

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 INTERIM AND FINAL ORDERS  
ESTABLISHING NOTICE AND HEARING PROCEDURES FOR TRADING  
IN, OR CERTAIN CLAIMS OF WORTHLESSNESS  
WITH RESPECT TO, EQUITY SECURITIES IN THE DEBTOR**

The above-captioned debtor and debtor-in-possession (the “**Debtor**”) submits this motion (the “**Motion**”), pursuant to sections 105(a), 362(a)(3) and 541 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “**Bankruptcy Code**”) and Rules 3001, 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**”), establishing notice and hearing procedures that must be followed before certain transfers of, or certain claims of worthlessness for federal or state tax purposes with respect to, equity securities in the Debtor, or of any beneficial interest therein, are deemed effective. 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

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



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.

### **Relief Requested**

6. By this Motion, the Debtor seeks entry of an order establishing, pursuant to sections 105(a), 362(a)(3) and 541 of the Bankruptcy Code, notification and hearing procedures for certain

transfers of, or certain claims of worthlessness for federal or state tax purposes with respect to, equity securities in the Debtor, or of any beneficial interest therein, including Options (as defined below) to acquire such equity securities, that must be complied with before such transfers of equity securities or claims of worthlessness are deemed effective. The procedures for trading in, or claiming a worthless stock deduction with respect to, equity securities in the Debtor are necessary to protect and preserve the value of the Debtor's U.S. federal and state tax attributes, including, but not limited to, net operating loss carryforwards ("NOLs" and, collectively with any capital losses, unrealized built-in losses, and certain other tax and business credits and other tax attributes, the "**Tax Attributes**").

7. If no restrictions on trading or claiming worthless stock deductions are imposed by the Court, such trading or deductions could severely limit or even eliminate the Debtor's ability to utilize its Tax Attributes, which could lead to significant negative consequences for the Debtor, its estate, creditors and other stakeholders. To preserve, to the fullest extent possible, the Tax Attributes, the Debtor seeks immediate procedural relief that will enable the Debtor to closely monitor certain transfers of, or certain claims of worthlessness for federal or state tax purposes with respect to its equity securities so as to be in a position to act expeditiously, if necessary, to preserve its Tax Attributes. Thus, the Debtor requests that the Court enter an Interim Order preserving the status quo in this regard.

8. In addition, the Debtor requests that the Court schedule a final hearing within approximately thirty (30) days of the Petition Date to consider approval of this Motion on a final basis.

#### **The Debtor's Tax Attributes**

9. The Debtor has generated, and is currently generating, a significant amount of Tax Attributes for U.S. federal income tax purposes. While the value of the NOLs may be limited

under various scenarios, the Debtor wishes to preserve any value that may be available for the benefit of the estate. By this Motion, the Debtor seeks authority to protect and preserve the value of its Tax Attributes, including, without limitation, its NOLs. Although the value of the Debtor's Tax Attributes is contingent upon the amount of the Debtor's taxable income that may be offset by the Tax Attributes before they expire, the Tax Attributes could translate into potential future tax savings for the Debtor in either the short term or the long term, depending on statutory limitations on the utilization of tax attributes due to recent changes of control.

10. The Tax Attributes are a valuable asset because the Debtor generally can carry forward its Tax Attributes to reduce or eliminate its income tax liability. In particular, the Tax Attributes may be available to the Debtor to offset taxable income generated by ordinary course activity and other transactions completed during the course of the chapter 11 case. Additionally, the Debtor can carry forward the NOLs and credits to reduce its future tax liability. *See* 26 U.S.C. §§ 39, 172.

**Potential Limitations on the Use of the Tax Attributes**

11. As a general matter, if a corporation undergoes an "ownership change," section 382 of title 26 of the United States Code ("**Section 382**"), the Internal Revenue Code of 1986, as amended (the "**IRC**"), could severely limit or eliminate the corporation's ability to use its NOLs and certain other tax attributes to offset future taxable income. Under Section 382, an ownership change occurs when the percentage, by value, of a company's equity held by one or more persons holding five percent or more of the stock (in certain cases, taking into account Options to acquire such stock) (the "**5% Shareholders**") has increased by more than 50 percentage points

over the lowest percentage of equity owned by such shareholders at any time during the preceding three-year period or since the last ownership change, as applicable (the “**Testing Period**”).<sup>2</sup>

12. An “ownership change” can also occur as a result of a “worthless stock deduction” claimed by any “50-percent shareholder.” A 50-percent shareholder is any person that owned 50% or more of a corporation’s stock “at any time during the 3-year period ending on the last day of the taxable year” in which the worthless stock deduction is claimed. IRC § 382(g)(4)(D). If the 50-percent shareholder still owns the corporation’s stock at the end of the year, Section 382 of the IRC essentially treats the person as if they purchased new stock on the first day of the next taxable year. That deemed purchase would cause an ownership change because the 50-percent shareholder would be deemed to have a 50-percentage point increase in its stock ownership. Notably, in the seminal case of *In re Prudential Lines, Inc.*, 928 F.2d 565 (2d Cir. 1991), which is generally relied upon to support equity trading motions, the specific issue in the case was a worthless stock deduction.

13. If there has been a prior ownership change, the Testing Period for determining whether another ownership change has occurred begins on the first day following the date of the prior ownership change. Section 383 of the IRC imposes a similar limitation to certain tax credits of a corporation. For clarity, this discussion refers only to Section 382 but the rules, principles and policies discussed therein are generally applicable to Section 383’s limit on a corporation’s use of

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<sup>2</sup> For example, assume (i) an individual (“A”) owns 50.1% of the stock of corporation XYZ (“XYZ”) and (ii) A sells her 50.1% interest in XYZ to another individual (“B”), who currently owns 5% of XYZ’s stock. Under Section 382, an ownership change has occurred upon B’s acquisition of A’s 50.1% interest in XYZ because the percentage of XYZ stock held by B has increased more than fifty (50) percentage points (from 5% to 55.1%) during the Testing Period. The same result would follow even if B owned no XYZ stock prior to the transaction with A because B both becomes a “5-percent shareholder” and increases the percentage of XYZ stock B holds by more than fifty (50) percentage points during the Testing Period. To be clear, a “5-percent shareholder” increasing its holding by 50 percent (i.e., from 5% to 7.5%) as opposed to 50 percentage points would not, in and of itself, result in an “ownership change” under Section 382. Any subsequent ownership change with respect to XYZ would be determined based only on equity transfers that occur subsequent to the ownership change resulting from the transaction between A and B described immediately above.

credits after an ownership change and are incorporated by reference into Section 383 by the IRC and the Treasury Regulations promulgated thereunder. *See* IRC § 383(e); 26 C.F.R. § 1.383-1(g).

14. The general purpose of Section 382 is to prevent a company with taxable income from reducing its tax obligations by acquiring control of another corporation with NOLs, net unrealized built-in losses (“**Built-in Losses**”) or certain other tax attributes. To achieve this objective, Section 382 limits the amount of taxable income that can be offset by a pre-change loss to an amount equal to the product of the long-term tax-exempt rate (as published monthly by the U.S. Department of the Treasury) as of the ownership change date and the value of the equity of the loss corporation immediately before the ownership change (a “**Section 382 Limitation**”).<sup>3</sup> Built-in Losses recognized during the five-year period after the ownership change may be subject to similar limitations.

#### **Proposed Procedures for Trading In Equity Securities**

15. By establishing procedures for continuously monitoring the trading of the Debtor’s equity securities, the Debtor can preserve its ability to seek substantive relief at the appropriate time, particularly if it appears that additional trading may jeopardize the use of its Tax Attributes. Accordingly, the Debtor requests that the Court enter the Interim Order establishing the below procedures for trading in equity securities (including Options to acquire such securities, as defined below):<sup>4</sup>

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<sup>3</sup> For ownership changes occurring in May 2022, the applicable long-term tax-exempt rate will be 1.64 percent. If a corporation has a “net unrealized built-in gain” (“**NUBIG**”) in its assets as of the time of the ownership change, the Section 382 Limitation may be increased in certain circumstances. If a corporation has a “unrealized built-in loss” (“**NUBIL**”) in assets as of the time of the ownership change, any recognized built-in losses during the five-year period beginning on the date of the ownership change will be subject to the Section 382 Limitation. The Debtor is in the process of analyzing whether they currently have a NUBIL or a NUBIG in its assets.

<sup>4</sup> The Debtor requests that the Court permit the Debtor to waive, in writing, and in its sole and absolute discretion, any and all restrictions, stays and notification procedures contained in this Motion or in any order entered with respect hereto should the Debtor conclude in its sole discretion that any such restriction, stay or notification procedure is not

- a. Any purchase, sale, or other transfer of equity securities (including Options to acquire such securities, as defined below) in the Debtor on or after the Petition Date in violation of the procedures set forth herein shall be null and void *ab initio* as an act in violation of the automatic stay under section 362 of the Bankruptcy Code.
- b. Any person or entity (as defined in Treasury Regulations Section 1.382-3(a)(1)) who currently is or becomes a Substantial Shareholder (as defined in subparagraph (f) below) shall file with the Court, and serve on counsel to the Debtor, a notice of such status, in the form attached hereto as **Exhibit A-1**, on or before the later of (i) twenty (20) calendar days after the date of the Notice of Interim Order or Notice of Final Order (as defined below and as applicable) and (ii) ten (10) calendar days after becoming a Substantial Shareholder.
- c. At least twenty-one (21) calendar days prior to effectuating any transfer of equity securities (including Options to acquire such securities, as defined below) that would result in an increase in the amount of Zosano Stock (as defined below) beneficially owned by a Substantial Shareholder or would result in a person or entity becoming a Substantial Shareholder, such Substantial Shareholder (or person or entity that may become a Substantial Shareholder) shall file with the Court, and serve on counsel to the Debtor, advance written notice, in the form attached hereto as **Exhibit A-2**, of the intended transfer of equity securities (including Options to acquire such securities, as defined below).
- d. At least twenty-one (21) calendar days prior to effectuating any transfer of equity securities (including Options to acquire such securities, as defined below) that would result in a decrease in the amount of Zosano Stock beneficially owned by a Substantial Shareholder or would result in a person or entity ceasing to be a Substantial Shareholder, such Substantial Shareholder shall file with the Court, and serve on counsel to the Debtor, advance written notice, in the form attached hereto as **Exhibit A-3**, of the intended transfer of equity securities (including Options to acquire such securities, as defined below) (the notices required to be filed and served under subparagraphs (c) and (d), each a “**Notice of Proposed Transfer**”).
- e. The Debtor shall have twenty-one (21) calendar days after receipt of a Notice of Proposed Transfer to file with the Court and serve on such Substantial Shareholder (or person or entity that may become a Substantial Shareholder) an objection to the proposed transfer of equity securities (including Options to acquire such securities, as defined below) described in the Notice of Proposed Transfer on the grounds that such transfer may adversely affect the Debtor’s ability to utilize its Tax Attributes. During such 21-day period, and while any objection by the Debtor (or any other party in interest) to the proposed transfer is pending, such Substantial Shareholder shall not effectuate the proposed transfer to which the Notice of Proposed Transfer relates and thereafter shall do so only in accordance with the Court’s ruling, and,

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necessary to protect its Tax Attributes; *provided, however*, that the Debtor shall provide notice of any such waiver to the U.S. Trustee in writing within three business days thereafter.

as applicable, any appellate rules and procedures. If the Debtor does not object within such 21-day period, such transaction may proceed solely as set forth in the Notice of Proposed Transfer. Further transactions within the scope of this subparagraph (e) must be the subject of additional notices as set forth herein, with an additional 21-day waiting period.

- f. For purposes of these procedures, (A) a “**Substantial Shareholder**” is any person or entity (as defined in Treasury Regulations Section 1.382-3(a)(1)) which has Beneficial Ownership of at least 4.5% of all issued and outstanding shares (equal to, as of June 1, 2022, approximately 220,602 shares<sup>5</sup>) of the common stock of the Debtor (“**Zosano Stock**”), and (B) “**Beneficial Ownership**” or any variation thereof of Zosano Stock and Options to acquire Zosano Stock) shall be determined in accordance with applicable rules under Section 382, Treasury Regulations promulgated thereunder and rulings issued by the Internal Revenue Service, and thus, to the extent provided therein, from time to time shall include, without limitation, (i) direct and indirect ownership (e.g., a holding company would be considered to beneficially own all shares owned or acquired by its subsidiaries), (ii) ownership by the holder’s family members and persons acting in concert with the holder to make a coordinated acquisition of stock, and (iii) ownership of an Option to acquire Zosano Stock, but only to the extent such Option is treated as exercised under Treasury Regulations Section 1.382-4(d). An “**Option**” to acquire stock includes any contingent purchase, warrant, convertible debt, put, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

**Proposed Procedures for Claiming a Worthless Stock Deduction**

16. The Debtor also requests that the Court enter an order restricting the ability of shareholders that own or have owned 50% or more, by value, of the Debtor’s equity securities to claim a deduction for the worthlessness of those securities on its federal or state tax returns for a tax year ending before the Debtor emerges from chapter 11 protection. In accordance with Section 382(g)(4)(D) of the IRC, any securities held by such a shareholder are treated as though they were transferred if such shareholder claims a worthlessness deduction with respect to such securities. Therefore, it is essential that shareholders that own or have owned 50% or more of the Debtor’s

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<sup>5</sup> Based on approximately 4,902,260 shares of Zosano Stock issued and outstanding as of June 1, 2022.

equity securities defer claiming such worthlessness deduction until after the Debtor has emerged from bankruptcy.

17. By restricting 50% shareholders from claiming a worthlessness deduction prior to the Debtor's emergence from chapter 11 protection, the Debtor can preserve its ability to seek substantive relief to use the Tax Attributes. Accordingly, the Debtor requests that the Court enter an order establishing the following procedures:

- a. Any worthless stock deduction claim of equity securities (including Options to acquire such securities, as defined below) in the Debtor on or after the Petition Date in violation of the procedures set forth herein shall be null and void *ab initio* as an act in violation of the automatic stay under section 362 of the Bankruptcy Code.
- b. Any person or entity (as defined in Treasury Regulations Section 1.382- 3(a)(1)) who currently is or becomes a 50% Shareholder (as defined in subparagraph (e) below) shall file with the Court, and serve on counsel to the Debtor, a notice of such status, in the form attached hereto as **Exhibit A-4**, on or before the later of (i) twenty (20) calendar days after the date of the Notice of Interim Order or Notice of Final Order (as defined below and as applicable) and (ii) ten (10) calendar days after becoming a 50% Shareholder.
- c. At least twenty-one (21) days prior to filing any federal or state tax return, or any amendment to such a return, claiming any deduction for worthlessness of the equity securities (including Options to acquire such securities, as defined below) in the Debtor, for a tax year ending before the Debtor's emergence from chapter 11 protection, such 50% Shareholder shall file with the Court, and serve on counsel to the Debtor, an advance written notice, in the form attached hereto as **Exhibit A-5** (a "**Notice of Intent to Claim a Worthless Stock Deduction**") of the intended claim of worthlessness.
- d. The Debtor will have twenty-one (21) calendar days after receipt of a Notice of Intent to Claim a Worthless Stock Deduction to file with the Court and serve on such 50% Shareholder an objection to any proposed claim of worthlessness described in the Notice of Intent to Claim a Worthless Stock Deduction on the grounds that such claim might adversely affect the Debtor's ability to utilize its Tax Attributes. During such 21-day period, and while any objection by the Debtor (or any other party in interest) to the proposed claim is pending, such 50% Shareholder shall not claim, or cause to be claimed, the proposed worthless stock deduction to which the Notice of Intent to Claim a Worthless Stock Deduction relates and thereafter shall do so only in accordance with the Court's ruling, and, as applicable, any appellate rules and procedures. If the Debtor does not object within such 21-day period, the filing of the tax return with such claim would be

permitted only as set forth in the Notice of Intent to Claim a Worthless Stock Deduction. Additional tax returns or amendments within the scope of this subparagraph must be the subject of additional notices as set forth herein, with an additional 21-day waiting period.

- e. For purposes of these procedures, (A) a “**50% Shareholder**” is any person or entity that, at any time during the three-year period ending on the Petition Date, has had Beneficial Ownership of 50% or more of the equity securities in the Debtor (determined in accordance with IRC section 382(g)(4)(D) and the applicable regulations thereunder), and (B) “**Beneficial Ownership**” or any variation thereof of Zosano Stock and Options to acquire Zosano Stock) shall be determined in accordance with applicable rules under Section 382, Treasury Regulations promulgated thereunder and rulings issued by the Internal Revenue Service, and thus, to the extent provided therein, from time to time shall include, without limitation, (i) direct and indirect ownership (e.g., a holding company would be considered to beneficially own all shares owned or acquired by its subsidiaries), (ii) ownership by the holder’s family members and persons acting in concert with the holder to make a coordinated acquisition of stock, and (iii) ownership of an Option to acquire Zosano Stock, but only to the extent such Option is treated as exercised under Treasury Regulations Section 1.382-4(d). An “**Option**” to acquire stock includes any contingent purchase, warrant, convertible debt, put, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

**Notice Procedures for Interim Order and Final Order**

18. To ensure parties in interest receive appropriate notice of the procedures for trading in equity securities and claiming worthless stock deductions, the Debtor requests that the Court approve the following notice provisions for the procedures for trading in equity securities and claiming worthless stock deductions.

**A. Notice of Interim Order**

19. Following entry of the Interim Order, the Debtor proposes to send notices substantially the forms attached hereto as **Exhibit A-6** (the “**Notice of Interim Order**”) to: (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 U.S. Securities & Exchange Commission; (f) all banks, brokers, intermediaries, other nominees or their mailing agents

(collectively, the “**Nominees**”) that hold Zosano Stock in “street name” for the beneficial holders of the Zosano Stock, as applicable; (g) the transfer agent; (h) registered holder of Zosano Stock; (i) all Substantial Stockholders, if any; and (j) all parties that have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002 (collectively, the “**Equity Trading Notice Parties**”).

20. Any person or entity, or broker or agent acting on their behalf, who sells at least 4.5% of all issued and outstanding shares of Zosano Stock (or an Option with respect thereto) to another person or entity shall be required to provide Notice of Interim Order (unless the Court has entered the Final Order) to such purchaser of such Zosano Stock, or any broker or agent acting on their behalf, to the extent reasonably feasible. The Notice of Interim Order will provide information as to the procedures to be followed in trading, or claiming a worthless stock deduction with respect to, the Zosano Stock and include notice of a hearing to grant the motion on an interim basis and a final hearing, respectively, and an opportunity to object before entry of the Interim Order and Final Order. If, at the time of the purchase, the Court has entered the Final Order, any person or entity, or broker or agent acting on their behalf, who sells at least 4.5% of all issued and outstanding shares of Zosano Stock (or an Option with respect thereto) to another person or entity shall provide the purchaser (or its agent) with the Notice of Final Order as provided in detail below.

**B. Notice of Final Order**

21. Following entry of the Final Order, the Debtor proposes to send a notice in substantially the form attached hereto as **Exhibit A-8** (the “**Notice of Final Order**”) to the Equity Trading Notice Parties.

22. Upon receipt of the Notice of Final Order, the Nominees shall serve the Notice of Final Order to any beneficial holders of the Zosano Stock by no later than five (5) business days

after being served with the Notice of Final Order. Additionally, any person or entity, or broker or agent acting on their behalf, who sells at least 4.5% of all issued and outstanding shares of Zosano Stock (or an Option with respect thereto) to another person or entity shall be required to provide the Notice of Final Order to such purchaser of such Zosano Stock, or any broker or agent acting on their behalf, to the extent reasonably feasible. The Notice of Final Order will provide information as to the procedures to be followed in trading, or claiming a worthless stock deduction with respect to, the Zosano Stock.

### **Basis for Relief Requested**

#### **A. The Significance of the Tax Attributes**

23. As a result of past and current operations, the Debtor presently has significant Tax Attributes. These Tax Attributes may increase as the chapter 11 case proceeds and could translate into potential future income tax savings for the Debtor.

24. As discussed above, Section 172(b) of the IRC permits corporations to carry forward certain Tax Attributes to offset future taxable income, thereby significantly improving such corporations' cash position in the future. Thus, the Tax Attributes are a valuable asset of the Debtor's estate, and their availability could improve creditor recoveries. However, absent the relief requested herein, trading and accumulation of Zosano Stock, or certain claims of worthlessness with respect thereto, during the pendency of the chapter 11 case could severely limit the Debtor's ability to utilize the value of its Tax Attributes.

#### **B. The Provisions of Section 382**

25. As described above, Section 382 limits the amount of taxable income that can be offset by a corporation's Tax Attributes in taxable years (or portions thereof) following an ownership change. If an ownership change were to occur during the course of the chapter 11 case, Section 382 would limit the amount of taxable income that the Debtor could offset by its pre-

change losses in taxable years (or portions thereof) to an annual amount equal to the value of the corporation prior to the ownership change multiplied by the long-term tax-exempt rate. *See* 26 U.S.C. § 382(b). Pre-change losses would include the Debtor's Tax Attributes. This formulaic limitation under Section 382 can severely restrict the ability to use pre-change losses because the value of the equity of a distressed company may be quite low.

26. The problem facing the Debtor, and the reason for this Motion, is that if certain equity holders transfer Zosano Stock, or certain worthless stock deductions are made with respect thereto, such transfers or deductions may trigger an ownership change that would not fall within the ambit of special relief provisions applicable to an ownership change resulting from a confirmed chapter 11 plan, because such an ownership change would not occur pursuant to such a plan. An ownership change occurring during the pendency of the chapter 11 case is of particular concern because it could likely result in a Section 382 Limitation. Subsequent to such an ownership change, the Debtor's ability to utilize its Tax Attributes both during and after the chapter 11 case could be limited.

27. The Debtor, through this Motion, seeks the ability to monitor and object to changes in ownership of, or certain claims of worthlessness with respect to, Zosano Stock so that it may prevent an ownership change during the pendency of the chapter 11 case, and to preserve (1) the ability to utilize its Tax Attributes during the pendency of the chapter 11 case to offset taxable income and any potential prepetition tax claims that may be asserted; and (2) the flexibility in crafting a possible plan of reorganization, depending on facts and circumstances as they develop. In short, the Debtor seeks to maximize its ability to reduce federal income taxes by offsetting its income earned during the chapter 11 case and thereafter with current Tax Attributes.

**C. Special Section 382 Bankruptcy Rules**

28. To qualify for the Section 382 bankruptcy relief provisions, Section 382(l)(5) and (l)(6), any ownership change must occur pursuant to the consummation of a plan of reorganization. Under Section 382(l)(5), a Section 382 Limitation will not apply to an ownership change resulting from consummation of a chapter 11 plan, provided that under the plan, the debtor's pre-change shareholders (i.e., persons or entities who owned the debtor's stock immediately before such ownership change) and/or certain qualified creditors emerge from the reorganization owning at least 50% of the total value and voting power of the debtor's stock immediately after the ownership change as a result of being shareholders or qualified creditors immediately before such change. Section 382(l)(6) provides that if a corporation undergoes an ownership change pursuant to a plan of reorganization in chapter 11 and Section 382(l)(5) does not apply (either because the corporation elects out of that provision or because its requirements are not satisfied), then under Section 382(l)(6), the value of the equity of the corporation for purposes of calculating the Section 382 Limitation shall reflect the increase (if any) in value of the old loss corporation resulting from any surrender or cancellation of creditors' claims in the transaction. Thus, assuming the value of the equity of the Debtor increases as a result of a reorganization, Section 382(l)(6) will provide for a higher annual limitation than would result under the general rules of Section 382 and could allow the Debtor to use a greater portion of its Tax Attributes to offset any post-change income. The Debtor does not expect that an ownership change during the pendency of the chapter 11 case would qualify for either of these exceptions, because it is not anticipated that the consummation of a chapter 11 plan itself would result in an ownership change. Thus, in all circumstances, it is in the best interests of the Debtor and its

estate to grant the requested relief so as to prevent an ownership change prior to consummation of a plan of reorganization.

**D. Tax Attributes are Property of the Debtor's Estate and are Entitled to Court Protection.**

29. Courts have uniformly held that a debtor's tax attributes constitute property of the estate under section 541 of the Bankruptcy Code and, as such, courts have the authority to implement certain protective measures to preserve the Tax Attributes. The seminal case articulating this rule is *In re Prudential Lines, Inc.*, in which the United States Bankruptcy Court for the Southern District of New York held that a "debtor's potential ability to utilize NOLs is property of an estate" and that the taking of a worthless stock deduction is an exercise of control over a debtor's NOLs, and thus was properly subject to the automatic stay. *In re Prudential Lines, Inc.*, 107 B.R. 832, 839 (Bankr. S.D.N.Y. 1989), *aff'd*, 119 B.R. 430 (S.D.N.Y. 1990), *aff'd*, 928 F.2d 565 (2d Cir. 1991), *cert. denied* 502 U.S. 821 (1991); *see In re Forman Enters., Inc.*, 273 B.R. 408, 415 (Bankr. W.D. Pa. 2002) (same).

30. Because the Debtor's NOLs are property of its estate, the Court has the authority under section 362 of the Bankruptcy Code to enforce the automatic stay by restricting the transfer of equity securities in the Debtor that could jeopardize the existence or value of this asset. *See In re Grossman's, Inc.*, Case No. 97-695 (PJW), 1997 WL 33446314, at \*1 (Bankr. D. Del. Oct. 9, 1997) (holding that net operating losses were property of debtors' estates and protected by automatic stay); *In re Phar-Mor, Inc.*, 152 B.R. 924, 927 (Bankr. N.D. Ohio 1993) (holding that section 362 prohibited the sale of stock in the debtors as an exercise of control of the debtors' NOLs, which were property of the debtors' estates).

31. Unrestricted trading in the Debtor's equity securities or deductions for worthless stock with no advance warning jeopardize the Tax Attributes and could impair the value of the

Debtor's estate. The Debtor respectfully submits that the Interim and Final Orders will play an integral role in the Debtor's success both during and after the chapter 11 case, and there is an immediate need to establish the notice and hearing provisions regarding trading in equity securities in the Debtor and parties claiming that such equity securities are worthless. Accordingly, the Debtor respectfully requests that the Court grant the relief requested herein.

**E. The Requested Relief is Narrowly Tailored.**

32. Unrestricted trading in the Debtor's equity securities or deductions for worthless stock with no advance warning jeopardize the Tax Attributes and could impair the value of the Debtor's estate. The Debtor respectfully submits that the Interim and Final Orders will play an integral role in the Debtor's success both during and after the chapter 11 case, and there is an immediate need to establish the notice and hearing provisions regarding trading in equity securities in the Debtor and parties claiming that such equity securities are worthless. Accordingly, the Debtor respectfully requests that the Court grant the relief requested herein outweighs subjecting a limited number of transfers and/or worthless stock deductions to the procedures described above.

33. Moreover, the Debtor submits that the foregoing notice procedures satisfy due process and the strictures of Bankruptcy Rule 9014 by providing the counterparties with a notice and an opportunity to object and attend a hearing. *See, e.g., In re Colorado Mountain Cellars, Inc.*, 226 B.R. 244, 246 (D. Colo. 1998) (noting that a hearing is not required to satisfy Bankruptcy Rule 9014). Furthermore, the proposed notice procedures protect the due process rights of the parties in interest without unnecessarily exposing the Debtor's estate to unwanted administrative expenses.

**F. The Requested Relief is Necessary to Avoid Irreparable Harm to the Debtor.**

34. Once a Tax Attribute is limited under Section 382, its use may be limited forever. The relief sought herein is necessary to avoid an irrevocable loss or reduction in the availability of the Tax Attributes and the irreparable harm that could be caused by unrestricted trading in the Debtor's equity securities and the Debtor's resulting inability to offset taxable income freely with its Tax Attributes.

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

35. 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.

36. 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.

37. 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). Prompt entry of the Interim Order is necessary in light of the critical importance of preserving the value of the Debtor's Tax Attributes.

38. 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**

39. 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) any party that has requested notice pursuant to Bankruptcy Rule 2002; (g) Five Narrow Lane LP; (h) all other substantial stockholders, if any; 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**

40. No previous request for the relief sought herein has been made by the Debtor to this Court 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

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  
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-and-

John D. Elrod (Admitted *pro hac vice*)  
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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-1**

**Notice of Status as Substantial Shareholder**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

In re:

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

Debtor.

Chapter 11

Case No. 22-10506 (JKS)

**NOTICE OF STATUS AS A SUBSTANTIAL SHAREHOLDER**<sup>2</sup>

**PLEASE TAKE NOTICE THAT** the undersigned party is or has become a Substantial Shareholder with respect to Zosano Stock or of any Beneficial Ownership therein (as defined herein and in the [*Interim/Final*] *Order Pursuant to Sections 105(a), 362(a)(3), and 541 of the Bankruptcy Code, and Bankruptcy Rule 3001 Establishing Notice and Hearing Procedures for Trading in, or Certain Claims of Worthlessness With Respect to, Equity Securities in the Debtor* (the “**Order**”) of Zosano Pharma Corporation (“**Zosano**”), the debtor and debtor-in-possession in Case No. 22-10506 (JKS) pending in the United States Bankruptcy Court for the District of Delaware (the “**Court**”).

<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> For purposes of this Notice, (A) a “**Substantial Shareholder**” is any person or entity (as defined in Treasury Regulations Section 1.382-3(a)(1)) which has Beneficial Ownership of at least 4.5% of all issued and outstanding shares (equal to, as of June 1, 2022, approximately 220,602 shares<sup>2</sup>) of the common stock of the Debtor (“**Zosano Stock**”), and (B) “**Beneficial Ownership**” or any variation thereof of Zosano Stock and Options to acquire Zosano Stock) shall be determined in accordance with applicable rules under Section 382, Treasury Regulations promulgated thereunder and rulings issued by the Internal Revenue Service, and thus, to the extent provided therein, from time to time shall include, without limitation, (i) direct and indirect ownership (e.g., a holding company would be considered to beneficially own all shares owned or acquired by its subsidiaries), (ii) ownership by the holder’s family members and persons acting in concert with the holder to make a coordinated acquisition of stock, and (iii) ownership of an Option to acquire Zosano Stock, but only to the extent such Option is treated as exercised under Treasury Regulations Section 1.382-4(d). An “**Option**” to acquire stock includes any contingent purchase, warrant, convertible debt, put, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

**PLEASE TAKE FURTHER NOTICE THAT**, as of [\_\_\_\_\_], the undersigned party currently has Beneficial Ownership of, [\_\_\_\_\_] shares of Zosano Stock (including any Options with respect to Zosano Stock). The following table sets forth the date(s) on which the undersigned party acquired Beneficial Ownership or otherwise has Beneficial Ownership of such Zosano Stock:

Number of Shares	Date Acquired

The undersigned party holds such Zosano Stock through a bank, broker, intermediary, or other agent (a “**Nominee**”), in “street name,” with the below Nominee, identified by such Nominee’s “Participant Number” with the Depository Trust Company (“**DTC**”):

Name of Nominee	Nominee’s DTC Participant Number

**PLEASE TAKE FURTHER NOTICE THAT** the last four digits of the taxpayer identification number of the undersigned party are [ ].

**PLEASE TAKE FURTHER NOTICE THAT**, under penalty of perjury, the undersigned party hereby declares that it has examined this Notice and accompanying attachments (if any), and, to the best of its knowledge and belief, this Notice and any attachments which purport to be part of this Notice are true, correct, and complete.

**PLEASE TAKE FURTHER NOTICE THAT**, pursuant to the Order, this Notice is being (a) filed with the Court and (b) served upon the proposed counsel to the Debtor.

Respectfully Submitted,

---

(Name of Shareholder)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Date: \_\_\_\_\_

**Exhibit A-2**

**Notice of Intent to Acquire Equity Interest**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

In re:

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

Debtor.

Chapter 11

Case No. 22-10506 (JKS)

**NOTICE OF INTENT TO PURCHASE, ACQUIRE OR  
OTHERWISE ACCUMULATE AN EQUITY INTEREST**

PLEASE TAKE NOTICE THAT the undersigned party hereby provides notice of its intention to purchase, acquire or otherwise accumulate one or more shares of Zosano Stock or of any Beneficial Ownership therein (as defined herein and in the [*Interim/Final*] *Order Pursuant to Sections 105(a), 362(a)(3), and 541 of the Bankruptcy Code, and Bankruptcy Rule 3001 Establishing Notice and Hearing Procedures for Trading in, or Certain Claims of Worthlessness With Respect to, Equity Securities in the Debtor* (the “**Order**”)) of Zosano Pharma Corporation (“**Zosano**”), or an Option with respect thereto (as defined herein and in the Order) (the “**Proposed Transfer**”).

PLEASE TAKE FURTHER NOTICE THAT, if applicable, on [Prior Date(s)], the undersigned party filed a Notice of Status as a Substantial Shareholder<sup>2</sup> with the United States

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

<sup>2</sup> For purposes of this Notice, (A) a “**Substantial Shareholder**” is any person or entity (as defined in Treasury Regulations Section 1.382-3(a)(1)) which has Beneficial Ownership of at least 4.5% of all issued and outstanding shares (equal to, as of June 1, 2022, approximately 220,602 shares<sup>2</sup>) of the common stock of the Debtor (“**Zosano Stock**”), and (B) “**Beneficial Ownership**” or any variation thereof of Zosano Stock and Options to acquire Zosano Stock) shall be determined in accordance with applicable rules under Section 382, Treasury Regulations promulgated thereunder and rulings issued by the Internal Revenue Service, and thus, to the extent provided therein, from time to time shall include, without limitation, (i) direct and indirect ownership (e.g., a holding company would be considered to beneficially own all shares owned or acquired by its subsidiaries), (ii) ownership by the holder’s family members and persons acting in concert with the holder to make a coordinated acquisition of stock, and (iii) ownership of an Option to acquire Zosano Stock, but only to the extent such Option is treated as exercised under Treasury Regulations Section 1.382-4(d). An “**Option**” to acquire stock includes any contingent purchase, warrant, convertible

Bankruptcy Court for the District of Delaware (the “**Court**”) and served copies thereof on counsel to the Debtor.

**PLEASE TAKE FURTHER NOTICE THAT** the undersigned party currently has Beneficial Ownership of [\_\_\_\_\_] shares of Zosano Stock (including any Options with respect to Zosano Stock). The undersigned party holds such Zosano Stock through a bank, broker, intermediary, or other agent (a “**Nominee**”), in “street name,” with the below Nominee, identified by such Nominee’s “Participant Number” with the Depository Trust Company (“**DTC**”):

Name of Nominee	Nominee’s DTC Participant Number

**PLEASE TAKE FURTHER NOTICE THAT**, pursuant to the Proposed Transfer, the undersigned party proposes to purchase, acquire, or otherwise accumulate Beneficial Ownership of [\_\_\_] shares of Zosano Stock or an Option with respect to [\_\_\_] shares of Zosano Stock. If the Proposed Transfer is permitted to occur, the undersigned party will have Beneficial Ownership of [\_\_\_] shares of Zosano Stock (including any Options with respect to Zosano Stock) after such transfer becomes effective.

**PLEASE TAKE FURTHER NOTICE THAT** the last four digits of the taxpayer identification or social security number of the undersigned party are [\_\_\_\_\_].

**PLEASE TAKE FURTHER NOTICE THAT**, under penalty of perjury, the undersigned party hereby declares that it has examined this Notice and accompanying attachments (if any),

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debt, put, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

and, to the best of its knowledge and belief, this Notice and any attachments which purport to be part of this Notice are true, correct, and complete.

**PLEASE TAKE FURTHER NOTICE THAT**, pursuant to the Order, this Notice is being (a) filed with the Court and (b) served upon counsel to the Debtor.

**PLEASE TAKE FURTHER NOTICE THAT** the Debtor has 21 calendar days after receipt of this Notice to object to the Proposed Transfer described herein. If the Debtor files an objection, such Proposed Transfer will not be effective unless approved by a final and non-appealable order of the Court. If the Debtor does not object within such 21-day period, then after expiration of such period the Proposed Transfer may proceed solely as set forth in this Notice.

**PLEASE TAKE FURTHER NOTICE THAT** any further transactions contemplated by the undersigned party that may result in the undersigned party purchasing, acquiring or otherwise accumulating Beneficial Ownership of additional shares of Zosano Stock (or an Option with respect thereto) will each require an additional notice filed with the Court to be served in the same manner as this Notice.

Respectfully Submitted,

\_\_\_\_\_  
(Name of Shareholder)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Date: \_\_\_\_\_

**Exhibit A-3**

**Notice of Intent to Transfer Equity Interest**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

In re:

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

Debtor.

Chapter 11

Case No. 22-10506 (JKS)

**NOTICE OF INTENT TO SELL, TRADE OR  
OTHERWISE ACCUMULATE AN EQUITY INTEREST**

**PLEASE TAKE NOTICE THAT** the undersigned party hereby provides notice of its intention to sell, trade or otherwise transfer one or more shares of Zosano Stock or of any Beneficial Ownership therein (as defined herein and in the [*Interim/Final*] *Order Pursuant to Sections 105(a), 362(a)(3), and 541 of the Bankruptcy Code, and Bankruptcy Rule 3001 Establishing Notice and Hearing Procedures for Trading in, or Certain Claims of Worthlessness With Respect to, Equity Securities in the Debtor* (the “**Order**”)) of Zosano Pharma Corporation (“**Zosano**”), or an Option with respect thereto (as defined herein and in the Order) (the “**Proposed Transfer**”).

**PLEASE TAKE FURTHER NOTICE THAT**, if applicable, on [Prior Date(s)], the undersigned party filed a Notice of Status as a Substantial Shareholder<sup>2</sup> with the United States

---

<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> For purposes of this Notice, (A) a “**Substantial Shareholder**” is any person or entity (as defined in Treasury Regulations Section 1.382-3(a)(1)) which has Beneficial Ownership of at least 4.5% of all issued and outstanding shares (equal to, as of June 1, 2022, approximately 220,602 shares<sup>2</sup>) of the common stock of the Debtor (“**Zosano Stock**”), and (B) “**Beneficial Ownership**” or any variation thereof of Zosano Stock and Options to acquire Zosano Stock) shall be determined in accordance with applicable rules under Section 382, Treasury Regulations promulgated thereunder and rulings issued by the Internal Revenue Service, and thus, to the extent provided therein, from time to time shall include, without limitation, (i) direct and indirect ownership (e.g., a holding company would be considered to beneficially own all shares owned or acquired by its subsidiaries), (ii) ownership by the holder’s family members and persons acting in concert with the holder to make a coordinated acquisition of stock, and (iii) ownership of an Option to acquire Zosano Stock, but only to the extent such Option is treated as exercised under Treasury Regulations Section 1.382-4(d). An “**Option**” to acquire stock includes any contingent purchase, warrant, convertible

Bankruptcy Court for the District of Delaware (the “**Court**”) and served copies thereof on counsel to the Debtor.

**PLEASE TAKE FURTHER NOTICE THAT** the undersigned party currently has Beneficial Ownership of [\_\_\_\_\_] shares of Zosano Stock (including any Options with respect to Zosano Stock). The undersigned party holds such Zosano Stock through a bank, broker, intermediary, or other agent (a “**Nominee**”), in “street name,” with the below Nominee, identified by such Nominee’s “Participant Number” with the Depository Trust Company (“**DTC**”):

Name of Nominee	Nominee’s DTC Participant Number

**PLEASE TAKE FURTHER NOTICE THAT**, pursuant to the Proposed Transfer, the undersigned party proposes to sell, trade, or otherwise transfer Beneficial Ownership of [\_\_\_\_\_] shares of Zosano Stock or an Option with respect to [\_\_\_\_\_] shares of Zosano Stock. If the Proposed Transfer is permitted to occur, the undersigned party will have Beneficial Ownership of [\_\_\_\_\_] shares of Zosano Stock (including any Options with respect to Zosano Stock) after such transfer becomes effective.

**PLEASE TAKE FURTHER NOTICE THAT** the last four digits of the taxpayer identification or social security number of the undersigned party are [\_\_\_\_\_].

**PLEASE TAKE FURTHER NOTICE THAT**, under penalty of perjury, the undersigned party hereby declares that it has examined this Notice and accompanying attachments (if any),

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debt, put, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

and, to the best of its knowledge and belief, this Notice and any attachments, which purport to be part of this Notice are true, correct and complete.

**PLEASE TAKE FURTHER NOTICE THAT**, pursuant to the Order, this Notice is being (a) filed with the Court and (b) served upon counsel to the Debtor.

**PLEASE TAKE FURTHER NOTICE THAT** the Debtor has 21 calendar days after receipt of this Notice to object to the Proposed Transfer described herein. If the Debtor files an objection, such Proposed Transfer will not be effective unless approved by a final and non-appealable order of the Court. If the Debtor does not object within such 21-day period, then after expiration of such period the Proposed Transfer may proceed solely as set forth in this Notice.

**PLEASE TAKE FURTHER NOTICE THAT** any further transactions contemplated by the undersigned party that may result in the undersigned party selling, trading or otherwise transferring Beneficial Ownership of additional shares of Zosano Stock (or an Option with respect thereto) will each require an additional notice filed with the Court to be served in the same manner as this Notice.

Respectfully Submitted,

\_\_\_\_\_  
(Name of Shareholder)

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Date: \_\_\_\_\_

**Exhibit A-4**

**Notice of Status as a 50% Shareholder**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

In re:

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

Debtor.

Chapter 11

Case No. 22-10506 (JKS)

**NOTICE OF STATUS AS A 50% SHAREHOLDER**<sup>2</sup>

**PLEASE TAKE NOTICE THAT** the undersigned party is or has become a 50% Shareholder with respect to Zosano Stock or of any Beneficial Ownership therein (as defined herein and in the [Interim/Final] Order Pursuant to Sections 105(a), 362(a)(3), and 541 of the Bankruptcy Code, and Bankruptcy Rule 3001 Establishing Notice and Hearing Procedures for Trading in, or Certain Claims of Worthlessness With Respect to, Equity Securities in the Debtor (the “**Order**”) of Zosano Pharma Corporation (“**Zosano**”), the debtor and debtor-in-possession in Case No. 22-10506 (JKS) pending in the United States Bankruptcy Court for the District of Delaware (the “**Court**”).

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

<sup>2</sup> For purposes of this Notice, (A) a “**50% Shareholder**” is any person or entity that, at any time during the three-year period ending on the Petition Date, has had Beneficial Ownership of 50% or more of the equity securities in the Debtor (determined in accordance with IRC section 382(g)(4)(D) and the applicable regulations thereunder), and (B) “**Beneficial Ownership**” or any variation thereof of Zosano Stock and Options to acquire Zosano Stock) shall be determined in accordance with applicable rules under Section 382, Treasury Regulations promulgated thereunder and rulings issued by the Internal Revenue Service, and thus, to the extent provided therein, from time to time shall include, without limitation, (i) direct and indirect ownership (e.g., a holding company would be considered to beneficially own all shares owned or acquired by its subsidiaries), (ii) ownership by the holder’s family members and persons acting in concert with the holder to make a coordinated acquisition of stock, and (iii) ownership of an Option to acquire Zosano Stock, but only to the extent such Option is treated as exercised under Treasury Regulations Section 1.382-4(d). An “**Option**” to acquire stock includes any contingent purchase, warrant, convertible debt, put, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

**PLEASE TAKE FURTHER NOTICE THAT**, as of [ \_\_\_\_\_ ], the undersigned party currently has Beneficial Ownership of [ \_\_\_\_\_ ] shares of Zosano Stock (including any Options with respect to any Zosano Stock). The following table sets forth the date(s) on which the undersigned party acquired Beneficial Ownership or otherwise has Beneficial Ownership of such Zosano Stock (including any Options with respect to Zosano Stock):

Number of Shares	Date Acquired

The undersigned party holds such Zosano Stock through a bank, broker, intermediary, or other agent (a “**Nominee**”), in “street name”, with the below Nominee, identified by such Nominee’s “Participant Number” with the Depository Trust Company (“**DTC**”):

Name of Nominee	Nominee’s DTC Participant Number

**PLEASE TAKE FURTHER NOTICE THAT** the last four digits of the taxpayer identification number of the undersigned party are [ ].

**PLEASE TAKE FURTHER NOTICE THAT**, under penalty of perjury, the undersigned party hereby declares that it has examined this Notice and accompanying attachments (if any), and, to the best of its knowledge and belief, this Notice and any attachments which purport to be part of this Notice are true, correct and complete.

**PLEASE TAKE FURTHER NOTICE THAT**, pursuant to the Order, this Notice is being (a) filed with the Court and (b) served upon the proposed counsel to the Debtor.

Respectfully Submitted,

---

(Name of Shareholder)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Date: \_\_\_\_\_

**Exhibit A-5**

**Notice of Intent to Claim a Worthless Stock Deduction**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

In re:

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

Debtor.

Chapter 11

Case No. 22-10506 (JKS)

**NOTICE OF INTENT TO CLAIM A WORTHLESS STOCK DEDUCTION**

**PLEASE TAKE NOTICE THAT** the undersigned party hereby provides notice of its intention to claim a worthless stock deduction (the “**Proposed Worthlessness Claim**”) with respect to Zosano Stock or of any Beneficial Ownership therein (as defined herein and in the *[Interim/Final] Order Pursuant to Sections 105(a), 362(a)(3), and 541 of the Bankruptcy Code, and Bankruptcy Rule 3001 Establishing Notice and Hearing Procedures for Tradingin, or Certain Claims of Worthlessness With Respect to, Equity Securities in the Debtor* (the “**Order**”) of Zosano Pharma Corporation (“**Zosano**”), the debtor and debtor-in-possession in Case No. 22-10506 (JKS) pending in the United States Bankruptcy Court for the District of Delaware (the “**Court**”).

**PLEASE TAKE FURTHER NOTICE THAT**, if applicable, on [Prior Date(s)], the undersigned party filed a Notice of Status as a 50% Shareholder<sup>2</sup> with the Court and served copies thereof on counsel to the Debtor.

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

<sup>2</sup> For purposes of this Notice, (A) a “**50% Shareholder**” is any person or entity that, at any time during the three-year period ending on the Petition Date, has had Beneficial Ownership of 50% or more of the equity securities in the Debtor (determined in accordance with IRC section 382(g)(4)(D) and the applicable regulations thereunder), and (B) “**Beneficial Ownership**” or any variation thereof of Zosano Stock and Options to acquire Zosano Stock) shall be determined in accordance with applicable rules under Section 382, Treasury Regulations promulgated thereunder and rulings issued by the Internal Revenue Service, and thus, to the extent provided therein, from time to time shall include, without limitation, (i) direct and indirect ownership (e.g., a holding company would be considered to beneficially own all shares owned or acquired by its subsidiaries), (ii) ownership by the holder’s family members and persons

**PLEASE TAKE FURTHER NOTICE THAT** as of [\_\_\_\_\_], the undersigned party currently has Beneficial Ownership of [\_\_\_\_\_] shares of Zosano Stock (including any Options with respect to any Zosano Stock). The undersigned party holds such Zosano Stock through a bank, broker, intermediary, or other agent (a “**Nominee**”), in “street name”, with the below Nominee, identified by such Nominee’s “Participant Number” with the Depository Trust Company (“**DTC**”):

Name of Nominee	Nominee’s DTC Participant Number

**PLEASE TAKE FURTHER NOTICE THAT**, pursuant to the Proposed Worthlessness Claim, the undersigned proposes to declare for [federal/state] tax purposes that [\_\_\_\_\_] shares of Zosano Stock or an Option with respect to [\_\_\_\_\_] shares of Zosano Stock became worthless during the tax year ending [\_\_\_\_\_].

**PLEASE TAKE FURTHER NOTICE THAT** the last four digits of the taxpayer identification number of the undersigned party are [\_\_\_\_\_].

**PLEASE TAKE FURTHER NOTICE THAT**, under penalty of perjury, the undersigned party hereby declares that it has examined this Notice and accompanying attachments (if any), and, to the best of its knowledge and belief, this Notice and any attachments which purport to be part of this Notice are true, correct and complete.

**PLEASE TAKE FURTHER NOTICE THAT**, pursuant to the Order, this Notice is being (a) filed with the Court and (b) served upon the proposed counsel to the Debtor.

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acting in concert with the holder to make a coordinated acquisition of stock, and (iii) ownership of an Option to acquire Zosano Stock, but only to the extent such Option is treated as exercised under Treasury Regulations Section 1.382-4(d). An “**Option**” to acquire stock includes any contingent purchase, warrant, convertible debt, put, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

**PLEASE TAKE FURTHER NOTICE THAT** the Debtor has 21 calendar days after receipt of this Notice to object to the Proposed Worthlessness Claim described herein. If the Debtor files an objection, such Proposed Worthlessness Claim will not be effective unless approved by a final and non-appealable order of the Court. If the Debtor does not object within such 21-day period, then after expiration of such period the Proposed Worthlessness Claim may proceed solely as set forth in this Notice.

**PLEASE TAKE FURTHER NOTICE THAT** any further transactions contemplated by the undersigned party that may result in the undersigned party claiming a worthless stock deduction with respect to its shares of Zosano Stock (or an Option with respect thereto) will each require an additional notice filed with the Court to be served in the same manner as this Notice.

Respectfully Submitted,

---

(Name of Shareholder)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Date: \_\_\_\_\_

**Exhibit A-6**

**Notice of 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)

**NOTICE OF ENTRY OF INTERIM ORDER, PURSUANT TO SECTIONS 105(a),  
362(a)(3) AND 541 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 3001,  
ESTABLISHING NOTICE AND HEARING PROCEDURES FOR TRADING  
IN, OR CERTAIN CLAIMS OF WORTHLESSNESS WITH  
RESPECT TO, EQUITY SECURITIES IN THE DEBTOR**

**PLEASE TAKE NOTICE THAT** on June 1, 2022 (the “**Petition Date**”), the above-captioned debtor and debtor-in-possession (the “**Debtor**” or “**Zosano**”) commenced a case under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”). Subject to certain exceptions, section 362 of the Bankruptcy Code operates as a stay of any act to obtain possession of property of the Debtor’s estate or of property from the Debtor’s estate or to exercise control over property of the Debtor’s estate.

**PLEASE TAKE FURTHER NOTICE THAT** on the Petition Date, the Debtor filed a motion (the “**Motion**”)<sup>2</sup> seeking entry of an Interim Order and Final Order pursuant to sections 105, 362 and 541 of the Bankruptcy Code establishing notice and hearing procedures for trading in, or certain claims of worthlessness with respect to, equity securities in the Debtor.

**PLEASE TAKE FURTHER NOTICE THAT** on June [●], 2022, the United States Bankruptcy Court for the District of Delaware (the “**Court**”) entered that certain *Interim Order Pursuant to Sections 105(a), 362(a)(3), and 541 of the Bankruptcy Code and Bankruptcy Rule*

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

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

*3001 Establishing Notice and Hearing Procedures for Trading in, or Certain Claims of Worthlessness With Respect to, Equity Securities in the Debtor* approving the procedures set forth below in order to preserve the Tax Attributes held by the Debtor (the “**Interim Order**”).

**PLEASE TAKE FURTHER NOTICE THAT** pursuant to the Interim Order, the following procedures shall apply to holding and trading in, or certain claims of worthlessness with respect to, equity securities (including Options to acquire such securities, as defined below) of Zosano:

1. Any purchase, sale, or other transfer of, or certain claims of worthlessness with respect to, equity securities (including Options to acquire such securities, as defined below) in Zosano on or after the Petition Date in violation of the procedures set forth herein (including the notice requirements set forth in paragraphs 2(a) and 3(b)) shall be null and void *ab initio* as an act in violation of the automatic stay under section 362 of the Bankruptcy Code.

2. The following procedures shall apply to the trading in equity securities (including Options to acquire such securities, as defined below) in Zosano:

- a. Any person or entity (as defined in Treasury Regulations Section 1.382-3(a)(1)) who currently is or becomes a Substantial Shareholder (as defined in subparagraph (f) below) shall file with the Court, and serve on counsel to the Debtor, a notice of such status, in the form attached to the Motion as **Exhibit A-1**, on or before the later of (i) twenty (20) calendar days after the date of this Notice or Notice of Final Order (as defined below and as applicable) and (ii) ten (10) calendar days after becoming a Substantial Shareholder.
- b. At least twenty-one (21) calendar days prior to effectuating any transfer of equity securities (including Options to acquire such securities, as defined below) that would result in an increase in the amount of Zosano Stock (as defined below) beneficially owned by a Substantial Shareholder or would result in a person or entity becoming a Substantial Shareholder, such Substantial Shareholder (or person or entity that may become a Substantial Shareholder) shall file with the Court, and serve on counsel to the Debtor, advance written notice, in the form attached to the Motion as **Exhibit A-2**, of the intended transfer of equity securities (including Options to acquire such securities, as defined below).

- c. At least twenty-one (21) calendar days prior to effectuating any transfer of equity securities (including Options to acquire such securities, as defined below) that would result in a decrease in the amount of Zosano Stock beneficially owned by a Substantial Shareholder or would result in a person or entity ceasing to be a Substantial Shareholder, such Substantial Shareholder shall file with the Court, and serve on counsel to the Debtor, advance written notice, in the form attached to the Motion as **Exhibit A-3**, of the intended transfer of equity securities (including Options to acquire such securities, as defined below) (the notices required to be filed and served under subparagraphs (c) and (d), each a “**Notice of Proposed Transfer**”).
- d. The Debtor shall have twenty-one (21) calendar days after receipt of a Notice of Proposed Transfer to file with the Court and serve on such Substantial Shareholder (or person or entity that may become a Substantial Shareholder) an objection to the proposed transfer of equity securities (including Options to acquire such securities, as defined below) described in the Notice of Proposed Transfer on the grounds that such transfer may adversely affect the Debtor’s ability to utilize its Tax Attributes. During such 21-day period, and while any objection by the Debtor (or any other party in interest) to the proposed transfer is pending, such Substantial Shareholder shall not effectuate the proposed transfer to which the Notice of Proposed Transfer relates and thereafter shall do so only in accordance with the Court’s ruling, and, as applicable, any appellate rules and procedures. If the Debtor does not object within such 21-day period, such transaction may proceed solely as set forth in the Notice of Proposed Transfer. Further transactions within the scope of this subparagraph (e) must be the subject of additional notices as set forth herein, with an additional 21-day waiting period.
- e. For purposes this Notice, (A) a “**Substantial Shareholder**” is any person or entity (as defined in Treasury Regulations Section 1.382-3(a)(1)) which has Beneficial Ownership of at least 4.5% of all issued and outstanding shares (equal to, as of June 1, 2022, approximately 220,602 shares<sup>3</sup>) of the common stock of the Debtor (“**Zosano Stock**”), and (B) “**Beneficial Ownership**” or any variation thereof of Zosano Stock and Options to acquire Zosano Stock) shall be determined in accordance with applicable rules under Section 382, Treasury Regulations promulgated thereunder and rulings issued by the Internal Revenue Service, and thus, to the extent provided therein, from time to time shall include, without limitation, (i) direct and indirect ownership (e.g., a holding company would be considered to beneficially own all shares owned or acquired by its subsidiaries), (ii) ownership by the holder’s family members and persons acting in concert with the holder to make a coordinated acquisition of stock, and (iii) ownership of an Option to acquire Zosano Stock, but only to the extent such Option is treated as exercised under Treasury Regulations Section 1.382-4(d). An “**Option**” to acquire stock includes any contingent purchase, warrant, convertible debt, put, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

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<sup>3</sup> Based on approximately 4,902,260 shares of Zosano Stock issued and outstanding as of June 1, 2022.

3. The following procedures shall apply to claims for tax purposes that shares of Zosano's equity securities (including Options to acquire such securities, as defined below) are worthless:

- a. Any worthless stock deduction claim of equity securities (including Options to acquire such securities, as defined below) in the Debtor on or after the Petition Date in violation of the procedures set forth herein shall be null and void *ab initio* as an act in violation of the automatic stay under section 362 of the Bankruptcy Code.
- b. Any person or entity (as defined in Treasury Regulations Section 1.382- 3(a)(1)) who currently is or becomes a 50% Shareholder (as defined in subparagraph (e) below) shall file with the Court, and serve on counsel to the Debtor, a notice of such status, in the form attached to the Motion as **Exhibit A-4**, on or before the later of (i) twenty (20) calendar days after the date of this Notice or Notice of Final Order (as defined below and as applicable) and (ii) ten (10) calendar days after becoming a 50% Shareholder.
- c. At least twenty-one (21) days prior to filing any federal or state tax return, or any amendment to such a return, claiming any deduction for worthlessness of the equity securities (including Options to acquire such securities, as defined below) in the Debtor, for a tax year ending before the Debtor's emergence from chapter 11 protection, such 50% Shareholder shall file with the Court, and serve on counsel to the Debtor, an advance written notice, in the form attached to the Motion as **Exhibit A-5** (a "**Notice of Intent to Claim a Worthless Stock Deduction**") of the intended claim of worthlessness.
- d. The Debtor will have twenty-one (21) calendar days after receipt of a Notice of Intent to Claim a Worthless Stock Deduction to file with the Court and serve on such 50% Shareholder an objection to any proposed claim of worthlessness described in the Notice of Intent to Claim a Worthless Stock Deduction on the grounds that such claim might adversely affect the Debtor's ability to utilize its Tax Attributes. During such 21-day period, and while any objection by the Debtor (or any other party in interest) to the proposed claim is pending, such 50% Shareholder shall not claim, or cause to be claimed, the proposed worthless stock deduction to which the Notice of Intent to Claim a Worthless Stock Deduction relates and thereafter shall do so only in accordance with the Court's ruling, and, as applicable, any appellate rules and procedures. If the Debtor does not object within such 21-day period, the filing of the tax return with such claim would be permitted only as set forth in the Notice of Intent to Claim a Worthless Stock Deduction. Additional tax returns or amendments within the scope of this subparagraph must be the subject of additional notices as set forth herein, with an additional 21-day waiting period.
- e. For purposes of this Notice, (A) a "**50% Shareholder**" is any person or entity that, at any time during the three-year period ending on the Petition Date, has had Beneficial Ownership of 50% or more of the equity securities in the Debtor (determined in accordance with IRC section 382(g)(4)(D) and the applicable regulations thereunder),

and (B) “**Beneficial Ownership**” or any variation thereof of Zosano Stock and Options to acquire Zosano Stock) shall be determined in accordance with applicable rules under Section 382, Treasury Regulations promulgated thereunder and rulings issued by the Internal Revenue Service, and thus, to the extent provided therein, from time to time shall include, without limitation, (i) direct and indirect ownership (e.g., a holding company would be considered to beneficially own all shares owned or acquired by its subsidiaries), (ii) ownership by the holder’s family members and persons acting in concert with the holder to make a coordinated acquisition of stock, and (iii) ownership of an Option to acquire Zosano Stock, but only to the extent such Option is treated as exercised under Treasury Regulations Section 1.382-4(d). An “**Option**” to acquire stock includes any contingent purchase, warrant, convertible debt, put, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

**PLEASE TAKE FURTHER NOTICE THAT**, upon the request of any person, counsel to the Debtor will provide a form of each of the required notices described above.

**PLEASE TAKE FURTHER NOTICE THAT** a copy of the Interim Order may be obtained free of charge from: <http://www.kccllc.net/ZosanoPharma>.

**FAILURE TO FOLLOW THE PROCEDURES SET FORTH IN THIS NOTICE SHALL CONSTITUTE A VIOLATION OF, AMONG OTHER THINGS, THE AUTOMATIC STAY PRESCRIBED BY SECTION 362 OF THE BANKRUPTCY CODE. ANY PROHIBITED PURCHASE, ACQUISITION, ACCUMULATION, SALE, TRADE, OR OTHER TRANSFER OF, OR ANY CLAIM OF WORTHLESSNESS WITH RESPECT TO, ZOSANO STOCK, OR ANY BENEFICIAL OWNERSHIP THEREIN, IN VIOLATION OF THE INTERIM ORDER SHALL BE NULL AND VOID *AB INITIO* AND MAY BE PUNISHED BY CONTEMPT OR OTHER SANCTIONS IMPOSED BY THE COURT.**

**PLEASE TAKE FURTHER NOTICE THAT** the requirements set forth in this Notice of Interim Order are in addition to the requirements of Bankruptcy Rule 3001(e) and applicable securities, corporate, and other laws, and do not excuse compliance therewith.

**PLEASE TAKE FURTHER NOTICE THAT** a final hearing on the relief sought in the Motion shall be conducted on \_\_\_\_\_, 2022 at \_\_\_\_\_ (ET) (the “**Final Hearing**”). Any party-in-interest objecting to the relief sought at the Final Hearing or the Final Order shall file and serve a written objection, which objection shall be served upon (i) 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)) and (ii) counsel to any statutory committee appointed in the chapter 11 case, in each case so as to be received no later than \_\_\_\_\_, 2022 at 4:00 p.m. (ET). 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.

Dated: June 2, 2022

GREENBERG TRAURIG, LLP

*/s/ Draft*

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

**Exhibit A-7**

**Notice of 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)

**NOTICE OF ENTRY OF FINAL ORDER, PURSUANT TO SECTIONS 105(a), 362(a)(3)  
AND 541 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 3001,  
ESTABLISHING NOTICE AND HEARING PROCEDURES FOR TRADING  
IN, OR CERTAIN CLAIMS OF WORTHLESSNESS WITH  
RESPECT TO, EQUITY SECURITIES IN THE DEBTOR**

**PLEASE TAKE NOTICE THAT** on June 1, 2022 (the “**Petition Date**”), the above-captioned debtor and debtor-in-possession (the “**Debtor**” or “**Zosano**”) commenced a case under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”). Subject to certain exceptions, section 362 of the Bankruptcy Code operates as a stay of any act to obtain possession of property of the Debtor’s estate or of property from the Debtor’s estate or to exercise control over property of the Debtor’s estate.

**PLEASE TAKE FURTHER NOTICE THAT**, on the Petition Date, the Debtor filed a motion (the “**Motion**”)<sup>2</sup> seeking entry of an Interim Order and Final Order pursuant to sections 105, 362 and 541 of the Bankruptcy Code establishing notice and hearing procedures for trading in, or certain claims of worthlessness with respect to, equity securities in the Debtor.

**PLEASE TAKE FURTHER NOTICE THAT** on June [●], 2022, the United States Bankruptcy Court for the District of Delaware (the “**Court**”) entered that certain *Interim Order Pursuant to Sections 105(a), 362(a)(3), and 541 of the Bankruptcy Code and Bankruptcy Rule*

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

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

*3001 Establishing Notice and Hearing Procedures for Trading in, or Certain Claims of Worthlessness With Respect to, Equity Securities in the Debtor* approving the procedures set forth below in order to preserve the Tax Attributes held by the Debtor (the “**Interim Order**”).

**PLEASE TAKE FURTHER NOTICE THAT**, on [●], 2022, the Court entered that certain *Final Order Pursuant to Sections 105(a), 362(a)(3), and 541 of the Bankruptcy Code and Bankruptcy Rule 3001 Establishing Notice and Hearing Procedures for Trading in, or Certain Claims of Worthlessness with Respect to, Equity Securities in the Debtor* approving the procedures set forth below in order to preserve the Tax Attributes held by the Debtor (the “**Final Order**”).

**PLEASE TAKE FURTHER NOTICE THAT** pursuant to the Final Order, the following procedures shall apply to holding and trading in, or certain claims of worthlessness with respect to, equity securities (including Options to acquire such securities, as defined below) of Zosano:

1. Any purchase, sale, or other transfer of, or certain claims of worthlessness with respect to, equity securities (including Options to acquire such securities, as defined below) in Zosano on or after the Petition Date in violation of the procedures set forth herein (including the notice requirements set forth in paragraphs 2(a) and 3(b)) shall be null and void *ab initio* as an act in violation of the automatic stay under section 362 of the Bankruptcy Code.

2. The following procedures shall apply to the trading in equity securities (including Options to acquire such securities, as defined below) in Zosano:

- a. Any person or entity (as defined in Treasury Regulations Section 1.382- 3(a)(1)) who currently is or becomes a Substantial Shareholder (as defined in subparagraph (f) below) shall file with the Court, and serve on counsel to the Debtor, a notice of such status, in the form attached to the Motion as **Exhibit A-1**, on or before the later of (i) twenty (20) calendar days after the date of the Notice of Interim Order or this Notice (as defined below and as applicable) and (ii) ten (10) calendar days after becoming a Substantial Shareholder.
- b. At least twenty-one (21) calendar days prior to effectuating any transfer of equity securities (including Options to acquire such securities, as defined below) that

would result in an increase in the amount of Zosano Stock (as defined below) beneficially owned by a Substantial Shareholder or would result in a person or entity becoming a Substantial Shareholder, such Substantial Shareholder (or person or entity that may become a Substantial Shareholder) shall file with the Court, and serve on counsel to the Debtor, advance written notice, in the form attached to the Motion as **Exhibit A-2**, of the intended transfer of equity securities (including Options to acquire such securities, as defined below).

- c. At least twenty-one (21) calendar days prior to effectuating any transfer of equity securities (including Options to acquire such securities, as defined below) that would result in a decrease in the amount of Zosano Stock beneficially owned by a Substantial Shareholder or would result in a person or entity ceasing to be a Substantial Shareholder, such Substantial Shareholder shall file with the Court, and serve on counsel to the Debtor, advance written notice, in the form attached to the Motion as **Exhibit A-3**, of the intended transfer of equity securities (including Options to acquire such securities, as defined below) (the notices required to be filed and served under subparagraphs (c) and (d), each a “**Notice of Proposed Transfer**”).
- d. The Debtor shall have twenty-one (21) calendar days after receipt of a Notice of Proposed Transfer to file with the Court and serve on such Substantial Shareholder (or person or entity that may become a Substantial Shareholder) an objection to the proposed transfer of equity securities (including Options to acquire such securities, as defined below) described in the Notice of Proposed Transfer on the grounds that such transfer may adversely affect the Debtor’s ability to utilize its Tax Attributes. During such 21-day period, and while any objection by the Debtor (or any other party in interest) to the proposed transfer is pending, such Substantial Shareholder shall not effectuate the proposed transfer to which the Notice of Proposed Transfer relates and thereafter shall do so only in accordance with the Court’s ruling, and, as applicable, any appellate rules and procedures. If the Debtor does not object within such 21-day period, such transaction may proceed solely as set forth in the Notice of Proposed Transfer. Further transactions within the scope of this subparagraph (e) must be the subject of additional notices as set forth herein, with an additional 21-day waiting period.
- e. For purposes of this Notice, (A) a “**Substantial Shareholder**” is any person or entity (as defined in Treasury Regulations Section 1.382-3(a)(1)) which has Beneficial Ownership of at least 4.5% of all issued and outstanding shares ((equal to, as of June 1, 2022, approximately 220,602 shares<sup>3</sup>) of the common stock of the Debtor (“**Zosano Stock**”), and (B) “**Beneficial Ownership**” or any variation thereof of Zosano Stock and Options to acquire Zosano Stock) shall be determined in accordance with applicable rules under Section 382, Treasury Regulations promulgated thereunder and rulings issued by the Internal Revenue Service, and thus, to the extent provided therein, from time to time shall include, without limitation, (i) direct and indirect ownership (e.g., a holding company would be

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<sup>3</sup> Based on approximately 4,902,260 shares of Zosano Stock issued and outstanding as of June 1, 2022.

considered to beneficially own all shares owned or acquired by its subsidiaries), (ii) ownership by the holder's family members and persons acting in concert with the holder to make a coordinated acquisition of stock, and (iii) ownership of an Option to acquire Zosano Stock, but only to the extent such Option is treated as exercised under Treasury Regulations Section 1.382-4(d). An "Option" to acquire stock includes any contingent purchase, warrant, convertible debt, put, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

3. The following procedures shall apply to claims for tax purposes that shares of Zosano's equity securities (including Options to acquire such securities, as defined below) are worthless:

- a. Any worthless stock deduction claim of equity securities (including Options to acquire such securities, as defined below) in the Debtor on or after the Petition Date in violation of the procedures set forth herein shall be null and void *ab initio* as an act in violation of the automatic stay under section 362 of the Bankruptcy Code.
- b. Any person or entity (as defined in Treasury Regulations Section 1.382- 3(a)(1)) who currently is or becomes a 50% Shareholder (as defined in subparagraph (e) below) shall file with the Court, and serve on counsel to the Debtor, a notice of such status, in the form attached to the Motion as **Exhibit A-4**, on or before the later of (i) twenty (20) calendar days after the date of the Notice of Interim Order or this Notice (as defined below and as applicable) and (ii) ten (10) calendar days after becoming a 50% Shareholder.
- c. At least twenty-one (21) days prior to filing any federal or state tax return, or any amendment to such a return, claiming any deduction for worthlessness of the equity securities (including Options to acquire such securities, as defined below) in the Debtor, for a tax year ending before the Debtor's emergence from chapter 11 protection, such 50% Shareholder shall file with the Court, and serve on counsel to the Debtor, an advance written notice, in the form attached to the Motion as **Exhibit A-5** (a "Notice of Intent to Claim a Worthless Stock Deduction") of the intended claim of worthlessness.
- d. The Debtor will have twenty-one (21) calendar days after receipt of a Notice of Intent to Claim a Worthless Stock Deduction to file with the Court and serve on such 50% Shareholder an objection to any proposed claim of worthlessness described in the Notice of Intent to Claim a Worthless Stock Deduction on the grounds that such claim might adversely affect the Debtor's ability to utilize its Tax Attributes. During such 21-day period, and while any objection by the Debtor (or any other party in interest) to the proposed claim is pending, such 50% Shareholder shall not claim, or cause to be claimed, the proposed worthless stock deduction to which the Notice of Intent to Claim a Worthless Stock Deduction

relates and thereafter shall do so only in accordance with the Court's ruling, and, as applicable, any appellate rules and procedures. If the Debtor does not object within such 21-day period, the filing of the tax return with such claim would be permitted only as set forth in the Notice of Intent to Claim a Worthless Stock Deduction. Additional tax returns or amendments within the scope of this subparagraph must be the subject of additional notices as set forth herein, with an additional 21-day waiting period.

- e. For purposes of this Notice, (A) a "**50% Shareholder**" is any person or entity that, at any time during the three-year period ending on the Petition Date, has had Beneficial Ownership of 50% or more of the equity securities in the Debtor (determined in accordance with IRC section 382(g)(4)(D) and the applicable regulations thereunder), and (B) "**Beneficial Ownership**" or any variation thereof of Zosano Stock and Options to acquire Zosano Stock) shall be determined in accordance with applicable rules under Section 382, Treasury Regulations promulgated thereunder and rulings issued by the Internal Revenue Service, and thus, to the extent provided therein, from time to time shall include, without limitation, (i) direct and indirect ownership (e.g., a holding company would be considered to beneficially own all shares owned or acquired by its subsidiaries), (ii) ownership by the holder's family members and persons acting in concert with the holder to make a coordinated acquisition of stock, and (iii) ownership of an Option to acquire Zosano Stock, but only to the extent such Option is treated as exercised under Treasury Regulations Section 1.382-4(d). An "**Option**" to acquire stock includes any contingent purchase, warrant, convertible debt, put, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

**PLEASE TAKE FURTHER NOTICE THAT** upon the request of any person, counsel to the Debtor will provide a form of each of the required notices described above.

**PLEASE TAKE FURTHER NOTICE THAT** a copy of the Final Order may be obtained free of charge from <http://www.kccllc.net/ZosanoPharma>.

**FAILURE TO FOLLOW THE PROCEDURES SET FORTH IN THIS NOTICE SHALL CONSTITUTE A VIOLATION OF, AMONG OTHER THINGS, THE AUTOMATIC STAY PRESCRIBED BY SECTION 362 OF THE BANKRUPTCY CODE. ANY PROHIBITED PURCHASE, ACQUISITION, ACCUMULATION, SALE, TRADE, OR OTHER TRANSFER OF, OR ANY CLAIM OF WORTHLESSNESS WITH RESPECT TO, ZOSANO STOCK, OR ANY BENEFICIAL OWNERSHIP THEREIN, IN**

**VIOLATION OF THE FINAL ORDER SHALL BE NULL AND VOID *AB INITIO* AND MAY BE PUNISHED BY CONTEMPT OR OTHER SANCTIONS IMPOSED BY THE COURT.**

**PLEASE TAKE FURTHER NOTICE THAT** the requirements set forth in this Notice of Final Order are in addition to the requirements of Bankruptcy Rule 3001(e) and applicable securities, corporate, and other laws, and do not excuse compliance therewith.

Dated:

GREENBERG TRAURIG, LLP

*/s/ Draft*

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

**Exhibit B**

**Proposed 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, PURSUANT TO SECTIONS 105(a), 362(a)(3) AND 541 OF THE  
BANKRUPTCY CODE AND BANKRUPTCY RULE 3001, ESTABLISHING NOTICE  
AND HEARING PROCEDURES FOR TRADING IN, OR CERTAIN CLAIMS OF  
WORTHLESSNESS WITH RESPECT TO, EQUITY SECURITIES IN THE DEBTOR**

Upon consideration of the motion (the “**Motion**”)<sup>2</sup> of the above-captioned debtor and debtor-in-possession (the “**Debtor**” or “**Zosano**”) for the entry of interim and final orders, pursuant to sections 105, 362(a)(3) and 541 of the Bankruptcy Code and Bankruptcy Rule 3001, establishing notice and hearing procedures that must be satisfied before certain transfers of, or certain claims of worthlessness for federal or state tax purposes with respect to, equity securities in Zosano, including Options to acquire such securities, as defined below, or of any beneficial interest therein, are deemed effective; 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 this 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)(2); and the Debtor having consented to the Court entering an order in the event this matter is deemed a non-core proceeding;

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

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

and this Court having determined that the relief requested in the Motion is in the best interests of the Debtor, its estate, its creditors and other parties-in-interest; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED, on an interim basis, as set forth herein.
1. Any purchase, sale, or other transfer of, or certain claims of worthlessness with respect to, equity securities (including Options to acquire such securities, as defined below) in Zosano on or after the Petition Date in violation of the procedures set forth herein (including the notice requirements set forth in paragraph 3(a) below) shall be null and void *ab initio* as an act in violation of the automatic stay under section 362 of the Bankruptcy Code.
2. The following procedures shall apply to trading in equity securities (including Options to acquire such securities, as defined below) in Zosano:
  - a. Any person or entity (as defined in Treasury Regulations Section 1.382- 3(a)(1)) who currently is or becomes a Substantial Shareholder (as defined in subparagraph (f) below) shall file with the Court, and serve on counsel to the Debtor, a notice of such status, in the form attached to the Motion as **Exhibit A-1**, on or before the later of (i) twenty (20) calendar days after the date of the Notice of Interim Order or Notice of Final Order (as defined below and as applicable) and (ii) ten (10) calendar days after becoming a Substantial Shareholder.
  - b. At least twenty-one (21) calendar days prior to effectuating any transfer of equity securities (including Options to acquire such securities, as defined below) that would result in an increase in the amount of Zosano Stock (as defined below) beneficially owned by a Substantial Shareholder or would result in a person or entity becoming a Substantial Shareholder, such Substantial Shareholder (or person or entity that may become a Substantial Shareholder) shall file with the Court, and serve on counsel to the Debtor, advance written notice, in the form attached to the Motion as **Exhibit A-2**, of the intended transfer of equity securities (including Options to acquire such securities, as defined below).
  - c. At least twenty-one (21) calendar days prior to effectuating any transfer of equity securities (including Options to acquire such securities, as defined below) that would result in a decrease in the amount of Zosano Stock beneficially owned by a

Substantial Shareholder or would result in a person or entity ceasing to be a Substantial Shareholder, such Substantial Shareholder shall file with the Court, and serve on counsel to the Debtor, advance written notice, in the form attached to the Motion as **Exhibit A-3**, of the intended transfer of equity securities (including Options to acquire such securities, as defined below) (the notices required to be filed and served under subparagraphs (c) and (d), each a “**Notice of Proposed Transfer**”).

- d. The Debtor shall have twenty-one (21) calendar days after receipt of a Notice of Proposed Transfer to file with the Court and serve on such Substantial Shareholder (or person or entity that may become a Substantial Shareholder) an objection to the proposed transfer of equity securities (including Options to acquire such securities, as defined below) described in the Notice of Proposed Transfer on the grounds that such transfer may adversely affect the Debtor’s ability to utilize its Tax Attributes. During such 21-day period, and while any objection by the Debtor (or any other party in interest) to the proposed transfer is pending, such Substantial Shareholder shall not effectuate the proposed transfer to which the Notice of Proposed Transfer relates and thereafter shall do so only in accordance with the Court’s ruling, and, as applicable, any appellate rules and procedures. If the Debtor does not object within such 21-day period, such transaction may proceed solely as set forth in the Notice of Proposed Transfer. Further transactions within the scope of this subparagraph (d) must be the subject of additional notices as set forth herein, with an additional 21-day waiting period.
- e. For purposes of this Interim Order, (A) a “**Substantial Shareholder**” is any person or entity (as defined in Treasury Regulations Section 1.382-3(a)(1)) which has Beneficial Ownership of at least 4.5% of all issued and outstanding shares (equal to, as of June 1, 2022, approximately 220,602 shares<sup>3</sup>) of the common stock of the Debtor (“**Zosano Stock**”), and (B) “**Beneficial Ownership**” or any variation thereof of Zosano Stock and Options to acquire Zosano Stock) shall be determined in accordance with applicable rules under Section 382, Treasury Regulations promulgated thereunder and rulings issued by the Internal Revenue Service, and thus, to the extent provided therein, from time to time shall include, without limitation, (i) direct and indirect ownership (e.g., a holding company would be considered to beneficially own all shares owned or acquired by its subsidiaries), (ii) ownership by the holder’s family members and persons acting in concert with the holder to make a coordinated acquisition of stock, and (iii) ownership of an Option to acquire Zosano Stock, but only to the extent such Option is treated as exercised under Treasury Regulations Section 1.382-4(d). An “**Option**” to acquire stock includes any contingent purchase, warrant, convertible debt, put, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

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<sup>3</sup> Based on approximately 4,902,260 shares of Zosano Stock issued and outstanding as of June 1, 2022.

3. The following procedures shall apply to claims for tax purposes that shares of Zosano's equity securities (including Options to acquire such securities, as defined below) are worthless:

- a. Any worthless stock deduction claim of equity securities (including Options to acquire such securities, as defined below) in the Debtor on or after the Petition Date in violation of the procedures set forth herein shall be null and void *ab initio* as an act in violation of the automatic stay under section 362 of the Bankruptcy Code.
- b. Any person or entity (as defined in Treasury Regulations Section 1.382- 3(a)(1)) who currently is or becomes a 50% Shareholder (as defined in subparagraph (e) below) shall file with the Court, and serve on counsel to the Debtor, a notice of such status, in the form attached to the Motion as **Exhibit A-4**, on or before the later of (i) twenty (20) calendar days after the date of the Notice of Interim Order or Notice of Final Order (as defined below and as applicable) and (ii) ten (10) calendar days after becoming a 50% Shareholder.
- c. At least twenty-one (21) days prior to filing any federal or state tax return, or any amendment to such a return, claiming any deduction for worthlessness of the equity securities (including Options to acquire such securities, as defined below) in the Debtor, for a tax year ending before the Debtor's emergence from chapter 11 protection, such 50% Shareholder shall file with the Court, and serve on counsel to the Debtor, an advance written notice, in the form attached to the Motion as **Exhibit A-5** (a "**Notice of Intent to Claim a Worthless Stock Deduction**") of the intended claim of worthlessness.
- d. The Debtor will have twenty-one (21) calendar days after receipt of a Notice of Intent to Claim a Worthless Stock Deduction to file with the Court and serve on such 50% Shareholder an objection to any proposed claim of worthlessness described in the Notice of Intent to Claim a Worthless Stock Deduction on the grounds that such claim might adversely affect the Debtor's ability to utilize its Tax Attributes. During such 21-day period, and while any objection by the Debtor (or any other party in interest) to the proposed claim is pending, such 50% Shareholder shall not claim, or cause to be claimed, the proposed worthless stock deduction to which the Notice of Intent to Claim a Worthless Stock Deduction relates and thereafter shall do so only in accordance with the Court's ruling, and, as applicable, any appellate rules and procedures. If the Debtor does not object within such 21-day period, the filing of the tax return with such claim would be permitted only as set forth in the Notice of Intent to Claim a Worthless Stock Deduction. Additional tax returns or amendments within the scope of this subparagraph must be the subject of additional notices as set forth herein, with an additional 21-day waiting period.

- e. For purposes of this Interim Order, (A) a “**50% Shareholder**” is any person or entity that, at any time during the three-year period ending on the Petition Date, has had Beneficial Ownership of 50% or more of the equity securities in the Debtor (determined in accordance with IRC section 382(g)(4)(D) and the applicable regulations thereunder), and (B) “**Beneficial Ownership**” or any variation thereof of Zosano Stock and Options to acquire Zosano Stock) shall be determined in accordance with applicable rules under Section 382, Treasury Regulations promulgated thereunder and rulings issued by the Internal Revenue Service, and thus, to the extent provided therein, from time to time shall include, without limitation, (i) direct and indirect ownership (e.g., a holding company would be considered to beneficially own all shares owned or acquired by its subsidiaries), (ii) ownership by the holder’s family members and persons acting in concert with the holder to make a coordinated acquisition of stock, and (iii) ownership of an Option to acquire Zosano Stock, but only to the extent such Option is treated as exercised under Treasury Regulations Section 1.382-4(d). An “**Option**” to acquire stock includes any contingent purchase, warrant, convertible debt, put, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

4. The Debtor may waive, in writing, any and all restrictions, stays and notification procedures contained in this Interim Order; *provided, however*, the Debtor shall provide notice of any such waiver to the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) in writing within three business days thereafter.

5. The Debtor shall serve the Notice of Interim Order setting forth the procedures authorized herein substantially in the form attached to the Motion as **Exhibit A-6** (the “**Notice of Interim Order**”) to: (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) all banks, brokers, intermediaries, other nominees or their mailing agents (collectively, the “**Nominees**”) that hold Zosano Stock in “street name” for the beneficial holders of the Zosano Stock, as applicable; (g) the transfer agent(s) for the Zosano Stock, as applicable; (h) all Substantial Shareholders, if any; and (i) all parties that have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002.

6. Any person or entity (or broker or agent acting on their behalf) who sells at least 4.5% of all issued and outstanding shares of Zosano Stock (or an Option with respect thereto) to another person or entity shall be required to provide the Notice of Interim Order to such purchaser or any broker or agent acting on their behalf of such Zosano Stock (or an Option with respect to), to the extent reasonably feasible (unless the Court has entered the Final Order). If at the time of purchase, the Court has entered the Final Order, any person or entity, or broker or agent acting on their behalf, who sells at least 4.5% of all issued and outstanding shares of Zosano Stock (or an Option with respect thereto) to another person or entity shall provide the purchaser (or its agent) with the Notice of Final Order pursuant to the terms of the Final Order.

7. The requirements set forth in this Interim Order are in addition to the requirements of Bankruptcy Rule 3001(e) and applicable securities, corporate and other laws, and do not excuse compliance therewith.

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

9. 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, c/o Zosano Pharma Corporation, 34790 Ardentech Court, Fremont, CA 94555, Attn: Kristina Warga; (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.

10. The requirements of Bankruptcy Rule 6003(b) are satisfied.
11. The requirements of Bankruptcy Rule 6004(a) are waived.
12. Notwithstanding the applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order shall be effective and enforceable immediately upon its entry.
13. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Interim Order.

**EXHIBIT C**

**Proposed 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, PURSUANT TO SECTIONS 105(a), 362(a)(3) AND 541 OF THE  
BANKRUPTCY CODE AND BANKRUPTCY RULE 3001, ESTABLISHING NOTICE  
AND HEARING PROCEDURES FOR TRADING IN, OR CERTAIN CLAIMS OF  
WORTHLESSNESS WITH RESPECT TO, EQUITY SECURITIES IN THE DEBTOR**

Upon consideration of the motion (the “**Motion**”)<sup>2</sup> of the above-captioned debtor and debtor-in-possession (the “**Debtor**” or “**Zosano**”) for the entry of interim and final orders, pursuant to sections 105, 362(a)(3) and 541 of the Bankruptcy Code and Bankruptcy Rule 3001, establishing notice and hearing procedures that must be satisfied before certain transfers of, or certain claims of worthlessness for federal or state tax purposes with respect to, equity securities in the Debtor, including Options to acquire such securities, as defined below, or of any beneficial interest therein, are deemed effective; and upon the First Day Declaration; and this Court having previously entered an order granting the relief requested in the Motion on an interim basis [Docket No. [●]] (the “**Interim Order**”); and due and sufficient notice of the Motion having been given under the particular circumstances; and it appearing that this 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 February 29, 2012; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order herewith consistent with Article III of the U.S. Constitution; and it appearing that venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408

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

and 1409; and it appearing that the relief requested by the Motion is in the best interests of the Debtor, its estate, its creditors and other parties in interest; 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. Any purchase, sale, or other transfer of, or certain claims of worthlessness with respect to, equity securities (including Options to acquire such securities, as defined below) in Zosano, or of any Beneficial Ownership therein, on or after the Petition Date in violation of the procedures set forth herein (including the notice requirements set forth in paragraph 3(a) below) shall be null and void *ab initio* as an act in violation of the automatic stay under section 362 of the Bankruptcy Code.
3. The following procedures shall apply to trading in equity securities (including Options to acquire such securities, as defined below) in Zosano:
  - a. Any person or entity (as defined in Treasury Regulations Section 1.382-3(a)(1)) who currently is or becomes a Substantial Shareholder (as defined in subparagraph (f) below) shall file with the Court, and serve on counsel to the Debtor, a notice of such status, in the form attached to the Motion as **Exhibit A-1**, on or before the later of (i) twenty (20) calendar days after the date of the Notice of Interim Order or Notice of Final Order (as defined below and as applicable) and (ii) ten (10) calendar days after becoming a Substantial Shareholder.
  - b. At least twenty-one (21) calendar days prior to effectuating any transfer of equity securities (including Options to acquire such securities, as defined below) that would result in an increase in the amount of Zosano Stock (as defined below) beneficially owned by a Substantial Shareholder or would result in a person or entity becoming a Substantial Shareholder, such Substantial Shareholder (or person or entity that may become a Substantial Shareholder) shall file with the Court, and serve on counsel to the Debtor, advance written notice, in the form attached to the Motion as **Exhibit A-2**, of the intended transfer of equity securities (including Options to acquire such securities, as defined below).
  - c. At least twenty-one (21) calendar days prior to effectuating any transfer of equity securities (including Options to acquire such securities, as defined below) that

would result in a decrease in the amount of Zosano Stock beneficially owned by a Substantial Shareholder or would result in a person or entity ceasing to be a Substantial Shareholder, such Substantial Shareholder shall file with the Court, and serve on counsel to the Debtor, advance written notice, in the form attached to the Motion as **Exhibit A-3**, of the intended transfer of equity securities (including Options to acquire such securities, as defined below) (the notices required to be filed and served under subparagraphs (c) and (d), each a “**Notice of Proposed Transfer**”).

- d. The Debtor shall have twenty-one (21) calendar days after receipt of a Notice of Proposed Transfer to file with the Court and serve on such Substantial Shareholder (or person or entity that may become a Substantial Shareholder) an objection to the proposed transfer of equity securities (including Options to acquire such securities, as defined below) described in the Notice of Proposed Transfer on the grounds that such transfer may adversely affect the Debtor’s ability to utilize its Tax Attributes. During such 21-day period, and while any objection by the Debtor (or any other party in interest) to the proposed transfer is pending, such Substantial Shareholder shall not effectuate the proposed transfer to which the Notice of Proposed Transfer relates and thereafter shall do so only in accordance with the Court’s ruling, and, as applicable, any appellate rules and procedures. If the Debtor does not object within such 21-day period, such transaction may proceed solely as set forth in the Notice of Proposed Transfer. Further transactions within the scope of this subparagraph (e) must be the subject of additional notices as set forth herein, with an additional 21-day waiting period.
- e. For purposes of this Final Order, (A) a “**Substantial Shareholder**” is any person or entity (as defined in Treasury Regulations Section 1.382-3(a)(1)) which has Beneficial Ownership of at least 4.5% of all issued and outstanding shares (equal to, as of June 1, 2022, approximately 220,602 shares<sup>2</sup>) of the common stock of the Debtor (“**Zosano Stock**”), and (B) “**Beneficial Ownership**” or any variation thereof of Zosano Stock and Options to acquire Zosano Stock) shall be determined in accordance with applicable rules under Section 382, Treasury Regulations promulgated thereunder and rulings issued by the Internal Revenue Service, and thus, to the extent provided therein, from time to time shall include, without limitation, (i) direct and indirect ownership (e.g., a holding company would be considered to beneficially own all shares owned or acquired by its subsidiaries), (ii) ownership by the holder’s family members and persons acting in concert with the holder to make a coordinated acquisition of stock, and (iii) ownership of an Option to acquire Zosano Stock, but only to the extent such Option is treated as exercised under Treasury Regulations Section 1.382-4(d). An “**Option**” to acquire stock includes any contingent purchase, warrant, convertible debt, put, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

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<sup>2</sup> Based on approximately 4,902,260 shares of Zosano Stock issued and outstanding as of June 1, 2022.

4. The following procedures shall apply to claims for tax purposes that shares of Zosano's equity securities (including Options to acquire such securities, as defined below) are worthless:

- a. Any worthless stock deduction claim of equity securities (including Options to acquire such securities, as defined below) in the Debtor on or after the Petition Date in violation of the procedures set forth herein shall be null and void *ab initio* as an act in violation of the automatic stay under section 362 of the Bankruptcy Code.
- b. Any person or entity (as defined in Treasury Regulations Section 1.382- 3(a)(1)) who currently is or becomes a 50% Shareholder (as defined in subparagraph (e) below) shall file with the Court, and serve on counsel to the Debtor, a notice of such status, in the form attached to the Motion as **Exhibit A-4**, on or before the later of (i) twenty (20) calendar days after the date of the Notice of Interim Order or Notice of Final Order (as defined below and as applicable) and (ii) ten (10) calendar days after becoming a 50% Shareholder.
- c. At least twenty-one (21) days prior to filing any federal or state tax return, or any amendment to such a return, claiming any deduction for worthlessness of the equity securities (including Options to acquire such securities, as defined below) in the Debtor, for a tax year ending before the Debtor's emergence from chapter 11 protection, such 50% Shareholder shall file with the Court, and serve on counsel to the Debtor, an advance written notice, in the form attached to the Motion as **Exhibit A-5** (a "**Notice of Intent to Claim a Worthless Stock Deduction**") of the intended claim of worthlessness.
- d. The Debtor will have twenty-one (21) calendar days after receipt of a Notice of Intent to Claim a Worthless Stock Deduction to file with the Court and serve on such 50% Shareholder an objection to any proposed claim of worthlessness described in the Notice of Intent to Claim a Worthless Stock Deduction on the grounds that such claim might adversely affect the Debtor's ability to utilize its Tax Attributes. During such 21-day period, and while any objection by the Debtor (or any other party in interest) to the proposed claim is pending, such 50% Shareholder shall not claim, or cause to be claimed, the proposed worthless stock deduction to which the Notice of Intent to Claim a Worthless Stock Deduction relates and thereafter shall do so only in accordance with the Court's ruling, and, as applicable, any appellate rules and procedures. If the Debtor does not object within such 21-day period, the filing of the tax return with such claim would be permitted only as set forth in the Notice of Intent to Claim a Worthless Stock Deduction. Additional tax returns or amendments within the scope of this subparagraph must be the subject of additional notices as set forth herein, with an additional 21-day waiting period.

- e. For purposes of this Final Order, (A) a “**50% Shareholder**” is any person or entity that, at any time during the three-year period ending on the Petition Date, has had Beneficial Ownership of 50% or more of the equity securities in the Debtor (determined in accordance with IRC section 382(g)(4)(D) and the applicable regulations thereunder), and (B) “**Beneficial Ownership**” or any variation thereof of Zosano Stock and Options to acquire Zosano Stock) shall be determined in accordance with applicable rules under Section 382, Treasury Regulations promulgated thereunder and rulings issued by the Internal Revenue Service, and thus, to the extent provided therein, from time to time shall include, without limitation, (i) direct and indirect ownership (e.g., a holding company would be considered to beneficially own all shares owned or acquired by its subsidiaries), (ii) ownership by the holder’s family members and persons acting in concert with the holder to make a coordinated acquisition of stock, and (iii) ownership of an Option to acquire Zosano Stock, but only to the extent such Option is treated as exercised under Treasury Regulations Section 1.382-4(d). An “**Option**” to acquire stock includes any contingent purchase, warrant, convertible debt, put, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

5. The Debtor may waive, in writing, any and all restrictions, stays and notification procedures contained in this Final Order; *provided, however*, the Debtor shall provide notice of any such waiver to the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) in writing within three business days thereafter.

6. The Debtor shall serve the Notice of Final Order setting forth the procedures authorized herein substantially in the form attached to the Motion as **Exhibit A-8** (the “**Notice of Final Order**”) to: (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) all banks, brokers, intermediaries, other nominees or their mailing agents (collectively, the “**Nominees**”) that hold Zosano Stock in “street name” for the beneficial holders of the Zosano Stock, as applicable; (g) the transfer agent(s) for the Zosano Stock, as applicable; (h) all Substantial Shareholders, if any; and (i) all parties that have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002.

7. Any person (or entity or broker or agent acting on their behalf) who sells at least 4.5% of all issued and outstanding shares of Zosano Stock (or an Option with respect thereto) to another person or entity shall be required to provide the Notice of Final Order to such purchaser (or its agent), to the extent reasonably feasible.

8. The requirements set forth in this Final Order are in addition to the requirements of Bankruptcy Rule 3001(e) and applicable securities, corporate and other laws, and do not excuse compliance therewith.

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

10. The requirements of Bankruptcy Rule 6004(a) are waived.

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

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