

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:

Zosano Pharma Corporation,¹

Debtor.

Chapter 11

Case No. 22-10506 (JKS)

**MOTION OF THE DEBTOR FOR ENTRY OF INTERIM AND FINAL ORDERS
AUTHORIZING THE (I) DEBTOR TO PAY CERTAIN PREPETITION TAXES AND
FEES AND RELATED OBLIGATIONS AND (II) BANKS TO HONOR AND PROCESS
CHECK AND ELECTRONIC TRANSFER REQUESTS RELATED THERETO**

The above-captioned debtor and debtor-in-possession (the “**Debtor**”), submits this motion (the “**Motion**”), pursuant to sections 105(a), 363(b), 507(a)(8), 541, 1107(a), and 1108 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “**Bankruptcy Code**”) and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), for entry of an interim order, substantially in the form attached hereto as **Exhibit A** (the “**Interim Order**”), and a final order, substantially in the form attached hereto as **Exhibit B** (the “**Final Order**,” and together with the Interim Order, the “**Proposed Orders**”), (i) authorizing, but not directing, the Debtor, in its discretion, to pay certain prepetition taxes and fees and related obligations that are payable to certain authorities (collectively, the “**Authorities**”), and (ii) authorizing banks and other financial institutions (collectively, the “**Banks**”) to honor and process check and electronic transfer requests related to the foregoing. In support of the Motion, the Debtor respectfully states as follows:

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).



Jurisdiction and Venue

1. The United States Bankruptcy Court for the District of Delaware (the “**Court**”) has jurisdiction over the 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 the 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.

The Debtor's Taxes and Fees

6. In the ordinary course of business, the Debtor incurs or collects and remits a variety of taxes and fees, including (i) Sales and Use Taxes, (ii) Business and Franchise Taxes and Fees, and (iii) Other Taxes and Fees (each defined below and collectively, the “**Taxes and Fees**”), to the applicable Authorities, which include various federal, state, and local taxing and other governmental authorities and/or certain municipal or governmental subdivisions or agencies of those governmental authorities.² The Debtor periodically remits the Taxes and Fees to the Authorities in accordance with applicable law.

7. The Debtor estimates that approximately \$250,000.00 in Taxes and Fees had accrued on account of certain Taxes and Fees, which amounts remain unpaid as of the Petition Date. In addition, to the extent the Debtor has inadvertently failed to timely pay any Taxes and Fees that became due and owing prior to the Petition Date, the Debtor is not by the Motion seeking authority to remit any “catch up” payments, late penalties, or similar fees to any Authorities.

8. Many Authorities impose personal liability on directors and/or responsible officers of entities responsible for collecting or paying certain taxes or fees to the extent that such taxes or fees are not remitted, as set forth below. Although the Debtor believes that all taxes and fees for which the Debtor's directors and/or responsible officers may be personally liable are described herein, it is possible that other prepetition obligations similar in nature (and in threat of personal liability) may be uncovered by the Debtor subsequent to the filing of the Motion. To the extent that such prepetition obligations exist, the Debtor will consider such obligations Taxes and Fees

² In addition to the taxes discussed herein, the Debtor is required by law to remit certain employee-related taxes to the appropriate federal, state, or local taxing authorities (the “**Employee-Related Taxes**”). Any relief requested with respect to the Employee-Related Taxes is requested in the Debtor's *Motion of the Debtor for Entry of Interim and Final Orders (I) Authorizing the Debtor to Pay (A) All Prepetition Employee Obligations and (B) Prepetition Withholding Obligations and Dues, and (II) Directing Banks to Honor Related Transfers*, filed concurrently herewith.

as that term is defined and used herein, and requests the Court to pay such Taxes and Fees as they may arise in the ordinary course of its business.

A. Sales and Use Taxes

9. In the ordinary course of its business, the Debtor incurs state and/or local sales and use taxes (the “**Sales and Use Taxes**”) in connection with the operation of its business, and on account of the purchase of inventory, materials, supplies, or other goods used in the Debtor’s business. The Sales and Use Taxes typically arise in connection with purchases the Debtor makes involving tangible personal property that are subject to California state, county, local, and district use taxes.

B. Business and Franchise Taxes and Fees

10. The Debtor is required to pay various state franchise taxes and privilege fees (collectively, the “**Business and Franchise Taxes and Fees**”) in order to continue conducting its business within a particular jurisdiction. The Debtor has historically paid Business and Franchise Taxes and Fees in Alabama, California, Delaware, Massachusetts, Minnesota, North Carolina, and Virginia. The Debtor’s ability to conduct business in different jurisdictions may be impaired if the Business and Franchise Taxes and Fees are not paid timely. Accordingly, the Debtor requests authority to remit, in its sole discretion, any and all Business and Franchise Taxes and Fees to the relevant Authorities pursuant to the Proposed Orders.

C. Other Taxes and Fees

11. The Debtor incurs, collects, and remits various other federal, state, and local taxes, charges, fines, penalties, and fees in the ordinary course of business (including any amounts required to be withheld, incurred or collected under applicable law) (collectively, “**Other Taxes and Fees**”). The Other Taxes and Fees include, without limitation, real and personal property

taxes, hazardous waste fees and other environmental fees, and corporate taxes and fees. The Debtor is required to remit these Other Taxes and Fees to various Authorities on a periodic basis. Accordingly, the Debtor requests authority to remit, in its sole discretion, any and all Other Taxes and Fees to the relevant Authorities pursuant to the Proposed Orders.

Relief Requested

12. By the Motion, the Debtor requests that the Court enter the Proposed Orders, (i) authorizing, but not directing, the Debtor, in its discretion, to pay the Taxes and Fees owing on account of periods prior to the Petition Date, when and as those Taxes and Fees come due in the ordinary course, subject to the \$30,000.00 cap provided for in the Interim Order and the \$250,000.00 cap provided for in the Final Order; and (ii) authorizing the Banks to honor and process check and electronic transfer requests related thereto.

Basis for Relief Requested

A. The Court should authorize, but not direct, the Debtor, in its discretion, to pay the Taxes and Fees.

13. There are several reasons for granting the relief requested herein.

i. Sections 105 and 363 of the Bankruptcy Code, and the Doctrine of Necessity

14. First, § 363(b)(1) of the Bankruptcy Code provides that, after notice and a hearing, the trustee “may use, sell, or lease, other than in the ordinary course of business, property of the estate” 11 U.S.C. § 363(b)(1). Section 105(a) of the Bankruptcy Code empowers a bankruptcy court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Bankruptcy courts have invoked the equitable power of § 105 of the Bankruptcy Code to authorize the postpetition payment of prepetition claims where such payment is necessary to preserve the value of a debtor’s estate. *E.g., Tropical Sportswear Int’l Corp.*, 320 B.R. 15, 20 (Bankr. M.D. Fla. 2005) (“Bankruptcy courts recognize

that section 363 is a source for authority to make critical vendor payments, and section 105 is used to fill in the blanks.”). Courts have likewise acknowledged that “[u]nder [section] 105, the court can permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtor.” *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (citing *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 177 (Bankr. S.D.N.Y. 1989)); see *In re Just for Feet, Inc.*, 242 B.R. 821, 825 (D. Del. 1999) (citing *In re Penn Central Transp. Co.*, 467 F.2d 100, 102 n.1 (3d Cir. 1972)) (holding that the court is authorized under § 105(a) of the Bankruptcy Code to allow immediate payment of pre-petition claims of vendors found to be critical to the debtor’s continued operation).

15. In a long line of well-established cases, federal courts consistently have permitted postpetition payment of prepetition obligations where necessary to preserve or enhance the value of a debtor’s estate for the benefit of all creditors. *E.g.*, *Miltenberger v. Logansport, C. & S. W. Ry. Co.*, 106 U.S. 286, 312 (1882) (payment of pre-receivership claim permitted to prevent “stoppage of [crucial] business relations”); *In re Lehigh & New Eng. Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (holding that “if payment of a claim which arose prior to [the commencement of the bankruptcy case] is essential to the continued operation of the . . . [business] during [the bankruptcy case], payment may be authorized even if it is made out of [the] corpus”); *Dudley v. Mealey*, 147 F.2d 268, 271 (2d Cir. 1945) (extending doctrine for payment of prepetition claims beyond railroad reorganization cases).

16. This legal principle—known as the “doctrine of necessity”—functions in chapter 11 cases as a mechanism by which a bankruptcy court can exercise its equitable power to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code. See *Just for Feet*, 242 B.R. at 826 (finding that “to invoke the necessity of payment doctrine, a debtor must show that payment of the pre-petition claims is critical to the debtor’s [continued operation].”); *In*

re Columbia Gas Sys., Inc., 136 B.R. 930, 939 (Bankr. D. Del. 1992) (recognizing that “[i]f payment of a pre-petition claim is essential to the continued operation of [the debtor], payment may be authorized”); *In re Boston & Me. Corp.*, 634 F.2d 1359, 1382 (1st Cir. 1980) (recognizing the existence of a judicial power to authorize trustees to pay claims for goods and services that are indispensably necessary to the debtor’s continued operation). The doctrine of necessity is frequently invoked early in a bankruptcy case, particularly in connection with those Bankruptcy Code provisions that relate to payment of prepetition claims. In one case, the court indicated its accord with “the principle that a bankruptcy court may exercise its equity powers under section 105(a) [of the Bankruptcy Code] to authorize payment of pre-petition claims where such payment is necessary ‘to permit the greatest likelihood of . . . payment of creditors in full or at least proportionately.’” *In re Structurelite Plastics Corp.*, 86 B.R. 922, 931 (Bankr. S. D. Ohio 1988).

17. The Debtor submits that the timely payment of the Taxes and Fees is critical to the Debtor’s ability to preserve and maximize estate value for the benefit of all stakeholders. Failure to pay these obligations could damage the Debtor’s relations with the Authorities and cause the Authorities to take precipitous action, including, among other things, conducting additional audits, filing liens, attempting to revoke licenses and permits, seeking to impose liability against the Debtor and its officers and directors and, if applicable, seeking to lift the automatic stay, all of which could disrupt the Debtor’s chapter 11 efforts and impose significant costs on the Debtor’s estate. Payment of the Taxes and Fees will avoid these potentially burdensome and costly governmental actions, as well as the incurrence of potential penalties and interest if such Taxes and Fees are not timely paid. Thus, the Debtor submits that granting the relief requested herein will maximize the value of the Debtor’s estate and benefit its creditors.

ii. Sections 1107 and 1108 of the Bankruptcy Code

18. Second, authority for satisfying the Taxes and Fees may also be found in §§ 1107(a) and 1108 of the Bankruptcy Code. The Debtor, operating its business as debtor-in-possession under sections 1107(a) and 1108, is a fiduciary “holding the bankruptcy estate and operating the business for the benefit of its creditors and (if the value justifies) equity owners.” *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Implicit in the duties of a chapter 11 debtor-in-possession is the duty “to protect and preserve the estate, including an operating business’s going-concern value.” *Id.*

19. Courts have noted that there are instances in which a debtor-in-possession can fulfill its fiduciary duty “only . . . by the preplan satisfaction of a prepetition claim.” *Id.* The *CoServ* court specifically noted that preplan satisfaction of prepetition claims would be a valid exercise of a debtor’s fiduciary duty when the payment “is the only means to effect a substantial enhancement of the estate.” *Id.* The court provided a three-pronged test for determining whether a preplan payment on account of a prepetition claim was a valid exercise of a debtor’s fiduciary duty:

First, it must be critical that the debtor deal with the claimant. Second, unless it deals with the claimant, the debtor risks the probability of harm, or, alternatively, loss of economic advantage to the estate or the debtor’s going concern value, which is disproportionate to the amount of the claimant’s prepetition claim. Third, there is no practical or legal alternative by which the debtor can deal with the claimant other than by payment of the claim.

20. Payment of the Taxes and Fees meets each element of the *CoServ* court’s standard. Any failure to pay the Taxes and Fees could impair the Debtor’s ability to continue its business operations. Moreover, any unexpected or inopportune interruption of the Debtor’s operations during the course of the Case could diminish estate value and frustrate the Debtor’s chapter 11 efforts. Therefore, the Debtor submits that it can only meet its fiduciary duty as debtor-in-

possession under §§ 1107(a) and 1108 of the Bankruptcy Code by paying the Taxes and Fees in the ordinary course of business.

iii. Section 507 of the Bankruptcy Code

21. Third, to the extent that the Taxes and Fees are entitled to priority status under § 507(a)(8) of the Bankruptcy Code, they must be paid in full under any chapter 11 plan before any of the Debtor's general unsecured obligations may be satisfied. As such, the payment of the Taxes and Fees affects only the timing of the payments to the Authorities, and not the amounts that such Authorities ultimately would receive.

iv. "Trust Fund" Taxes

22. Fourth, the Authorities might assert that certain of the Taxes and Fees are so-called "trust fund" taxes that the Debtor is required to collect from third parties and hold in trust for the benefit of the Authorities. To the extent that the Debtor collects the Taxes and Fees on behalf of the Authorities, such Taxes and Fees may not constitute property of the Debtor's bankruptcy estate. *See Begier v. I.R.S.*, 496 U.S. 53, 57-60 (1990); *City of Ferrell v. Sharon Steel Corp.*, 41 F.3d 92, 97 (3d Cir. 1994); *DeChiaro v. N.Y. State Tax Comm'n*, 760 F.2d 432, 433 (2d Cir. 1985) (sales taxes are "trust fund" taxes); *Al Copeland Enters., Inc. v. Texas*, 991 F.2d 233 (5th Cir. 1993) (debtor's prepetition collection of sales taxes and interest thereon was held subject to trust and was not property of the estate); *In re Shank*, 792 F.2d 829, 830 (9th Cir. 1986) (sales taxes required by state law to be collected by sellers from their customers are "trust fund" taxes); *In re Tap, Inc.*, 52 B.R. 271, 272 (Bankr. D. Mass. 1985) (withholding taxes are "trust fund" taxes). To the extent that the Taxes and Fees are "trust fund" taxes and the funds representing such Taxes and Fees can be adequately identified and traced, the Debtor would have no equitable interest in such funds, and these funds would not be property of the Debtor's estate. *See* 11 U.S.C. § 541(d); *In re Am. Int'l*

Airways, Inc., 70 B.R. 102, 103 (Bankr. E.D. Pa. 1987). Accordingly, the Debtor submits that the Court should authorize the Debtor to pay any of the Taxes and Fees that constitute trust fund taxes, and, further, that payment of such Taxes and Fees would not prejudice the rights of any of the Debtor's other creditors or other parties-in-interest.

v. Personal Liability

23. Finally, some states hold corporate officers personally liable for unpaid taxes in certain circumstances. *E.g.*, JOHN F. OLSEN, *ET AL.*, DIRECTOR & OFFICER LIABILITY: INDEMNIFICATION AND INSURANCE § 3:21 (2003) (“some states hold corporate officers personally liable for any sales tax and penalty owed and not paid by the corporation regardless of cause”). To the extent that any such “trust fund” taxes remain unpaid by the Debtor, its directors and officers could be subject to lawsuits or criminal prosecution during the pendency of the Case. Such potential lawsuits would prove extremely disruptive for the Debtor, for the named officers and directors whose attention to the chapter 11 process is required, and for the Court, as the Court might be asked to entertain various requests for injunctions with respect to the potential state court actions against such individuals. Even the possibility of any such lawsuit or criminal prosecution would distract the Debtor and its directors and officers, and impede its respective efforts in the Case. Furthermore, the Authorities may conduct additional audits of the Debtor if the Taxes and Fees are not timely paid. Payment of the Taxes and Fees will, therefore, avoid a loss of focus on the part of the Debtor's directors, officers, and other employees resulting from the risk of personal liability and/or audits.

24. For the foregoing reasons, the Debtor believes that granting the relief requested herein is appropriate and in the best interests of its estate and creditors.

B. The Court should authorize the Banks to honor and process the Debtor's payments on account of the Taxes and Fees.

25. The Debtor also requests that the Court authorize the Banks, when requested by the Debtor, to honor and process checks or electronic fund transfers drawn on the Debtor's bank accounts to pay prepetition obligations described herein, whether such checks or other requests were submitted prior to, or after, the Petition Date, provided that sufficient funds are available in the applicable bank accounts to make such payments. The Debtor further requests that all of the Banks be authorized to rely on the Debtor's designation of any particular check or electronic payment request as approved pursuant to the Motion.

Bankruptcy Rule 6003 Is Satisfied and Request for Waiver of Stay

26. 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.

27. 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.

28. 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). As explained in more detail above, the Debtor's inability to pay the prepetition Taxes and Fees in the ordinary course will result in immediate and irreparable harm to the Debtor's business.

29. 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

30. Notice of the 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 Authorities; (i) the Banks; (j) any party that has requested notice pursuant to Bankruptcy Rule 2002; and (k) any other party entitled to notice pursuant to Local Rule 9013-1(m)(iii). As the Motion is seeking "first day" relief, within two 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

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

[Signature on Next Page]

Conclusion

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

Dated: June 2, 2022

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

Exhibit A

Interim Order

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:

Zosano Pharma Corporation,¹

Debtor.

Chapter 11

Case No. 22-10506 (JKS)

Ref. Docket No.

**INTERIM ORDER AUTHORIZING THE (I) DEBTOR TO PAY CERTAIN
PREPETITION TAXES AND FEES AND RELATED OBLIGATIONS AND (II) BANKS
TO HONOR AND PROCESS CHECK AND ELECTRONIC
TRANSFER REQUESTS RELATED THERETO**

Upon consideration of the motion (the “**Motion**”)² of the above-captioned debtor and debtor-in-possession (the “**Debtor**”) pursuant to §§ 105(a), 363(b), 507(a)(8), 541, 1107(a), and 1108 of the Bankruptcy Code, for the entry of interim and final orders (i) authorizing, but not directing, the Debtor, in its discretion, to pay Taxes and Fees related to the period prior to the Petition Date to the Authorities, and (ii) authorizing the Banks to honor and process check and electronic transfer requests related to the foregoing; and upon consideration of the Motion and all pleadings related thereto, including the First Day Declaration; and due and proper notice of the Motion having been given; and it appearing that no other or further notice of the Motion is required; and it appearing that the Court has jurisdiction to consider the Motion in accordance with 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 as of February 29, 2012; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing

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).

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

that the relief requested in the Motion and provided for herein is in the best interest of the Debtor, its estate, and its creditors; and after due deliberation 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, in its discretion, to pay prepetition Taxes and Fees to the Authorities in the ordinary course of its business in an amount not to exceed \$30,000.00 pending entry of the Final Order.
3. Nothing in the Interim Order shall be construed as authorizing the Debtor to pay any amounts on account of past-due taxes.
4. The Banks are authorized, when requested by the Debtor, in the Debtor's discretion, to honor and process checks or electronic fund transfers drawn on the Debtor's accounts to pay prepetition obligations authorized to be paid hereunder, whether such checks or other requests were submitted prior to, or after, the Petition Date, provided that sufficient funds are available in the applicable bank accounts to make such payments. The Banks may rely on the representations of the Debtor with respect to whether any check or other transfer drawn or issued by the Debtor prior to the Petition Date should be honored pursuant to this Interim Order, and any such Bank shall not have any liability to any party for relying on such representations by the Debtor, as provided for in this Interim Order.
5. Nothing in this Interim Order (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to § 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtor and its estate, (b) 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, (c) shall impair, prejudice, waive, or

otherwise affect the rights of the Debtor and its estate with respect to any and all claims or causes of action against any Authority, or (d) shall be construed as a promise to pay a claim.

6. The Debtor is authorized to take any and all actions necessary to effectuate the relief granted herein.

7. 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.

8. The requirements of Bankruptcy Rule 6003(b) are satisfied because the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtor.

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

10. Notice of the Motion as provided therein shall be deemed good and sufficient and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

11. The Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of the Interim Order.

Exhibit B

Final Order

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:

Zosano Pharma Corporation,¹

Debtor.

Chapter 11

Case No. 22-10506 (JKS)

Ref. Docket Nos.

**FINAL ORDER AUTHORIZING THE (I) DEBTOR TO PAY CERTAIN
PREPETITION TAXES AND FEES AND RELATED OBLIGATIONS AND (II)
BANKS TO HONOR AND PROCESS CHECK AND
ELECTRONIC TRANSFER REQUESTS RELATED THERETO**

Upon consideration of the motion, *Motion of the Debtor for Entry of Interim and Final Orders Authorizing the (I) Debtor to Pay Certain Prepetition Taxes and Fees and Related Obligations and (II) Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto* (the “**Motion**”),² of the above-captioned debtor and debtor-in-possession (the “**Debtor**”) for the entry of interim and final orders, pursuant to §§ 105(a), 363(b), 507(a)(8), 541, 1107(a), and 1108 of the Bankruptcy Code, (i) authorizing, but not directing, the Debtor, in its discretion, to pay Taxes and Fees related to the period prior to the Petition Date to the Authorities, and (ii) authorizing the Banks to honor and process check and electronic transfer requests related to the foregoing; and upon consideration of the Motion and all pleadings related thereto, including the First Day Declaration; and due and proper notice of the Motion having been given; and it appearing that no other or further notice of the Motion is required; and it appearing that the Court has jurisdiction to consider the Motion in accordance with 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,

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).

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

dated as of February 29, 2012; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that the relief requested in the Motion and provided for herein is in the best interest of the Debtor, its estate, and its creditors; and the Court having entered the *Interim Order Authorizing the (I) Debtor to Pay Certain Prepetition Taxes and Fees and Related Obligations and (II) Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto* [Docket No. ____, entered on __, 2022]; and after due deliberation 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, in its discretion, to pay prepetition Taxes and Fees to the Authorities in the ordinary course of its business in an amount not to exceed \$250,000.00.
3. Nothing in this Final Order shall be construed as authorizing the Debtor to pay any amounts on account of past-due taxes.
4. The Banks are authorized, when requested by the Debtor, in the Debtor's discretion, to honor and process checks or electronic fund transfers drawn on the Debtor's accounts to pay prepetition obligations authorized to be paid hereunder, whether such checks or other requests were submitted prior to, or after, the Petition Date, provided that sufficient funds are available in the applicable bank accounts to make such payments. The Banks may rely on the representations of the Debtor with respect to whether any check or other transfer drawn or issued by the Debtor prior to the Petition Date should be honored pursuant to this Final Order, and any such Bank shall not have any liability to any party for relying on such representations by the Debtor, as provided for in this Final Order.

5. Nothing in this Final Order (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to § 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtor and its estate, (b) 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, (c) shall impair, prejudice, waive, or otherwise affect the rights of the Debtor and its estate with respect to any and all claims or causes of action against any Authority, or (d) shall be construed as a promise to pay a claim.

6. The Debtor is authorized to take any and all actions necessary to effectuate the relief granted herein.

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

8. The Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Final Order.