

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
(I) AUTHORIZING THE DEBTOR TO PAY (A) ALL PREPETITION EMPLOYEE
OBLIGATIONS AND (B) PREPETITION WITHHOLDING OBLIGATIONS,
AND (II) DIRECTING BANKS TO HONOR RELATED TRANSFERS**

The above-captioned debtor and debtor-in-possession (the “**Debtor**”) submits this motion (the “**Motion**”), pursuant to sections 105, 363, 503, 507(a)(4), 507(a)(5), 541, 1107 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(h) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), for entry of an in 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**”), (a) authorizing the Debtor to continue to honor and pay (i) all prepetition employee obligations as described more fully herein, and (ii) all prepetition federal and state withholding obligations and (b) authorizing all banks to honor the Debtor’s prepetition transfers for payment of any of the foregoing and prohibiting banks from placing holds on, or attempting to reverse, any automatic transfers on account of the foregoing. In support of this 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 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. Employees

6. As of the Petition Date, the Debtor employs approximately 15 employees (the “**Employees**”), all of whom work full-time in or near Fremont, California.² None of the Debtor’s Employees are subject to a collective bargaining agreement or similar labor agreement.

7. The Employees perform a wide range of functions critical to the Debtor’s operations and maintenance of its property, including pre-clinical research and development and platform development technology activities.

8. Many of these individuals are highly trained and have an essential working knowledge of the Debtor’s business that cannot be replaced easily. Failure to maintain the continued, uninterrupted services of the Employees could disrupt the Debtor’s reorganization efforts and jeopardize the value of its business as a going concern.

B. Wages and Payroll Obligations

i. Wages

9. All Employees are paid wages or salary (together, “**Wages**”) twice monthly, on the fifteenth and on the last working day of the month. For the pay period prior to the Petition Date, the Debtor’s payroll for Wages (including the Debtor’s portion of the Payroll Taxes (as defined below)) was approximately \$173,000. Nearly all of the Employees are paid through electronic fund transfers, *i.e.*, direct deposit.

10. The Debtor’s last regular payroll covered the pay period May 16, 2022 through May 31, 2022; the next payroll is scheduled for June 15, 2022. As of the Petition Date, the Debtor estimates that there are no unpaid prepetition Wages.

² Prior to the Petition Date, the Debtor rightsized its operations by implementing workforce reductions necessary to ensure the viability of the Debtor and preserve jobs for the remaining Employees.

11. By this Motion, the Debtor requests the authority to continue to pay Wages to its Employees in the ordinary course of business. The Debtor will not pay any accrued and unpaid Wages owed to the Employees in excess of the statutory priority amount.

ii. Obligations

12. The Debtor, as an employer, is required by law to withhold federal, state and local taxes the (“**Employee Taxes**”) from Wages for remittance to appropriate taxing authorities. In addition to the Employee Taxes, the Debtor is required to pay, from its own funds, social security and Medicare taxes and pay, based on a percentage of gross payroll and subject to state-imposed limits, additional amounts for state and federal unemployment insurance (together with the Employee Taxes, the “**Payroll Taxes**”) and remit the same to the appropriate authorities (the “**Taxing Authorities**”).

13. The Debtor utilizes a third-party service provider, ADP, to act as its payroll processor. In connection with those services, ADP processes the Payroll Taxes owed to the various Taxing Authorities on behalf of the Debtor in accordance with the Internal Revenue Code and applicable state law. As of the Petition Date, the Debtor has funded the Payroll Taxes to ADP for the current payment of Payroll Taxes and estimates that it does not owe any accrued but unremitted Payroll Taxes (the “**Withholding Obligations**”). Even so, the Debtor seeks authority to honor and process the prepetition obligations with respect to the Withholding Obligations, to the extent any may be outstanding, including authority for ADP to remit funded Payroll Taxes.

C. Employee Benefits

i. Paid Time Off

14. The Debtor provides Employees with various forms of paid time off. Employees receive vacation time each year (“**Vacation Time**”), and the Debtor allocates such time based on

the Employee's years of service and whether the Employee is part-time or full-time, as reflected in the below chart:³

	1-4 Years	Max Accrual	5+ Years	Maximum Accrual
Full-Time Employee	15 days/120 hours	200 hours	20 days/160 hours	240 hours
Part-Time Employee	Prorated on hours worked (must work 20 hours per week minimum to qualify)	Prorated	Prorated on hours worked (must work 20 hours per week minimum to qualify)	Prorated

15. The Debtor also provides up to ten paid sick days each year to regular full-time Employees (“**Sick Leave**”), which may be used for recovery from a non-work related injury, illness, disability or to care for an immediate family member. In addition, eligible Employees earn ten paid days off for federal holidays and certain other holidays assigned annually by the Debtor⁴ (the “**Paid Holidays**,” and together with the Vacation Time and Sick Leave, the “**PTO**”).⁵

16. By this Motion, the Debtor seeks authority, in its discretion, to: (a) continue to honor its PTO policy; (b) modify its prepetition policies relating thereto as they deem appropriate; and (c) honor and pay any obligations related thereto that (i) accrued prepetition, and (ii) accrued postpetition, but relate to the prepetition period. For the avoidance of doubt, the Debtor shall not cash out unpaid PTO upon termination of employment, unless applicable state law requires such payment.

³ Employees may “roll over” any unused PTO, but the Debtor generally caps “roll over” at 200 hours. For certain employees, the “roll over” cap may increase to 240 hours.

⁴ These holidays include two (unearned) holidays.

⁵ The Debtor estimates that, as of the Petition Date, approximately \$289,371 of PTO has accrued (plus applicable payroll taxes) and may be payable upon termination.

i. Employee Benefit Plans and Policies

17. The Debtor has established certain benefit plans and policies for eligible Employees that provide, among other benefits, medical, dental, vision, life insurance and disability insurance (the “**Employee Benefit Plans**”), which are described in more detail below.

18. Upon hire, Employees that work more than thirty hours a week are eligible for various health benefits, including medical, dental, vision, prescription drug coverage and other programs (the “**Health Benefits**”). Most Employees elect benefits through Beyond Benefits Life Science Association (“**Beyond Benefits**”)—a group health benefits program that provides the Employees with access to competitive benefits programs. Medical and prescription drug coverage is provided by either Anthem Insurance Companies, Inc. (“**Anthem**”) or Kaiser Foundation Health Plan, Inc (“**Kaiser**”).⁶ The Debtor’s dental plan is administered through Delta Dental, and the Debtor’s vision plan is administered through Vision Service Plan. The Debtor’s total cost for Health Benefits in 2021 was approximately \$1,227,666.00.

19. In addition, the Debtor provides to eligible Employees basic life, short-term and long-term disability and AD&D insurance (“**Additional Insurance Plans**”), which are administered through Anthem. The Debtor’s total cost for the Additional Insurance Plans is included in its payments to Beyond Benefits. The Debtor’s approximate monthly cost to maintain the Health Benefits and Additional Insurance Plans post-petition is \$55,000.

20. The Debtor also offers a wide variety of voluntary benefits for Employees, including, but not limited to, Flexible Spending Accounts (“**FSA**”), Medical Savings and Dependent Care Accounts and Employee Assistance Program and Travel Assistance Program (collectively, the “**Voluntary Benefits**”), which are all through Anthem with the exception of FSA

⁶ The health plan with Kaiser is not provided through Beyond Benefits.

being administered by Igoe Administrative Services. Any costs associated with participation in any of the Voluntary Benefits is fully borne by the participating Employee.⁷

21. The Debtor seeks authority, in its discretion, to: (a) continue the Health Benefits, Additional Insurance Plans and Voluntary Benefits for its Employees in the ordinary course of business on a postpetition basis; (b) modify its prepetition policies relating thereto as it deems appropriate; (c) continue making contributions to such Health Benefits, Additional Insurance Plans and Voluntary Benefits; (d) continue to pay fees of third-party administrators, as necessary; and (e) pay any amounts related thereto, including any premiums and claim amounts that (i) accrued prepetition, and (ii) accrue postpetition, but relate to the prepetition period.

ii. Non-Insider Severance Program

22. In the ordinary course of business, the Debtor maintains a severance program for the benefit of certain non-insider Employees (the “**Non-Insider Severance Program**”). Under the Non-Insider Severance Program, certain Employees may be eligible for payment of severance if their employment is terminated due to a workforce adjustment or any not-for-cause employer-initiated termination. Such severance payments (the “**Non-Insider Severance Benefits**”) are equal to two weeks of the respective Employee’s base salary and are paid in a lump sum. Under the Non-Insider Severance Program, the Debtor also provides a \$2,500 stipend for insurance and one month of professional outplacement services.

23. The Debtor’s maintenance of the Non-Insider Severance Program and payment of Non-Insider Severance Benefits are critical to maintaining Employee morale and loyalty. Failure to maintain the Non-Insider Severance Program will result in increased instability in the Debtor’s

⁷ The Debtor previously offered Employees the opportunity to participate in an Equity Incentive Program, but has since ceased that program and will not continue it in the chapter 11 case.

workforce, which will undermine the Debtor's ability to strengthen its financial and operational foundation, generate growth and position itself for long-term success.

24. As of the Petition Date, the Debtor believes that one former Employee is entitled to certain Non-Insider Severance Benefits totaling approximately \$3,400. The Debtor estimates that, as of the Petition Date, there are no other amounts outstanding under the Non-Insider Severance Program. The Debtor respectfully requests that the Court authorize the Debtor to continue, in its discretion, to pay amounts on account of the Non-Insider Severance Program if and when they come due in the ordinary course of business.

iii. Workers' Compensation Insurance

25. Under applicable law, the Debtor is required to maintain workers' compensation insurance programs to provide its Employees with workers' compensation insurance coverage for claims arising from or relating to their employment with the Debtor and to satisfy the Debtor's obligations arising under or relating to these programs (collectively, the "**Workers' Compensation Programs**"). The Workers' Compensation Programs cover all Employees and coverage is provided through a workers' compensation insurance policy with Tri State Insurance Company of Minnesota.

26. It is critical that the Debtor be permitted to continue its Workers' Compensation Programs and pay its premiums for workers' compensation coverage, as not doing so would almost certainly be costlier. In addition, failure to maintain this insurance could result in the institution of administrative or legal proceedings against the Debtor and its officers and directors and an inability of the Debtor to continue as a going concern. By this Motion, the Debtor requests authority to maintain and continue its prepetition practices with respect to the Workers' Compensation Programs, including, among other things, allowing workers' compensation

claimants, to the extent they hold valid claims, to proceed with their claims under the Workers' Compensation Programs.

iv. Retirement Plan

27. Employees are also eligible to enroll in the Zosano Pharma 401(k) Plan through Fidelity Management Trust Company (the "**Retirement Plan**"). Eligible Employees may elect to have a portion of their salary deposited directly into a 401(k) account on their behalf as a pre-tax contribution. The Debtor does not have a 401(k) match. By this Motion, the Debtor seeks authority to continue to honor its obligations with respect to the Retirement Plan in the ordinary course of business.

D. Reimbursable Expenses

28. Prior to the Petition Date, and in the ordinary course of its business, the Debtor reimbursed Employees for certain expenses incurred on behalf of the Debtor in the scope of its employment including travel, lodging, meals, transportation, personal usage of cell phones and conferences/seminars (the "**Reimbursable Expenses**"). On average, the Debtor spends less than \$5,000 per month on Reimbursable Expenses. As of the Petition Date, the Debtor estimates that approximately \$5,000 in Reimbursable Expenses remain outstanding.

29. To avoid harming Employees who incurred the Reimbursable Expenses, the Debtor requests authority, in its discretion, to (a) continue reimbursing the Reimbursable Expenses in accordance with prepetition practices, (b) modify its prepetition policies relating thereto as they deem appropriate, and (c) pay all Reimbursable Expenses that (i) accrued prepetition, and (ii) accrue postpetition but relate to the prepetition period.

E. Independent Service Providers

30. In addition to the Employees, independent contractors (the “**Independent Service Providers**”) provide the Debtor with information technology, safety and human resource services that are essential to the Debtor’s ongoing business operations. The Debtor estimates that no prepetition amounts are owed to the Independent Service Providers, but, out of an abundance of caution, seeks authority to pay amounts that may be owing or might come due to the Independent Service Providers postpetition in the ordinary course of business. If the Debtor is unable to pay the Independent Service Providers in the ordinary course in the chapter 11 case, the Debtor will lose the services, continuity and institutional knowledge of the Independent Service Providers, and the Debtor’s business operations will be severely and irreparably compromised.

Relief Requested

31. In order to enable the Debtor to maintain morale during this critical time, retain its current Employees and Independent Service Providers and minimize the personal hardship such Employees and Independent Service Providers may suffer if prepetition, employee-related obligations are not paid when due or honored as expected, the Debtor, by this Motion, seek authority, in its discretion, to pay and honor, as the case may be: (a) all prepetition claims of Employees, including, but not limited to, claims for Wages, PTO, the Health Benefits, the Additional Insurance Plans, the Voluntary Benefits and the Retirement Plan, as applicable, and certain costs and disbursements related to the foregoing, up to the statutory priority amount of \$15,150 per Employee; (b) all Withholding Obligations ((a) and (b) collectively, the “**Employee Obligations**”); (c) any claims of the Independent Service Providers, including, but not limited to, claims for Wages and certain costs and disbursements related to the foregoing, that may come due

postpetition in the ordinary course; (d) the Reimbursable Expenses; (e) the Workers' Compensation Programs; and (f) the Non-Insider Severance Program.

Authorization of Banks

32. The Debtor also seeks an order authorizing all banks to receive, process, honor and pay any and all checks or electronic transfers drawn on the Debtor's payroll and general disbursement accounts related to ordinary course Employee Obligations, whether presented before or after the Petition Date, provided that sufficient funds are on deposit in the applicable accounts to cover such payments.

Basis for Relief Requested

33. Courts generally acknowledge that it is appropriate to authorize the payment (or other special treatment) of prepetition employee obligations in certain circumstances. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, a debtor in possession is authorized to operate its business while maintaining "a fiduciary duty to act in the best interest of the estate as a whole, including its creditors, equity interest holders and other parties in interest." *LaSalle Nat'l Bank v. Perelman*, 82 F. Supp. 2d 279, 292 (D. Del. 2000). Implicit in the fiduciary duties of any debtor-in-possession is the obligation "to protect and preserve the estate, including an operating business's going-concern value." *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Some courts have noted that there are instances in which a debtor can fulfill this fiduciary duty "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 the debtor's fiduciary duty when the payment "is the only means to effect a substantial enhancement of the estate." *Id.* In the chapter 11 case, the debtor as a debtor-in-possession consistent with sections 1107(a) and 1108 of the Bankruptcy Code, and payment of the Employee Obligations is necessary to protect and preserve

the Debtor's business operations. Thus, the Court should authorize the relief requested in this Motion.

34. Consistent with the Debtor's fiduciary duties, this Court may also grant the relief requested herein pursuant to sections 105(a) and 363(b) and (c) of the Bankruptcy Code and the "necessity of payment" doctrine. 11 U.S.C. §§ 105(a), 363(b) and (c). Section 105(a) of the Bankruptcy Code further provides, in pertinent part, that a "court may 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). Section 363(b)(1) of the Bankruptcy Code states in pertinent part that: "The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate" 11 U.S.C. § 363(b)(1). If a debtor's determination to use estate assets represents a reasonable business judgment, the bankruptcy court should approve such use.

35. The "necessity of payment" doctrine authorizes the relief requested in this Motion because the Employees are indispensable to both the Debtor's operations and the resolution of this chapter 11 case. In addition, the Debtor believes that the unpaid Wages and other benefits earned within 180 days of the Petition Date that the Debtor seeks to pay are entitled to priority status under sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code and individually do not exceed the maximum priority amount.

36. The Employees and Independent Service Providers are essential to the continued operation of the Debtor's business, and the Employees' and Independent Service Providers' morale directly affects their effectiveness and productivity. As a business that relies heavily on its Employees and Independent Service Providers, a failure to continue to satisfy the Employee Obligations without disruption is essential. Consequently, it is critical that the Debtor continues, in the ordinary course, those personnel policies, programs and procedures that were in effect prior

to the Petition Date. If the checks issued and electronic fund transfers requested in payment of any of the compensation or other Employee Obligations are dishonored, or if such obligations are not timely paid postpetition, the Employees and Independent Service Providers may likely suffer extreme personal hardship and may be unable to pay their daily living expenses.

37. A loss of employee morale and goodwill at this juncture would undermine the Debtor's stability and would undoubtedly have an adverse effect on the Debtor, its members, the value of its assets and business and its ability to achieve its objectives in chapter 11. As noted by the court in *In re Equalnet Commc'ns Corp.*, 258 B.R. 368 (Bankr. S.D. Tex. 2000), "[t]he need to pay [prepetition employee wage] claims in an ordinary course of business time frame is simple common sense. Employees are more likely to stay in place and to refrain from actions which could be detrimental to the case and/or the estate if their pay and benefits remain intact and uninterrupted." *Id.* at 370.

38. As part of the foregoing relief, the Debtor also seeks authority to pay all Withholding Obligations. The failure to make such payments may also subject the Debtor and its officers to federal or state liability. *See City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 96–97 (3d Cir. 1994) (state law requiring debtor to withhold city income tax from its employees' wages created trust relationship between debtor and city for payment of withheld taxes); *DuCharmes & Co. v. Michigan (In re DuCharmes & Co.)*, 852 F.2d 194, 195–96 (6th Cir. 1988) (noting the special liabilities for failure to pay trust fund taxes). Moreover, the monies payable for amounts held in trust, like the Withholding Obligations, generally are not property of a debtor's estate. *See Begier v. IRS*, 496 U.S. 53, 59 (1990) (because the debtor does not own an equitable interest in property he holds in trust for another, that interest is not "property of the estate"). The failure to transfer these withheld funds could result in hardship to certain Employees or others. Furthermore,

if the Debtor cannot remit these amounts, the Employees may face legal action due to the Debtor's failure to submit these payments.

39. Finally, payment of Withholding Obligations that constitute "trust fund" taxes will not prejudice general unsecured creditors of the Debtor's estate as the relevant Taxing Authorities would hold priority claims under section 507(a)(8) of the Bankruptcy Code in respect of such obligations. Moreover, the monies payable for trust fund taxes, as well as the other funds that are held in trust for the benefit of third parties, such as withheld funds with respect to the Retirement Plan, are not property of the Debtor's estate.

40. The relief requested in this Motion is necessary for the viability of the Debtor's business and maximization of the value of the Debtor's assets. Accordingly, the Debtor submits that the relief sought herein is consistent with sections 105(a), 507(a), and 541 of the Bankruptcy Code.

41. Nothing in this Motion, nor any payments made by the Debtor pursuant to any order entered authorizing the relief requested in the Motion, shall be deemed an assumption or rejection of any Employee benefit, employment agreement, other program or contract or otherwise affect the Debtor's rights under section 365 of the Bankruptcy Code to assume or reject any executory contract between the Debtor and any Employee.

Bankruptcy Rule 6003 Is Satisfied and Request for Waiver of Stay

42. 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.

43. 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.

44. 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).

45. 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

46. 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) any party that has requested notice pursuant to Bankruptcy Rule 2002; and (i) 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

47. 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 orders granting the relief requested herein and 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

Proposed 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 (I) AUTHORIZING THE DEBTOR TO PAY
(A) ALL PREPETITION EMPLOYEE OBLIGATIONS AND
(B) PREPETITION WITHHOLDING OBLIGATIONS,
AND (II) DIRECTING BANKS TO HONOR RELATED TRANSFERS**

Upon consideration of the motion (the “**Motion**”)² filed by the above-captioned debtor and debtor-in-possession (the “**Debtor**”), pursuant to sections 105, 363, 503, 507(a)(4), 507(a)(5), 541, 1107 and 1108 of title 11 of the Bankruptcy Code, for the entry of an interim and final orders (a) authorizing the Debtors to continue to honor and pay (i) all prepetition employee obligations as described more fully in the Motion, and (ii) all prepetition federal and state withholding obligations and (b) authorizing all banks to honor the Debtors’ prepetition transfers for payment of any of the foregoing and prohibiting banks from placing holds on, or attempting to reverse, any automatic transfers on account of the foregoing; and the Court having jurisdiction over this matter 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 as of February 29, 2012; and this matter being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue of the chapter 11 case and the Motion in this district being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that due and adequate notice of the Motion has been given under the circumstances; and this Court having held a hearing (the “**Hearing**”) to consider the relief requested in the Motion; and upon the

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

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

First Day Declaration and the record of the Hearing, this Court having determined that there is good and sufficient cause for the relief set forth in this Order; and after due deliberation thereon,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on an interim basis to the extent provided herein.
2. The Debtor is authorized, but not directed, to continue to honor and pay all prepetition Employee Obligations in accordance with the Debtor's stated policies as fully set forth in the Motion and in the ordinary course of the Debtor's business; *provided, however*, that without prejudice to the Debtor's right to seek additional payments at the Final Hearing or any other time subsequent thereto, (a) payments to or on behalf of any Employee on account of any prepetition Employee Obligation, including PTO, shall not exceed the amounts afforded priority status by any applicable provisions of section 507 of the Bankruptcy Code, including sections 507(a)(4) and 507(a)(5), and (b) the aggregate amount of such payments shall not exceed \$75,000 unless further ordered by the Court.
3. The Debtor is authorized, but not directed, to pay all prepetition amounts owing to the Independent Service Providers for their services and to continue to pay such amounts in the ordinary course of business and consistent with the Debtor's business practices; *provided, however*, that without prejudice to the Debtor's right to seek additional payments at the Final Hearing or any other time subsequent thereto, (a) payments to or on behalf of any Independent Service Providers on account of any prepetition amounts owing shall not exceed the amounts afforded priority status by any applicable provisions of section 507 of the Bankruptcy Code, including sections 507(a)(4) and 507(a)(5), and (b) the aggregate amount of such payments shall not exceed \$2,500.

4. The Debtor is authorized, but not directed, to continue to honor and pay its Reimbursable Expenses, including any such prepetition obligations, in accordance with the Debtor's stated policies and prepetition practices, and are authorized to satisfy such prepetition Reimbursable Expenses in an amount not to exceed \$2,500.

5. The Debtor is authorized to continue the Non-Insider Severance Program and pay all prepetition amounts relating thereto in the ordinary course.

6. The Debtor is authorized to continue the Workers' Compensation Programs and pay all prepetition amounts relating thereto in the ordinary course.

7. The Debtor is authorized, but not directed, to make postpetition payments with respect to the foregoing in the ordinary course of business.

8. All of the Debtor's banks are authorized and directed to receive, process, honor, and pay any and all checks or electronic transfers drawn on the Debtor's payroll and disbursement accounts related to Employee Obligations and the Independent Service Providers, including, but not limited to, Wages, PTO, Employee Benefit Plans, Reimbursable Expenses, and Withholding Obligations authorized by this Interim Order, whether presented before or after the Petition Date, provided that sufficient funds are on deposit in the applicable accounts to cover such payments.

9. To the extent that any employment or related agreements may be deemed executory contracts within the meaning of section 365 of the Bankruptcy Code, the Debtor has not sought authority to assume such contracts, and no relief is granted in respect thereof.

10. Nothing in the Motion or this Interim Order, nor as a result of any payment made pursuant to this Interim Order, shall be deemed or construed as an admission as to the validity or priority of any claim against the Debtor, an approval or assumption of any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code, or a waiver of the rights of the Debtor, or

shall impair the ability of the Debtor, or any other party in interest, to the extent applicable, to contest the validity and amount of any payment made pursuant to this Interim Order.

11. Nothing herein shall be deemed to authorize (i) the payment of any amounts in satisfaction of bonus or severance obligations, which are subject to section 503(c) of the Bankruptcy Code; or (ii) the payment of any amounts owing to any retired or former employees under any supplemental executive retirement plan or otherwise.

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

13. 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: (i) 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.

14. The requirements of Bankruptcy Rule 6003(b) are satisfied.

15. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be effective and enforceable immediately upon entry hereof.

16. The Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Order.

Exhibit B

Proposed 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 (I) AUTHORIZING THE DEBTOR TO PAY
(A) ALL PREPETITION EMPLOYEE OBLIGATIONS AND
(B) PREPETITION WITHHOLDING OBLIGATIONS, AND
(II) DIRECTING BANKS TO HONOR RELATED TRANSFERS**

Upon consideration of the motion (the “**Motion**”)² filed by the above-captioned debtor and debtor-in-possession (the “**Debtor**”); and the Court having jurisdiction over this matter 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 as of February 29, 2012; and this matter being a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having jurisdiction to enter a final order consistent with Article III of the United States Constitution; and venue of the chapter 11 case and the Motion in this district being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and this Court having held a hearing (the “**Hearing**”) to consider the relief requested in the Motion; and upon the First Day Declaration and the record of the Hearing, this Court having determined that there is good and sufficient cause for the relief set forth in this Order; and after due deliberation thereon,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED to the extent provided herein.

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, CA 94555 (8360).

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

2. The Debtor is authorized, but not directed, to continue to honor and pay all prepetition Employee Obligations in accordance with the Debtor's stated policies as fully set forth in the Motion and in the ordinary course of the Debtor's businesses; *provided, however*, that without prejudice to the Debtor's right to seek additional payments at any other time subsequent hereto, (a) payments to or on behalf of any Employee on account of any prepetition Employee Obligation, including PTO, shall not exceed the amounts afforded priority status by any applicable provisions of section 507 of the Bankruptcy Code, including sections 507(a)(4) and 507(a)(5), and (b) the aggregate amount of such payments shall not exceed \$200,000 unless further ordered by the Court.

3. The Debtor is authorized, but not directed, to pay all prepetition amounts owing to the Independent Contractors for their services and to continue to pay such amounts in the ordinary course of business and consistent with the Debtor's business practices; *provided, however*, that without prejudice to the Debtor's right to seek additional payments at any other time subsequent hereto, (a) payments to or on behalf of any Independent Contractors on account of any prepetition amounts owing shall not exceed the amounts afforded priority status by any applicable provisions of section 507 of the Bankruptcy Code, including sections 507(a)(4) and 507(a)(5), and (b) the aggregate amount of such payments shall not exceed \$5,000.

4. The Debtor is authorized, but not directed, to continue to honor and pay its Reimbursable Expenses, including any such prepetition obligations, in accordance with the Debtor's stated policies and prepetition practices, and are authorized to satisfy such prepetition Reimbursable Expenses in an amount not to exceed \$5,000.

5. The Debtor is authorized, but not directed, to make postpetition payments with respect to the foregoing in the ordinary course of business.

6. All of the Debtor's banks are authorized and directed to receive, process, honor, and pay any and all checks or electronic transfers drawn on the Debtor's payroll and disbursement accounts related to Employee Obligations and the Independent Service Providers, including, but not limited to, Wages, PTO, Employee Benefit Plans, Reimbursable Expenses and Withholding Obligations authorized by this Final Order, whether presented before or after the Petition Date, provided that sufficient funds are on deposit in the applicable accounts to cover such payments.

7. The Debtor is authorized to continue the Non-Insider Severance Program and pay all prepetition amounts relating thereto in the ordinary course.

8. The Debtor is authorized to continue the Workers' Compensation Programs and pay all prepetition amounts relating thereto in the ordinary course.

9. To the extent that any employment or related agreements may be deemed executory contracts within the meaning of section 365 of the Bankruptcy Code, the Debtor has not sought authority to assume such contracts, and no relief is granted in respect thereof.

10. Nothing in the Motion, the Interim Order, or this Final Order, nor as a result of any payment made pursuant to this Final Order, shall be deemed or construed as an admission as to the validity or priority of any claim against the Debtor, an approval or assumption of any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code, or a waiver of the rights of the Debtor, or shall impair the ability of the Debtor, or any other party in interest, to the extent applicable, to contest the validity and amount of any payment made pursuant to this Final Order.

11. Nothing herein shall be deemed to authorize (i) the payment of any amounts in satisfaction of bonus or severance obligations, which are subject to section 503(c) of the Bankruptcy Code; or (ii) the payment of any amounts owing to any retired or former employees under any supplemental executive retirement plan or otherwise.

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

13. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be effective and enforceable immediately upon entry hereof.

14. The Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Order.