

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:

Zosano Pharma Corporation,¹

Debtor.

Chapter 11

Case No. 22-10506 (JKS)

Ref. Docket No. 13

**ORDER AUTHORIZING THE EMPLOYMENT AND RETENTION OF
KURTZMAN CARSON CONSULTANTS LLC AS CLAIMS AND NOTICING
AGENT EFFECTIVE AS OF THE PETITION DATE**

Upon the application (the “**Application**”)² of the above-captioned debtor and debtor-in-possession (the “**Debtor**”) for entry of an order, pursuant to 28 U.S.C. §156(c), Bankruptcy Code § 105(a), and Local Rule 2002-1(f), authorizing the retention and appointment of Kurtzman Carson Consultants LLC (“**KCC**”) as the claims and noticing agent to, among other things: (i) distribute required notices to parties-in-interest, (ii) receive, maintain, docket and otherwise administer the proofs of claim filed in the Case, and (iii) provide such other administrative services—as required by the Debtor—that would fall within the purview of services to be provided by the Clerk; and upon the Jordan Declaration submitted in support of the Application; the Debtor having estimated that there are in excess of two hundred creditors in the Case, it appearing that the notice requirements in the Case and the receiving, docketing, and maintaining of proofs of claim would be unduly time consuming and burdensome for the Clerk; the Court being authorized under 28 U.S.C. § 156(c) to utilize, at the Debtor’s expense, outside agents and facilities to provide noticing services to parties in chapter 11 cases and to receive, docket, maintain, photocopy, and transmit proofs of claim; the Court being satisfied that KCC has the capability and experience to provide

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

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Application.



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such services and that KCC does not hold an interest adverse to the Debtor or the Debtor's estate respecting the matters upon which it is to be engaged; good and sufficient notice of the Application having been given under the circumstances and in accordance with the Bankruptcy Rules and Local Rules and no other or further notice being required; and finding sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Application is GRANTED as set forth herein.
2. The Debtor is authorized to retain KCC, effective as of the Petition Date, under the terms of the Engagement Agreement, as may be modified herein, and KCC is authorized to perform noticing services and to receive, maintain, record and otherwise administer the proofs of claim filed in the Case, and all related tasks, all as described in the Application (the "**Claims and Noticing Services**").
3. KCC shall serve as the custodian of court records and shall be designated as the authorized repository for all proofs of claim filed in the Case and is authorized to maintain official claims registers for the Debtor and to provide the Clerk with a certified duplicate thereof upon the request of the Clerk.
4. KCC is authorized and directed to provide an electronic interface for filing proofs of claim and to obtain a post office box or address for the receipt of proofs of claim.
5. KCC is authorized to take such other actions to comply with all duties set forth in the Application.
6. Without further order of the Court, the Debtor is authorized to compensate KCC in accordance with the terms of the Engagement Agreement upon the receipt of reasonably detailed invoices setting forth the services provided by KCC and the rates charged for each, and to reimburse KCC for all reasonable and necessary expenses it may incur, upon the presentation of appropriate documentation, without the need for KCC to file fee applications or otherwise seek

Court approval for the compensation of its services and reimbursement of its expenses; provided, however, that the Debtor, the United States Trustee for the District of Delaware, any official committee appointed in the Case, and any other party-in-interest who specifically requests service of the monthly invoices (together, the “**Notice Parties**”) shall be provided copies of KCC’s invoices and shall have a period of ten calendar days to object to the amount of such invoice prior to the Debtor’s payment of such amounts or such shorter time as agreed by the Notice Parties.

7. KCC shall maintain records of all services showing dates, categories of services, fees charged, and expenses incurred.

8. The parties shall meet and confer in an attempt to resolve any dispute which may arise relating to the Engagement Agreement or monthly invoices, and the parties may seek resolution of the matter from the Court if consensual resolution is not achieved.

9. Pursuant to Bankruptcy Code § 503(b)(1)(A), the fees and expenses of KCC under this order (the “**Order**”) shall be an administrative expense of the Debtor’s estate.

10. KCC may apply its retainer to all prepetition invoices. Thereafter, the retainer shall be replenished by the Debtor to the original retainer amount, and KCC may hold the retainer under the Engagement Agreement during the Case as security for the payment of fees and expenses incurred under the Engagement Agreement.

11. The Debtor shall indemnify KCC under the terms of the Engagement Agreement, as modified by ¶¶ 12, 13, and 14 herein.

12. KCC shall not be entitled to indemnification, contribution, or reimbursement pursuant to the Engagement Agreement for services other than the claims and noticing services provided under the Engagement Agreement, unless such services and the indemnification, contribution, or reimbursement therefore are approved by the Court.

13. Notwithstanding anything to the contrary in the Engagement Agreement, the Debtor shall have no obligation to indemnify KCC, or provide contribution or reimbursement to KCC, for any claim or expense that is either: (i) judicially determined (the determination having become final) to have arisen from KCC's gross negligence, willful misconduct, or fraud; (ii) for a contractual dispute in which the Debtor alleges the breach of KCC's contractual obligations, unless the Court determines that indemnification, contribution or reimbursement would be permissible pursuant to *In re United Artists Theatre Co., et al.*, 315 F.3d 217 (3d Cir. 2003); or (iii) settled prior to a judicial determination under (i) or (ii) in this paragraph, but determined by the Court, after notice and a hearing, to be a claim or expense for which KCC should not receive indemnity, contribution or reimbursement under the terms of the Engagement Agreement as modified by the Order.

14. If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in the Case (that order having become a final order no longer subject to appeal), or (ii) the entry of an order closing the Case, KCC believes that it is entitled to the payment of any amounts by the Debtor on account of the Debtor's indemnification, contribution and/or reimbursement obligations under the Engagement Agreement (as modified by the Order), including without limitation the advancement of defense costs, KCC must file an application therefore in the Court, and the Debtor may not pay any such amounts to KCC before the entry of an order by the Court approving the payment. This paragraph is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses by KCC for indemnification, contribution or reimbursement, and not a provision limiting the duration of the Debtor's obligation to indemnify KCC. All parties-in-interest shall retain the right to object to any demand by KCC for indemnification, contribution or reimbursement.

15. In the event KCC is unable to provide the services set forth in the Order, KCC will immediately notify the Clerk and Debtor's counsel and cause to have all original proofs of claim and computer information turned over to another claims and noticing agent with the consent of the Clerk, counsel to the Debtor, and further order of the Court. KCC will not terminate its services with the Debtor without the Court's approval.

16. KCC shall comply with all relevant statutory provisions and rules of procedure, including the Local Rules, general orders, and applicable guidelines.

17. Counsel to the Debtor shall notify both KCC and the Clerk within seven days of an order of dismissal or conversion of the Case.

18. At the end of the Case or upon the termination of KCC's services, the Debtor must obtain a termination order to terminate the services provided.

19. Any limitation of liability provisions in the Engagement Agreement are hereby deemed null and void.

20. The Debtor may submit a separate retention application, pursuant to Bankruptcy Code § 327 and/or any applicable law, for work that is to be performed by KCC, but which is not specifically authorized by this Order.

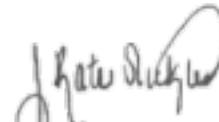
21. The Debtor and KCC are authorized to take all actions necessary to effectuate the relief granted pursuant to the Order in accordance with the Application.

22. Notwithstanding any term in the Engagement Agreement to the contrary, the Court retains jurisdiction with respect to all matters arising from or related to the implementation of the Order.

23. KCC shall not cease providing claims processing services during the Case for any reason, including nonpayment, without an order of the Court.

24. In the event of any inconsistency between the Engagement Agreement, the Application, and the Order, the Order shall govern.

**Dated: June 6th, 2022
Wilmington, Delaware**



**J. KATE STICKLES
UNITED STATES BANKRUPTCY JUDGE**