed on **Exhibit A** to the Motion) and any and all Banks at which such accounts are opened shall similarly be subject to the rights and obligations of this Order once served with a copy of this Order.

14. The Debtor is authorized to request the Banks, and the Banks are authorized to accept and honor all representations from the Debtor, as to which checks, drafts, wires or automated clearinghouse transfers should be honored or dishonored whether the Banks believe the payment is or is not consistent with the order(s) of this Court and governing law, and whether such checks, drafts, wires or automated clearinghouse transfers are dated or made prior to, on or subsequent to the Petition Date.

15. Each of the Banks is authorized to debit the Debtor's accounts in the ordinary course of business without the need for further order of this Court for: (i) all checks drawn on the Debtor's accounts which are cashed at such Bank's counters or exchanged for cashier's checks by the payees thereof prior to the Petition Date, (ii) all checks or other items deposited in one of the Debtor's accounts with such Bank prior to the Petition Date which have been dishonored or returned 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 (iii) all undisputed prepetition amounts outstanding as of the date hereof, if any, owed to any Bank as service charges for the maintenance of the Cash Management System.

16. Any of the Banks may rely on the representations of the Debtor with respect to whether any check or other payment order drawn or issued by the Debtor prior to the Petition Date should be honored pursuant to this or any other order of this Court, and such Bank shall not have any liability to any party for relying on such representations by the Debtor as provide for herein.

17. Nothing in this Order (i) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtor and its estate; (ii) shall impair, prejudice, waive, or otherwise affect the rights of the Debtor and its estate with respect to the validity, priority, or amount of any claim against the Debtor and its estate or (iii) shall be construed as a promise to pay a claim.

18. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

19. The Debtor is authorized and empowered to take all actions necessary to implement the relief granted in this Order.

20. This Court shall retain jurisdiction with respect to all matters arising from or relating to the interpretation or implementation of this Order.